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106TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
106–1004

ENACTMENT OF CERTAIN SMALL BUSINESS, HEALTH, TAX, AND MINIMUM WAGE PROVISIONS

CONFERENCE REPORT

TO ACCOMPANY

H.R. 2614

OCTOBER 26 (legislative day, OCTOBER 25), 2000.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 2614]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2614) to amend the Small Business Investment Act to make improvements to the certified development company program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

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

SECTION 1. ENACTMENT OF OTHER PROVISIONS OF LAW.

The provisions of the following bills of the 106th Congress are hereby enacted into law:

(1) H.R. 5538, as introduced on October 25, 2000 (the Minimum Wage Act of 2000).

(2) H.R. 5542, as introduced on October 25, 2000 (the Taxpayer Relief Act of 2000).

(3) H.R. 5543, as introduced on October 25, 2000 (the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000).

(4) H.R. 5544, as introduced on October 25, 2000 (the Pain Relief Promotion Act of 2000).

(5) H.R. 5545, as introduced on October 25, 2000 (the Small Business Reauthorization Act of 2000).

SEC. 2. PUBLICATION OF ACT.

In publishing this Act in slip form and in the United States Statutes at Large pursuant to section 112 of title 1, United States Code, the Archivist of the United States shall include after the date of approval appendixes setting forth the texts of the bills referred to in section 1.

And the Senate agree to the same.

JIM TALENT,
DICK ARMEY,
Managers on the Part of the House.

CHRISTOPHER BOND,
CONRAD BURNS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2614) to amend the Small Business Investment Act to make improvements to the certified development company program, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment.

The conference agreement would enact by reference the provisions of five bills introduced on October 25, 2000. Those bills are the following:

(1) H.R. 5538, the Minimum Wage Act of 2000.

(2) H.R. 5542, the Taxpayer Relief Act of 2000.

(3) H.R. 5543, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

(4) H.R. 5544, the Pain Relief Promotion Act of 2000.

(5) H.R. 5545, the Small Business Reauthorization Act of 2000.

This joint statement sets out for convenience the text of each bill that would be enacted in the conference report by reference.

MINIMUM WAGE ACT OF 2000

The conference agreement would enact the provisions of H.R. 5538, as introduced on October 25, 2000. The text of that bill follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Act of 2000".

SEC. 2. MINIMUM WAGE INCREASE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) is amended to read as follows:

"(1) except as otherwise provided in this section. Not less than $5.15 an hour during the period ending June 30, 2000, not less than $5.65 an hour during the year beginning January 1, 2001, and not less than $6.15 an hour beginning January 1, 2002;".

TAXPAYER RELIEF ACT OF 2000

The conference agreement would enact the provisions of H.R. 5542, as introduced on October 25, 2000. The text of that bill follows:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Taxpayer Relief Act of 2000".

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

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TITLE I—FSC REPEAL AND EXTRATERRITORIAL INCOME EXCLUSION

SEC. 101. REPEAL OF FOREIGN SALES CORPORATION RULES.

Subpart C of part III of subchapter N of chapter 1 (relating to taxation of foreign sales corporations) is hereby repealed.

SEC. 102. TREATMENT OF EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting before section 115 the following new section:

"SEC. 114. EXTRATERRITORIAL INCOME.

"(a) EXCLUSION.—Gross income does not include extraterritorial income.

"(b) EXCEPTION.—Subsection (a) shall not apply to extraterritorial income which is not qualifying foreign trade income as determined under subpart E of part III of subchapter N.

"(c) DISALLOWANCE OF DEDUCTIONS.—

"(1) IN GENERAL.—Any deduction of a taxpayer allocated under paragraph (2) to extraterritorial income of the taxpayer excluded from gross income under subsection (a) shall not be allowed.

"(2) ALLOCATION.—Any deduction of the taxpayer properly apportioned and allocated to the extraterritorial income derived by the taxpayer from any transaction shall be allocated on a proportionate basis between—

"(A) the extraterritorial income derived from such transaction which is excluded from gross income under subsection (a), and

"(B) the extraterritorial income derived from such transaction which is not so excluded.

"(d) DENIAL OF CREDITS FOR CERTAIN FOREIGN TAXES.—Notwithstanding any other provision of this chapter, no credit shall be allowed under this chapter for any income, war profits, and excess profits taxes paid or accrued to any foreign country or possession of the United States with respect to extraterritorial income which is excluded from gross income under subsection (a).

"(e) EXTRATERRITORIAL INCOME.—For purposes of this section, the term 'extraterritorial income' means the gross income of the taxpayer attributable to foreign trading gross receipts (as defined in section 942) of the taxpayer.".

(b) QUALIFYING FOREIGN TRADE INCOME.—Part III of subchapter N of chapter 1 is amended by inserting after subpart D the following new subpart:

"Subpart E—Qualifying Foreign Trade Income

"Sec. 941. Qualifying foreign trade income.
"Sec. 942. Foreign trading gross receipts.
"Sec. 943. Other definitions and special rules.

"SEC. 941. QUALIFYING FOREIGN TRADE INCOME.

"(a) QUALIFYING FOREIGN TRADE INCOME.—For purposes of this subpart and section 114—

"(1) IN GENERAL.—The term 'qualifying foreign trade income' means, with respect to any transaction, the amount of gross income which, if excluded, will result in a reduction of the taxable income of the taxpayer from such transaction equal to the greatest of—

"(A) 30 percent of the foreign sale and leasing income derived by the taxpayer from such transaction,

"(B) 1.2 percent of the foreign trading gross receipts derived by the taxpayer from the transaction, or

"(C) 15 percent of the foreign trade income derived by the taxpayer from the transaction.

In no event shall the amount determined under subparagraph (B) exceed 200 percent of the amount determined under subparagraph (C).

"(2) ALTERNATIVE COMPUTATION.—A taxpayer may compute its qualifying foreign trade income under a subparagraph of paragraph (1) other than the subparagraph which results in the greatest amount of such income.

"(3) LIMITATION ON USE OF FOREIGN TRADING GROSS RECEIPTS METHOD.—If any person computes its qualifying foreign trade income from any transaction with respect to any property under paragraph (1)(B), the qualifying foreign trade income of such person (or any related person) with respect to any other transaction involving such property shall be zero.

"(4) RULES FOR MARGINAL COSTING.—The Secretary shall prescribe regulations setting forth rules for the allocation of expenditures in computing foreign trade income under paragraph (1)(C) in those cases where a taxpayer is seeking to establish or maintain a market for qualifying foreign trade property.

"(5) PARTICIPATION IN INTERNATIONAL BOYCOTTS, ETC.—Under regulations prescribed by the Secretary, the qualifying foreign trade income of a taxpayer for any taxable year shall be reduced (but not below zero) by the sum of—

"(A) an amount equal to such income multiplied by the international boycott factor determined under section 999, and

"(B) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the taxpayer directly or indirectly to an official, employee, or agent in fact of a government.

"(b) FOREIGN TRADE INCOME.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'foreign trade income' means the taxable income of the taxpayer attributable to foreign trading gross receipts of the taxpayer.

"(2) SPECIAL RULE FOR COOPERATIVES.—In any case in which an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products sells qualifying foreign trade property, in computing the taxable income of such cooperative, there shall not be taken into account any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

"(c) FOREIGN SALE AND LEASING INCOME.—For purposes of this section—

"(1) IN GENERAL.—The term 'foreign sale and leasing income' means, with respect to any transaction—

"(A) foreign trade income properly allocable to activities which—

"(i) are described in paragraph (2)(A)(i) or (3) of section 942(b), and

"(ii) are performed by the taxpayer (or any person acting under a contract with such taxpayer) outside the United States, or

"(B) foreign trade income derived by the taxpayer in connection with the lease or rental of qualifying foreign trade property for use by the lessee outside the United States.

"(2) SPECIAL RULES FOR LEASED PROPERTY.—

"(A) SALES INCOME.—The term 'foreign sale and leasing income' includes any foreign trade income derived by

the taxpayer from the sale of property described in paragraph (1)(B).

"(B) LIMITATION IN CERTAIN CASES.—Except as provided in regulations, in the case of property which—

"(i) was manufactured, produced, grown, or extracted by the taxpayer, or

"(ii) was acquired by the taxpayer from a related person for a price which was not determined in accordance with the rules of section 482,

the amount of foreign trade income which may be treated as foreign sale and leasing income under paragraph (1)(B) or subparagraph (A) of this paragraph with respect to any transaction involving such property shall not exceed the amount which would have been determined if the taxpayer had acquired such property for the price determined in accordance with the rules of section 482.

"(3) SPECIAL RULES.—

"(A) EXCLUDED PROPERTY.—Foreign sale and leasing income shall not include any income properly allocable to excluded property described in subparagraph (B) of section 943(a)(3) (relating to intangibles).

"(B) ONLY DIRECT EXPENSES TAKEN INTO ACCOUNT.—For purposes of this subsection, any expense other than a directly allocable expense shall not be taken into account in computing foreign trade income.

"SEC. 942. FOREIGN TRADING GROSS RECEIPTS.

"(a) FOREIGN TRADING GROSS RECEIPTS.—

"(1) IN GENERAL.—Except as otherwise provided in this section, for purposes of this subpart, the term 'foreign trading gross receipts' means the gross receipts of the taxpayer which are—

"(A) from the sale, exchange, or other disposition of qualifying foreign trade property,

"(B) from the lease or rental of qualifying foreign trade property for use by the lessee outside the United States,

"(C) for services which are related and subsidiary to—

"(i) any sale, exchange, or other disposition of qualifying foreign trade property by such taxpayer, or

"(ii) any lease or rental of qualifying foreign trade property described in subparagraph (B) by such taxpayer,

"(D) for engineering or architectural services for construction projects located (or proposed for location) outside the United States, or

"(E) for the performance of managerial services for a person other than a related person in furtherance of the production of foreign trading gross receipts described in subparagraph (A), (B), or (C).

Subparagraph (E) shall not apply to a taxpayer for any taxable year unless at least 50 percent of its foreign trading gross receipts (determined without regard to this sentence) for such taxable year is derived from activities described in subparagraph (A), (B), or (C).

"(2) CERTAIN RECEIPTS EXCLUDED ON BASIS OF USE; SUBSIDIZED RECEIPTS EXCLUDED.—The term 'foreign trading gross receipts' shall not include receipts of a taxpayer from a transaction if—

"(A) the qualifying foreign trade property or services—

"(i) are for ultimate use in the United States, or

"(ii) are for use by the United States or any instrumentality thereof and such use of qualifying foreign trade property or services is required by law or regulation, or

"(B) such transaction is accomplished by a subsidy granted by the government (or any instrumentality thereof) of the country or possession in which the property is manufactured, produced, grown, or extracted.

"(3) ELECTION TO EXCLUDE CERTAIN RECEIPTS.—The term 'foreign trading gross receipts' shall not include gross receipts of a taxpayer from a transaction if the taxpayer elects not to have such receipts taken into account for purposes of this subpart.

"(b) FOREIGN ECONOMIC PROCESS REQUIREMENTS.—

"(1) IN GENERAL.—Except as provided in subsection (c), a taxpayer shall be treated as having foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as required by paragraph (2).

"(2) REQUIREMENT.—

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to the gross receipts of a taxpayer derived from any transaction if—

"(i) such taxpayer (or any person acting under a contract with such taxpayer) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction, and

"(ii) the foreign direct costs incurred by the taxpayer attributable to the transaction equal or exceed 50 percent of the total direct costs attributable to the transaction.

"(B) ALTERNATIVE 85-PERCENT TEST.—A taxpayer shall be treated as satisfying the requirements of subparagraph (A)(ii) with respect to any transaction if, with respect to each of at least 2 subparagraphs of paragraph (3), the foreign direct costs incurred by such taxpayer attributable to activities described in such subparagraph equal or exceed 85 percent of the total direct costs attributable to activities described in such subparagraph.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) TOTAL DIRECT COSTS.—The term 'total direct costs' means, with respect to any transaction, the total direct costs incurred by the taxpayer attributable to activities described in paragraph (3) performed at any location by the taxpayer or any person acting under a contract with such taxpayer.

"(ii) FOREIGN DIRECT COSTS.—The term 'foreign direct costs' means, with respect to any transaction, the portion of the total direct costs which are attributable to activities performed outside the United States.

"(3) ACTIVITIES RELATING TO QUALIFYING FOREIGN TRADE PROPERTY.—The activities described in this paragraph are any of the following with respect to qualifying foreign trade property—

"(A) advertising and sales promotion,

"(B) the processing of customer orders and the arranging for delivery,

"(C) transportation outside the United States in connection with delivery to the customer,

"(D) the determination and transmittal of a final invoice or statement of account or the receipt of payment, and

"(E) the assumption of credit risk.

"(4) ECONOMIC PROCESSES PERFORMED BY RELATED PERSONS.—A taxpayer shall be treated as meeting the requirements of this subsection with respect to any sales transaction involving any property if any related person has met such requirements in such transaction or any other sales transaction involving such property.

"(c) EXCEPTION FROM FOREIGN ECONOMIC PROCESS REQUIREMENT.—

"(1) IN GENERAL.—The requirements of subsection (b) shall be treated as met for any taxable year if the foreign trading gross receipts of the taxpayer for such year do not exceed $5,000,000.

"(2) RECEIPTS OF RELATED PERSONS AGGREGATED.—All related persons shall be treated as one person for purposes of paragraph (1), and the limitation under paragraph (1) shall be allocated among such persons in a manner provided in regulations prescribed by the Secretary.

"(3) SPECIAL RULE FOR PASS-THRU ENTITIES.—In the case of a partnership, S corporation, or other pass-thru entity, the limitation under paragraph (1) shall apply with respect to the partnership, S corporation, or entity and with respect to each partner, shareholder, or other owner.

"SEC. 943. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) QUALIFYING FOREIGN TRADE PROPERTY.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'qualifying foreign trade property' means property—

"(A) manufactured, produced, grown, or extracted within or outside the United States,

"(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business for direct use, consumption, or disposition outside the United States, and

"(C) not more than 50 percent of the fair market value of which is attributable to—

"(i) articles manufactured, produced, grown, or extracted outside the United States, and

"(ii) direct costs for labor (determined under the principles of section 263A) performed outside the United States.

For purposes of subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation, and the direct costs for labor under clause (ii) do not include costs that would be treated under the principles of section 263A as direct labor costs attributable to articles described in clause (i).

"(2) U.S. TAXATION TO ENSURE CONSISTENT TREATMENT.—Property which (without regard to this paragraph) is qualifying foreign trade property and which is manufactured, produced, grown, or extracted outside the United States shall be treated as qualifying foreign trade property only if it is manufactured, produced, grown, or extracted by—

"(A) a domestic corporation,

"(B) an individual who is a citizen or resident of the United States,

"(C) a foreign corporation with respect to which an election under subsection (e) (relating to foreign corporations electing to be subject to United States taxation) is in effect, or

"(D) a partnership or other pass-thru entity all of the partners or owners of which are described in subparagraph (A), (B), or (C).

Except as otherwise provided by the Secretary, tiered partnerships or pass-thru entities shall be treated as described in subparagraph (D) if each of the partnerships or entities is directly or indirectly wholly owned by persons described in subparagraph (A), (B), or (C).

"(3) EXCLUDED PROPERTY.—The term 'qualifying foreign trade property' shall not include—

"(A) property leased or rented by the taxpayer for use by any related person,

"(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, and other than computer software (whether or not patented), for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property,

"(C) oil or gas (or any primary product thereof),

"(D) products the transfer of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of Public Law 96–72, or

"(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber.

"(4) PROPERTY IN SHORT SUPPLY.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, the President may by Executive order designate the property as in short supply. Any property so designated shall not be

treated as qualifying foreign trade property during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

"(b) OTHER DEFINITIONS AND RULES.—For purposes of this subpart—

"(1) TRANSACTION.—

"(A) IN GENERAL.—The term 'transaction' means—

"(i) any sale, exchange, or other disposition,

"(ii) any lease or rental, and

"(iii) any furnishing of services.

"(B) GROUPING OF TRANSACTIONS.—To the extent provided in regulations, any provision of this subpart which, but for this subparagraph, would be applied on a transaction-by-transaction basis may be applied by the taxpayer on the basis of groups of transactions based on product lines or recognized industry or trade usage. Such regulations may permit different groupings for different purposes.

"(2) UNITED STATES DEFINED.—The term 'United States' includes the Commonwealth of Puerto Rico. The preceding sentence shall not apply for purposes of determining whether a corporation is a domestic corporation.

"(3) RELATED PERSON.—A person shall be related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

"(4) GROSS AND TAXABLE INCOME.—Section 114 shall not be taken into account in determining the amount of gross income or foreign trade income from any transaction.

"(c) SOURCE RULE.—Under regulations, in the case of qualifying foreign trade property manufactured, produced, grown, or extracted within the United States, the amount of income of a taxpayer from any sales transaction with respect to such property which is treated as from sources without the United States shall not exceed—

"(1) in the case of a taxpayer computing its qualifying foreign trade income under section 941(a)(1)(B), the amount of the taxpayer's foreign trade income which would (but for this subsection) be treated as from sources without the United States if the foreign trade income were reduced by an amount equal to 4 percent of the foreign trading gross receipts with respect to the transaction, and

"(2) in the case of a taxpayer computing its qualifying foreign trade income under section 941(a)(1)(C), 50 percent of the amount of the taxpayer's foreign trade income which would (but for this subsection) be treated as from sources without the United States.

"(d) TREATMENT OF WITHHOLDING TAXES.—

"(1) IN GENERAL.—For purposes of section 114(d), any withholding tax shall not be treated as paid or accrued with respect to extraterritorial income which is excluded from gross income

under section 114(a). For purposes of this paragraph, the term 'withholding tax' means any tax which is imposed on a basis other than residence and for which credit is allowable under section 901 or 903.

"(2) EXCEPTION.—Paragraph (1) shall not apply to any taxpayer with respect to extraterritorial income from any transaction if the taxpayer computes its qualifying foreign trade income with respect to the transaction under section 941(a)(1)(A).

"(e) ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—

"(1) IN GENERAL.—An applicable foreign corporation may elect to be treated as a domestic corporation for all purposes of this title if such corporation waives all benefits to such corporation granted by the United States under any treaty. No election under section 1362(a) may be made with respect to such corporation.

"(2) APPLICABLE FOREIGN CORPORATION.—For purposes of paragraph (1), the term 'applicable foreign corporation' means any foreign corporation if—

"(A) such corporation manufactures, produces, grows, or extracts property in the ordinary course of such corporation's trade or business, or

"(B) substantially all of the gross receipts of such corporation are foreign trading gross receipts.

"(3) PERIOD OF ELECTION.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the taxpayer. Any revocation of such election shall apply to taxable years beginning after such revocation.

"(B) TERMINATION.—If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraph (A) or (B) of paragraph (2) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

"(C) EFFECT OF REVOCATION OR TERMINATION.—If a corporation which made an election under paragraph (1) revokes such election or such election is terminated under subparagraph (B), such corporation (and any successor corporation) may not make such election for any of the 5 taxable years beginning with the first taxable year for which such election is not in effect as a result of such revocation or termination.

"(4) SPECIAL RULES.—

"(A) REQUIREMENTS.—This subsection shall not apply to an applicable foreign corporation if such corporation fails to meet the requirements (if any) which the Secretary may prescribe to ensure that the taxes imposed by this chapter on such corporation are paid.

"(B) EFFECT OF ELECTION, REVOCATION, AND TERMINATION.—

"(i) ELECTION.—For purposes of section 367, a foreign corporation making an election under this sub-

section shall be treated as transferring (as of the first day of the first taxable year to which the election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

"(ii) REVOCATION AND TERMINATION.—For purposes of section 367, if—

"(I) an election is made by a corporation under paragraph (1) for any taxable year, and

"(II) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of the first such subsequent taxable year to which such election ceases to apply) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

"(C) ELIGIBILITY FOR ELECTION.—The Secretary may by regulation designate one or more classes of corporations which may not make the election under this subsection.

"(f) RULES RELATING TO ALLOCATIONS OF QUALIFYING FOREIGN TRADE INCOME FROM SHARED PARTNERSHIPS.—

"(1) IN GENERAL.—If—

"(A) a partnership maintains a separate account for transactions (to which this subpart applies) with each partner,

"(B) distributions to each partner with respect to such transactions are based on the amounts in the separate account maintained with respect to such partner, and

"(C) such partnership meets such other requirements as the Secretary may by regulations prescribe,

then such partnership shall allocate to each partner items of income, gain, loss, and deduction (including qualifying foreign trade income) from any transaction to which this subpart applies on the basis of such separate account.

"(2) SPECIAL RULES.—For purposes of this subpart, in the case of a partnership to which paragraph (1) applies—

"(A) any partner's interest in the partnership shall not be taken into account in determining whether such partner is a related person with respect to any other partner, and

"(B) the election under section 942(a)(3) shall be made separately by each partner with respect to any transaction for which the partnership maintains separate accounts for each partner.

"(g) EXCLUSION FOR PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—Any amount described in paragraph (1) or (3) of section 1385(a)—

"(1) which is received by a person from an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products, and

"(2) which is allocable to qualifying foreign trade income and designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

shall be treated as qualifying foreign trade income of such person for purposes of section 114. The taxable income of the organization

shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

"(h) SPECIAL RULE FOR DISCS.—Section 114 shall not apply to any taxpayer for any taxable year if, at any time during the taxable year, the taxpayer is a member of any controlled group of corporations (as defined in section 927(d)(4), as in effect before the date of the enactment of this subsection) of which a DISC is a member."

SEC. 103. TECHNICAL AND CONFORMING AMENDMENTS.

(1) The second sentence of section 56(g)(4)(B)(i) is amended by inserting before the period "or under section 114".

(2) Section 275(a) is amended—

(A) by striking "or" at the end of paragraph (4)(A), by striking the period at the end of paragraph (4)(B) and inserting ", or", and by adding at the end of paragraph (4) the following new subparagraph:

"(C) such taxes are paid or accrued with respect to qualifying foreign trade income (as defined in section 941)."; ***and***

(B) by adding at the end the following the following new sentence: "A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C).".

(3) Paragraph (3) of section 864(e) is amended—

(A) by striking "For purposes of" and inserting:

"(A) IN GENERAL.—For purposes of"; and

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

"(B) ASSETS PRODUCING EXEMPT EXTRATERRITORIAL INCOME.—For purposes of allocating and apportioning any interest expense, there shall not be taken into account any qualifying foreign trade property (as defined in section 943(a)) which is held by the taxpayer for lease or rental in the ordinary course of trade or business for use by the lessee outside the United States (as defined in section 943(b)(2)).".

(4) Section 903 is amended by striking "164(a)" and inserting "114, 164(a),".

(5) Section 999(c)(1) is amended by inserting "941(a)(5)," after "908(a),".

(6) The table of sections for part III of subchapter B of chapter 1 is amended by inserting before the item relating to section 115 the following new item:

"Sec. 114. Extraterritorial income.".

(7) The table of subparts for part III of subchapter N of chapter 1 is amended by striking the item relating to subpart E and inserting the following new item:

"Subpart E. Qualifying foreign trade income.".

(8) The table of subparts for part III of subchapter N of chapter 1 is amended by striking the item relating to subpart C.

SEC. 104. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this title shall apply to transactions after September 30, 2000.

(b) NO NEW FSCS; TERMINATION OF INACTIVE FSCS.—

(1) NO NEW FSCS.—No corporation may elect after September 30, 2000, to be a FSC (as defined in section 922 of the Internal Revenue Code of 1986, as in effect before the amendments made by this Act).

(2) TERMINATION OF INACTIVE FSCS.—If a FSC has no foreign trade income (as defined in section 923(b) of such Code, as so in effect) for any period of 5 consecutive taxable years beginning after December 31, 2001, such FSC shall cease to be treated as a FSC for purposes of such Code for any taxable year beginning after such period.

(c) TRANSITION PERIOD FOR EXISTING FOREIGN SALES CORPORATIONS.—

(1) IN GENERAL.—In the case of a FSC (as so defined) in existence on September 30, 2000, and at all times thereafter, the amendments made by this Act shall not apply to any transaction in the ordinary course of trade or business involving a FSC which occurs—

(A) before January 1, 2002; or

(B) after December 31, 2001, pursuant to a binding contract—

(i) which is between the FSC (or any related person) and any person which is not a related person; and

(ii) which is in effect on September 30, 2000, and at all times thereafter.

For purposes of this paragraph, a binding contract shall include a purchase option, renewal option, or replacement option which is included in such contract and which is enforceable against the seller or lessor.

(2) ELECTION TO HAVE AMENDMENTS APPLY EARLIER.—A taxpayer may elect to have the amendments made by this Act apply to any transaction by a FSC or any related person to which such amendments would apply but for the application of paragraph (1). Such election shall be effective for the taxable year for which made and all subsequent taxable years, and, once made, may be revoked only with the consent of the Secretary of the Treasury.

(3) EXCEPTION FOR OLD EARNINGS AND PROFITS OF CERTAIN CORPORATIONS.—

(A) IN GENERAL.—In the case of a foreign corporation to which this paragraph applies—

(i) earnings and profits of such corporation accumulated in taxable years ending before October 1, 2000, shall not be included in the gross income of the persons holding stock in such corporation by reason of section 943(e)(4)(B)(i), and

(ii) rules similar to the rules of clauses (ii), (iii), and (iv) of section 953(d)(4)(B) shall apply with respect to such earnings and profits.

The preceding sentence shall not apply to earnings and profits acquired in a transaction after September 30, 2000, to which section 381 applies unless the distributor or transferor corporation was immediately before the transaction a foreign corporation to which this paragraph applies.

(B) EXISTING FSCS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957) if—

(i) such corporation is a FSC (as so defined) in existence on September 30, 2000,

(ii) such corporation is eligible to make the election under section 943(e) by reason of being described in paragraph (2)(B) of such section, and

(iii) such corporation makes such election not later than for its first taxable year beginning after December 31, 2001.

(C) OTHER CORPORATIONS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957), and such corporation shall (notwithstanding any provision of section 943(e)) be treated as an applicable foreign corporation for purposes of section 943(e), if—

(i) such corporation is in existence on September 30, 2000,

(ii) as of such date, such corporation is wholly owned (directly or indirectly) by a domestic corporation (determined without regard to any election under section 943(e)),

(iii) for each of the 3 taxable years preceding the first taxable year to which the election under section 943(e) by such controlled foreign corporation applies—

(I) all of the gross income of such corporation is subpart F income (as defined in section 952), including by reason of section 954(b)(3)(B), and

(II) in the ordinary course of such corporation's trade or business, such corporation regularly sold (or paid commissions) to a FSC which on September 30, 2000, was a related person to such corporation,

(iv) such corporation has never made an election under section 922(a)(2) (as in effect before the date of the enactment of this paragraph) to be treated as a FSC, and

(v) such corporation makes the election under section 943(e) not later than for its first taxable year beginning after December 31, 2001.

The preceding sentence shall cease to apply as of the date that the domestic corporation referred to in clause (ii) ceases to wholly own (directly or indirectly) such controlled foreign corporation.

(4) RELATED PERSON.—For purposes of this subsection, the term "related person" has the meaning given to such term by section 943(b)(3).

(5) SECTION REFERENCES.—Except as otherwise expressly provided, any reference in this subsection to a section or other provision shall be considered to be a reference to a section or other provision of the Internal Revenue Code of 1986, as amended by this title.

(d) SPECIAL RULES RELATING TO LEASING TRANSACTIONS.—

(1) SALES INCOME.—If foreign trade income in connection with the lease or rental of property described in section 927(a)(1)(B) of such Code (as in effect before the amendments made by this Act) is treated as exempt foreign trade income for purposes of section 921(a) of such Code (as so in effect), such property shall be treated as property described in section 941(c)(1)(B) of such Code (as added by this Act) for purposes of applying section 941(c)(2) of such Code (as so added) to any subsequent transaction involving such property to which the amendments made by this Act apply.

(2) LIMITATION ON USE OF GROSS RECEIPTS METHOD.—If any person computed its foreign trade income from any transaction with respect to any property on the basis of a transfer price determined under the method described in section 925(a)(1) of such Code (as in effect before the amendments made by this Act), then the qualifying foreign trade income (as defined in section 941(a) of such Code, as in effect after such amendment) of such person (or any related person) with respect to any other transaction involving such property (and to which the amendments made by this Act apply) shall be zero.

TITLE II—SMALL BUSINESS TAX RELIEF

SEC. 201. EXTENSION OF WORK OPPORTUNITY TAX CREDIT.

(a) IN GENERAL.—Section 51(c)(4)(B) is amended by striking "December 31, 2001" and inserting "June 30, 2004".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals who begin work for the employer after December 31, 2001.

SEC. 202. INCREASE IN AMORTIZABLE REFORESTATION EXPENDITURES, ETC.

(a) INCREASE IN DOLLAR LIMITATION.—Paragraph (1) of section 194(b) (relating to amortization of reforestation expenditures) is amended by striking "$10,000 ($5,000" and inserting "$25,000 ($12,500".

(b) TEMPORARY SUSPENSION OF INCREASED DOLLAR LIMITATION.—

(1) IN GENERAL.—Subsection (b) of section 194 (relating to amortization of reforestation expenditures) is amended by adding at the end the following new paragraph:

"(5) SUSPENSION OF DOLLAR LIMITATION.—Paragraph (1) shall not apply to taxable years beginning after December 31, 2000, and before January 1, 2004.".

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 48(b) is amended by striking "section 194(b)(1)" and inserting "section 194(b)(1) and without regard to section 194(b)(5)".

(c) CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LAND OWNER.—

(1) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking "retains an economic interest in such timber" and inserting "either retains an economic interest in such timber or makes an outright sale of such timber".

(2) CONFORMING AMENDMENT.—The third sentence of section 631(b) is amended by striking "The date of disposal" and inserting "In the case of disposal of timber with a retained economic interest, the date of disposal".

(d) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 2000.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to sales after the date of the enactment of this Act.

SEC. 203. INCREASE IN EXPENSE TREATMENT FOR SMALL BUSINESSES.

(a) IN GENERAL.—Paragraph (1) of section 179(b) (relating to dollar limitation) is amended to read as follows:

"(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $35,000.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 204. INCREASED DEDUCTION FOR MEAL EXPENSES.

(a) IN GENERAL.—Paragraph (1) of section 274(n) (relating to only 50 percent of meal and entertainment expenses allowed as deduction) is amended by striking "50 percent" in the text and inserting "the allowable percentage".

(b) ALLOWABLE PERCENTAGE.—Subsection (n) of section 274 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) ALLOWABLE PERCENTAGE.—For purposes of paragraph (1), the allowable percentage is—

"(A) in the case of amounts for items described in paragraph (1)(B), 50 percent, and

"(B) in the case of expenses for food or beverages, 70 percent.".

(c) CONFORMING AMENDMENT.—The heading for subsection (n) of section 274 is amended by striking "50 PERCENT" and inserting "LIMITED PERCENTAGES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 205. INCREASED DEDUCTIBILITY OF BUSINESS MEAL EXPENSES FOR INDIVIDUALS SUBJECT TO FEDERAL LIMITATIONS ON HOURS OF SERVICE.

(a) IN GENERAL.—Paragraph (4) of section 274(n) (relating to limited percentages of meal and entertainment expenses allowed as deduction), as redesignated by section 204, is amended to read as follows:

"(4) SPECIAL RULE FOR INDIVIDUALS SUBJECT TO FEDERAL HOURS OF SERVICE.—In the case of any expenses for food or beverages consumed while away from home (within the meaning of section 162(a)(2)) by an individual during, or incident to, the period of duty subject to the hours of service limitations of the

Department of Transportation, paragraph (2)(B) shall be applied by substituting '80 percent' for '70 percent'.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 206. REPEAL OF MODIFICATION OF INSTALLMENT METHOD.

(a) IN GENERAL.—Subsection (a) of section 536 of the Ticket to Work and Work Incentives Improvement Act of 1999 (relating to modification of installment method and repeal of installment method for accrual method taxpayers) is repealed effective with respect to sales and other dispositions occurring on or after the date of the enactment of such Act.

(b) APPLICABILITY.—The Internal Revenue Code of 1986 shall be applied and administered as if that subsection (and the amendments made by that subsection) had not been enacted.

SEC. 207. INCOME AVERAGING NOT TO INCREASE ALTERNATIVE MINIMUM TAX LIABILITY; INCOME AVERAGING FOR FISHERMEN.

(a) IN GENERAL.—Section 55(c) (defining regular tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following:

"(2) COORDINATION WITH INCOME AVERAGING FOR FARMERS AND FISHERMEN.—Solely for purposes of this section, section 1301 (relating to averaging of farm and fishing income) shall not apply in computing the regular tax.".

(b) ALLOWING INCOME AVERAGING FOR FISHERMEN.—

(1) IN GENERAL.—Section 1301(a) is amended by striking "farming business" and inserting "farming business or fishing business".

(2) DEFINITION OF ELECTED FARM INCOME.—

(A) IN GENERAL.—Clause (i) of section 1301(b)(1)(A) is amended by inserting "or fishing business" before the semicolon.

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 1301(b)(1) is amended by inserting "or fishing business" after "farming business" both places it occurs.

(3) DEFINITION OF FISHING BUSINESS.—Section 1301(b) is amended by adding at the end the following new paragraph:

"(4) FISHING BUSINESS.—The term 'fishing business' means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 208. REPEAL OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) REPEAL OF OCCUPATIONAL TAXES.—

(1) IN GENERAL.—The following provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed:

(A) Subpart A (relating to proprietors of distilled spirits plants, bonded wine cellars, etc.).

(B) Subpart B (relating to brewer).

(C) Subpart D (relating to wholesale dealers) (other than sections 5114 and 5116).

(D) Subpart E (relating to retail dealers) (other than section 5124).

(E) Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146).

(2) NONBEVERAGE DOMESTIC DRAWBACK.—Section 5131 is amended by striking ", on payment of a special tax per annum,".

(3) INDUSTRIAL USE OF DISTILLED SPIRITS.—Section 5276 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) The heading for part II of subchapter A of chapter 51 and the table of subparts for such part are amended to read as follows:

"PART II—MISCELLANEOUS PROVISIONS

"Subpart A. Manufacturers of stills.
"Subpart B. Nonbeverage domestic drawback claimants.
"Subpart C. Recordkeeping by dealers.
"Subpart D. Other provisions.".

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

"Part II. Miscellaneous provisions.".

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants), as amended by paragraph (5), is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended—

(i) by redesignating the items relating to sections 5131 through 5134 as relating to sections 5111 through 5114, respectively, and

(ii) by striking "and rate of tax" in the item relating to section 5111, as so redesignated.

(C) Section 5111, as redesignated by subparagraph (A), is amended—

*(i) by striking "**AND RATE OF TAX**" in the section heading,*

(ii) by striking "(a) ELIGIBILITY FOR DRAWBACK.—", and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

"Subpart C—Recordkeeping by Dealers

"Sec. 5121. Recordkeeping by wholesale dealers.

"Sec. 5122. Recordkeeping by retail dealers.
"Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.".

(5)(A) Section 5114 (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5114 is amended—

(i) by striking the section heading and inserting the following new heading:

"SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.",

and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) WHOLESALE DEALERS.—For purposes of this part—

"(1) WHOLESALE DEALER IN LIQUORS.—The term 'wholesale dealer in liquors' means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

"(2) WHOLESALE DEALER IN BEER.—The term 'wholesale dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

"(3) DEALER.—The term 'dealer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

"(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS OR MORE.—The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer.".

(C) Paragraph (3) of section 5121(d), as so redesignated, is amended by striking "section 5146" and inserting "section 5123".

(6)(A) Section 5124 (relating to records) is moved to subpart C of part II of subchapter A of chapter 51 and inserted after section 5121.

(B) Section 5124 is amended—

(i) by striking the section heading and inserting the following new heading:

"SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.",

(ii) by striking "section 5146" in subsection (c) and inserting "section 5123", and

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c) RETAIL DEALERS.—For purposes of this section—

"(1) RETAIL DEALER IN LIQUORS.—The term 'retail dealer in liquors' means any dealer (other than a retail dealer in beer)

who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

"(2) RETAIL DEALER IN BEER.—The term 'retail dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

"(3) DEALER.—The term 'dealer' has the meaning given such term by section 5121(c)(3).".

(7) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5123.

(8) Part II of subchapter A of chapter 51 is amended by inserting after subpart C the following new subpart:

"Subpart D—Other Provisions

"Sec. 5131. Packaging distilled spirits for industrial uses.
"Sec. 5132. Prohibited purchases by dealers.".

(9) Section 5116 is moved to subpart D of part II of subchapter A of chapter 51, inserted after the table of sections, redesignated as section 5131, and amended by inserting "(as defined in section 5121(c))" after "dealer" in subsection (a).

(10) Subpart D of part II of subchapter A of chapter 51 is amended by adding at the end the following new section:

"SEC. 5132. PROHIBITED PURCHASES BY DEALERS.

"(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

"(b) PENALTY AND FORFEITURE.—

"For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302.".

(11) Subsection (b) of section 5002 is amended—

(A) by striking "section 5112(a)" and inserting "section 5121(c)(3)",

(B) by striking "section 5112" and inserting "section 5121(c)", and

(C) by striking "section 5122" and inserting "section 5122(c)".

(12) Subparagraph (A) of section 5010(c)(2) is amended by striking "section 5134" and inserting "section 5114".

(13) Subsection (d) of section 5052 is amended to read as follows:

"(d) BREWER.—For purposes of this chapter, the term 'brewer' means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).".

(14) The text of section 5182 is amended to read as follows:

"For provisions requiring recordkeeping by wholesale liquor dealers, see section 5112, and by retail liquor dealers, see section 5122.".

(15) Subsection (b) of section 5402 is amended by striking "section 5092" and inserting "section 5052(d)".

(16) Section 5671 is amended by striking "or 5091".

(17)(A) Part V of subchapter J of chapter 51 is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to part V.

(18)(A) Sections 5142, 5143, and 5145 are moved to subchapter D of chapter 52, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended—

(i) by striking "this part" each place it appears and inserting "this subchapter", and

(ii) by striking "this subpart" in section 5732(c)(2) (as so redesignated) and inserting "this subchapter".

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking "(except the tax imposed by section 5131)" each place it appears.

(C) Subsection (c) of section 5733, as redesignated by subparagraph (A), is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end thereof the following:

"Sec. 5732. Payment of tax.
"Sec. 5733. Provisions relating to liability for occupational taxes.
"Sec. 5734. Application of State laws.".

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(19) Subsection (c) of section 6071 is amended by striking "section 5142" and inserting "section 5732".

(20) Paragraph (1) of section 7652(g) is amended—

(A) by striking "subpart F" and inserting "subpart B", and

(B) by striking "section 5131(a)" and inserting "section 5111(a)".

(21) The table of sections for subchapter D of chapter 51 is amended by striking the item relating to section 5276.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2001, but shall not apply to taxes imposed for periods before such date.

SEC. 209. EXCLUSION FROM GROSS INCOME FOR CERTAIN FORGIVEN MORTGAGE OBLIGATIONS.

(a) IN GENERAL.—Paragraph (1) of section 108(a) (relating to exclusion from gross income) is amended by striking "or" at the end of both subparagraphs (A) and (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by inserting after subparagraph (D) the following new subparagraph:

"(E) in the case of an individual, the indebtedness discharged is qualified residential indebtedness.".

(b) QUALIFIED RESIDENTIAL INDEBTEDNESS.—Section 108 (relating to discharge of indebtedness) is amended by adding at the end the following new subsection:

"(h) QUALIFIED RESIDENTIAL INDEBTEDNESS.—

"(1) LIMITATIONS.—The amount excluded under subparagraph (E) of subsection (a)(1) with respect to any qualified residential indebtedness shall not exceed the excess (if any) of—

"(A) the outstanding principal amount of such indebtedness (immediately before the discharge), over

"(B) the sum of—

"(i) the amount realized from the sale of the real property securing such indebtedness reduced by the cost of such sale, and

"(ii) the outstanding principal amount of any other indebtedness secured by such property.

"(2) QUALIFIED RESIDENTIAL INDEBTEDNESS.—

"(A) IN GENERAL.—The term 'qualified residential indebtedness' means indebtedness which—

"(i) was incurred or assumed by the taxpayer in connection with real property used as the principal residence (within the meaning of section 121) of the taxpayer and is secured by such real property,

"(ii) was incurred or assumed to acquire, construct, reconstruct, or substantially improve such real property, and

"(iii) with respect to which such taxpayer makes an election to have this paragraph apply.

"(B) REFINANCED INDEBTEDNESS.—Such term shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (A)(ii), but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

"(C) EXCEPTIONS.—Such term shall not include qualified farm indebtedness or qualified real property business indebtedness.".

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 108(a) is amended—

(A) in subparagraph (A) by striking "and (D)" and inserting "(D), and (E)", and

(B) by amending subparagraph (B) to read as follows:

"(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION, QUALIFIED REAL PROPERTY BUSINESS EXCLUSION, AND QUALIFIED RESIDENTIAL INDEBTEDNESS EXCLUSION.—Subparagraphs (C), (D), and (E) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.".

(2) Paragraph (1) of section 108(b) is amended by striking "or (C)" and inserting "(C), or (E)".

(3) Subsection (c) of section 121 is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE RELATING TO DISCHARGE OF INDEBTEDNESS.—The amount of gain which (but for this paragraph) would be excluded from gross income under subsection (a) with respect to a principal residence shall be reduced by the amount excluded from gross income under section 108(a)(1)(E) with respect to such residence.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges after December 31, 2000.

SEC. 210. CLARIFICATION OF CASH ACCOUNTING RULES FOR SMALL BUSINESS.

(a) CASH ACCOUNTING PERMITTED.—Section 446 (relating to general rule for methods of accounting) is amended by adding at the end the following new subsection:

"(g) SMALL BUSINESS TAXPAYERS PERMITTED TO USE CASH ACCOUNTING METHOD WITHOUT LIMITATION.—

"(1) IN GENERAL.—Notwithstanding any other provision of this title, an eligible taxpayer shall not be required to use an accrual method of accounting for any taxable year.

"(2) ELIGIBLE TAXPAYER.—For purposes of this subsection—

"(A) IN GENERAL.—A taxpayer is an eligible taxpayer with respect to any taxable year if, for all prior taxable years beginning after October 31, 1999, the taxpayer (or any predecessor) met the gross receipts test of subparagraph (B).

"(B) GROSS RECEIPTS TEST.—A taxpayer meets the gross receipts test of this subparagraph for any prior taxable year if the average annual gross receipts of the taxpayer (or any predecessor) for the 3-taxable-year period ending with such prior taxable year does not exceed $2,500,000. The rules of paragraphs (2) and (3) of section 448(c) shall apply for purposes of the preceding sentence."

(b) CLARIFICATION OF INVENTORY RULES FOR SMALL BUSINESS.—Section 471 (relating to general rule for inventories) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) SMALL BUSINESS TAXPAYERS NOT REQUIRED TO USE INVENTORIES.—

"(1) IN GENERAL.—An eligible taxpayer shall not be required to use inventories under this section for a taxable year.

"(2) TREATMENT OF TAXPAYERS NOT USING INVENTORIES.—If an eligible taxpayer elects not to use inventories with respect to any property for any taxable year beginning after the date of the enactment of this section, such property shall be treated as a material or supply which is not incidental.

"(3) ELIGIBLE TAXPAYER.—For purposes of this subsection, the term 'eligible taxpayer' has the meaning given such term by section 446(g)(2).".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account

over a period (not greater than 4 taxable years) beginning with such taxable year.

SEC. 211. AMENDMENTS RELATING TO DEMAND DEPOSIT ACCOUNTS AT DEPOSITORY INSTITUTIONS.

(a) INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED.—

(1) FEDERAL RESERVE ACT.—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is amended by inserting at the end the following: "Notwithstanding any other provision of this section, a member bank may permit the owner of any deposit, any account which is a deposit, or any account on which interest or dividends are paid to make up to 24 transfers per month (or such greater number as the Board may determine by rule or order), for any purpose, to a demand deposit account of the owner in the same institution. With respect to an escrow account maintained in connection with a loan, a lender or servicer shall pay interest on such account only if such payments are required by contract between the lender or servicer and the borrower, or a specific statutory provision of the law of the State in which the security property is located requires the lender or servicer to make such payments. Nothing in this subsection shall be construed to prevent an account offered pursuant to this subsection from being considered a transaction account for purposes of this Act.".

(2) HOME OWNERS' LOAN ACT.—

(A) IN GENERAL.—Section 5(b)(1) of the Home Owners' Loan Act (12 U.S.C. 1464 (b)(1)) is amended by adding at the end the following new subparagraph:

"(G) TRANSFERS.—Notwithstanding any other provision of this paragraph, a Federal savings association may permit the owner of any deposit or share, any account which is a deposit or share, or any account on which interest or dividends are paid to make up to 24 transfers per month (or such greater number as the Board of Governors of the Federal Reserve System may determine by rule or order under section 19(i) to be permissible for member banks), for any purpose, to a demand deposit account of the owner in the same institution. With respect to an escrow account maintained in connection with a loan, a lender or servicer shall pay interest on such account only if such payments are required by contract between the lender or servicer and the borrower, or a specific statutory provision of the law of the State in which the security property is located requires the lender or servicer to make such payments. Nothing in this subsection shall be construed to prevent an account offered pursuant to this subsection from being considered a transaction account (as defined in section 19(b) of the Federal Reserve Act) for purposes of the Federal Reserve Act.".

(B) REPEAL.—Effective on at the end of the 2-year period beginning on the date of enactment of this Act, section 5(b)(1) of the Home Owners' Loan Act (12 U.S.C. 1464 (b)(1)) is amended by striking subparagraph (G).

(3) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended by adding at the end the following new paragraph:

"(3) TRANSFERS.—Notwithstanding any other provision of this subsection, an insured nonmember bank or insured State savings association may permit the owner of any deposit or share, any account which is a deposit or share, or any account on which interest or dividends are paid to make up to 24 transfers per month (or such greater number as the Board of Governors of the Federal Reserve System may determine by rule or order under section 19(i) to be permissible for member banks), for any purpose, to a demand deposit account of the owner in the same institution. With respect to an escrow account maintained in connection with a loan, a lender or servicer shall pay interest on such account only if such payments are required by contract between the lender or servicer and the borrower, or a specific statutory provision of the law of the State in which the security property is located requires the lender or servicer to make such payments. Nothing in this subsection shall be construed to prevent an account offered pursuant to this subsection from being considered a transaction account (as defined in section 19(b) of the Federal Reserve Act) for purposes of the Federal Reserve Act.".

(b) REPEAL OF PROHIBITION ON PAYMENT OF INTEREST ON DEMAND DEPOSITS.—

(1) FEDERAL RESERVE ACT.—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is amended to read as follows:

"(i) [Repealed]".

(2) HOME OWNERS' LOAN ACT.—The 1st sentence of section 5(b)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by striking "savings association may not—" and all that follows through "(ii) permit any" and inserting "savings association may not permit any".

(3) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended to read as follows:

"(g) [Repealed]".

(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act.

TITLE III—HEALTH INSURANCE AND LONG-TERM CARE INSURANCE PROVISIONS

SEC. 301. DEDUCTION FOR 100 PERCENT OF HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

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

"(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 100 percent of the amount paid during

the taxable year for insurance which constitutes medical care for the taxpayer and the taxpayer's spouse and dependents.".

(b) CLARIFICATION OF LIMITATIONS ON OTHER COVERAGE.—The first sentence of section 162(l)(2)(B) is amended to read as follows: "Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer participates in any subsidized health plan maintained by any employer (other than an employer described in section 401(c)(4)) of the taxpayer or the spouse of the taxpayer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 302. DEDUCTION FOR HEALTH AND LONG-TERM CARE INSURANCE COSTS OF INDIVIDUALS NOT PARTICIPATING IN EMPLOYER-SUBSIDIZED HEALTH PLANS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. HEALTH AND LONG-TERM CARE INSURANCE COSTS.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed as a deduction an amount equal to the applicable percentage of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer and the taxpayer's spouse and dependents.

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage shall be determined in accordance with the following table:

"For taxable years beginning in calendar year—	***The applicable percentage is—***
2001, 2002, and 2003	*25*
2004	*35*
2005	*65*
2006 and thereafter	*100.*

"(c) LIMITATION BASED ON OTHER COVERAGE.—

"(1) COVERAGE UNDER CERTAIN SUBSIDIZED EMPLOYER PLANS.—

"(A) IN GENERAL.—Subsection (a) shall not apply to any taxpayer for any calendar month for which the taxpayer participates in any health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer if for such month 50 percent or more of the cost of coverage under such plan (determined under section 4980B and without regard to payments made with respect to any coverage described in subsection (e)) is paid or incurred by the employer.

"(B) EMPLOYER CONTRIBUTIONS TO CAFETERIA PLANS, FLEXIBLE SPENDING ARRANGEMENTS, AND MEDICAL SAVINGS ACCOUNTS.—Employer contributions to a cafeteria plan, a flexible spending or similar arrangement, or a medical savings account which are excluded from gross income under section 106 shall be treated for purposes of subparagraph (A) as paid by the employer.

"(C) AGGREGATION OF PLANS OF EMPLOYER.—A health plan which is not otherwise described in subparagraph (A) shall be treated as described in such subparagraph if such plan would be so described if all health plans of persons

treated as a single employer under subsection (b), (c), (m), or (o) of section 414 were treated as one health plan.

"(D) SEPARATE APPLICATION TO HEALTH INSURANCE AND LONG-TERM CARE INSURANCE.—Subparagraphs (A) and (C) shall be applied separately with respect to—

"(i) plans which include primarily coverage for qualified long-term care services or are qualified long-term care insurance contracts, and

"(ii) plans which do not include such coverage and are not such contracts.

"(2) COVERAGE UNDER CERTAIN FEDERAL PROGRAMS.—

"(A) IN GENERAL.—Subsection (a) shall not apply to any amount paid for any coverage for an individual for any calendar month if, as of the first day of such month, the individual is covered under any medical care program described in—

"(i) title XVIII, XIX, or XXI of the Social Security Act,

"(ii) chapter 55 of title 10, United States Code,

"(iii) chapter 17 of title 38, United States Code,

"(iv) chapter 89 of title 5, United States Code, or

"(v) the Indian Health Care Improvement Act.

"(B) EXCEPTIONS.—

"(i) QUALIFIED LONG-TERM CARE.—Subparagraph (A) shall not apply to amounts paid for coverage under a qualified long-term care insurance contract.

"(ii) CONTINUATION COVERAGE OF FEHBP.—Subparagraph (A)(iv) shall not apply to coverage which is comparable to continuation coverage under section 4980B.

"(d) LONG-TERM CARE DEDUCTION LIMITED TO QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.—In the case of a qualified long-term care insurance contract, only eligible long-term care premiums (as defined in section 213(d)(10)) may be taken into account under subsection (a).

"(e) DEDUCTION NOT AVAILABLE FOR PAYMENT OF ANCILLARY COVERAGE PREMIUMS.—Any amount paid as a premium for insurance which provides for—

"(1) coverage for accidents, disability, dental care, vision care, or a specified illness, or

"(2) making payments of a fixed amount per day (or other period) by reason of being hospitalized,

shall not be taken into account under subsection (a).

"(f) SPECIAL RULES.—

"(1) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The amount taken into account by the taxpayer in computing the deduction under section 162(l) shall not be taken into account under this section.

"(2) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—The amount taken into account by the taxpayer in computing the deduction under this section shall not be taken into account under section 213.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations requiring employers to report to their employees and the Secretary such information as the Secretary determines to be appropriate.".

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (17) the following new item:

"(18) HEALTH AND LONG-TERM CARE INSURANCE COSTS.—The deduction allowed by section 222.".

(c) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new items:

"Sec. 222. Health and long-term care insurance costs.
"Sec. 223. Cross reference.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 303. 2-YEAR EXTENSION OF AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Paragraphs (2) and (3)(B) of section 220(i) (defining cut-off year) are each amended by striking "2000" each place it appears and inserting "2002".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 220(j) is amended—

(A) by striking "1998 or 1999" each place it appears and inserting "1998, 1999, 2000, or 2001", and

(B) by striking "600,000 (750,000 in the case of 1999)" and inserting "750,000 (600,000 in the case of 1998)".

(2) Subparagraph (A) of section 220(j)(4) is amended by striking ", 1998, and 1999" and inserting "and of each calendar year after 1997 and before 2002".

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

SEC. 304. ADDITIONAL CONSUMER PROTECTIONS FOR LONG-TERM CARE INSURANCE.

(a) ADDITIONAL PROTECTIONS APPLICABLE TO LONG-TERM CARE INSURANCE.—Subparagraph (A) of section 7702B(g)(2) (relating to requirements of model regulation and Act) is amended to read as follows:

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to any contract if such contract meets—

"(i) MODEL REGULATION.—The following requirements of the model regulation:

"(I) Section 6A (relating to guaranteed renewal or noncancellability), and the requirements of section 6B of the model Act relating to such section 6A.

"(II) Section 6B (relating to prohibitions on limitations and exclusions).

"(III) Section 6C (relating to extension of benefits).

"(IV) Section 6D (relating to continuation or conversion of coverage).

"(V) Section 6E (relating to discontinuance and replacement of policies).

"(VI) Section 7 (relating to unintentional lapse).

"(VII) Section 8 (relating to disclosure), other than section 8F thereof.

"(VIII) Section 11 (relating to prohibitions against post-claims underwriting).

"(IX) Section 12 (relating to minimum standards).

"(X) Section 13 (relating to requirement to offer inflation protection), except that any requirement for a signature on a rejection of inflation protection shall permit the signature to be on an application or on a separate form.

"(XI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

"(XII) The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

"(ii) MODEL ACT.—The following requirements of the model Act:

"(I) Section 6C (relating to preexisting conditions).

"(II) Section 6D (relating to prior hospitalization).

"(III) The provisions of section 8 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) MODEL PROVISIONS.—The terms 'model regulation' and 'model Act' mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of September 2000).

"(ii) COORDINATION.—Any provision of the model regulation or model Act listed under clause (i) or (ii) of subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision.

"(iii) DETERMINATION.—For purposes of this section and section 4980C, the determination of whether any requirement of a model regulation or the model Act has been met shall be made by the Secretary."

(b) EXCISE TAX.—Paragraph (1) of section 4980C(c) (relating to requirements of model provisions) is amended to read as follows:

"(1) REQUIREMENTS OF MODEL PROVISIONS.—

"(A) MODEL REGULATION.—The following requirements of the model regulation must be met:

"(i) Section 9 (relating to required disclosure of rating practices to consumer)."

"(ii) Section 14 (relating to application forms and replacement coverage).

"(iii) Section 15 (relating to reporting requirements), except that the issuer shall also report at least annually the number of claims denied during the reporting period for each class of business (expressed as a percentage of claims denied), other than claims denied for failure to meet the waiting period or because of any applicable preexisting condition.

"(iv) Section 22 (relating to filing requirements for marketing).

"(v) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C, except that—

"(I) in addition to such requirements, no person shall, in selling or offering to sell a qualified long-term care insurance contract, misrepresent a material fact; and

"(II) no such requirements shall include a requirement to inquire or identify whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance.

"(vi) Section 24 (relating to suitability).

"(vii) Section 29 (relating to standard format outline of coverage).

"(viii) Section 30 (relating to requirement to deliver shopper's guide).

The requirements referred to in clause (vi) shall not include those portions of the personal worksheet described in Appendix B relating to consumer protection requirements not imposed by section 4980C or 7702B.

"(B) MODEL ACT.—The following requirements of the model Act must be met:

"(i) Section 6F (relating to right to return), except that such section shall also apply to denials of applications and any refund shall be made within 30 days of the return or denial.

"(ii) Section 6G (relating to outline of coverage).

"(iii) Section 6H (relating to requirements for certificates under group plans).

"(iv) Section 6I (relating to policy summary).

"(v) Section 6J (relating to monthly reports on accelerated death benefits).

"(vi) Section 7 (relating to incontestability period).

"(C) DEFINITIONS.—For purposes of this paragraph, the terms 'model regulation' and 'model Act' have the meanings given such terms by section 7702B(g)(2)(B)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to policies issued more than 1 year after the date of the enactment of this Act.

SEC. 305. DEDUCTION FOR PROVIDING LONG-TERM CARE IN THE HOME TO HOUSEHOLD MEMBERS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 is amended by redesignating section 223 as section 224 and by inserting after section 222 the following new section:

"SEC. 223. PROVISION OF LONG-TERM CARE IN THE HOME TO HOUSEHOLD MEMBERS.

"(a) DEDUCTION ALLOWED.—

"(1) IN GENERAL.—There shall be allowed as a deduction for the taxable year an amount equal to the applicable amount multiplied by the number of qualified family members of the taxpayer for the taxable year.

"(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount for a taxable year shall be the amount determined in accordance with the following table:

"For taxable years beginning in:	***The applicable amount is:***
2001	*$3,000*
2002	*$4,000*
2003	*$5,000*
2004	*$6,000*
2005	*$7,000*
2006	*$8,000*
2007	*$9,000*
2008 and thereafter	*$10,000.*

"(b) LIMITATIONS.—

"(1) REDUCTION FOR AMOUNTS RECEIVED UNDER LONG-TERM CARE INSURANCE POLICY.—The amount of the deduction allowable under subsection (a) with respect to a qualified family member shall be reduced (but not below zero) by the amount received for the taxable year under a long-term care insurance policy (whether or not such policy is a qualified long-term care insurance contract under section 7702B) with respect to which the insured is the qualified family member.

"(2) PHASEOUT.—The amount of the deduction allowable under subsection (a) (after the application of paragraph (1)) shall be reduced in the same manner as the exemption amount is reduced under section 151(d)(3).

"(c) QUALIFIED FAMILY MEMBER.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified family member' means, with respect to any taxable year, any individual—

"(A) who is—

"(i) the taxpayer's spouse, or

"(ii) an individual who bears a relationship to the taxpayer described in any of paragraphs (1) through (8) of section 152(a),

"(B) who is a member for the entire taxable year of the household maintained by the taxpayer,

"(C) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than the sum of—

"(i) the exemption amount (as defined in section 151(d)), and

"(ii) the standard deduction, and

"(D) who has been certified, before the due date for filing the return of tax for the taxable year (without extensions), by a physician (as defined in section 1861(r)(1) of the Social Security Act) as being an individual described in paragraph (3) for a period—

"(i) which is at least 180 consecutive days, and

"(ii) a portion of which occurs within the taxable year.

"(2) SPECIAL RULES.—

"(A) FREQUENCY OF CERTIFICATION.—The term 'qualified family member' shall not include any individual otherwise meeting the requirements of paragraph (1)(D) unless the certification is made within the 39½ month period ending on the due date (or such other period as the Secretary prescribes).

"(B) GROSS INCOME TEST NOT TO APPLY TO CERTAIN INDIVIDUALS.—Paragraph (1)(C) shall not apply to—

"(i) the spouse of the taxpayer,

"(ii) any child of the taxpayer described in section 151(c)(1)(B), and

"(iii) any gross income which is not taken into account under paragraph (1)(B) of section 151(c) by reason of paragraph (5) thereof.

"(3) INDIVIDUALS WITH LONG-TERM CARE NEEDS.—An individual is described in this paragraph if the individual meets any of the following requirements:

"(A) The individual is at least 6 years of age and—

"(i) is unable to perform (without substantial assistance from another individual) at least 3 activities of daily living (as defined in section 7702B(c)(2)(B)) due to a loss of functional capacity, or

"(ii) requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment, and

"(I) is unable to perform, without reminding or cuing assistance, at least 1 activity of daily living (as so defined), or

"(II) to the extent provided in regulations prescribed by the Secretary (in consultation with the Secretary of Health and Human Services), is unable to engage in age appropriate activities.

"(B) The individual is at least 2 but not 6 years of age and is unable due to a loss of functional capacity to perform (without substantial assistance from another individual) at least 2 of the following activities: eating, transferring, or mobility.

"(C) The individual is under 2 years of age and requires specific durable medical equipment by reason of a severe health condition or requires a skilled practitioner trained to address the individual's condition to be available if the individual's parents or guardians are absent.

"(d) SPECIAL RULES.—

"(1) IDENTIFICATION REQUIREMENT.—No deduction shall be allowed under this section to a taxpayer with respect to any qualified family member unless the taxpayer includes the name and taxpayer identification number of such member, and the identification number of the physician certifying such member, on the return of tax for the taxable year.

"(2) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—No deduction shall be allowable under this section in the case of a taxable year covering a period of less than 12 months, except that in the case of a taxable year closed by the death of a taxpayer a ratable portion of the deduction shall be allowable.

"(3) SPECIAL RULES.—Rules similar to the rules of paragraphs (1), (2), (3), (4), and (5) of section 21(e) shall apply for purposes of this subsection.".

(b) DEDUCTION ALLOWABLE WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—

(1) Subsection (b) of section 63 is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) the deduction allowed by section 223."

(2) Subsection (d) of section 63 is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) the deduction allowed by section 223."

(c) CONFORMING AMENDMENTS.—

(1) Section 6213(g)(2) is amended by striking "and" at the end of subparagraph (K), by striking the period at the end of subparagraph (L) and inserting ", and", and by inserting after subparagraph (L) the following new subparagraph:

"(M) an omission of a correct TIN or physician identification number required under section 223(d)(1) (relating to deduction for provision of long-term care in the home to household members) to be included on a return."

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

"Sec. 223. Provision of long-term care in the home to household members.
"Sec. 224. Cross reference."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

TITLE IV—PENSION AND INDIVIDUAL RETIREMENT ARRANGEMENT PROVISIONS

SEC. 400. SHORT TITLE.

This title may be cited as the "Retirement Savings and Pension Coverage Act of 2000".

Subtitle A—Individual Retirement Accounts

SEC. 401. MODIFICATION OF IRA CONTRIBUTION LIMITS.

(a) INCREASE IN CONTRIBUTION LIMIT.—

(1) IN GENERAL.—Paragraph (1)(A) of section 219(b) (relating to maximum amount of deduction) is amended by striking "$2,000" and inserting "the deductible amount".

(2) DEDUCTIBLE AMOUNT.—Section 219(b) is amended by adding at the end the following new paragraph:

"(5) DEDUCTIBLE AMOUNT.—For purposes of paragraph (1)(A)—

"(A) IN GENERAL.—The deductible amount shall be determined in accordance with the following table:

"For taxable years beginning in:	***The deductible amount is:***
2001	*$3,000*
2002	*$4,000*
2003 and thereafter	*$5,000.*

"(B) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS 50 OR OLDER.—

"(i) IN GENERAL.—In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for such taxable year (determined without regard to this subparagraph) shall be increased by the applicable catch-up amount.

"(ii) APPLICABLE CATCH-UP AMOUNT.—For purposes of clause (i), the applicable catch-up amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in:	***The applicable catch-up amount is:***
2001	*$500*
2002	*$1,000*
2003 and thereafter	*$1,500.*

"(C) COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003, the $5,000 amount under subparagraph (A) and the $1,500 amount under subparagraph (B) shall each be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2002' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.".

(b) INCREASE IN AGI LIMITS FOR ACTIVE PARTICIPANTS.—

(1) JOINT RETURNS.—The table in clause (i) of section 219(g)(3)(B) (relating to applicable dollar amount) is amended to read as follows:

"For taxable years beginning in calendar year:	*The applicable dollar amount:*
2001	*$56,000*
2002	*$60,000*
2003	*$64,000*
2004	*$68,000*
2005	*$72,000*
2006	*$76,000*
2007 or thereafter	*$80,000.".*

(2) OTHER TAXPAYERS.—Section 219(g)(3)(B) (relating to applicable dollar amount) is amended by striking clauses (ii) and (iii) and inserting the following:

"(ii) In the case of any other taxpayer:

"For taxable years beginning in calendar year:	*The applicable dollar amount:*
2001	*$36,000*
2002	*$40,000*
2003	*$44,000*
2004	*$48,000*
2005 or thereafter	*$50,000.".*

(c) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking "in excess of $2,000 on behalf of any individual" and inserting "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)".

(2) Section 408(b)(2)(B) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(3) Section 408(b) is amended by striking "$2,000" in the matter following paragraph (4) and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(4) Section 408(j) is amended by striking "$2,000".

(5) Section 408(p)(8) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 402. DEEMED IRAS UNDER EMPLOYER PLANS.

(a) IN GENERAL.—Section 408 (relating to individual retirement accounts) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

"(q) DEEMED IRAS UNDER QUALIFIED EMPLOYER PLANS.—

"(1) GENERAL RULE.—If—

"(A) a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and

"(B) under the terms of the qualified employer plan, such account or annuity meets the applicable requirements of this section or section 408A for an individual retirement account or annuity,

then such account or annuity shall be treated for purposes of this title in the same manner as an individual retirement plan and not as a qualified employer plan (and contributions to such

account or annuity as contributions to an individual retirement plan and not to the qualified employer plan). For purposes of subparagraph (B), the requirements of subsection (a)(5) shall not apply.

"(2) SPECIAL RULES FOR QUALIFIED EMPLOYER PLANS.—For purposes of this title, a qualified employer plan shall not fail to meet any requirement of this title solely by reason of establishing and maintaining a program described in paragraph (1).

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

"(A) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' has the meaning given such term by section 72(p)(4); except such term shall only include an eligible deferred compensation plan (as defined in section 457(b)) which is maintained by an eligible employer described in section 457(e)(1)(A).

"(B) VOLUNTARY EMPLOYEE CONTRIBUTION.—The term 'voluntary employee contribution' means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C))—

"(i) which is made by an individual as an employee under a qualified employer plan which allows employees to elect to make contributions described in paragraph (1), and

"(ii) with respect to which the individual has designated the contribution as a contribution to which this subsection applies.".

(b) AMENDMENT OF ERISA.—

(1) IN GENERAL.—Section 4 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003) is amended by adding at the end the following new subsection:

"(c) If a pension plan allows an employee to elect to make voluntary employee contributions to accounts and annuities as provided in section 408(q) of the Internal Revenue Code of 1986, such accounts and annuities (and contributions thereto) shall not be treated as part of such plan (or as a separate pension plan) for purposes of any provision of this title other than section 403(c), 404, or 405 (relating to exclusive benefit, and fiduciary and co-fiduciary responsibilities).".

(2) CONFORMING AMENDMENT.—Section 4(a) of such Act (29 U.S.C. 1003(a)) is amended by inserting "or (c)" after "subsection (b)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2001.

SEC. 403. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subsection (d) of section 408 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

"(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

"(A) IN GENERAL.—In the case of a qualified charitable distribution, no amount shall be includible in the gross income of the account holder or beneficiary.

"(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term 'qualified charitable dis-

tribution' means any distribution from an individual retirement account—

"(i) which is made on or after the date that the individual for whose benefit the account is maintained has attained age 70½, and

"(ii) which is a charitable contribution (as defined in section 170(c)) made directly from the account to an organization or entity described in section 170(c).

"(C) DENIAL OF DEDUCTION.—The amount allowable as a deduction to the taxpayer for the taxable year under section 170 (before the application of section 170(b)) for qualified charitable distributions shall be reduced (but not below zero) by the sum of the amounts of the qualified charitable distributions during such year which (but for this paragraph) would have been includible in the gross income of the taxpayer for such year.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2000.

SEC. 404. MODIFICATION OF AGI LIMITS FOR ROTH IRAS.

(a) INCREASE IN AGI LIMIT FOR ROTH IRA CONTRIBUTIONS.—

(1) IN GENERAL.—Section 408A(c)(3)(C)(ii) (relating to limits based on modified adjusted gross income) is amended to read as follows:

"(ii) the applicable dollar amount is—

"(I) in the case of a taxpayer filing a joint return, $190,000, and

"(II) in the case of any other taxpayer, $95,000.".

(2) PHASEOUT AMOUNT.—Clause (ii) of section 408A(c)(3)(A) is amended to read as follows:

"(ii) $15,000 ($30,000 in the case of a joint return).".

(b) INCREASE IN AGI LIMIT FOR ROTH IRA CONVERSIONS.—Section 408A(c)(3)(B) (relating to rollover from IRA) is amended by striking "relates" and all that follows and inserting "relates, the taxpayer's adjusted gross income exceeds $100,000 ($200,000 in the case of a joint return).".

(c) CONFORMING AMENDMENT.—Section 408A(c)(3) is amended by striking subparagraph (D).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

Subtitle B—Expanding Coverage

SEC. 411. INCREASE IN BENEFIT AND CONTRIBUTION LIMITS.

(a) DEFINED BENEFIT PLANS.—

(1) DOLLAR LIMIT.—

(A) Subparagraph (A) of section 415(b)(1) (relating to limitation for defined benefit plans) is amended by striking "$90,000" and inserting "$160,000".

(B) Subparagraphs (C) and (D) of section 415(b)(2) are each amended by striking "$90,000" each place it appears in the headings and the text and inserting "$160,000".

(C) Paragraph (7) of section 415(b) (relating to benefits under certain collectively bargained plans) is amended by striking "the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000'" and inserting "one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$160,000'".

(2) LIMIT REDUCED WHEN BENEFIT BEGINS BEFORE AGE 62.—Subparagraph (C) of section 415(b)(2) is amended by striking "the social security retirement age" each place it appears in the heading and text and inserting "age 62" and by striking the second sentence.

(3) LIMIT INCREASED WHEN BENEFIT BEGINS AFTER AGE 65.—Subparagraph (D) of section 415(b)(2) is amended by striking "the social security retirement age" each place it appears in the heading and text and inserting "age 65".

(4) COST-OF-LIVING ADJUSTMENTS.—Subsection (d) of section 415 (related to cost-of-living adjustments) is amended—

(A) by striking "$90,000" in paragraph (1)(A) and inserting "$160,000"; and

(B) in paragraph (3)(A)—

(i) by striking "$90,000" in the heading and inserting "$160,000"; and

(ii) by striking "October 1, 1986" and inserting "July 1, 2000".

(5) CONFORMING AMENDMENTS.—

(A) Section 415(b)(2) is amended by striking subparagraph (F).

(B) Section 415(b)(9) is amended to read as follows:

"(9) SPECIAL RULE FOR COMMERCIAL AIRLINE PILOTS.—In the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.".

(C) Section 415(b)(10)(C)(i) is amended by striking "applied without regard to paragraph (2)(F)".

(b) DEFINED CONTRIBUTION PLANS.—

(1) DOLLAR LIMIT.—Subparagraph (A) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended by striking "$30,000" and inserting "$40,000".

(2) COST-OF-LIVING ADJUSTMENTS.—Subsection (d) of section 415 (related to cost-of-living adjustments) is amended—

(A) by striking "$30,000" in paragraph (1)(C) and inserting "$40,000"; and

(B) in paragraph (3)(D)—

(i) by striking "$30,000" in the heading and inserting "$40,000"; and

(ii) by striking "October 1, 1993" and inserting "July 1, 2000".

(3) CONFORMING AMENDMENTS.—

(A) IN GENERAL.—Section 664(g)(3)(E) (relating to plan requirements) is amended by striking "limitations under section 415(c)(1)" and inserting "applicable limitation under paragraph (7)".

(B) APPLICABLE LIMITATION.—Section 664(g) (relating to qualified gratuitous transfer of qualified employer securities) is amended by adding at the end the following new paragraph:

"(7) APPLICABLE LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—

"(i) $30,000, or

"(ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

"(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.".

(c) QUALIFIED TRUSTS.—

(1) COMPENSATION LIMIT.—Sections 401(a)(17), 404(l), 408(k), and 505(b)(7) are each amended by striking "$150,000" each place it appears and inserting "$200,000".

(2) BASE PERIOD AND ROUNDING OF COST-OF-LIVING ADJUSTMENT.—Subparagraph (B) of section 401(a)(17) is amended—

(A) by striking "October 1, 1993" and inserting "July 1, 2000"; and

(B) by striking "$10,000" both places it appears and inserting "$5,000".

(d) ELECTIVE DEFERRALS.—

(1) IN GENERAL.—Paragraph (1) of section 402(g) (relating to limitation on exclusion for elective deferrals) is amended to read as follows:

"(1) IN GENERAL.—

"(A) LIMITATION.—Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount.

"(B) APPLICABLE DOLLAR AMOUNT.—For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	***The applicable dollar amount:***
2001	*$11,000*
2002	*$12,000*
2003	*$13,000*
2004	*$14,000*
2005 or thereafter	*$15,000.".*

(2) COST-OF-LIVING ADJUSTMENT.—Paragraph (5) of section 402(g) is amended to read as follows:

"(5) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 2005, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2004, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.".

(3) CONFORMING AMENDMENTS.—

(A) Section 402(g) (relating to limitation on exclusion for elective deferrals), as amended by paragraphs (1) and (2), is further amended by striking paragraph (4) and redesignating paragraphs (5), (6), (7), (8), and (9) as paragraphs (4), (5), (6), (7), and (8), respectively.

(B) Paragraph (2) of section 457(c) is amended by striking "402(g)(8)(A)(iii)" and inserting "402(g)(7)(A)(iii)".

(C) Clause (iii) of section 501(c)(18)(D) is amended by striking "(other than paragraph (4) thereof)".

(e) DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—

(1) IN GENERAL.—Section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations) is amended—

(A) in subsections (b)(2)(A) and (c)(1) by striking "$7,500" each place it appears and inserting "the applicable dollar amount"; and

(B) in subsection (b)(3)(A) by striking "$15,000" and inserting "twice the dollar amount in effect under subsection (b)(2)(A)".

(2) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT.—Paragraph (15) of section 457(e) is amended to read as follows:

"(15) APPLICABLE DOLLAR AMOUNT.—

"(A) IN GENERAL.—The applicable dollar amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	***The applicable dollar amount:***
2001	*$11,000*
2002	*$12,000*
2003	*$13,000*
2004	*$14,000*
2005 or thereafter	*$15,000.*

"(B) COST-OF-LIVING ADJUSTMENTS.—In the case of taxable years beginning after December 31, 2005, the Secretary shall adjust the $15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2004, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.".

(f) SIMPLE RETIREMENT ACCOUNTS.—

(1) LIMITATION.—Clause (ii) of section 408(p)(2)(A) (relating to general rule for qualified salary reduction arrangement) is amended by striking "$6,000" and inserting "the applicable dollar amount".

(2) APPLICABLE DOLLAR AMOUNT.—Subparagraph (E) of 408(p)(2) is amended to read as follows:

"(E) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	***The applicable dollar amount:***
2001	*$7,000*
2002	*$8,000*
2003	*$9,000*
2004 or thereafter	*$10,000.*

"(ii) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2004, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2003, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.".

(3) CONFORMING AMENDMENTS.—

(A) Subclause (I) of section 401(k)(11)(B)(i) is amended by striking "$6,000" and inserting "the amount in effect under section 408(p)(2)(A)(ii)".

(B) Section 401(k)(11) is amended by striking subparagraph (E).

(g) ROUNDING RULE RELATING TO DEFINED BENEFIT PLANS AND DEFINED CONTRIBUTION PLANS.—Paragraph (4) of section 415(d) is amended to read as follows:

"(4) ROUNDING.—

"(A) $160,000 AMOUNT.—Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

"(B) $40,000 AMOUNT.—Any increase under subparagraph (C) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.".

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2000.

SEC. 412. PLAN LOANS FOR SUBCHAPTER S OWNERS, PARTNERS, AND SOLE PROPRIETORS.

(a) IN GENERAL.—Subparagraph (B) of section 4975(f)(6) (relating to exemptions not to apply to certain transactions) is amended by adding at the end the following new clause:

"(iii) LOAN EXCEPTION.—For purposes of subparagraph (A)(i), the term 'owner-employee' shall only include a person described in subclause (II) or (III) of clause (i).".

(b) AMENDMENT OF ERISA.—Section 408(d)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(d)(2)) is amended by adding at the end the following new subparagraph:

"(C) For purposes of paragraph (1)(A), the term 'owner-employee' shall only include a person described in clause (ii) or (iii) of subparagraph (A).".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2000.

SEC. 413. MODIFICATION OF TOP-HEAVY RULES.

(a) SIMPLIFICATION OF DEFINITION OF KEY EMPLOYEE.—

(1) IN GENERAL.—Section 416(i)(1)(A) (defining key employee) is amended—

(A) by striking "or any of the 4 preceding plan years" in the matter preceding clause (i);

(B) by striking clause (i) and inserting the following:

"(i) an officer of the employer having an annual compensation greater than $115,000,";

(C) by striking clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively; and

(D) by striking the second sentence in the matter following clause (iii), as redesignated by subparagraph (C).

(2) COST-OF-LIVING ADJUSTMENT.—Section 416(i)(1) is amended by adding at the end the following new subparagraph:

"(E) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2001, the Secretary shall adjust the $115,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2000, and any increase under this subparagraph which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000.".

(3) CONFORMING AMENDMENT.—Section 416(i)(1)(B)(iii) is amended by striking "and subparagraph (A)(ii)".

(b) MATCHING CONTRIBUTIONS TAKEN INTO ACCOUNT FOR MINIMUM CONTRIBUTION REQUIREMENTS.—Section 416(c)(2)(A) (relating to defined contribution plans) is amended by adding at the end the following: "Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph.".

(c) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Paragraph (3) of section 416(g) is amended to read as follows:

"(3) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.—

"(A) IN GENERAL.—For purposes of determining—

"(i) the present value of the cumulative accrued benefit for any employee, or

"(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

"(B) 5-YEAR PERIOD IN CASE OF IN-SERVICE DISTRIBUTION.—In the case of any distribution made for a reason other than separation from service, death, or disability, subparagraph (A) shall be applied by substituting '5-year period' for '1-year period'.".

(2) BENEFITS NOT TAKEN INTO ACCOUNT.—Subparagraph (E) of section 416(g)(4) is amended—

(A) by striking "LAST 5 YEARS" in the heading and inserting "LAST YEAR BEFORE DETERMINATION DATE"; and

(B) by striking "5-year period" and inserting "1-year period".

(d) DEFINITION OF TOP-HEAVY PLANS.—Paragraph (4) of section 416(g) (relating to other special rules for top-heavy plans) is amended by adding at the end the following new subparagraph:

"(H) CASH OR DEFERRED ARRANGEMENTS USING ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—The term 'top-heavy plan' shall not include a plan which consists solely of—

"(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12), and

"(ii) matching contributions with respect to which the requirements of section 401(m)(11) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).".

(e) FROZEN PLAN EXEMPT FROM MINIMUM BENEFIT REQUIREMENT.—Subparagraph (C) of section 416(c)(1) (relating to defined benefit plans) is amended—

(A) by striking "clause (ii)" in clause (i) and inserting "clause (ii) or (iii)"; and

(B) by adding at the end the following:

"(iii) EXCEPTION FOR FROZEN PLAN.—For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b)) no key employee or former key employee.".

(f) ELIMINATION OF FAMILY ATTRIBUTION.—Section 416(i)(1)(B) (defining 5-percent owner) is amended by adding at the end the following new clause:

"(iv) FAMILY ATTRIBUTION DISREGARDED.—Solely for purposes of applying this paragraph (and not for purposes of any provision of this title which incor-

porates by reference the definition of a key employee or 5-percent owner under this paragraph), section 318 shall be applied without regard to subsection (a)(1) thereof in determining whether any person is a 5-percent owner.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2000.

SEC. 414. ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.

(a) IN GENERAL.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended by adding at the end the following new subsection:

"(n) ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.—Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a), and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2000.

SEC. 415. REPEAL OF COORDINATION REQUIREMENTS FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations), as amended by section 411, is amended to read as follows:

"(c) LIMITATION.—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed the amount in effect under subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2000.

SEC. 416. ELIMINATION OF USER FEE FOR REQUESTS TO IRS REGARDING PENSION PLANS.

(a) ELIMINATION OF CERTAIN USER FEES.—The Secretary of the Treasury or the Secretary's delegate shall not require payment of user fees under the program established under section 10511 of the Revenue Act of 1987 for requests to the Internal Revenue Service for determination letters with respect to the qualified status of a pension benefit plan maintained solely by one or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

(1) made after the later of—

(A) the fifth plan year the pension benefit plan is in existence; or

(B) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years; or

(2) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

(b) PENSION BENEFIT PLAN.—For purposes of this section, the term "pension benefit plan" means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

(c) ELIGIBLE EMPLOYER.—For purposes of this section, the term "eligible employer" has the same meaning given such term in section 408(p)(2)(C)(i)(I) of the Internal Revenue Code of 1986. The determination of whether an employer is an eligible employer under this section shall be made as of the date of the request described in subsection (a).

(d) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subsection (a) applies shall not be taken into account.

(e) EFFECTIVE DATE.—The provisions of this section shall apply with respect to requests made after December 31, 2000.

SEC. 417. DEDUCTION LIMITS.

(a) MODIFICATION OF LIMITS.—

(1) STOCK BONUS AND PROFIT SHARING TRUSTS.—

(A) IN GENERAL.—Subclause (I) of section 404(a)(3)(A)(i) (relating to stock bonus and profit sharing trusts) is amended by striking "15 percent" and inserting "25 percent".

(B) CONFORMING AMENDMENT.—Subparagraph (C) of section 404(h)(1) is amended by striking "15 percent" each place it appears and inserting "25 percent".

(2) DEFINED CONTRIBUTION PLANS.—

(A) IN GENERAL.—Clause (v) of section 404(a)(3)(A) (relating to stock bonus and profit sharing trusts) is amended to read as follows:

"(v) DEFINED CONTRIBUTION PLANS SUBJECT TO THE FUNDING STANDARDS.—Except as provided by the Secretary, a defined contribution plan which is subject to the funding standards of section 412 shall be treated in the same manner as a stock bonus or profit-sharing plan for purposes of this subparagraph.".

(B) CONFORMING AMENDMENTS.—

(i) Section 404(a)(1)(A) is amended by inserting "(other than a trust to which paragraph (3) applies)" after "pension trust".

(ii) Section 404(h)(2) is amended by striking "stock bonus or profit-sharing trust" and inserting "trust subject to subsection (a)(3)(A)".

(iii) The heading of section 404(h)(2) is amended by striking "STOCK BONUS AND PROFIT-SHARING TRUST" and inserting "CERTAIN TRUSTS".

(b) COMPENSATION.—

(1) IN GENERAL.—Section 404(a) (relating to general rule) is amended by adding at the end the following:

"(12) DEFINITION OF COMPENSATION.—For purposes of paragraphs (3), (7), (8), and (9), the term 'compensation' shall include amounts treated as participant's compensation under subparagraph (C) or (D) of section 415(c)(3).".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 404(a)(3) is amended by striking the last sentence thereof.

(B) Clause (i) of section 4972(c)(6)(B) is amended by striking "(within the meaning of section 404(a))" and inserting "(within the meaning of section 404(a) and as adjusted under section 404(a)(12))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2000.

SEC. 418. OPTION TO TREAT ELECTIVE DEFERRALS AS AFTER-TAX ROTH CONTRIBUTIONS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to deferred compensation, etc.) is amended by inserting after section 402 the following new section:

"SEC. 402A. OPTIONAL TREATMENT OF ELECTIVE DEFERRALS AS ROTH CONTRIBUTIONS.

"(a) GENERAL RULE.—If an applicable retirement plan includes a qualified Roth contribution program—

"(1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

"(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

"(b) QUALIFIED ROTH CONTRIBUTION PROGRAM.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified Roth contribution program' means a program under which an employee may elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

"(2) SEPARATE ACCOUNTING REQUIRED.—A program shall not be treated as a qualified Roth contribution program unless the applicable retirement plan—

"(A) establishes separate accounts ('designated Roth accounts') for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and

"(B) maintains separate recordkeeping with respect to each account.

"(c) DEFINITIONS AND RULES RELATING TO DESIGNATED ROTH CONTRIBUTIONS.—For purposes of this section—

"(1) DESIGNATED ROTH CONTRIBUTION.—The term 'designated Roth contribution' means any elective deferral which—

"(A) is excludable from gross income of an employee without regard to this section, and

"(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

"(2) DESIGNATION LIMITS.—The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

"(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

"(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

"(3) ROLLOVER CONTRIBUTIONS.—

"(A) IN GENERAL.—A rollover contribution of any payment or distribution from a designated Roth account which is otherwise allowable under this chapter may be made only if the contribution is to—

"(i) another designated Roth account of the individual from whose account the payment or distribution was made, or

"(ii) a Roth IRA of such individual.

"(B) COORDINATION WITH LIMIT.—Any rollover contribution to a designated Roth account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

"(d) DISTRIBUTION RULES.—For purposes of this title—

"(1) EXCLUSION.—Any qualified distribution from a designated Roth account shall not be includible in gross income.

"(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified distribution' has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

"(B) DISTRIBUTIONS WITHIN NONEXCLUSION PERIOD.—A payment or distribution from a designated Roth account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

"(i) the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan, or

"(ii) if a rollover contribution was made to such designated Roth account from a designated Roth account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth contribution to such previously established account.

"(C) DISTRIBUTIONS OF EXCESS DEFERRALS AND CONTRIBUTIONS AND EARNINGS THEREON.—The term 'qualified distribution' shall not include any distribution of any excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8), and any income on the excess deferral or contribution.

"(3) TREATMENT OF DISTRIBUTIONS OF CERTAIN EXCESS DEFERRALS.—Notwithstanding section 72, if any excess deferral under section 402(g)(2) attributable to a designated Roth contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

"(A) not be treated as investment in the contract, and

"(B) be included in gross income for the taxable year in which such excess is distributed.

"(4) AGGREGATION RULES.—Section 72 shall be applied separately with respect to distributions and payments from a designated Roth account and other distributions and payments from the plan.

"(e) OTHER DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE RETIREMENT PLAN.—The term 'applicable retirement plan' means—

"(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a), and

"(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

"(2) ELECTIVE DEFERRAL.—The term 'elective deferral' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).".

(b) EXCESS DEFERRALS.—Section 402(g) (relating to limitation on exclusion for elective deferrals) is amended—

(1) by adding at the end of paragraph (1)(A) (as added by section 201(d)(1)) the following new sentence: "The preceding sentence shall not apply to the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year."; and

(2) by inserting "(or would be included but for the last sentence thereof)" after "paragraph (1)" in paragraph (2)(A).

(c) ROLLOVERS.—Subparagraph (B) of section 402(c)(8) is amended by adding at the end the following:

"If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.".

(d) REPORTING REQUIREMENTS.—

(1) W–2 INFORMATION.—Section 6051(a)(8) is amended by inserting ", including the amount of designated Roth contributions (as defined in section 402A)" before the comma at the end.

(2) INFORMATION.—Section 6047 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) DESIGNATED ROTH CONTRIBUTIONS.—The Secretary shall require the plan administrator of each applicable retirement plan (as defined in section 402A) to make such returns and reports regarding designated Roth contributions (as defined in section 402A) to the Secretary, participants and beneficiaries of the plan, and such other persons as the Secretary may prescribe.".

(e) CONFORMING AMENDMENTS.—

(1) Section 408A(e) is amended by adding after the first sentence the following new sentence: "Such term includes a rollover contribution described in section 402A(c)(3)(A).".

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 402 the following new item:

"Sec. 402A. Optional treatment of elective deferrals as Roth contributions.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

Subtitle C—Enhancing Fairness For Women

SEC. 421. CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.

(a) IN GENERAL.—Section 414 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(v) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.—

"(1) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

"(2) LIMITATION ON AMOUNT OF ADDITIONAL DEFERRALS.—

"(A) IN GENERAL.—A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

"(i) the applicable deferral amount, or

"(ii) the excess (if any) of—

"(I) the participant's compensation for the year, over

"(II) any other elective deferrals of the participant for such year which are made without regard to this subsection.

"(B) APPLICABLE DEFERRAL AMOUNT; COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(i), the applicable deferral amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	***The applicable deferral amount:***
2001	*$1,000*
2002	*$2,000*
2003	*$3,000*
2004	*$4,000*
2005 or thereafter	*$5,000.*

"(ii) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2005, the Secretary shall adjust the $5,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

"(3) TREATMENT OF CONTRIBUTIONS.—In the case of any contribution to a plan under paragraph (1), such contribution

shall not, with respect to the year in which the contribution is made—

"(A) be subject to any otherwise applicable limitation contained in section 402(g), 402(h)(2), 404(a), 404(h), 408(p)(2)(A)(ii), 415, or 457, or

"(B) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan.

"(4) APPLICATION OF NONDISCRIMINATION RULES.—

"(A) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features if the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

"(B) AGGREGATION.—For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 plan.

"(5) ELIGIBLE PARTICIPANT.—For purposes of this subsection, the term 'eligible participant' means, with respect to any plan year, a participant in a plan—

"(A) who has attained the age of 50 before the close of the plan year, and

"(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan year by reason of the application of any limitation or other restriction described in paragraph (3) or any comparable limitation contained in the terms of the plan.

"(6) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

"(A) APPLICABLE EMPLOYER PLAN.—The term 'applicable employer plan' means—

"(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

"(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

"(iii) an eligible deferred compensation plan under section 457 of an eligible employer as defined in section 457(e)(1)(A), and

"(iv) an arrangement meeting the requirements of section 408 (k) or (p).

"(B) ELECTIVE DEFERRAL.—The term 'elective deferral' has the meaning given such term by subsection (u)(2)(C).

"(C) EXCEPTION FOR SECTION 457 PLANS.—This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions in taxable years beginning after December 31, 2000.

SEC. 422. EQUITABLE TREATMENT FOR CONTRIBUTIONS OF EMPLOYEES TO DEFINED CONTRIBUTION PLANS.

(a) EQUITABLE TREATMENT.—

(1) IN GENERAL.—Subparagraph (B) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended by striking "25 percent" and inserting "100 percent".

(2) APPLICATION TO SECTION 403(b).—Section 403(b) is amended—

(A) by striking "the exclusion allowance for such taxable year" in paragraph (1) and inserting "the applicable limit under section 415";

(B) by striking paragraph (2); and

(C) by inserting "or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated" before the period at the end of the second sentence of paragraph (3).

(3) CONFORMING AMENDMENTS.—

(A) Subsection (f) of section 72 is amended by striking "section 403(b)(2)(D)(iii))" and inserting "section 403(b)(2)(D)(iii), as in effect before the enactment of the Retirement Savings and Pension Coverage Act of 2000)".

(B) Section 404(a)(10)(B) is amended by striking ", the exclusion allowance under section 403(b)(2),".

(C) Section 415(a)(2) is amended by striking ", and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)".

(D) Section 415(c)(3) is amended by adding at the end the following new subparagraph:

"(E) ANNUITY CONTRACTS.—In the case of an annuity contract described in section 403(b), the term 'participant's compensation' means the participant's includible compensation determined under section 403(b)(3).".

(E) Section 415(c) is amended by striking paragraph (4).

(F) Section 415(c)(7) is amended to read as follows:

"(7) CERTAIN CONTRIBUTIONS BY CHURCH PLANS NOT TREATED AS EXCEEDING LIMIT.—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

"(B) $40,000 AGGREGATE LIMITATION.—The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

"(C) ANNUAL ADDITION.—For purposes of this paragraph, the term 'annual addition' has the meaning given such term by paragraph (2).".

(G) Subparagraph (B) of section 402(g)(7) (as redesignated by section 201(d)(3)(A)) is amended by inserting before the period at the end the following: "(as in effect before the enactment of the Retirement Savings and Pension Coverage Act of 2000)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 2000.

(b) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—

(1) IN GENERAL.—Subsection (k) of section 415 is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to limitation years beginning after December 31, 1999.

(B) EXCLUSION ALLOWANCE.—Effective for limitation years beginning in 2000, in the case of any annuity contract described in section 403(b) of the Internal Revenue Code of 1986, the amount of the contribution disqualified by reason of section 415(g) of such Code shall reduce the exclusion allowance as provided in section 403(b)(2) of such Code.

(3) MODIFICATION OF 403(b) EXCLUSION ALLOWANCE TO CONFORM TO 415 MODIFICATION.—The Secretary of the Treasury shall modify the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 to render void the requirement that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance. For taxable years beginning after December 31, 1999, such regulations shall be applied as if such requirement were void.

(c) DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (B) of section 457(b)(2) (relating to salary limitation on eligible deferred compensation plans) is amended by striking "33⅓ percent" and inserting "100 percent".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after December 31, 2000.

SEC. 423. FASTER VESTING OF CERTAIN EMPLOYER MATCHING CONTRIBUTIONS.

(a) IN GENERAL.—Section 411(a) (relating to minimum vesting standards) is amended—

(1) in paragraph (2), by striking "A plan" and inserting "Except as provided in paragraph (12), a plan"; and

(2) by adding at the end the following:

"(12) FASTER VESTING FOR MATCHING CONTRIBUTIONS.—In the case of matching contributions (as defined in section 401(m)(4)(A)), paragraph (2) shall be applied—

"(A) by substituting '3 years' for '5 years' in subparagraph (A), and

"(B) by substituting the following table for the table contained in subparagraph (B):

"Years of service:	***The nonforfeitable percentage is:***
2	*20*
3	*40*
4	*60*
5	*80*
6	*100.".*

(b) AMENDMENT OF ERISA.—Section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)) is amended—

(1) in paragraph (2), by striking "A plan" and inserting "Except as provided in paragraph (4), a plan", and

(2) by adding at the end the following:

"(4) In the case of matching contributions (as defined in section 401(m)(4)(A) of the Internal Revenue Code of 1986), paragraph (2) shall be applied—

"(A) by substituting '3 years' for '5 years' in subparagraph (A), and

"(B) by substituting the following table for the table contained in subparagraph (B):

"Years of service:	***The nonforfeitable percentage is:***
2	*20*
3	*40*
4	*60*
5	*80*
6	*100.".*

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2000.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified by the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without re-

gard to any extension thereof on or after such date of the enactment); or

(ii) January 1, 2001; or

(B) January 1, 2005.

(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

SEC. 424. SIMPLIFY AND UPDATE THE MINIMUM DISTRIBUTION RULES.

(a) SIMPLIFICATION AND FINALIZATION OF MINIMUM DISTRIBUTION REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall—

(A) simplify and finalize the regulations relating to minimum distribution requirements under sections 401(a)(9), 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2) of the Internal Revenue Code of 1986; and

(B) modify such regulations to—

(i) reflect current life expectancy; and

(ii) revise the required distribution methods so that, under reasonable assumptions, the amount of the required minimum distribution does not decrease over a participant's life expectancy.

(2) FRESH START.—Notwithstanding subparagraph (D) of section 401(a)(9) of such Code, during the first year that regulations are in effect under this subsection, required distributions for future years may be redetermined to reflect changes under such regulations. Such redetermination shall include the opportunity to choose a new designated beneficiary and to elect a new method of calculating life expectancy.

(3) DATE FOR REGULATIONS.—Not later than December 31, 2001, the Secretary shall issue final regulations described in paragraph (1) and such regulations shall apply without regard to whether an individual had previously begun receiving minimum distributions.

(b) REPEAL OF RULE WHERE DISTRIBUTIONS HAD BEGUN BEFORE DEATH OCCURS.—

(1) IN GENERAL.—Subparagraph (B) of section 401(a)(9) is amended by striking clause (i) and redesignating clauses (ii), (iii), and (iv) as clauses (i), (ii), and (iii), respectively.

(2) CONFORMING CHANGES.—

(A) Clause (i) of section 401(a)(9)(B) (as so redesignated) is amended—

(i) by striking "FOR OTHER CASES" in the heading; and

(ii) by striking "the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii)" and inserting "his entire interest has been distributed to him".

(B) Clause (ii) of section 401(a)(9)(B) (as so redesignated) is amended by striking "clause (ii)" and inserting "clause (i)".

(C) Clause (iii) of section 401(a)(9)(B) (as so redesignated) is amended—

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

(ii) by striking "clause (iii)(III)" in subclause (I) and inserting "clause (ii)(III)";

(iii) by striking "the date on which the employee would have attained age 70½," in subclause (I) and inserting "April 1 of the calendar year following the calendar year in which the spouse attains 70½,"; and

(iv) by striking "the distributions to such spouse begin," in subclause (II) and inserting "his entire interest has been distributed to him,".

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to years beginning after December 31, 2000.

(B) DISTRIBUTIONS TO SURVIVING SPOUSE.—

(i) IN GENERAL.—In the case of an employee described in clause (ii), distributions to the surviving spouse of the employee shall not be required to commence prior to the date on which such distributions would have been required to begin under section 401(a)(9)(B) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act).

(ii) CERTAIN EMPLOYEES.—An employee is described in this clause if such employee dies before—

(I) the date of the enactment of this Act, and

(II) the required beginning date (within the meaning of section 401(a)(9)(C) of the Internal Revenue Code of 1986) of the employee.

(c) REDUCTION IN EXCISE TAX.—

(1) IN GENERAL.—Subsection (a) of section 4974 is amended by striking "50 percent" and inserting "10 percent".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after December 31, 2000.

SEC. 425. CLARIFICATION OF TAX TREATMENT OF DIVISION OF SECTION 457 PLAN BENEFITS UPON DIVORCE.

(a) IN GENERAL.—Section 414(p)(11) (relating to application of rules to governmental and church plans) is amended—

(1) by inserting "or an eligible deferred compensation plan (within the meaning of section 457(b))" after "subsection (e))"; and

(2) in the heading, by striking "GOVERNMENTAL AND CHURCH PLANS" and inserting "CERTAIN OTHER PLANS".

(b) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—Paragraph (10) of section 414(p) is amended by striking "and section 409(d)" and inserting "section 409(d), and section 457(d)".

(c) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN.—Subsection (p) of section 414 is amended by redesignating paragraph (12) as paragraph (13) and inserting after paragraph (11) the following new paragraph:

"(12) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN.—If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursu-

ant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers, distributions, and payments made after December 31, 2000.

SEC. 426. PROVISIONS RELATING TO HARDSHIP DISTRIBUTIONS.

(a) SAFE HARBOR RELIEF.—

(1) IN GENERAL.—The Secretary of the Treasury shall revise the regulations relating to hardship distributions under section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that the period an employee is prohibited from making elective and employee contributions in order for a distribution to be deemed necessary to satisfy financial need shall be equal to 6 months.

(2) EFFECTIVE DATE.—The revised regulations under this subsection shall apply to years beginning after December 31, 2000.

(b) HARDSHIP DISTRIBUTIONS NOT TREATED AS ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(1) MODIFICATION OF DEFINITION OF ELIGIBLE ROLLOVER.—Section 402(c)(4)(C) (relating to eligible rollover distribution) is amended by striking "described in section 401(k)(2)(B)(i)(IV)" and inserting "under the terms of the plan".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to distributions made after December 31, 2001, unless a plan administrator elects to apply such amendment to distributions made after December 31, 2000.

SEC. 427. WAIVER OF TAX ON NONDEDUCTIBLE CONTRIBUTIONS FOR DOMESTIC OR SIMILAR WORKERS.

(a) IN GENERAL.—Section 4972(c)(6) (relating to exceptions to nondeductible contributions), as amended by section 442(b), is amended by striking "or" at the end of subparagraph (A), by striking the period and inserting ", or" at the end of subparagraph (B), and by inserting after subparagraph (B) the following new subparagraph:

> *"(C) so much of the contributions to a qualified employer plan which are not deductible when contributed solely because such contributions are not made in connection with a trade or business of the employer.".*

(b) EXCLUSION OF CERTAIN CONTRIBUTIONS.—Section 4972(c)(6), as amended by subsection (a), is amended by adding at the end the following new sentence: "Subparagraph (C) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).".

(c) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer the proper treatment of nondeductible contributions under the laws in effect before such amendments.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

Subtitle D—Increasing Portability For Participants

SEC. 431. ROLLOVERS ALLOWED AMONG VARIOUS TYPES OF PLANS.

(a) ROLLOVERS FROM AND TO SECTION 457 PLANS.—

(1) ROLLOVERS FROM SECTION 457 PLANS.—

(A) IN GENERAL.—Section 457(e) (relating to other definitions and special rules) is amended by adding at the end the following:

"(16) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if—

"(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4) without regard to subparagraph (C) thereof),

"(ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

"(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

"(C) REPORTING.—Rollovers under this paragraph shall be reported to the Secretary in the same manner as rollovers from qualified retirement plans (as defined in section 4974(c)).".

(B) DEFERRAL LIMIT DETERMINED WITHOUT REGARD TO ROLLOVER AMOUNTS.—Section 457(b)(2) (defining eligible deferred compensation plan) is amended by inserting "(other than rollover amounts)" after "taxable year".

(C) DIRECT ROLLOVER.—Paragraph (1) of section 457(d) 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 inserting after subparagraph (B) the following:

"(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of transfer.".

(D) WITHHOLDING.—

(i) Paragraph (12) of section 3401(a) is amended by adding at the end the following:

"(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) maintained by an employer described in section 457(e)(1)(A), or".

(ii) Paragraph (3) of section 3405(c) is amended to read as follows:

"(3) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term 'eligible rollover distribution' has the meaning given such term by section 402(f)(2)(A).".

(iii) LIABILITY FOR WITHHOLDING.—Subparagraph (B) of section 3405(d)(2) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or", and by adding at the end the following:

"(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).".

(2) ROLLOVERS TO SECTION 457 PLANS.—

(A) IN GENERAL.—Section 402(c)(8)(B) (defining eligible retirement plan) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by inserting after clause (iv) the following new clause:

"(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A).".

(B) SEPARATE ACCOUNTING.—Section 402(c) is amended by adding at the end the following new paragraph:

"(11) SEPARATE ACCOUNTING.—Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.".

(C) 10 PERCENT ADDITIONAL TAX.—Subsection (t) of section 72 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new paragraph:

"(9) SPECIAL RULE FOR ROLLOVERS TO SECTION 457 PLANS.—For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).".

(b) ALLOWANCE OF ROLLOVERS FROM AND TO 403(b) PLANS.—

(1) ROLLOVERS FROM SECTION 403(b) PLANS.—Section 403(b)(8)(A)(ii) (relating to rollover amounts) is amended by striking "such distribution" and all that follows and inserting "such distribution to an eligible retirement plan described in section 402(c)(8)(B), and".

(2) ROLLOVERS TO SECTION 403(b) PLANS.—Section 402(c)(8)(B) (defining eligible retirement plan), as amended by

subsection (a), is amended by striking "and" at the end of clause (iv), by striking the period at the end of clause (v) and inserting ", and", and by inserting after clause (v) the following new clause:

"(vi) an annuity contract described in section 403(b).".

(c) EXPANDED EXPLANATION TO RECIPIENTS OF ROLLOVER DISTRIBUTIONS.—Paragraph (1) of section 402(f) (relating to written explanation to recipients of distributions eligible for rollover treatment) 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 adding at the end the following new subparagraph:

"(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.".

(d) SPOUSAL ROLLOVERS.—Section 402(c)(9) (relating to rollover where spouse receives distribution after death of employee) is amended by striking "; except that" and all that follows up to the end period.

(e) CONFORMING AMENDMENTS.—

(1) Section 72(o)(4) is amended by striking "and 408(d)(3)" and inserting "403(b)(8), 408(d)(3), and 457(e)(16)".

(2) Section 219(d)(2) is amended by striking "or 408(d)(3)" and inserting "408(d)(3), or 457(e)(16)".

(3) Section 401(a)(31)(B) is amended by striking "and 403(a)(4)" and inserting ", 403(a)(4), 403(b)(8), and 457(e)(16)".

(4) Subparagraph (A) of section 402(f)(2) is amended by striking "or paragraph (4) of section 403(a)" and inserting ", paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)".

(5) Paragraph (1) of section 402(f) is amended by striking "from an eligible retirement plan".

(6) Subparagraphs (A) and (B) of section 402(f)(1) are amended by striking "another eligible retirement plan" and inserting "an eligible retirement plan".

(7) Subparagraph (B) of section 403(b)(8) is amended to read as follows:

"(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.".

(8) Section 408(a)(1) is amended by striking "or 403(b)(8)," and inserting "403(b)(8), or 457(e)(16)".

(9) Subparagraphs (A) and (B) of section 415(b)(2) are each amended by striking "and 408(d)(3)" and inserting "403(b)(8), 408(d)(3), and 457(e)(16)".

(10) Section 415(c)(2) is amended by striking "and 408(d)(3)" and inserting "408(d)(3), and 457(e)(16)".

(11) Section 4973(b)(1)(A) is amended by striking "or 408(d)(3)" and inserting "408(d)(3), or 457(e)(16)".

(f) EFFECTIVE DATE; SPECIAL RULES.—

(1) EFFECTIVE DATE.—Except as provided in paragraph (2), the amendments made by this section shall apply to distributions after December 31, 2000.

(2) REASONABLE NOTICE.—No penalty shall be imposed on a plan for the failure to provide the information required by the amendment made by subsection (c) with respect to any distribution made before January 1, 2002, if the administrator of such plan makes a reasonable attempt to comply with such requirement.

(3) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section.

SEC. 432. ROLLOVERS OF IRAS INTO WORKPLACE RETIREMENT PLANS.

(a) IN GENERAL.—Subparagraph (A) of section 408(d)(3) (relating to rollover amounts) is amended by adding "or" at the end of clause (i), by striking clauses (ii) and (iii), and by adding at the end the following:

> *"(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).*

For purposes of clause (ii), the term 'eligible retirement plan' means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 403(b) is amended by striking "section 408(d)(3)(A)(iii)" and inserting "section 408(d)(3)(A)(ii)".

(2) Clause (i) of section 408(d)(3)(D) is amended by striking "(i), (ii), or (iii)" and inserting "(i) or (ii)".

(3) Subparagraph (G) of section 408(d)(3) is amended to read as follows:

> *"(G) SIMPLE RETIREMENT ACCOUNTS.—In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.".*

(c) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2000.

(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of sec-

tion 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section.

SEC. 433. ROLLOVERS OF AFTER-TAX CONTRIBUTIONS.

(a) ROLLOVERS FROM EXEMPT TRUSTS.—Paragraph (2) of section 402(c) (relating to maximum amount which may be rolled over) is amended by adding at the end the following: "The preceding sentence shall not apply to such distribution to the extent—

"(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

"(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).".

(b) OPTIONAL DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—Subparagraph (B) of section 401(a)(31) (relating to limitation) is amended by adding at the end the following: "The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

"(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

"(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).".

(c) RULES FOR APPLYING SECTION 72 TO IRAS.—Paragraph (3) of section 408(d) (relating to special rules for applying section 72) is amended by inserting at the end the following:

"(H) APPLICATION OF SECTION 72.—

"(i) IN GENERAL.—If—

"(I) a distribution is made from an individual retirement plan, and

"(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

"(ii) APPLICABLE RULES.—In the case of a distribution described in clause (i)—

"(I) section 72 shall be applied separately to such distribution,

"(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from in-

come on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

"(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after December 31, 2001.

SEC. 434. HARDSHIP EXCEPTION TO 60-DAY RULE.

(a) EXEMPT TRUSTS.—Paragraph (3) of section 402(c) (relating to transfer must be made within 60 days of receipt) is amended to read as follows:

"(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

"(B) HARDSHIP EXCEPTION.—The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.".

(b) IRAS.—Paragraph (3) of section 408(d) (relating to rollover contributions), as amended by section 433, is amended by adding after subparagraph (H) the following new subparagraph:

"(I) WAIVER OF 60-DAY REQUIREMENT.—The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2000.

SEC. 435. TREATMENT OF FORMS OF DISTRIBUTION.

(a) PLAN TRANSFERS.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (6) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following:

"(D) PLAN TRANSFERS.—

"(i) IN GENERAL.—A defined contribution plan (in this subparagraph referred to as the 'transferee plan') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the 'transferor plan') to the extent that—

"(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the

transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

"(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),

"(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

"(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

"(V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

"(ii) SPECIAL RULE FOR MERGERS; ETC.—Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

"(E) ELIMINATION OF FORM OF DISTRIBUTION.—Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

"(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and

"(ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.".

(2) AMENDMENT OF ERISA.—Section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) is amended by adding at the end the following:

"(4)(A) A defined contribution plan (in this subparagraph referred to as the 'transferee plan') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the 'transferor plan') to the extent that—

"(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

"(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

"(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

"(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and

"(v) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

"(B) Subparagraph (A) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

"(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

"(A) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

"(B) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 2000.

(b) REGULATIONS.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (6)(B) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by inserting after the second sentence the following new sentence: "The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.".

(2) AMENDMENT OF ERISA.—Section 204(g)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)(2)) is amended by inserting before the last sentence the following new sentence: "The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.".

(3) SECRETARY DIRECTED.—Not later than December 31, 2002, the Secretary of the Treasury is directed to issue regulations under section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Se-

curity Act of 1974, including the regulations required by the amendment made by this subsection. Such regulations shall apply to plan years beginning after December 31, 2002, or such earlier date as is specified by the Secretary of the Treasury.

SEC. 436. RATIONALIZATION OF RESTRICTIONS ON DISTRIBUTIONS.

(a) MODIFICATION OF SAME DESK EXCEPTION.—

(1) SECTION 401(k).—

(A) Section 401(k)(2)(B)(i)(I) (relating to qualified cash or deferred arrangements) is amended by striking "separation from service" and inserting "severance from employment".

(B) Subparagraph (A) of section 401(k)(10) (relating to distributions upon termination of plan or disposition of assets or subsidiary) is amended to read as follows:

"(A) IN GENERAL.—An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).".

(C) Section 401(k)(10) is amended—

(i) in subparagraph (B)—

(I) by striking "An event" in clause (i) and inserting "A termination"; and

(II) by striking "the event" in clause (i) and inserting "the termination";

(ii) by striking subparagraph (C); and

(iii) by striking "OR DISPOSITION OF ASSETS OR SUBSIDIARY" in the heading.

(2) SECTION 403(b).—

(A) Paragraphs (7)(A)(ii) and (11)(A) of section 403(b) are each amended by striking "separates from service" and inserting "has a severance from employment".

(B) The heading for paragraph (11) of section 403(b) is amended by striking "SEPARATION FROM SERVICE" and inserting "SEVERANCE FROM EMPLOYMENT".

(3) SECTION 457.—Clause (ii) of section 457(d)(1)(A) is amended by striking "is separated from service" and inserting "has a severance from employment".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2000.

SEC. 437. PURCHASE OF SERVICE CREDIT IN GOVERNMENTAL DEFINED BENEFIT PLANS.

(a) 403(b) PLANS.—Subsection (b) of section 403 is amended by adding at the end the following new paragraph:

"(13) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT.—No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

"(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

"(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.".

(b) 457 PLANS.—Subsection (e) of section 457 is amended by adding after paragraph (16) the following new paragraph:

"(17) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT.—No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

"(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

"(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to trustee-to-trustee transfers after December 31, 2000.

SEC. 438. EMPLOYERS MAY DISREGARD ROLLOVERS FOR PURPOSES OF CASH-OUT AMOUNTS.

(a) QUALIFIED PLANS.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—Section 411(a)(11) (relating to restrictions on certain mandatory distributions) is amended by adding at the end the following:

"(D) SPECIAL RULE FOR ROLLOVER CONTRIBUTIONS.—A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term 'rollover contributions' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).".

(2) AMENDMENT OF ERISA.—Section 203(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(c)) is amended by adding at the end the following:

"(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term 'rollover contributions' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Internal Revenue Code of 1986.".

(b) ELIGIBLE DEFERRED COMPENSATION PLANS.—Clause (i) of section 457(e)(9)(A) is amended by striking "such amount" and inserting "the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2000.

SEC. 439. MINIMUM DISTRIBUTION AND INCLUSION REQUIREMENTS FOR SECTION 457 PLANS.

(a) MINIMUM DISTRIBUTION REQUIREMENTS.—Paragraph (2) of section 457(d) (relating to distribution requirements) is amended to read as follows:

"(2) MINIMUM DISTRIBUTION REQUIREMENTS.—A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of section 401(a)(9).".

(b) INCLUSION IN GROSS INCOME.—

(1) YEAR OF INCLUSION.—Subsection (a) of section 457 (relating to year of inclusion in gross income) is amended to read as follows:

"(a) YEAR OF INCLUSION IN GROSS INCOME.—

"(1) IN GENERAL.—Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

"(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

"(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

"(2) SPECIAL RULE FOR ROLLOVER AMOUNTS.—To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.".

(2) CONFORMING AMENDMENTS.—

(A) So much of paragraph (9) of section 457(e) as precedes subparagraph (A) is amended to read as follows:

"(9) BENEFITS OF TAX EXEMPT ORGANIZATION PLANS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)—".

(B) Section 457(d) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR GOVERNMENT PLAN.—An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2000.

Subtitle E—Strengthening Pension Security and Enforcement

SEC. 441. REPEAL OF 155 PERCENT OF CURRENT LIABILITY FUNDING LIMIT.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—Section 412(c)(7) (relating to full-funding limitation) is amended—

(1) by striking "the applicable percentage" in subparagraph (A)(i)(I) and inserting "in the case of plan years beginning before January 1, 2004, the applicable percentage"; and

(2) by amending subparagraph (F) to read as follows:

"(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

"In the case of any plan year beginning in—	***The applicable percentage is—***
2001	*160*

"In the case of any plan year beginning in—	*The applicable percentage is—*
2002	*165*
2003	*170.".*

(b) AMENDMENT OF ERISA.—Section 302(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)) is amended—

(1) by striking "the applicable percentage" in subparagraph (A)(i)(I) and inserting "in the case of plan years beginning before January 1, 2004, the applicable percentage"; and

(2) by amending subparagraph (F) to read as follows:

"(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

"In the case of any plan year beginning in—	*The applicable percentage is—*
2001	*160*
2002	*165*
2003	*170.".*

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2000.

SEC. 442. MAXIMUM CONTRIBUTION DEDUCTION RULES MODIFIED AND APPLIED TO ALL DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Subparagraph (D) of section 404(a)(1) (relating to special rule in case of certain plans) is amended to read as follows:

"(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—

"(i) IN GENERAL.—In the case of any defined benefit plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded termination liability (determined as if the proposed termination date referred to in section 4041(b)(2)(A)(i)(II) of the Employee Retirement Income Security Act of 1974 were the last day of the plan year).

"(ii) PLANS WITH LESS THAN 100 PARTICIPANTS.—For purposes of this subparagraph, in the case of a plan which has less than 100 participants for the plan year, termination liability shall not include the liability attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years before the termination date.

"(iii) RULE FOR DETERMINING NUMBER OF PARTICIPANTS.—For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as one plan, but only employees of such member or employer shall be taken into account.

"(iv) PLANS MAINTAINED BY PROFESSIONAL SERVICE EMPLOYERS.—Clause (i) shall not apply to a plan de-

scribed in section 4021(b)(13) of the Employee Retirement Income Security Act of 1974.".

(b) CONFORMING AMENDMENT.—Paragraph (6) of section 4972(c) is amended to read as follows:

"(6) EXCEPTIONS.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account so much of the contributions to one or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

"(A) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

"(B) the sum of—

"(i) the amount of contributions described in section 401(m)(4)(A), plus

"(ii) the amount of contributions described in section 402(g)(3)(A).

For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (B).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2000.

SEC. 443. EXCISE TAX RELIEF FOR SOUND PENSION FUNDING.

(a) IN GENERAL.—Subsection (c) of section 4972 (relating to nondeductible contributions) is amended by adding at the end the following new paragraph:

"(7) DEFINED BENEFIT PLAN EXCEPTION.—In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2000.

SEC. 444. EXCISE TAX ON FAILURE TO PROVIDE NOTICE BY DEFINED BENEFIT PLANS SIGNIFICANTLY REDUCING FUTURE BENEFIT ACCRUALS.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

"SEC. 4980F. FAILURE OF APPLICABLE PLANS REDUCING BENEFIT ACCRUALS TO SATISFY NOTICE REQUIREMENTS.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED AND REASONABLE DILIGENCE EXERCISED.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for the tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

"(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

"(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

"(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

"(4) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

"(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

"(1) In the case of a plan other than a multiemployer plan, the employer.

"(2) In the case of a multiemployer plan, the plan.

"(e) NOTICE REQUIREMENTS FOR PLANS SIGNIFICANTLY REDUCING BENEFIT ACCRUALS.—

"(1) IN GENERAL.—If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide written notice to each applicable individual (and to each employee organization representing applicable individuals).

"(2) NOTICE.—The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

"(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

"(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

"(3) TIMING OF NOTICE.—Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

"(4) DESIGNEES.—Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

"(5) NOTICE BEFORE ADOPTION OF AMENDMENT.—A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means, with respect to any plan amendment—

"(A) each participant in the plan, and

"(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

"(2) APPLICABLE PENSION PLAN.—The term 'applicable pension plan' means—

"(A) any defined benefit plan, or

"(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

"(3) EARLY RETIREMENT.—A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.

"(g) NEW TECHNOLOGIES.—The Secretary may by regulations allow any notice under paragraph (1) or (2) of subsection (e) to be provided by using new technologies."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by adding at the end the following new item:

"Sec. 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements.".

(b) AMENDMENT OF ERISA.—Section 204(h) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(h)) is amended by adding at the end the following new paragraphs:

"(3)(A) An applicable pension plan to which paragraph (1) applies shall not be treated as meeting the requirements of such paragraph unless, in addition to any notice required to be provided to an individual or organization under such paragraph, the plan administrator provides the notice described in subparagraph (B) to each applicable individual (and to each employee organization representing applicable individuals).

"(B) The notice required by subparagraph (A) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

"(i) which has fewer than 100 participants who have accrued a benefit under the plan, or

"(ii) which offers participants the option to choose between the new benefit formula and the old benefit formula.

"(C) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by subparagraph (A) shall be provided within a reasonable time before the effective date of the plan amendment.

"(D) Any notice under subparagraph (A) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

"(E) A plan shall not be treated as failing to meet the requirements of subparagraph (A) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

"(F) The Secretary of the Treasury may by regulations allow any notice under subparagraph (A) or (B) to be provided by using new technologies.

"(4) For purposes of paragraph (3)—

"(A) The term 'applicable individual' means, with respect to any plan amendment—

"(i) each participant in the plan; and

"(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

"(B) The term 'applicable pension plan' means—

"(i) any defined benefit plan; or

"(ii) an individual account plan which is subject to the funding standards of section 412 of the Internal Revenue Code of 1986.

"(C) A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan amendments taking effect on or after the date of the enactment of this Act.

(2) TRANSITION.—Until such time as the Secretary of the Treasury issues regulations under sections 4980F(e)(2) and (3) of the Internal Revenue Code of 1986 and section 204(h)(3) of the Employee Retirement Income Security Act of 1974 (as added by the amendments made by this section), a plan shall be treated as meeting the requirements of such sections if it makes a good faith effort to comply with such requirements.

(3) SPECIAL NOTICE RULES.—

(A) IN GENERAL.—The period for providing any notice required by the amendments made by this section shall not end before the date which is 3 months after the date of the enactment of this Act.

(B) REASONABLE NOTICE.—The amendments made by this section shall not apply to any plan amendment taking effect on or after the date of the enactment of this Act if, before October 25, 2000, notice was provided to participants and beneficiaries adversely affected by the plan amendment (or their representatives) which was reasonably expected to notify them of the nature and effective date of the plan amendment.

(d) STUDY.—The Secretary of the Treasury shall prepare a report on the effects of conversions of traditional defined benefit plans to cash balance or hybrid formula plans. Such study shall examine the effect of such conversions on longer service participants, including the incidence and effects of "wear away" provisions under which participants earn no additional benefits for a period of time after the conversion. As soon as practicable, but not later than 60 days after the date of the enactment of this Act, the Secretary shall submit such report, together with recommendations thereon, to the Committee on Ways and Means and the Committee on Education

and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 445. TREATMENT OF MULTIEMPLOYER PLANS UNDER SECTION 415.

(a) COMPENSATION LIMIT.—

(1) IN GENERAL.—Paragraph (11) of section 415(b) (relating to limitation for defined benefit plans) is amended to read as follows:

"(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL AND MULTIEMPLOYER PLANS.—In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply.".

(2) CONFORMING AMENDMENT.—Section 415(b)(7) (relating to benefits under certain collectively bargained plans) is amended by inserting "(other than a multiemployer plan)" after "defined benefit plan" in the matter preceding subparagraph (A).

(b) COMBINING AND AGGREGATION OF PLANS.—

(1) COMBINING OF PLANS.—Subsection (f) of section 415 (relating to combining of plans) is amended by adding at the end the following:

"(3) EXCEPTION FOR MULTIEMPLOYER PLANS.—Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated—

"(A) with any other plan which is not a multiemployer plan for purposes of applying subsection (b)(1)(B) to such other plan, or

"(B) with any other multiemployer plan for purposes of applying the limitations established in this section.".

(2) CONFORMING AMENDMENT FOR AGGREGATION OF PLANS.—Subsection (g) of section 415 (relating to aggregation of plans) is amended by striking "The Secretary" and inserting "Except as provided in subsection (f)(3), the Secretary".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2000.

SEC. 446. PROTECTION OF INVESTMENT OF EMPLOYEE CONTRIBUTIONS TO 401(K) PLANS.

(a) IN GENERAL.—Section 1524(b) of the Taxpayer Relief Act of 1997 is amended to read as follows:

"(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.

"(2) NONAPPLICATION TO PREVIOUSLY ACQUIRED PROPERTY.—The amendments made by this section shall not apply to any elective deferral which is invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired before January 1, 1999.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply as if included in the provision of the Taxpayer Relief Act of 1997 to which it relates.

SEC. 447. PERIODIC PENSION BENEFITS STATEMENTS.

(a) IN GENERAL.—Section 105(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025 (a)) is amended to read as follows:

"(a)(1) Except as provided in paragraph (2)—

"(A) the administrator of an individual account plan shall furnish a pension benefit statement—

"(i) to a plan participant at least once annually, and

"(ii) to a plan beneficiary upon written request, and

"(B) the administrator of a defined benefit plan shall furnish a pension benefit statement—

"(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

"(ii) to a plan participant or plan beneficiary of the plan upon written request.

"(2) Notwithstanding paragraph (1), the administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall only be required to furnish a pension benefit statement under paragraph (1) upon the written request of a participant or beneficiary of the plan.

"(3) A pension benefit statement under paragraph (1)—

"(A) shall indicate, on the basis of the latest available information—

"(i) the total benefits accrued, and

"(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

"(B) shall be written in a manner calculated to be understood by the average plan participant, and

"(C) may be provided in written, electronic, telephonic, or other appropriate form.

"(4)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, telephonic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

"(B) The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).".

(b) CONFORMING AMENDMENTS.—

(1) Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by striking subsection (d).

(2) Section 105(b) of such Act (29 U.S.C. 1025(b)) is amended to read as follows:

"(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in subsection (a)(1)(A) or (a)(1)(B)(ii), whichever is applicable, in any 12-month period.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2001.

SEC. 448. PROHIBITED ALLOCATIONS OF STOCK IN S CORPORATION ESOP.

(a) IN GENERAL.—Section 409 (relating to qualifications for tax credit employee stock ownership plans) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) PROHIBITED ALLOCATIONS OF SECURITIES IN AN S CORPORATION.—

"(1) IN GENERAL.—An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

"(2) FAILURE TO MEET REQUIREMENTS.—

"(A) IN GENERAL.—If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

"(B) CROSS REFERENCE.—

"For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

"(3) NONALLOCATION YEAR.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'nonallocation year' means any plan year of an employee stock ownership plan if, at any time during such plan year—

"(i) such plan holds employer securities consisting of stock in an S corporation, and

"(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

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

"(i) IN GENERAL.—The rules of section 318(a) shall apply for purposes of determining ownership, except that—

"(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

"(II) paragraph (4) thereof shall not apply.

"(ii) DEEMED-OWNED SHARES.—Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), an individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

"(4) DISQUALIFIED PERSON.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'disqualified person' means any person if—

"(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

"(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

"(B) TREATMENT OF FAMILY MEMBERS.—In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

"(C) DEEMED-OWNED SHARES.—

"(i) IN GENERAL.—The term 'deemed-owned shares' means, with respect to any person—

"(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

"(II) such person's share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants.

"(ii) PERSON'S SHARE OF UNALLOCATED STOCK.—For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

"(D) MEMBER OF FAMILY.—For purposes of this paragraph, the term 'member of the family' means, with respect to any individual—

"(i) the spouse of the individual,

"(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

"(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

"(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

"(5) TREATMENT OF SYNTHETIC EQUITY.—For purposes of paragraphs (3) and (4), in the case of a person who owns syn-

thetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

"(A) the treatment of any person as a disqualified person, or

"(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the meaning given such term by section 4975(e)(7).

"(B) EMPLOYER SECURITIES.—The term 'employer security' has the meaning given such term by section 409(l).

"(C) SYNTHETIC EQUITY.—The term 'synthetic equity' means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.".

(b) COORDINATION WITH SECTION 4975(e)(7).—The last sentence of section 4975(e)(7) (defining employee stock ownership plan) is amended by inserting ", section 409(p)," after "409(n)".

(c) EXCISE TAX.—

(1) APPLICATION OF TAX.—Subsection (a) of section 4979A (relating to tax on certain prohibited allocations of employer securities) is amended—

(A) by striking "or" at the end of paragraph (1); and

(B) by striking all that follows paragraph (2) and inserting the following:

"(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

"(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.".

(2) LIABILITY.—Section 4979A(c) (defining liability for tax) is amended to read as follows:

"(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid—

"(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

"(A) the employer sponsoring such plan, or

"(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

"(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.".

(3) DEFINITIONS.—Section 4979A(e) (relating to definitions) is amended to read as follows:

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) DEFINITIONS.—Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

"(2) SPECIAL RULES RELATING TO TAX IMPOSED BY REASON OF PARAGRAPH (3) OR (4) OF SUBSECTION (a).—

"(A) PROHIBITED ALLOCATIONS.—The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

"(B) SYNTHETIC EQUITY.—The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

"(C) SPECIAL RULE DURING FIRST NONALLOCATION YEAR.—For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

"(D) STATUTE OF LIMITATIONS.—The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

"(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

"(ii) the date on which the Secretary is notified of such allocation or ownership.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2001.

(2) EXCEPTION FOR CERTAIN PLANS.—In the case of any—

(A) employee stock ownership plan established after July 11, 2000; or

(B) employee stock ownership plan established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of the Internal Revenue Code of 1986 is not in effect on such date,

the amendments made by this section shall apply to plan years ending after July 11, 2000.

Subtitle F—Reducing Regulatory Burdens

SEC. 451. MODIFICATION OF TIMING OF PLAN VALUATIONS.

(a) IN GENERAL.—Paragraph (9) of section 412(c) (relating to annual valuation) is amended to read as follows:

"(9) ANNUAL VALUATION.—

"(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

"(B) VALUATION DATE.—

"(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) ELECTION TO USE PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

"(I) an election is in effect under this clause with respect to the plan, and

"(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

"(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) ELECTION.—An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary.".

(b) AMENDMENT OF ERISA.—Paragraph (9) of section 302(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(c)) is amended—

(1) by inserting "(A)" after "(9)"; and

(2) by adding at the end the following:

"(B)(i) Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

"(I) an election is in effect under this clause with respect to the plan; and

"(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

"(iii) Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary of the Treasury.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2000.

SEC. 452. ESOP DIVIDENDS MAY BE REINVESTED WITHOUT LOSS OF DIVIDEND DEDUCTION.

(a) IN GENERAL.—Section 404(k)(2)(A) (defining applicable dividends) is amended by striking "or" at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

"(iii) is, at the election of such participants or their beneficiaries—

"(I) payable as provided in clause (i) or (ii), or

"(II) paid to the plan and reinvested in qualifying employer securities, or".

(b) STANDARD FOR DISALLOWANCE.—Section 404(k)(5)(A) (relating to disallowance of deduction) is amended by inserting "avoidance or" before "evasion".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 453. REPEAL OF TRANSITION RULE RELATING TO CERTAIN HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Paragraph (4) of section 1114(c) of the Tax Reform Act of 1986 is hereby repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to plan years beginning after December 31, 2000.

SEC. 454. EMPLOYEES OF TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—The Secretary of the Treasury shall modify Treasury Regulations section 1.410(b)–6(g) to provide that employees of an organization described in section 403(b)(1)(A)(i) of the Internal Revenue Code of 1986 who are eligible to make contributions under section 403(b) of such Code pursuant to a salary reduction agreement may be treated as excludable with respect to a plan under section 401(k) or (m) of such Code that is provided under the same general arrangement as a plan under such section 401(k), if—

(1) no employee of an organization described in section 403(b)(1)(A)(i) of such Code is eligible to participate in such section 401(k) plan or section 401(m) plan; and

(2) 95 percent of the employees who are not employees of an organization described in section 403(b)(1)(A)(i) of such Code are eligible to participate in such plan under such section 401(k) or (m).

(b) EFFECTIVE DATE.—The modification required by subsection (a) shall apply as of the same date set forth in section 1426(b) of the Small Business Job Protection Act of 1996.

SEC. 455. CLARIFICATION OF TREATMENT OF EMPLOYER-PROVIDED RETIREMENT ADVICE.

(a) IN GENERAL.—Subsection (a) of section 132 (relating to exclusion from gross income) is amended by striking "or" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", or", and by adding at the end the following new paragraph:

"(7) qualified retirement planning services.".

(b) QUALIFIED RETIREMENT PLANNING SERVICES DEFINED.—Section 132 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following:

"(m) QUALIFIED RETIREMENT PLANNING SERVICES.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified retirement planning services' means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

"(2) NONDISCRIMINATION RULE.—Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

"(3) QUALIFIED EMPLOYER PLAN.—For purposes of this subsection, the term 'qualified employer plan' means a plan, contract, pension, or account described in section 219(g)(5).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2000.

SEC. 456. REPORTING SIMPLIFICATION.

(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $250,000 or less as of the close of the plan year need not file a return for that year.

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term "one-participant retirement plan" means a retirement plan that—

(A) on the first day of the plan year—

(i) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated); or

(ii) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation);

(B) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

(C) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses);

(D) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

(E) does not cover a business that leases employees.

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case of plan years beginning after December 31, 2001, the Secretary of the Treasury shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 employees on the first day of a plan year and meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on January 1, 2001.

SEC. 457. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

The Secretary of the Treasury shall continue to update and improve the Employee Plans Compliance Resolution System (or any successor program) giving special attention to—

(1) increasing the awareness and knowledge of small employers concerning the availability and use of the program;

(2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures;

(3) extending the duration of the self-correction period under the Administrative Policy Regarding Self-Correction for significant compliance failures;

(4) expanding the availability to correct insignificant compliance failures under the Administrative Policy Regarding Self-Correction during audit; and

(5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

SEC. 458. REPEAL OF THE MULTIPLE USE TEST.

(a) IN GENERAL.—Paragraph (9) of section 401(m) is amended to read as follows:

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2000.

SEC. 459. FLEXIBILITY IN NONDISCRIMINATION, COVERAGE, AND LINE OF BUSINESS RULES.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall, by regulation, provide that a plan shall be deemed to satisfy the requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and circumstances test

under section 401(a)(4) of such Code, as in effect before January 1, 1994, but only if—

(A) the plan satisfies conditions prescribed by the Secretary to appropriately limit the availability of such test; and

(B) the plan is submitted to the Secretary for a determination of whether it satisfies such test.

Subparagraph (B) shall only apply to the extent provided by the Secretary.

(2) EFFECTIVE DATES.—

(A) REGULATIONS.—The regulation required by paragraph (1) shall apply to years beginning after December 31, 2002.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under paragraph (1)(A) shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(b) COVERAGE TEST.—

(1) IN GENERAL.—Section 410(b)(1) (relating to minimum coverage requirements) is amended by adding at the end the following:

"(D) In the case that the plan fails to meet the requirements of subparagraphs (A), (B) and (C), the plan—

"(i) satisfies subparagraph (B), as in effect immediately before the enactment of the Tax Reform Act of 1986,

"(ii) is submitted to the Secretary for a determination of whether it satisfies the requirement described in clause (i), and

"(iii) satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of this subparagraph.

Clause (ii) shall apply only to the extent provided by the Secretary.".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to years beginning after December 31, 2002.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under regulations prescribed by the Secretary under section 410(b)(1)(D) of the Internal Revenue Code of 1986 shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(c) LINE OF BUSINESS RULES.—The Secretary of the Treasury shall, on or before December 31, 2002, modify the existing regulations issued under section 414(r) of the Internal Revenue Code of 1986 in order to expand (to the extent that the Secretary determines appropriate) the ability of a pension plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

SEC. 460. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—

(1) Subparagraph (G) of section 401(a)(5) and subparagraph (H) of section 401(a)(26) are each amended by striking "section 414(d))" and all that follows and inserting "section 414(d)).".

(2) Subparagraph (G) of section 401(k)(3) and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 are each amended by striking "maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)".

(b) CONFORMING AMENDMENTS.—

(1) The heading for subparagraph (G) of section 401(a)(5) is amended to read as follows: "GOVERNMENTAL PLANS".

(2) The heading for subparagraph (H) of section 401(a)(26) is amended to read as follows: "EXCEPTION FOR GOVERNMENTAL PLANS".

(3) Subparagraph (G) of section 401(k)(3) is amended by inserting "GOVERNMENTAL PLANS.—" after "(G)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2000.

SEC. 461. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—

(A) IN GENERAL.—Subparagraph (A) of section 417(a)(6) is amended by striking "90-day" and inserting "180-day".

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute "180 days" for "90 days" each place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(2) AMENDMENT OF ERISA.—Section 205(c)(7)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended by striking "90-day" and inserting "180-day".

(3) EFFECTIVE DATE.—The amendments made by paragraph (1)(A) and (2) and the modifications required by paragraph (1)(B) shall apply to years beginning after December 31, 2000.

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2000.

(c) DISCLOSURE OF OPTIONAL FORMS OF BENEFITS.—

(1) REGULATIONS.—

(A) IN GENERAL.—The Secretary of the Treasury shall, not later than December 31, 2001, issue final regulations under section 417(a)(3) of the Internal Revenue Code of 1986 which provide that if—

(i) a defined benefit plan offers both a qualified joint and survivor annuity and a single sum optional form of benefit, and

(ii) the distributable amount under such single sum option is less than the present value (determined in accordance with section 417(e) of such Code) of the qualified joint and survivor annuity commencing as of the same annuity starting date, the written explanation required by section 417(a)(3)(A) of such Code shall include sufficient information to allow the participant to understand the difference between the amount of the single sum and such present value.

(B) UNMARRIED PARTICIPANTS.—If the plan offers an unmarried participant one or more annuity options that are substantially more valuable than the qualified joint and survivor annuity offered by the plan, the comparison required under subparagraph (A) shall be made between the single sum option and the most valuable of the other annuity options offered by the plan.

(C) FORM.—Any information required under this paragraph shall be provided in a manner calculated to be reasonably understood by the average plan participant.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall only apply to distributions made not earlier than 6 months after the date such regulations are issued.

SEC. 462. ANNUAL REPORT DISSEMINATION.

(a) REPORT AVAILABLE THROUGH ELECTRONIC MEANS.—Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended by adding at the end the following new sentence: "The requirement to furnish information under the previous sentence shall be satisfied if the administrator makes such information reasonably available through electronic means or other new technology.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to reports for years beginning after December 31, 1999.

SEC. 463. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

(1) in subsection (a), by striking "2001 and 2005 on or after September 1 of each year involved" and inserting "2001, 2005, and 2009 in the month of September of each year involved";

(2) in subsection (b), by adding at the end the following new sentence: "To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with the American Savings Education Council.";

(3) in subsection (e)(2)—

(A) by striking "Committee on Labor and Human Resources" in subparagraph (D) and inserting "Committee on Health, Education, Labor, and Pensions";

(B) by striking subparagraph (F) and inserting the following:

"(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;";

(C) by redesignating subparagraph (G) as subparagraph (J); and

(D) by inserting after subparagraph (F) the following new subparagraphs:

"(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

"(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

"(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and";

(4) in subsection (e)(3)(A)—

(A) by striking "There shall be no more than 200 additional participants." and inserting "The participants in the National Summit shall also include additional participants appointed under this subparagraph.";

(B) by striking "one-half shall be appointed by the President," in clause (i) and inserting "not more than 100 participants shall be appointed under this clause by the President,", and by striking "and" at the end of clause (i);

(C) by striking "one-half shall be appointed by the elected leaders of Congress" in clause (ii) and inserting "not more than 100 participants shall be appointed under this clause by the elected leaders of Congress", and by striking the period at the end of clause (ii) and inserting "; and";

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

"(iii) The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this clause additional participants to the National Summit. The number of such additional participants appointed under this clause may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by the organization referred to in subsection (b)(2) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult

and cooperate and shall not be Federal, State, or local government employees.";

(5) in subsection (e)(3)(B), by striking "January 31, 1998" in subparagraph (B) and inserting "May 1, 2001, May 1, 2005, and May 1, 2009, for each of the subsequent summits, respectively";

(6) in subsection (f)(1)(C), by inserting ", no later than 90 days prior to the date of the commencement of the National Summit," after "comment" in paragraph (1)(C);

(7) in subsection (g), by inserting ", in consultation with the congressional leaders specified in subsection (e)(2)," after "report";

(8) in subsection (i)—

(A) by striking "beginning on or after October 1, 1997" in paragraph (1) and inserting "2001, 2005, and 2009"; and

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

"(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph."; and

(9) in subsection (k)—

(A) by striking "shall enter into a contract on a sole-source basis" and inserting "may enter into a contract on a sole-source basis"; and

(B) by striking "fiscal year 1998" and inserting "fiscal years 2001, 2005, and 2009".

SEC. 464. STUDY OF PENSION COVERAGE.

Not later than 5 years after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the effect of the provisions of the Retirement Savings and Pension Coverage Act of 2000 on pension coverage, including—

(1) any expansion of coverage for low- and middle-income workers;

(2) levels of pension benefits;

(3) quality of pension coverage;

(4) worker's access to and participation in plans; and

(5) retirement security.

Subtitle G—Other ERISA Provisions

SEC. 471. MISSING PARTICIPANTS.

(a) IN GENERAL.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsection:

"(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

"(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

"(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

"(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

"(A) to the corporation, or

"(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

"(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

"(A) in a single sum (plus interest), or

"(B) in such other form as is specified in regulations of the corporation.

"(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

"(A) the plan is a pension plan (within the meaning of section 3(2))—

"(i) to which the provisions of this section do not apply (without regard to this subsection), and

"(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

"(B) at the time the assets are to be distributed upon termination, the plan—

"(i) has missing participants, and

"(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

"(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)), respectively, are prescribed.

SEC. 472. REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.

(a) IN GENERAL.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

(1) in clause (i), by inserting "other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined)," after "single-employer plan,",

(2) in clause (iii), by striking the period at the end and inserting ", and", and

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

"(iv) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, $5 for each individual who is a participant in such plan during the plan year.".

(b) DEFINITION OF NEW SINGLE-EMPLOYER PLAN.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

"(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

"(ii)(I) For purposes of this paragraph, the term 'small employer' means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

"(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans established after December 31, 2000.

SEC. 473. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS.

(a) NEW PLANS.—Subparagraph (E) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by adding at the end the following new clause:

"(v) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term 'applicable percentage' means—

"(I) 0 percent, for the first plan year.

"(II) 20 percent, for the second plan year.

"(III) 40 percent, for the third plan year.

"(IV) 60 percent, for the fourth plan year.

"(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of the

plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.".

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), as amended by section 472(b), is amended—

(1) by striking "The" in subparagraph (E)(i) and inserting "Except as provided in subparagraph (G), the", and

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

"(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

"(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by two or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether the 25-or-fewer-employees limitation has been satisfied.".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plans established after December 31, 2000.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2000.

SEC. 474. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

(a) IN GENERAL.—Section 4007(b) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1307(b)) is amended—

(1) by striking "(b)" and inserting "(b)(1)", and

(2) by inserting at the end the following new paragraph:

"(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accruing for periods beginning not earlier than the date of the enactment of this Act.

SEC. 475. SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE.—Section 4022(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended to read as follows:

"(5)(A) For purposes of this paragraph, the term 'majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

"(i) owns the entire interest in an unincorporated trade or business,

"(ii) in the case of a partnership, is a partner who owns, directly or indirectly, 50 percent or more of either the capital interest or the profits interest in such partnership, or

"(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).

"(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

"(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

"(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.".

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking "section 4022(b)(5)" and inserting "section 4022(b)(5)(B)".

(2) Section 4044(b) of such Act (29 U.S.C. 1344(b)) is amended—

(A) by striking "(5)" in paragraph (2) and inserting "(4), (5),", and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.".

(c) CONFORMING AMENDMENTS.—

(1) Section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321) is amended—

(A) in subsection (b)(9), by striking "as defined in section 4022(b)(6)", and

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

"(d) For purposes of subsection (b)(9), the term 'substantial owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

"(1) owns the entire interest in an unincorporated trade or business,

"(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

"(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of paragraph (3), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).".

(2) Section 4043(c)(7) of such Act (29 U.S.C. 1343(c)(7)) is amended by striking "section 4022(b)(6)" and inserting "section 4021(d)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2000, and

(B) under section 4042 of such Act (29 U.S.C. 1342) with respect to which proceedings are instituted by the corporation after such date.

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on January 1, 2001.

SEC. 476. MULTIEMPLOYER PLAN BENEFITS GUARANTEE.

(a) IN GENERAL.—Section 4022A(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322A(c)) is amended—

(1) by striking "$5" each place it appears in paragraph (1) and inserting "$11",

(2) by striking "$15" in paragraph (1) and inserting "$33", and

(3) by striking paragraphs (2), (5), and (6) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(b) CONFORMING AMENDMENT.—Section 4244(e)(4) of such Act (29 U.S.C. 1424(e)(4)) is amended by striking "and without regard to section 4022A(c)(2)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits payable after the date of the enactment of this Act, except that such amendments shall not apply to any multiemployer plan that has received financial assistance (within the meaning of section 4261 of the Employee Retirement Income Security Act of 1974) within the 1-year period ending on the date of the enactment of this Act.

SEC. 477. CIVIL PENALTIES FOR BREACH OF FIDUCIARY RESPONSIBILITY.

(a) IMPOSITION AND AMOUNT OF PENALTY MADE DISCRETIONARY.—Section 502(l)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)(1)) is amended—

(1) by striking "shall" and inserting "may", and

(2) by striking "equal to" and inserting "not greater than".

(b) APPLICABLE RECOVERY AMOUNT.—Section 502(l)(2) of such Act (29 U.S.C. 1132(l)(2)) is amended to read as follows:

"(2) For purposes of paragraph (1), the term 'applicable recovery amount' means any amount which is recovered from any fiduciary or other person (or from any other person on behalf of any such fiduciary or other person) with respect to a breach or violation described in paragraph (1) on or after the 30th day following receipt by such fiduciary or other person of written notice from the Secretary of the violation, whether paid voluntarily or by order of a court in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5). The Secretary may, in the Secretary's sole discretion, extend the 30-day period described in the preceding sentence.".

(c) OTHER RULES.—Section 502(l) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)) is amended by adding at the end the following new paragraph:

"(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

"(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and opportunity for a hearing with respect to the violation and applicable recovery amount.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to any breach of fiduciary responsibility or other violation of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 occurring on or after the date of enactment of this Act.

(2) TRANSITION RULE.—In applying the amendment made by subsection (b) (relating to applicable recovery amount), a breach or other violation occurring before the date of enactment of this Act which continues after the 180th day after such date (and which may have been discontinued at any time during its existence) shall be treated as having occurred after such date of enactment.

SEC. 478. BENEFIT SUSPENSION NOTICE.

(a) MODIFICATION OF REGULATION.—The Secretary of Labor shall modify the regulation under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide that the notification required by such regulation—

(1) in the case of an employee who returns to work for a former employer after commencement of payment of benefits under the plan shall—

(A) be made during the first calendar month or payroll period in which the plan withholds payments, and

(B) if a reduced rate of future benefit accruals will apply to the returning employee (as of the first date of participation in the plan by the employee after returning to work), include a statement that the rate of future benefit accruals will be reduced, and

(2) in the case of any employee who is not described in paragraph (1)—

(A) may be included in the summary plan description for the plan furnished in accordance with section 104(b) of such Act (29 U.S.C. 1024(b)), rather than in a separate notice, and

(B) need not include a copy of the relevant plan provisions.

(b) EFFECTIVE DATE.—The modification made under this section shall apply to plan years beginning after December 31, 2000.

Subtitle H—Plan Amendments

SEC. 481. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A); and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this title, or pursuant to any regulation issued under this title; and

(B) on or before the last day of the first plan year beginning on or after January 1, 2003.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting "2005" for "2003".

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan); and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

TITLE V—SCHOOL CONSTRUCTION PROVISIONS

SEC. 501. ADDITIONAL INCREASE IN ARBITRAGE REBATE EXCEPTION FOR GOVERNMENTAL BONDS USED TO FINANCE EDUCATIONAL FACILITIES.

(a) IN GENERAL.—Section 148(f)(4)(D)(vii) (relating to increase in exception for bonds financing public school capital expenditures) is amended by striking "$5,000,000" the second place it appears and inserting "$10,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after December 31, 2000.

SEC. 502. MODIFICATION OF ARBITRAGE REBATE RULES APPLICABLE TO PUBLIC SCHOOL CONSTRUCTION BONDS.

(a) IN GENERAL.—Subparagraph (C) of section 148(f)(4) is amended by adding at the end the following new clause:

> *"(xviii) 4-YEAR SPENDING REQUIREMENT FOR PUBLIC SCHOOL CONSTRUCTION ISSUE.—*
>
> > *"(I) IN GENERAL.—In the case of a public school construction issue, the spending requirements of clause (ii) shall be treated as met if at least 10 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 1-year period beginning on the date the bonds are issued, 30 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date, 60 percent of such proceeds are spent for such purposes within the 3-year period beginning on such date, and 100 percent of such proceeds are spent for such purposes within the 4-year period beginning on such date.*
> >
> > *"(II) PUBLIC SCHOOL CONSTRUCTION ISSUE.—For purposes of this clause, the term 'public school construction issue' means any construction issue if no bond which is part of such issue is a private activity bond and all of the available construction proceeds of such issue are to be used for the construction (as defined in clause (iv)) of public school facilities to provide education or training below the postsecondary level or for the acquisition of land that is functionally related and subordinate to such facilities.*
> >
> > *"(III) OTHER RULES TO APPLY.—Rules similar to the rules of the preceding provisions of this subparagraph which apply to clause (ii) also apply to this clause.".*

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2000.

SEC. 503. MODIFICATION OF SPECIAL ARBITRAGE RULE FOR CERTAIN FUNDS.

(a) IN GENERAL.—Paragraph (1) of section 648 of the Tax Reform Act of 1984 is amended to read as follows:

"(1) such securities or obligations are held in a fund—

"(A) which, except to the extent of the investment earnings on such securities or obligations, cannot be used, under State constitutional or statutory restrictions continuously in effect since October 9, 1969, through the date of issue of the bond issue, to pay debt service on the bond issue or to finance the facilities that are to be financed with the proceeds of the bonds, or

"(B) the annual distributions from which cannot exceed 7 percent of the average fair market value of the assets held in such fund except to the extent distributions are necessary to pay debt service on the bond issue,".

(b) CONFORMING AMENDMENT.—Paragraph (3) of such section is amended by striking "the investment earnings of" and inserting "distributions from".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2001.

SEC. 504. TREATMENT OF QUALIFIED PUBLIC EDUCATIONAL FACILITY BONDS AS EXEMPT FACILITY BONDS.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to exempt facility bond) 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:

"(13) qualified public educational facilities."

(b) QUALIFIED PUBLIC EDUCATIONAL FACILITIES.—Section 142 (relating to exempt facility bond) is amended by adding at the end the following new subsection:

"(k) QUALIFIED PUBLIC EDUCATIONAL FACILITIES.—

"(1) IN GENERAL.—For purposes of subsection (a)(13), the term 'qualified public educational facility' means any school facility which is—

"(A) part of a public elementary school or a public secondary school, and

"(B) owned by a private, for-profit corporation pursuant to a public-private partnership agreement with a State or local educational agency described in paragraph (2).

"(2) PUBLIC-PRIVATE PARTNERSHIP AGREEMENT DESCRIBED.—A public-private partnership agreement is described in this paragraph if it is an agreement—

"(A) under which the corporation agrees—

"(i) to do 1 or more of the following: construct, rehabilitate, refurbish, or equip a school facility, and

"(ii) at the end of the term of the agreement, to transfer the school facility to such agency for no additional consideration, and

"(B) the term of which does not exceed the term of the issue to be used to provide the school facility.

"(3) SCHOOL FACILITY.—For purposes of this subsection, the term 'school facility' means—

"(A) school buildings,

"(B) functionally related and subordinate facilities and land with respect to such buildings, including any stadium or other facility primarily used for school events, and

"(C) any property, to which section 168 applies (or would apply but for section 179), for use in the facility.

"(4) PUBLIC SCHOOLS.—For purposes of this subsection, the terms 'elementary school' and 'secondary school' have the meanings given such terms by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), as in effect on the date of the enactment of this subsection.

"(5) ANNUAL AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING.—

"(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(13) if the aggregate face amount of bonds issued by the State pursuant thereto (when added to the aggregate face amount of bonds previously so issued during the calendar year) exceeds an amount equal to the greater of—

"(i) $10 multiplied by the State population, or

"(ii) $5,000,000.

"(B) ALLOCATION RULES.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the State may allocate in a calendar year the amount described in subparagraph (A) for such year in such manner as the State determines appropriate.

"(ii) RULES FOR CARRYFORWARD OF UNUSED AMOUNT.—With respect to any calendar year, a State may make an election under rules similar to the rules of section 146(f), except that the sole carryforward purpose with respect to such election is the issuance of exempt facility bonds described in section 142(a)(13)."

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(1) by striking "or (12)" and inserting "(12), or (13)", and

(2) by striking "and environmental enhancements of hydroelectric generating facilities" and inserting "environmental enhancements of hydroelectric generating facilities, and qualified public educational facilities".

(d) EXEMPTION FROM LIMITATION ON USE FOR LAND ACQUISITION.—Section 147(h) (relating to certain rules not to apply to mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds) is amended by adding at the end the following new paragraph:

"(3) EXEMPT FACILITY BONDS FOR QUALIFIED PUBLIC-PRIVATE SCHOOLS.—Subsection (c) shall not apply to any exempt facility bond issued as part of an issue described in section 142(a)(13) (relating to qualified public-private schools)."

(e) CONFORMING AMENDMENT.—The heading of section 147(h) is amended by striking "MORTGAGE REVENUE BONDS, QUALIFIED STUDENT LOAN BONDS, AND QUALIFIED 501(c)(3) BONDS" in the heading and inserting "CERTAIN BONDS".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2000.

SEC. 505. EXPANSION OF QUALIFIED ZONE ACADEMY BOND PROGRAM.

(a) IN GENERAL.—So much of part IV of subchapter U of chapter 1 (relating to incentives for education zones) as precedes subsection (d) of section 1397E is amended to read as follows:

"PART IV—EDUCATION BOND PROVISIONS

"Sec. 1397E. Credit to holders of qualified zone academy bonds.
"Sec. 1397F. Qualified zone academy bond defined.
"Sec. 1397G. Authorization of additional qualified zone academy bonds without targeting and private partnership requirements.

"SEC. 1397E. CREDIT TO HOLDERS OF QUALIFIED ZONE ACADEMY BONDS.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible taxpayer who holds a qualified zone academy bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified zone academy bond is 25 percent of the annual credit determined with respect to such bond.

"(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified zone academy bond is the product of—

"(A) the applicable credit rate, multiplied by

"(B) the outstanding face amount of the bond.

"(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (1), the applicable credit rate with respect to an issue is the rate equal to an average market yield (as of the day before the day that the issue is sold) on outstanding long-term corporate debt obligations (determined under regulations prescribed by the Secretary).

"(4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be car-

ried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

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

"(1) QUALIFIED ZONE ACADEMY BOND.—The term 'qualified zone academy bond' has the meaning given to such term by section 1397F; except that such term shall also include any bond treated as a qualified zone academy bond under section 1397G. Such term shall not include any bond which is part of an issue unless such issue meets the requirements of subsection (g).

"(2) CREDIT ALLOWANCE DATE.—The term 'credit allowance date' means—

"(A) March 15,

"(B) June 15,

"(C) September 15, and

"(D) December 15.

Such term includes the last day on which the bond is outstanding.

"(3) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means—

"(A) a bank (within the meaning of section 581),

"(B) an insurance company to which subchapter L applies,

"(C) a corporation actively engaged in the business of lending money, and

"(D) any other C corporation.

"(e) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given to such term by section 14101 of the Elementary and Secondary Education Act of 1965. Such term includes the local educational agency that serves the District of Columbia, but does not include any other State agency.

"(2) BOND.—The term 'bond' includes any obligation.

"(3) STATE.—The term 'State' includes the District of Columbia and any possession of the United States.

"(4) PUBLIC SCHOOL FACILITY.—The term 'public school facility' shall not include—

"(A) any stadium or other facility primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public, or

"(B) any facility which is not owned by a State or local government or any agency or instrumentality of a State or local government.

"(5) PERMITTED PURPOSE.—The term 'permitted purpose' means—

"(A) in the case of a bond which is a qualified zone academy bond without regard to section 1397G, any qualified purpose (as defined in section 1397F(a)(4)), and

"(B) in the case of a bond which is a qualified zone academy bond solely by reason of section 1397G, the purpose described in section 1397G(a)(2).

"(f) SPECIAL RULES.—

"(1) ONLY CERTAIN REFINANCINGS PERMITTED.—A refinancing of indebtedness (other than a qualified zone academy

bond) shall be treated as a qualified zone academy bond only if such indebtedness was originally incurred by the issuer—

"(A) after the date of the enactment of this section,

"(B) for a term of not more than 1 year,

"(C) to finance an expenditure which is a permitted purpose to be financed by a qualified zone academy bond, and

"(D) in anticipation of being refinanced with proceeds of a qualified zone academy bond.

"(2) SINKING FUNDS.—Rules similar to the rules under section 148 on replacement proceeds shall apply for purposes of this section. Such replacement proceeds shall be invested in noninterest-bearing State and Local Government Series obligations issued by the Secretary.

"(g) SPECIAL RULES RELATING TO ARBITRAGE.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, an issue shall be treated as meeting the requirements of this subsection if the issue meets the spending requirements of subclause (I) of section 148(f)(4)(C)(xviii).

"(2) RULES REGARDING COMPLIANCE DURING 4-YEAR PERIOD.—If an issue fails to meet such spending requirements during the 4-year period beginning on the date of issuance, the issuer shall pay to the United States amounts which would be required to be paid to the United States under section 148(f)(2) were such issue required to meet the requirements of such section. Rules similar to the rules of clause (iii) of section 148(f)(4)(C) shall apply for purposes of the preceding sentence.

"(3) RULES REGARDING CONTINUING COMPLIANCE AFTER 4-YEAR DETERMINATION.—If at least 95 percent of the proceeds of the issue is not expended for 1 or more permitted purposes within the 4-year period beginning on the date of issuance, an issue shall be treated as continuing to meet the requirements of this subsection if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 4-year period.

"(4) SMALL ISSUER EXCEPTION.—Paragraph (1) shall not apply to an issue issued by a governmental unit with general taxing powers if the requirements of paragraphs (2) and (3) of section 148(f) would be treated as met by reason of subparagraph (D) of section 148(f)(4) if such issue were treated as a tax-exempt bond and taken into account under such subparagraph, and such issue shall be so treated for purposes of determining whether such requirements are met with respect to tax-exempt bonds.

"(h) RECAPTURE OF PORTION OF CREDIT WHERE CESSATION OF COMPLIANCE.—

"(1) IN GENERAL.—If any bond which when issued purported to be a qualified zone academy bond ceases to be a qualified zone academy bond, the issuer shall pay to the United States (at the time required by the Secretary) an amount equal to the sum of—

"(A) the aggregate of the credits allowable under this section with respect to such bond (determined without regard to subsection (c)) for taxable years ending during the

calendar year in which such cessation occurs and the 2 preceding calendar years, and

"(B) interest at the underpayment rate under section 6621 on the amount determined under subparagraph (A) for each calendar year for the period beginning on the first day of such calendar year.

"(2) FAILURE TO PAY.—If the issuer fails to timely pay the amount required by paragraph (1) with respect to such bond, the tax imposed by this chapter on each holder of any such bond which is part of such issue shall be increased (for the taxable year of the holder in which such cessation occurs) by the aggregate decrease in the credits allowed under this section to such holder for taxable years beginning in such 3 calendar years which would have resulted solely from denying any credit under this section with respect to such issue for such taxable years.

"(3) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (2) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under paragraph (2) shall not be treated as a tax imposed by this chapter for purposes of determining—

"(i) the amount of any credit allowable under this part, or

"(ii) the amount of the tax imposed by section 55.

"(i) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

"(j) TREATMENT FOR ESTIMATED TAX PURPOSES.—Solely for purposes of sections 6654 and 6655, the credit allowed by this section to a taxpayer by reason of holding a qualified zone academy bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.

"(k) REPORTING.—Issuers of qualified zone academy bonds shall submit reports similar to the reports required under section 149(e).

"(l) TERMINATION.—This section shall not apply to any bond issued after December 31, 2005.

"SEC. 1397F. QUALIFIED ZONE ACADEMY BONDS."

(b) EXTENSION OF QUALIFIED ZONE ACADEMY BOND PROVISIONS.—

(1) Subsections (d) and (e) of section 1397E (as in effect on the day before the date of the enactment of this Act) are hereby moved and inserted after the section heading for section 1397F (as added by subsection (a)) and redesignated as subsections (a) and (b).

(2) Subsection (b) of section 1397F (as so redesignated) is amended to read as follows:

"(b) LIMITATIONS ON AMOUNT OF BONDS DESIGNATED.—

"(1) IN GENERAL.—There is a national zone academy bond limitation for each calendar year. Such limitation is—

"(A) $400,000,000 for 1998,

"(B) $400,000,000 for 1999,

"(C) $400,000,000 for 2000,

"(D) $400,000,000 for 2001,

"(E) $400,000,000 for 2002,

"(F) $400,000,000 for 2003, and

"(G) except as provided in paragraph (3), zero after 2003.

"(2) ALLOCATION OF LIMITATION.—

"(A) IN GENERAL.—The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State to qualified zone academies within such State.

"(B) DESIGNATION SUBJECT TO LIMITATION AMOUNT.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under subparagraph (A) for such calendar year.

"(3) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

"(A) the limitation amount under this subsection for any State, exceeds

"(B) the amount of bonds issued during such year which are designated under subsection (a) (or the corresponding provisions of prior law) with respect to qualified zone academies within such State,

the limitation amount under this subsection for such State for the following calendar year shall be increased by the amount of such excess. Any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis."

(3) Subsection (a) of section 1397F (as so redesignated) is amended—

(A) by striking "For purposes of this section—" in the material preceding paragraph (1) and inserting "For purposes of this part—",

(B) by striking "an eligible local" in paragraphs (1)(A) and (3)(A) (as redesignated by this paragraph) and inserting "a local",

(C) by striking "the maximum term permitted under paragraph (3)" in paragraph (1)(D) and inserting "15 years", and

(D) by striking paragraphs (3) and (6) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(4) Paragraph (3) of section 1397F(a) (as so redesignated) is amended—

(A) by striking "(4)" and all that follows through "The term" and inserting the following:

"(4) QUALIFIED ZONE ACADEMY.—The term",

(B) by striking subparagraph (B),

(C) by redesignating clauses (i) through (iv) as subparagraphs (A) through (D), respectively, and

(D) by redesignating subclauses (I) and (II) of subparagraph (D) (as so redesignated) as clauses (i) and (ii), respectively.

(c) AUTHORIZATION OF ADDITIONAL QUALIFIED ZONE ACADEMY BONDS WITHOUT TARGETING AND PRIVATE PARTNERSHIP REQUIREMENTS.—Part IV of subchapter U of chapter 1 is amended by adding at the end the following new section:

"SEC. 1397G. AUTHORIZATION OF ADDITIONAL QUALIFIED ZONE ACADEMY BONDS WITHOUT TARGETING AND PRIVATE PARTNERSHIP REQUIREMENTS.

"(a) IN GENERAL.—For purposes of this part, the term 'qualified zone academy bond' also includes any bond issued by a State or local government as part of an issue if—

"(1) the issuer designates such bond for purpose of this section, and

"(2) the requirements of subparagraphs (A), (B), and (D) of paragraph (1) of section 1397F(a) are met with respect to such issue, determined—

"(A) by treating any public school facility as being a qualified zone academy, and

"(B) by applying paragraph (4) thereof as if the only qualified purpose were constructing, rehabilitating, or repairing a public school facility or acquiring the land which is functionally related and subordinate to the public school facility which is to be constructed with part of the proceeds of such issue.

"(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under subsection (d) for such calendar year to such issuer.

"(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national additional qualified zone academy bond limitation for each calendar year. Such limitation is—

"(1) $5,000,000,000 for 2001,

"(2) $5,000,000,000 for 2002, and

"(3) $5,000,000,000 for 2003,

"(4) except as provided in subsection (e), zero after 2003.

"(d) LIMITATION ALLOCATED AMONG STATES.—

"(1) IN GENERAL.—

"(A) ALLOCATION ON THE BASIS OF POPULATION.—50 percent of the limitation applicable under subsection (c) for any calendar year shall be allocated before such calendar year by the Secretary among the States on the basis of their respective populations.

"(B) ALLOCATION ON THE BASIS OF POVERTY.—50 percent of the limitation applicable under subsection (c) for any calendar year shall be allocated before such calendar year by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget).

"(C) MINIMUM ALLOCATIONS TO SMALL STATES.—The Secretary shall adjust the allocations under this subsection for any calendar year for each State to the extent necessary to ensure that the amount allocated to such State under this subsection for such year is not less than $25,000,000.

"(D) USE OF CENSUS DATA.—Determinations under this subsection shall be made on the basis of the most recently available census data.

"(2) ALLOCATION WITHIN THE STATE.—

"(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the limitation allocated to any State may be allocated among governmental units in such State having authority to issue such bonds as provided by State law (or, in absence of State law, by the Governor of such State).

"(B) MINIMUM ALLOCATIONS TO LARGE LOCAL EDUCATIONAL AGENCIES.—In no event may the limitation for any calendar year allocated to any large local educational agency in a State be less than the sum of—

"(i) an amount which bears the same ratio to 50 percent of such limitation as the population within the area under the jurisdiction of such agency bears to the population of the entire State, and

"(ii) an amount which bears the same ratio to 50 percent of such limitation as the population within the area under the jurisdiction of such agency below the poverty line (as defined by the Office of Management and Budget) bears to such population of the entire State.

"(3) ALLOCATIONS FOR INDIAN SCHOOLS.—In addition to the amounts otherwise allocated under this subsection, $200,000,000 (in the aggregate for calendar years 2001, 2002, and 2003) shall be allocated by the Secretary (after consultation with the Secretary of the Interior) for purposes of the construction, rehabilitation, and repair of schools operated by or on behalf of an Indian tribal government (within the meaning of section 7871). In the case of amounts allocated under the preceding sentence, Indian tribal governments (as so defined) shall be treated as qualified issuers for purposes of this part.

"(4) REQUIRED STATE ALLOCATION PLANS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this section, the limitation for any State shall be zero unless the limitation is allocated within such State pursuant to a qualified allocation plan.

"(B) QUALIFIED ALLOCATION PLAN.—For purposes of subparagraph (A), the term 'qualified allocation plan' means any plan which—

"(i) identifies the State's needs for public school facilities (including descriptions of the capacity of public schools in the State to house projected enrollments), particular financing difficulties being encountered by local school districts in the State, and health and safety problems at existing facilities, and

"(ii) describes how the State will allocate to local educational agencies, or otherwise use, its allocation under this section to address the needs identified under clause (i), including a description of how it will—

"(I) ensure that the needs of rural, urban, and suburban areas will be recognized,

"(II) ensure that the needs of localities with the greatest needs, as demonstrated by inadequate school facilities coupled with low level of resources, will be met, and

"(III) give priority to the role of charter schools in achieving State educational objectives.

"(C) APPLICATION OF PARAGRAPH.—This paragraph shall apply to allocations after more than 6 months after the date of the enactment of this paragraph.

"(5) LARGE LOCAL EDUCATIONAL AGENCY.—For purposes of this section, the term 'large local educational agency' means, with respect to a calendar year, any local educational agency with at least 40,000 children who have attained age 5 but not age 18 for the most recent fiscal year ending before such calendar year.

"(e) CARRYOVER OF UNUSED LIMITATION.—

"(1) IN GENERAL.—If for any calendar year—

"(A) the amount allocated under subsection (d) to any State, exceeds

"(B) the amount of bonds issued during such year which are designated under subsection (a) pursuant to such allocation,

the limitation amount under such subsection for such State for the following calendar year shall be increased by the amount of such excess.

"(2) 2-YEAR CARRYFORWARD.—Any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

"(3) ALLOCATIONS FOR INDIAN SCHOOLS.—Rules similar to paragraphs (1) and (2) shall apply to the amounts allocated under subsection (d)(3); except that 2003 shall be treated as the unused limitation year."

(d) REPORTING.—Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

"(8) REPORTING OF CREDIT ON QUALIFIED ZONE ACADEMY BONDS.—

"(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 1397E(i) and such amounts shall be treated

as paid on the credit allowance date (as defined in section 1397E(d)(2)).

"(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

"(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting."

(e) CONFORMING AMENDMENTS.—

(1) Subsections (f), (g), and (h) of section 1397E (as in effect on the day before the date of the enactment of this Act) are hereby repealed.

(2) Subchapter U of chapter 1 of such Code is amended by redesignating section 1397F (as in effect on the day before the date of the enactment of this Act) as section 1397H.

(3) The table of parts of subchapter U of chapter 1 of such Code is amended by striking the item relating to part IV and inserting the following item:

"Part IV. Education bond provisions."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to obligations issued after December 31, 2000.

(2) MODIFICATION OF RESTRICTION ON ZONE ACADEMY BOND HOLDERS.—In the case of bonds to which section 1397E of the Internal Revenue Code of 1986 (as in effect before the date of the enactment of this Act) applies, the limitation of such section to corporations actively engaged in the business of lending money shall not apply after the date of the enactment of this Act.

TITLE VI—COMMUNITY REVITALIZATION

Subtitle A—Tax Incentives for Renewal Communities

SEC. 601. DESIGNATION OF AND TAX INCENTIVES FOR RENEWAL COMMUNITIES.

(a) IN GENERAL.—Chapter 1 is amended by adding at the end the following new subchapter:

"Subchapter X—Renewal Communities

"Part I. Designation.
"Part II. Renewal community capital gain; renewal community business.
"Part III. Additional incentives.

"PART I—DESIGNATION

"Sec. 1400E. Designation of renewal communities.

"SEC. 1400E. DESIGNATION OF RENEWAL COMMUNITIES.

"(a) DESIGNATION.—

"(1) DEFINITIONS.—For purposes of this title, the term 'renewal community' means any area—

"(A) which is nominated by 1 or more local governments and the State or States in which it is located for designation as a renewal community (hereafter in this section referred to as a 'nominated area'), and

"(B) which the Secretary of Housing and Urban Development designates as a renewal community, after consultation with—

"(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury; the Director of the Office of Management and Budget, and the Administrator of the Small Business Administration, and

"(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

"(2) NUMBER OF DESIGNATIONS.—

"(A) IN GENERAL.—Not more than 40 nominated areas may be designated as renewal communities.

"(B) MINIMUM DESIGNATION IN RURAL AREAS.—Of the areas designated under paragraph (1), at least 12 must be areas—

"(i) which are within a local government jurisdiction or jurisdictions with a population of less than 50,000,

"(ii) which are outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

"(iii) which are determined by the Secretary of Housing and Urban Development, after consultation with the Secretary of Commerce, to be rural areas.

One of such 12 areas shall be an area within Mississippi, to be designated by the State of Mississippi, that includes at least 1 census tract within Madison County, Mississippi.

"(3) AREAS DESIGNATED BASED ON DEGREE OF POVERTY, ETC.—

"(A) IN GENERAL.—Except as otherwise provided in this section, the nominated areas designated as renewal communities under this subsection shall be those nominated areas with the highest average ranking with respect to the criteria described in subparagraphs (B), (C), and (D) of subsection (c)(3). For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area which exceeds such criterion by the greatest amount given the highest ranking.

"(B) EXCEPTION WHERE INADEQUATE COURSE OF ACTION, ETC.—An area shall not be designated under subparagraph (A) if the Secretary of Housing and Urban De-

velopment determines that the course of action described in subsection (d)(2) with respect to such area is inadequate.

"(C) PREFERENCE FOR ENTERPRISE COMMUNITIES AND EMPOWERMENT ZONES.—With respect to the first 20 designations made under this section, a preference shall be provided to those nominated areas which are enterprise communities or empowerment zones (and are otherwise eligible for designation under this section).

"(4) LIMITATION ON DESIGNATIONS.—

"(A) PUBLICATION OF REGULATIONS.—The Secretary of Housing and Urban Development shall prescribe by regulation no later than 4 months after the date of the enactment of this section, after consultation with the officials described in paragraph (1)(B)—

"(i) the procedures for nominating an area under paragraph (1)(A),

"(ii) the parameters relating to the size and population characteristics of a renewal community, and

"(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d).

"(B) TIME LIMITATIONS.—The Secretary of Housing and Urban Development may designate nominated areas as renewal communities only during the period beginning on the first day of the first month following the month in which the regulations described in subparagraph (A) are prescribed and ending on December 31, 2001.

"(C) PROCEDURAL RULES.—The Secretary of Housing and Urban Development shall not make any designation of a nominated area as a renewal community under paragraph (2) unless—

"(i) the local governments and the States in which the nominated area is located have the authority—

"(I) to nominate such area for designation as a renewal community,

"(II) to make the State and local commitments described in subsection (d), and

"(III) to provide assurances satisfactory to the Secretary of Housing and Urban Development that such commitments will be fulfilled,

"(ii) a nomination regarding such area is submitted in such a manner and in such form, and contains such information, as the Secretary of Housing and Urban Development shall by regulation prescribe, and

"(iii) the Secretary of Housing and Urban Development determines that any information furnished is reasonably accurate.

"(5) NOMINATION PROCESS FOR INDIAN RESERVATIONS.—For purposes of this subchapter, in the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be treated as being both the State and local governments with respect to such area.

"(b) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

"(1) IN GENERAL.—Any designation of an area as a renewal community shall remain in effect during the period beginning on January 1, 2002, and ending on the earliest of—

"(A) December 31, 2009,

"(B) the termination date designated by the State and local governments in their nomination, or

"(C) the date the Secretary of Housing and Urban Development revokes such designation.

"(2) REVOCATION OF DESIGNATION.—The Secretary of Housing and Urban Development may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which the area is located—

"(A) has modified the boundaries of the area, or

"(B) is not complying substantially with, or fails to make progress in achieving, the State or local commitments, respectively, described in subsection (d).

"(3) EARLIER TERMINATION OF CERTAIN BENEFITS IF EARLIER TERMINATION OF DESIGNATION.—If the designation of an area as a renewal community terminates before December 31, 2009, the day after the date of such termination shall be substituted for 'January 1, 2010' each place it appears in sections 1400F and 1400J with respect to such area.

"(c) AREA AND ELIGIBILITY REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of Housing and Urban Development may designate a nominated area as a renewal community under subsection (a) only if the area meets the requirements of paragraphs (2) and (3) of this subsection.

"(2) AREA REQUIREMENTS.—A nominated area meets the requirements of this paragraph if—

"(A) the area is within the jurisdiction of one or more local governments,

"(B) the boundary of the area is continuous, and

"(C) the area—

"(i) has a population of not more than 200,000 and at least—

"(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i)) is located within a metropolitan statistical area (within the meaning of section 143(k)(2)(B)) which has a population of 50,000 or greater, or

"(II) 1,000 in any other case, or

"(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

"(3) ELIGIBILITY REQUIREMENTS.—A nominated area meets the requirements of this paragraph if the State and the local governments in which it is located certify in writing (and the Secretary of Housing and Urban Development, after such review of supporting data as he deems appropriate, accepts such certification) that—

"(A) the area is one of pervasive poverty, unemployment, and general distress;

"(B) the unemployment rate in the area, as determined by the most recent available data, was at least 1½ times

the national unemployment rate for the period to which such data relate;

"(C) the poverty rate for each population census tract within the nominated area is at least 20 percent; and

"(D) in the case of an urban area, at least 70 percent of the households living in the area have incomes below 80 percent of the median income of households within the jurisdiction of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

"(4) CONSIDERATION OF OTHER FACTORS.—The Secretary of Housing and Urban Development, in selecting any nominated area for designation as a renewal community under this section—

"(A) shall take into account—

"(i) the extent to which such area has a high incidence of crime, or

"(ii) if such area has census tracts identified in the May 12, 1998, report of the General Accounting Office regarding the identification of economically distressed areas, and

"(B) with respect to 1 of the areas to be designated under subsection (a)(2)(B), may, in lieu of any criteria described in paragraph (3), take into account the existence of outmigration from the area.

"(d) REQUIRED STATE AND LOCAL COMMITMENTS.—

"(1) IN GENERAL.—The Secretary of Housing and Urban Development may designate any nominated area as a renewal community under subsection (a) only if—

"(A) the local government and the State in which the area is located agree in writing that, during any period during which the area is a renewal community, such governments will follow a specified course of action which meets the requirements of paragraph (2) and is designed to reduce the various burdens borne by employers or employees in such area, and

"(B) the economic growth promotion requirements of paragraph (3) are met.

"(2) COURSE OF ACTION.—

"(A) IN GENERAL.—A course of action meets the requirements of this paragraph if such course of action is a written document, signed by a State (or local government) and neighborhood organizations, which evidences a partnership between such State or government and community-based organizations and which commits each signatory to specific and measurable goals, actions, and timetables. Such course of action shall include at least 4 of the following:

"(i) A reduction of tax rates or fees applying within the renewal community.

"(ii) An increase in the level of efficiency of local services within the renewal community.

"(iii) Crime reduction strategies, such as crime prevention (including the provision of crime prevention services by nongovernmental entities).

"(iv) Actions to reduce, remove, simplify, or streamline governmental requirements applying within the renewal community.

"(v) Involvement in the program by private entities, organizations, neighborhood organizations, and community groups, particularly those in the renewal community, including a commitment from such private entities to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents from the renewal community.

"(vi) The gift (or sale at below fair market value) of surplus real property (such as land, homes, and commercial or industrial structures) in the renewal community to neighborhood organizations, community development corporations, or private companies.

"(B) RECOGNITION OF PAST EFFORTS.—For purposes of this section, in evaluating the course of action agreed to by any State or local government, the Secretary of Housing and Urban Development shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

"(3) ECONOMIC GROWTH PROMOTION REQUIREMENTS.—The economic growth promotion requirements of this paragraph are met with respect to a nominated area if the local government and the State in which such area is located certify in writing that such government and State (respectively) have repealed or reduced, will not enforce, or will reduce within the nominated area at least 4 of the following:

"(A) Licensing requirements for occupations that do not ordinarily require a professional degree.

"(B) Zoning restrictions on home-based businesses which do not create a public nuisance.

"(C) Permit requirements for street vendors who do not create a public nuisance.

"(D) Zoning or other restrictions that impede the formation of schools or child care centers.

"(E) Franchises or other restrictions on competition for businesses providing public services, including taxicabs, jitneys, cable television, or trash hauling.

This paragraph shall not apply to the extent that such regulation of businesses and occupations is necessary for and well-tailored to the protection of health and safety.

"(e) COORDINATION WITH TREATMENT OF EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.—For purposes of this title, the designation under section 1391 of any area as an empowerment zone or enterprise community shall cease to be in effect as of the date that the designation of any portion of such area as a renewal community takes effect.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this subchapter—

"(1) GOVERNMENTS.—If more than one government seeks to nominate an area as a renewal community, any reference to, or requirement of, this section shall apply to all such governments.

"(2) LOCAL GOVERNMENT.—The term 'local government' means—

"(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

"(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary of Housing and Urban Development.

"(3) APPLICATION OF RULES RELATING TO CENSUS TRACTS.—The rules of section 1392(b)(4) shall apply.

"(4) CENSUS DATA.—Population and poverty rate shall be determined by using 1990 census data.

"(g) PRIORITY FOR DISTRICT OF COLUMBIA NOMINATED AREA.—For purposes of this subchapter—

"(1) IN GENERAL.—One nominated area within the District of Columbia shall be treated for purposes of subsection (a)(3) as having the highest average with respect to the criteria described in subparagraphs (B), (C), and (D) of subsection (c)(3).

"(2) DATE OF DESIGNATION.—Notwithstanding subsection (b)(1), the designation of a nominated area within the District of Columbia as a renewal community shall take effect on January 1, 2003.

"(3) NOMINATION.—The District of Columbia shall be treated as being both a State and local government with respect to such area.

"PART II—RENEWAL COMMUNITY CAPITAL GAIN; RENEWAL COMMUNITY BUSINESS

"Sec. 1400F. Renewal community capital gain.
"Sec. 1400G. Renewal community business defined.

"SEC. 1400F. RENEWAL COMMUNITY CAPITAL GAIN.

"(a) GENERAL RULE.—Gross income does not include any qualified capital gain from the sale or exchange of a qualified community asset held for more than 5 years.

"(b) QUALIFIED COMMUNITY ASSET.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified community asset' means—

"(A) any qualified community stock,

"(B) any qualified community partnership interest, and

"(C) any qualified community business property.

"(2) QUALIFIED COMMUNITY STOCK.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'qualified community stock' means any stock in a domestic corporation if—

"(i) such stock is acquired by the taxpayer after December 31, 2001, and before January 1, 2010, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

"(ii) as of the time such stock was issued, such corporation was a renewal community business (or, in the case of a new corporation, such corporation was being

organized for purposes of being a renewal community business), and

"(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a renewal community business.

"(B) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

"(3) QUALIFIED COMMUNITY PARTNERSHIP INTEREST.—The term 'qualified community partnership interest' means any capital or profits interest in a domestic partnership if—

"(A) such interest is acquired by the taxpayer after December 31, 2001, and before January 1, 2010, from the partnership solely in exchange for cash,

"(B) as of the time such interest was acquired, such partnership was a renewal community business (or, in the case of a new partnership, such partnership was being organized for purposes of being a renewal community business), and

"(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a renewal community business.

A rule similar to the rule of paragraph (2)(B) shall apply for purposes of this paragraph.

"(4) QUALIFIED COMMUNITY BUSINESS PROPERTY.—

"(A) IN GENERAL.—The term 'qualified community business property' means tangible property if—

"(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 2001, and before January 1, 2010,

"(ii) the original use of such property in the renewal community commences with the taxpayer, and

"(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a renewal community business of the taxpayer.

"(B) SPECIAL RULE FOR SUBSTANTIAL IMPROVEMENTS.—The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as satisfied with respect to—

"(i) property which is substantially improved by the taxpayer before January 1, 2010, and

"(ii) any land on which such property is located.

The determination of whether a property is substantially improved shall be made under clause (ii) of section 1400B(b)(4)(B), except that 'December 31, 2001' shall be substituted for 'December 31, 1997' in such clause.

"(c) QUALIFIED CAPITAL GAIN.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualified capital gain' means any gain recognized on the sale or exchange of—

"(A) a capital asset, or

"(B) property used in the trade or business (as defined in section 1231(b)).

"(2) GAIN BEFORE 2002 OR AFTER 2014 NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain attrib-

utable to periods before January 1, 2002, or after December 31, 2014.

"(3) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (3), (4), and (5) of section 1400B(e) shall apply for purposes of this subsection.

"(d) CERTAIN RULES TO APPLY.—For purposes of this section, rules similar to the rules of paragraphs (5), (6), and (7) of subsection (b), and subsections (f) and (g), of section 1400B shall apply; except that for such purposes section 1400B(g)(2) shall be applied by substituting 'January 1, 2002' for 'January 1, 1998' and 'December 31, 2014' for 'December 31, 2007'.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section.

"SEC. 1400G. RENEWAL COMMUNITY BUSINESS DEFINED.

"For purposes of this subchapter, the term 'renewal community business' means any entity or proprietorship which would be a qualified business entity or qualified proprietorship under section 1397C if references to renewal communities were substituted for references to empowerment zones in such section.

"PART III—ADDITIONAL INCENTIVES

"Sec. 1400H. Renewal community employment credit.
"Sec. 1400I. Commercial revitalization deduction.
"Sec. 1400J. Increase in expensing under section 179.

"SEC. 1400H. RENEWAL COMMUNITY EMPLOYMENT CREDIT.

"(a) IN GENERAL.—Subject to the modification in subsection (b), a renewal community shall be treated as an empowerment zone for purposes of section 1396 with respect to wages paid or incurred after December 31, 2001.

"(b) MODIFICATION.—In applying section 1396 with respect to renewal communities—

"(1) the applicable percentage shall be 15 percent, and

"(2) subsection (c) thereof shall be applied by substituting '$10,000' for '$15,000' each place it appears.

"SEC. 1400I. COMMERCIAL REVITALIZATION DEDUCTION.

"(a) GENERAL RULE.—At the election of the taxpayer, either—

"(1) one-half of any qualified revitalization expenditures chargeable to capital account with respect to any qualified revitalization building shall be allowable as a deduction for the taxable year in which the building is placed in service, or

"(2) a deduction for all such expenditures shall be allowable ratably over the 120-month period beginning with the month in which the building is placed in service.

"(b) QUALIFIED REVITALIZATION BUILDINGS AND EXPENDITURES.—For purposes of this section—

"(1) QUALIFIED REVITALIZATION BUILDING.—The term 'qualified revitalization building' means any building (and its structural components) if—

"(A) the building is placed in service by the taxpayer in a renewal community and the original use of the building begins with the taxpayer, or

"(B) in the case of such building not described in subparagraph (A), such building—

"(i) is substantially rehabilitated (within the meaning of section 47(c)(1)(C)) by the taxpayer, and

"(ii) is placed in service by the taxpayer after the rehabilitation in a renewal community.

"(2) QUALIFIED REVITALIZATION EXPENDITURE.—

"(A) IN GENERAL.—The term 'qualified revitalization expenditure' means any amount properly chargeable to capital account for property for which depreciation is allowable under section 168 (without regard to this section) and which is—

"(i) nonresidential real property (as defined in section 168(e)), or

"(ii) section 1250 property (as defined in section 1250(c)) which is functionally related and subordinate to property described in clause (i).

"(B) CERTAIN EXPENDITURES NOT INCLUDED.—

"(i) ACQUISITION COST.—In the case of a building described in paragraph (1)(B), the cost of acquiring the building or interest therein shall be treated as a qualified revitalization expenditure only to the extent that such cost does not exceed 30 percent of the aggregate qualified revitalization expenditures (determined without regard to such cost) with respect to such building.

"(ii) CREDITS.—The term 'qualified revitalization expenditure' does not include any expenditure which the taxpayer may take into account in computing any credit allowable under this title unless the taxpayer elects to take the expenditure into account only for purposes of this section.

"(c) DOLLAR LIMITATION.—The aggregate amount which may be treated as qualified revitalization expenditures with respect to any qualified revitalization building shall not exceed the lesser of—

"(1) $10,000,000, or

"(2) the commercial revitalization expenditure amount allocated to such building under this section by the commercial revitalization agency for the State in which the building is located.

"(d) COMMERCIAL REVITALIZATION EXPENDITURE AMOUNT.—

"(1) IN GENERAL.—The aggregate commercial revitalization expenditure amount which a commercial revitalization agency may allocate for any calendar year is the amount of the State commercial revitalization expenditure ceiling determined under this paragraph for such calendar year for such agency.

"(2) STATE COMMERCIAL REVITALIZATION EXPENDITURE CEILING.—The State commercial revitalization expenditure ceiling applicable to any State—

"(A) for each calendar year after 2001 and before 2010 is $12,000,000 for each renewal community in the State, and

"(B) for each calendar year thereafter is zero.

"(3) COMMERCIAL REVITALIZATION AGENCY.—For purposes of this section, the term 'commercial revitalization agency' means any agency authorized by a State to carry out this section.

"(4) TIME AND MANNER OF ALLOCATIONS.—Allocations under this section shall be made at the same time and in the same manner as under paragraphs (1) and (7) of section 42(h).

"(e) RESPONSIBILITIES OF COMMERCIAL REVITALIZATION AGENCIES.—

"(1) PLANS FOR ALLOCATION.—Notwithstanding any other provision of this section, the commercial revitalization expenditure amount with respect to any building shall be zero unless—

"(A) such amount was allocated pursuant to a qualified allocation plan of the commercial revitalization agency which is approved (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) by the governmental unit of which such agency is a part; and

"(B) such agency notifies the chief executive officer (or its equivalent) of the local jurisdiction within which the building is located of such allocation and provides such individual a reasonable opportunity to comment on the allocation.

"(2) QUALIFIED ALLOCATION PLAN.—For purposes of this subsection, the term 'qualified allocation plan' means any plan—

"(A) which sets forth selection criteria to be used to determine priorities of the commercial revitalization agency which are appropriate to local conditions,

"(B) which considers—

"(i) the degree to which a project contributes to the implementation of a strategic plan that is devised for a renewal community through a citizen participation process,

"(ii) the amount of any increase in permanent, full-time employment by reason of any project, and

"(iii) the active involvement of residents and non-profit groups within the renewal community, and

"(C) which provides a procedure that the agency (or its agent) will follow in monitoring compliance with this section.

"(f) SPECIAL RULES.—

"(1) DEDUCTION IN LIEU OF DEPRECIATION.—The deduction provided by this section for qualified revitalization expenditures shall—

"(A) with respect to the deduction determined under subsection (a)(1), be in lieu of any depreciation deduction otherwise allowable on account of one-half of such expenditures, and

"(B) with respect to the deduction determined under subsection (a)(2), be in lieu of any depreciation deduction otherwise allowable on account of all of such expenditures.

"(2) BASIS ADJUSTMENT, ETC.—For purposes of sections 1016 and 1250, the deduction under this section shall be treated in the same manner as a depreciation deduction. For purposes of section 1250(b)(5), the straight line method of adjustment shall be determined without regard to this section.

"(3) SUBSTANTIAL REHABILITATIONS TREATED AS SEPARATE BUILDINGS.—A substantial rehabilitation (within the meaning of section 47(c)(1)(C)) of a building shall be treated as a separate building for purposes of subsection (a).

"(4) CLARIFICATION OF ALLOWANCE OF DEDUCTION UNDER MINIMUM TAX.—Notwithstanding section 56(a)(1), the deduction under this section shall be allowed in determining alternative minimum taxable income under section 55.

"(g) TERMINATION.—This section shall not apply to any building placed in service after December 31, 2009.

"SEC. 1400J. INCREASE IN EXPENSING UNDER SECTION 179.

"(a) IN GENERAL.—For purposes of section 1397A—

"(1) a renewal community shall be treated as an empowerment zone,

"(2) a renewal community business shall be treated as an enterprise zone business, and

"(3) qualified renewal property shall be treated as qualified zone property.

"(b) QUALIFIED RENEWAL PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified renewal property' means any property to which section 168 applies (or would apply but for section 179) if—

"(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 2001, and before January 1, 2010, and

"(B) such property would be qualified zone property (as defined in section 1397D) if references to renewal communities were substituted for references to empowerment zones in section 1397D.

"(2) CERTAIN RULES TO APPLY.—The rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this section.".

(b) EXCEPTION FOR COMMERCIAL REVITALIZATION DEDUCTION FROM PASSIVE LOSS RULES.—

(1) Paragraph (3) of section 469(i) is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

"(C) EXCEPTION FOR COMMERCIAL REVITALIZATION DEDUCTION.—Subparagraph (A) shall not apply to any portion of the passive activity loss for any taxable year which is attributable to the commercial revitalization deduction under section 1400I.".

(2) Subparagraph (E) of section 469(i)(3), as redesignated by subparagraph (A), is amended to read as follows:

"(E) ORDERING RULES TO REFLECT EXCEPTIONS AND SEPARATE PHASE-OUTS.—If subparagraph (B), (C), or (D) applies for a taxable year, paragraph (1) shall be applied—

"(i) first to the portion of the passive activity loss to which subparagraph (C) does not apply,

"(ii) second to the portion of the passive activity credit to which subparagraph (B) or (D) does not apply,

"(iii) third to the portion of such credit to which subparagraph (B) applies,

"(iv) fourth to the portion of such loss to which subparagraph (C) applies, and

"(v) then to the portion of such credit to which subparagraph (D) applies.".

(3)(A) Subparagraph (B) of section 469(i)(6) 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) any deduction under section 1400I (relating to commercial revitalization deduction).".

(B) The heading for such subparagraph (B) is amended by striking "OR REHABILITATION CREDIT" and inserting ", REHABILITATION CREDIT, OR COMMERCIAL REVITALIZATION DEDUCTION".

(c) AUDIT AND REPORT.—Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the renewal community program established under section 1400E of the Internal Revenue Code of 1986 (as added by subsection (a)) and the empowerment zone and enterprise community program under subchapter U of chapter 1 of such Code, report to Congress on such program and its effect on poverty, unemployment, and economic growth within the designated renewal communities, empowerment zones, and enterprise communities.

(d) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 is amended by adding at the end the following new item:

"Subchapter X. Renewal Communities.".

SEC. 602. WORK OPPORTUNITY CREDIT FOR HIRING YOUTH RESIDING IN RENEWAL COMMUNITIES.

(a) HIGH-RISK YOUTH.—Subparagraphs (A)(ii) and (B) of section 51(d)(5) are each amended by striking "empowerment zone or enterprise community" and inserting "empowerment zone, enterprise community, or renewal community".

(b) QUALIFIED SUMMER YOUTH EMPLOYEE.—Clause (iv) of section 51(d)(7)(A) is amended by striking "empowerment zone or enterprise community" and inserting "empowerment zone, enterprise community, or renewal community".

(c) HEADINGS.—Paragraphs (5)(B) and (7)(C) of section 51(d) are each amended by inserting "OR COMMUNITY" in the heading after "ZONE".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2001.

Subtitle B—Extension and Expansion of Empowerment Zone Incentives

SEC. 611. AUTHORITY TO DESIGNATE 9 ADDITIONAL EMPOWERMENT ZONES.

Section 1391 is amended by adding at the end the following new subsection:

"(h) ADDITIONAL DESIGNATIONS PERMITTED.—

"(1) IN GENERAL.—In addition to the areas designated under subsections (a) and (g), the appropriate Secretaries may designate in the aggregate an additional 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than seven may be designated in urban areas and not more than 2 may be designated in rural areas.

"(2) PERIOD DESIGNATIONS MAY BE MADE AND TAKE EFFECT.—A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 2002. Subject to subparagraphs (B) and (C) of subsection (d)(1), such designations shall remain in effect during the period beginning on January 1, 2002, and ending on December 31, 2009.

"(3) MODIFICATIONS TO ELIGIBILITY CRITERIA, ETC.—The rules of subsection (g)(3) shall apply to designations under this subsection.".

SEC. 612. EXTENSION OF EMPOWERMENT ZONE TREATMENT THROUGH 2009.

Subparagraph (A) of section 1391(d)(1) (relating to period for which designation is in effect) is amended to read as follows:

"(A)(i) in the case of an empowerment zone, December 31, 2009, or

"(ii) in the case of an enterprise community, the close of the 10th calendar year beginning on or after such date of designation,".

SEC. 613. 20 PERCENT EMPLOYMENT CREDIT FOR ALL EMPOWERMENT ZONES

(a) 20 PERCENT CREDIT.—Subsection (b) of section 1396 (relating to empowerment zone employment credit) is amended to read as follows:

"(b) APPLICABLE PERCENTAGE.—For purposes of this section, the applicable percentage is 20 percent.".

(b) ALL EMPOWERMENT ZONES ELIGIBLE FOR CREDIT.—Section 1396 is amended by striking subsection (e).

(c) CONFORMING AMENDMENT.—Subsection (d) of section 1400 is amended to read as follows:

"(d) SPECIAL RULE FOR APPLICATION OF EMPLOYMENT CREDIT.—With respect to the DC Zone, section 1396(d)(1)(B) (relating to empowerment zone employment credit) shall be applied by substituting 'the District of Columbia' for 'such empowerment zone'.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid or incurred after December 31, 2001.

SEC. 614. INCREASED EXPENSING UNDER SECTION 179.

(a) IN GENERAL.—Subparagraph (A) of section 1397A(a)(1) is amended by striking "$20,000" and inserting "$35,000".

(b) EXPENSING FOR PROPERTY USED IN DEVELOPABLE SITES.—Section 1397A is amended by striking subsection (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 615. HIGHER LIMITS ON TAX-EXEMPT EMPOWERMENT ZONE FACILITY BONDS.

(a) IN GENERAL.—Paragraph (3) of section 1394(f) (relating to bonds for empowerment zones designated under section 1391(g)) is amended to read as follows:

"(3) EMPOWERMENT ZONE FACILITY BOND.—For purposes of this subsection, the term 'empowerment zone facility bond' means any bond which would be described in subsection (a) if—

"(A) in the case of obligations issued before January 1, 2002, only empowerment zones designated under section 1391(g) were taken into account under sections 1397C and 1397D, and

"(B) in the case of obligations issued after December 31, 2001, all empowerment zones (other than the District of Columbia) were taken into account under sections 1397C and 1397D.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2001.

SEC. 616. NONRECOGNITION OF GAIN ON ROLLOVER OF EMPOWERMENT ZONE INVESTMENTS.

(a) IN GENERAL.—Part III of subchapter U of chapter 1 is amended—

(1) by redesignating subpart C as subpart D;

(2) by redesignating sections 1397B and 1397C as sections 1397C and 1397D, respectively; and

(3) by inserting after subpart B the following new subpart:

"Subpart C—Nonrecognition of Gain on Rollover of Empowerment Zone Investments

"Sec. 1397B. Nonrecognition of Gain on Rollover of Empowerment Zone Investments.

"SEC. 1397B. NONRECOGNITION OF GAIN ON ROLLOVER OF EMPOWERMENT ZONE INVESTMENTS.

"(a) NONRECOGNITION OF GAIN.—In the case of any sale of a qualified empowerment zone asset held by the taxpayer for more than 1 year and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

"(1) the cost of any qualified empowerment zone asset (with respect to the same zone as the asset sold) purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

"(2) any portion of such cost previously taken into account under this section.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED EMPOWERMENT ZONE ASSET.—

"(A) IN GENERAL.—The term 'qualified empowerment zone asset' means any property which would be a qualified community asset (as defined in section 1400F) if in section 1400F—

"(i) references to empowerment zones were substituted for references to renewal communities,

"(ii) references to enterprise zone businesses (as defined in section 1397C) were substituted for references to renewal community businesses, and

"(iii) the date of the enactment of this paragraph were substituted for 'December 31, 2001' each place it appears.

"(B) TREATMENT OF DC ZONE.—The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this section.

"(2) CERTAIN GAIN NOT ELIGIBLE FOR ROLLOVER.—This section shall not apply to—

"(A) any gain which is treated as ordinary income for purposes of this subtitle, and

"(B) any gain which is attributable to real property, or an intangible asset, which is not an integral part of an enterprise zone business.

"(3) PURCHASE.—A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

"(4) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified empowerment zone asset which is purchased by the taxpayer during the 60-day period described in subsection (a). This paragraph shall not apply for purposes of section 1202.

"(5) HOLDING PERIOD.—For purposes of determining whether the nonrecognition of gain under subsection (a) applies to any qualified empowerment zone asset which is sold—

"(A) the taxpayer's holding period for such asset and the asset referred to in subsection (a)(1) shall be determined without regard to section 1223, and

"(B) only the first year of the taxpayer's holding period for the asset referred to in subsection (a)(1) shall be taken into account for purposes of paragraphs (2)(A)(iii), (3)(C), and (4)(A)(iii) of section 1400F(b).".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (23) of section 1016(a) is amended—

(A) by striking "or 1045" and inserting "1045, or 1397B", and

(B) by striking "or 1045(b)(4)" and inserting "1045(b)(4), or 1397B(b)(4)".

(2) Paragraph (15) of section 1223 is amended to read as follows:

"(15) Except for purposes of sections 1202(a)(2), 1202(c)(2)(A), 1400B(b), and 1400F(b), in determining the pe-

riod for which the taxpayer has held property the acquisition of which resulted under section 1045 or 1397B in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property has been held as of the date of such sale.".

(3) Paragraph (2) of section 1394(b) is amended—

(A) by striking "section 1397C" and inserting "section 1397D", and

(B) by striking "section 1397C(a)(2)" and inserting "section 1397D(a)(2)".

(4) Paragraph (3) of section 1394(b) is amended—

(A) by striking "section 1397B" each place it appears and inserting "section 1397C", and

(B) by striking "section 1397B(d)" and inserting "section 1397C(d)".

(5) Sections 1400(e) and 1400B(c) are each amended by striking "section 1397B" each place it appears and inserting "section 1397C".

(6) The table of subparts for part III of subchapter U of chapter 1 is amended by striking the last item and inserting the following new items:

"Subpart C. Nonrecognition of gain on rollover of empowerment zone investments.
"Subpart D. General provisions.".

(7) The table of sections for subpart D of such part III is amended to read as follows:

"Sec. 1397C. Enterprise zone business defined.
"Sec. 1397D. Qualified zone property defined.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified empowerment zone assets acquired after the date of the enactment of this Act.

SEC. 617. INCREASED EXCLUSION OF GAIN ON SALE OF EMPOWERMENT ZONE STOCK.

(a) IN GENERAL.—Subsection (a) of section 1202 is amended to read as follows:

"(a) EXCLUSION.—

"(1) IN GENERAL.—In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

"(2) EMPOWERMENT ZONE BUSINESSES.—

"(A) IN GENERAL.—In the case of qualified small business stock acquired after the date of the enactment of this paragraph in a corporation which is a qualified business entity (as defined in section 1397C(b)) during substantially all of the taxpayer's holding period for such stock, paragraph (1) shall be applied by substituting '60 percent' for '50 percent'.

"(B) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5) and (7) of section 1400B(b) shall apply for purposes of this paragraph.

"(C) GAIN AFTER 2014 NOT QUALIFIED.—Subparagraph (A) shall not apply to gain attributable to periods after December 31, 2014.

"(D) TREATMENT OF DC ZONE.—The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this paragraph.".

(b) CONFORMING AMENDMENT.—Paragraph (8) of section 1(h) is amended by striking "means" and all that follows and inserting "means the excess of—

"(A) the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202(a), over

"(B) the gain excluded from gross income under section 1202.".

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

Subtitle C—New Markets Tax Credit

SEC. 621. NEW MARKETS TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following new section:

"SEC. 45D. NEW MARKETS TAX CREDIT.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the qualified community development entity for such investment at its original issue.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

"(A) 5 percent with respect to the first 3 credit allowance dates, and

"(B) 6 percent with respect to the remainder of the credit allowance dates.

"(3) CREDIT ALLOWANCE DATE.—For purposes of paragraph (1), the term 'credit allowance date' means, with respect to any qualified equity investment—

"(A) the date on which such investment is initially made, and

"(B) each of the 6 anniversary dates of such date thereafter.

"(b) QUALIFIED EQUITY INVESTMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified equity investment' means any equity investment in a qualified community development entity if—

"(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

"(B) substantially all of such cash is used by the qualified community development entity to make qualified low-income community investments, and

"(C) such investment is designated for purposes of this section by the qualified community development entity.

Such term shall not include any equity investment issued by a qualified community development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

"(2) LIMITATION.—The maximum amount of equity investments issued by a qualified community development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

"(3) SAFE HARBOR FOR DETERMINING USE OF CASH.—The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the qualified community development entity are invested in qualified low-income community investments.

"(4) TREATMENT OF SUBSEQUENT PURCHASERS.—The term 'qualified equity investment' includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

"(5) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

"(6) EQUITY INVESTMENT.—The term 'equity investment' means—

"(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

"(B) any capital interest in an entity which is a partnership.

"(c) QUALIFIED COMMUNITY DEVELOPMENT ENTITY.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified community development entity' means any domestic corporation or partnership if—

"(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons,

"(B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity, and

"(C) the entity is certified by the Secretary for purposes of this section as being a qualified community development entity.

"(2) SPECIAL RULES FOR CERTAIN ORGANIZATIONS.—The requirements of paragraph (1) shall be treated as met by—

"(A) any specialized small business investment company (as defined in section 1044(c)(3)), and

"(B) any community development financial institution (as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)).

"(d) QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified low-income community investment' means—

"(A) any equity investment in, or loan to, any qualified active low-income community business,

"(B) the purchase from another community development entity of any loan made by such entity which is a qualified low-income community investment,

"(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities, and

"(D) any equity investment in, or loan to, any qualified community development entity.

"(2) QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualified active low-income community business' means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

"(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community,

"(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community,

"(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income community,

"(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

"(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

"(B) PROPRIETORSHIP.—Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

"(C) PORTIONS OF BUSINESS MAY BE QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.—The term 'qualified active low-income community business' includes any trades or businesses which would qualify as a qualified active

low-income community business if such trades or businesses were separately incorporated.

"(3) QUALIFIED BUSINESS.—For purposes of this subsection, the term 'qualified business' has the meaning given to such term by section 1397C(d); except that—

"(A) in lieu of applying paragraph (2)(B) thereof, the rental to others of real property located in any low-income community shall be treated as a qualified business if there are substantial improvements located on such property, and

"(B) paragraph (3) thereof shall not apply.

"(e) LOW-INCOME COMMUNITY.—For purposes of this section—

"(1) IN GENERAL.—The term 'low-income community' means any population census tract if—

"(A) the poverty rate for such tract is at least 20 percent, or

"(B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or

"(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

"(2) TARGETED AREAS.—The Secretary may designate any area within any census tract as a low-income community if—

"(A) the boundary of such area is continuous,

"(B) the area would satisfy the requirements of paragraph (1) if it were a census tract, and

"(C) an inadequate access to investment capital exists in such area.

"(3) AREAS NOT WITHIN CENSUS TRACTS.—In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates and median family income.

"(f) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED.—

"(1) IN GENERAL.—There is a new markets tax credit limitation for each calendar year. Such limitation is—

"(A) $1,000,000,000 for 2001,

"(B) $1,500,000,000 for 2002 and 2003,

"(C) $2,000,000,000 for 2004 and 2005, and

"(D) $3,500,000,000 for 2006 and 2007.

"(2) ALLOCATION OF LIMITATION.—The limitation under paragraph (1) shall be allocated by the Secretary among qualified community development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

"(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

"(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income com-

munity investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

"(3) CARRYOVER OF UNUSED LIMITATION.—If the new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2014.

"(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

"(1) IN GENERAL.—If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a qualified community development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

"(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

"(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

"(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

"(3) RECAPTURE EVENT.—For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a qualified community development entity if—

"(A) such entity ceases to be a qualified community development entity,

"(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

"(C) such investment is redeemed by such entity.

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

"(h) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

"(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

"(2) which prevent the abuse of the purposes of this section,

"(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

"(4) which impose appropriate reporting requirements, and

"(5) which apply the provisions of this section to newly formed entities.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38 is amended by striking "plus" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting ", plus", and by adding at the end the following new paragraph:

"(13) the new markets tax credit determined under section 45D(a).".

(2) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 is amended by adding at the end the following new paragraph:

"(9) NO CARRYBACK OF NEW MARKETS TAX CREDIT BEFORE JANUARY 1, 2001.—No portion of the unused business credit for any taxable year which is attributable to the credit under section 45D may be carried back to a taxable year ending before January 1, 2001.".

(c) DEDUCTION FOR UNUSED CREDIT.—Subsection (c) of section 196 is amended by striking "and" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ", and", and by adding at the end the following new paragraph:

"(9) the new markets tax credit determined under section 45D(a).".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45D. New markets tax credit.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to investments made after December 31, 2000.

(f) GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies—

(1) how entities shall apply for an allocation under section 45D(f)(2) of the Internal Revenue Code of 1986, as added by this section;

(2) the competitive procedure through which such allocations are made; and

(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.

(g) AUDIT AND REPORT.—Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the new markets tax credit program established under section 45D of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all qualified community development entities that receive an allocation under the new markets credit under such section.

Subtitle D—Improvements in Low-Income Housing Credit

SEC. 631. MODIFICATION OF STATE CEILING ON LOW-INCOME HOUSING CREDIT.

(a) IN GENERAL.—Clauses (i) and (ii) of section 42(h)(3)(C) (relating to State housing credit ceiling) are amended to read as follows:

"(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

"(ii) the greater of—

"(I) $1.75 ($1.50 for 2001) multiplied by the State population, or

"(II) $2,000,000,".

(b) ADJUSTMENT OF STATE CEILING FOR INCREASES IN COST-OF-LIVING.—Paragraph (3) of section 42(h) (relating to housing credit dollar amount for agencies) is amended by adding at the end the following new subparagraph:

"(H) COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—In the case of a calendar year after 2002, the $2,000,000 and $1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) ROUNDING.—

"(I) In the case of the $2,000,000 amount, any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

"(II) In the case of the $1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.".

(c) CONFORMING AMENDMENTS.—

(1) Section 42(h)(3)(C), as amended by subsection (a), is amended—

(A) by striking "clause (ii)" in the matter following clause (iv) and inserting "clause (i)"; and

(B) by striking "clauses (i)" in the matter following clause (iv) and inserting "clauses (ii)".

(2) Section 42(h)(3)(D)(ii) is amended—

(A) by striking "subparagraph (C)(ii)" and inserting "subparagraph (C)(i)"; and

(B) by striking "clauses (i)" in subclause (II) and inserting "clauses (ii)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years after 2000.

SEC. 632. MODIFICATION OF CRITERIA FOR ALLOCATING HOUSING CREDITS AMONG PROJECTS.

(a) SELECTION CRITERIA.—Subparagraph (C) of section 42(m)(1) (relating to certain selection criteria must be used) is amended—

(1) by inserting ", including whether the project includes the use of existing housing as part of a community revitalization plan" before the comma at the end of clause (iii); and

(2) by striking clauses (v), (vi), and (vii) and inserting the following new clauses:

"(v) tenant populations with special housing needs,

"(vi) public housing waiting lists,

"(vii) tenant populations of individuals with children, and

"(viii) projects intended for eventual tenant ownership.".

(b) PREFERENCE FOR COMMUNITY REVITALIZATION PROJECTS LOCATED IN QUALIFIED CENSUS TRACTS.—Clause (ii) of section 42(m)(1)(B) is amended by striking "and" at the end of subclause (I), by adding "and" at the end of subclause (II), and by inserting after subclause (II) the following new subclause:

"(III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan,".

SEC. 633. ADDITIONAL RESPONSIBILITIES OF HOUSING CREDIT AGENCIES.

(a) MARKET STUDY; PUBLIC DISCLOSURE OF RATIONALE FOR NOT FOLLOWING CREDIT ALLOCATION PRIORITIES.—Subparagraph (A) of section 42(m)(1) (relating to responsibilities of housing credit agencies) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting a comma, and by adding at the end the following new clauses:

"(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

"(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.".

(b) SITE VISITS.—Clause (iii) of section 42(m)(1)(B) (relating to qualified allocation plan) is amended by inserting before the period "and in monitoring for noncompliance with habitability standards through regular site visits".

SEC. 634. MODIFICATIONS TO RULES RELATING TO BASIS OF BUILDING WHICH IS ELIGIBLE FOR CREDIT.

(a) ADJUSTED BASIS TO INCLUDE PORTION OF CERTAIN BUILDINGS USED BY LOW-INCOME INDIVIDUALS WHO ARE NOT TENANTS AND BY PROJECT EMPLOYEES.—Paragraph (4) of section 42(d) (relating to special rules relating to determination of adjusted basis) is amended—

(1) by striking "subparagraph (B)" in subparagraph (A) and inserting "subparagraphs (B) and (C)";

(2) by redesignating subparagraph (C) as subparagraph (D); and

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

"(C) INCLUSION OF BASIS OF PROPERTY USED TO PROVIDE SERVICES FOR CERTAIN NONTENANTS.—

"(i) IN GENERAL.—The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

"(ii) LIMITATION.—The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part. For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

"(iii) COMMUNITY SERVICE FACILITY.—For purposes of this subparagraph, the term 'community service facility' means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).".

(b) CERTAIN NATIVE AMERICAN HOUSING ASSISTANCE DISREGARDED IN DETERMINING WHETHER BUILDING IS FEDERALLY SUBSIDIZED FOR PURPOSES OF THE LOW-INCOME HOUSING CREDIT.—Subparagraph (E) of section 42(i)(2) (relating to determination of whether building is federally subsidized) is amended—

(1) in clause (i), by inserting "or the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (as in effect on October 1, 1997)" after "this subparagraph)"; and

(2) in the subparagraph heading, by inserting "OR NATIVE AMERICAN HOUSING ASSISTANCE" after "HOME ASSISTANCE".

SEC. 635. OTHER MODIFICATIONS.

(a) ALLOCATION OF CREDIT LIMIT TO CERTAIN BUILDINGS.—

(1) The first sentence of section 42(h)(1)(E)(ii) is amended by striking "(as of" the first place it appears and inserting "(as of the later of the date which is 6 months after the date that the allocation was made or".

(2) The last sentence of section 42(h)(3)(C) is amended by striking "project which" and inserting "project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which".

(b) DETERMINATION OF WHETHER BUILDINGS ARE LOCATED IN HIGH COST AREAS.—The first sentence of section 42(d)(5)(C)(ii)(I) is amended—

(1) by inserting "either" before "in which 50 percent"; and

(2) by inserting before the period "or which has a poverty rate of at least 25 percent".

SEC. 636. CARRYFORWARD RULES.

(a) IN GENERAL.—Clause (ii) of section 42(h)(3)(D) (relating to unused housing credit carryovers allocated among certain States) is amended by striking "the excess" and all that follows and inserting "the excess (if any) of—

"(I) the unused State housing credit ceiling for the year preceding such year, over

"(II) the aggregate housing credit dollar amount allocated for such year.".

(b) CONFORMING AMENDMENT.—The second sentence of section 42(h)(3)(C) (relating to State housing credit ceiling) is amended by striking "clauses (i) and (iii)" and inserting "clauses (i) through (iv)".

SEC. 637. EFFECTIVE DATE.

Except as otherwise provided in this title, the amendments made by this title shall apply to—

(1) housing credit dollar amounts allocated after December 31, 2000; and

(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

Subtitle E—Other Community Renewal and New Markets Assistance

SEC. 641. TRANSFER OF UNOCCUPIED AND SUBSTANDARD HUD-HELD HOUSING TO LOCAL GOVERNMENTS AND COMMUNITY DEVELOPMENT CORPORATIONS.

Section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z–11a) is amended—

(1) by striking "FLEXIBLE AUTHORITY.—" and inserting "DISPOSITION OF HUD-OWNED PROPERTIES. (a) FLEXIBLE AUTHORITY FOR MULTIFAMILY PROJECTS.—"; and

(2) by adding at the end the following new subsection:

"(b) TRANSFER OF UNOCCUPIED AND SUBSTANDARD HOUSING TO LOCAL GOVERNMENTS AND COMMUNITY DEVELOPMENT CORPORATIONS.—

"(1) TRANSFER AUTHORITY.—Notwithstanding the authority under subsection (a) and the last sentence of section 204(g) of the National Housing Act (12 U.S.C. 1710(g)), the Secretary of

Housing and Urban Development shall transfer ownership of any qualified HUD property, subject to the requirements of this section, to a unit of general local government having jurisdiction for the area in which the property is located or to a community development corporation which operates within such a unit of general local government in accordance with this subsection, but only to the extent that units of general local government and community development corporations consent to transfer and the Secretary determines that such transfer is practicable.

"(2) QUALIFIED HUD PROPERTIES.—For purposes of this subsection, the term 'qualified HUD property' means any property for which, as of the date that notification of the property is first made under paragraph (3)(B), not less than 6 months have elapsed since the later of the date that the property was acquired by the Secretary or the date that the property was determined to be unoccupied or substandard, that is owned by the Secretary and is—

"(A) an unoccupied multifamily housing project;

"(B) a substandard multifamily housing project; or

"(C) an unoccupied single family property that—

"(i) has been determined by the Secretary not to be an eligible asset under section 204(h) of the National Housing Act (12 U.S.C. 1710(h)); or

"(ii) is an eligible asset under such section 204(h), but—

"(I) is not subject to a specific sale agreement under such section; and

"(II) has been determined by the Secretary to be inappropriate for continued inclusion in the program under such section 204(h) pursuant to paragraph (10) of such section.

"(3) TIMING.—The Secretary shall establish procedures that provide for—

"(A) time deadlines for transfers under this subsection;

"(B) notification to units of general local government and community development corporations of qualified HUD properties in their jurisdictions;

"(C) such units and corporations to express interest in the transfer under this subsection of such properties;

"(D) a right of first refusal for transfer of qualified HUD properties to units of general local government and community development corporations, under which—

"(i) the Secretary shall establish a period during which the Secretary may not transfer such properties except to such units and corporations;

"(ii) the Secretary shall offer qualified HUD properties that are single family properties for purchase by units of general local government at a cost of $1 for each property, but only to the extent that the costs to the Federal Government of disposal at such price do not exceed the costs to the Federal Government of disposing of property subject to the procedures for single family property established by the Secretary pursuant

to the authority under the last sentence of section 204(g) of the National Housing Act (12 U.S.C. 1710(g));

"(iii) the Secretary may accept an offer to purchase a property made by a community development corporation only if the offer provides for purchase on a cost recovery basis; and

"(iv) the Secretary shall accept an offer to purchase such a property that is made during such period by such a unit or corporation and that complies with the requirements of this paragraph;

"(E) a written explanation, to any unit of general local government or community development corporation making an offer to purchase a qualified HUD property under this subsection that is not accepted, of the reason that such offer was not acceptable.

"(4) OTHER DISPOSITION.—With respect to any qualified HUD property, if the Secretary does not receive an acceptable offer to purchase the property pursuant to the procedure established under paragraph (3), the Secretary shall dispose of the property to the unit of general local government in which property is located or to community development corporations located in such unit of general local government on a negotiated, competitive bid, or other basis, on such terms as the Secretary deems appropriate.

"(5) SATISFACTION OF INDEBTEDNESS.—Before transferring ownership of any qualified HUD property pursuant to this subsection, the Secretary shall satisfy any indebtedness incurred in connection with the property to be transferred, by canceling the indebtedness.

"(6) DETERMINATION OF STATUS OF PROPERTIES.—To ensure compliance with the requirements of this subsection, the Secretary shall take the following actions:

"(A) UPON ENACTMENT.—Upon the enactment of this subsection, the Secretary shall promptly assess each residential property owned by the Secretary to determine whether such property is a qualified HUD property.

"(B) UPON ACQUISITION.—Upon acquiring any residential property, the Secretary shall promptly determine whether the property is a qualified HUD property.

"(C) UPDATES.—The Secretary shall periodically reassess the residential properties owned by the Secretary to determine whether any such properties have become qualified HUD properties.

"(7) TENANT LEASES.—This subsection shall not affect the terms or the enforceability of any contract or lease entered into with respect to any residential property before the date that such property becomes a qualified HUD property.

"(8) USE OF PROPERTY.—Property transferred under this subsection shall be used only for appropriate neighborhood revitalization efforts, including homeownership, rental units, commercial space, and parks, consistent with local zoning regulations, local building codes, and subdivision regulations and restrictions of record.

"(9) INAPPLICABILITY TO PROPERTIES MADE AVAILABLE FOR HOMELESS.—Notwithstanding any other provision of this subsection, this subsection shall not apply to any properties that the Secretary determines are to be made available for use by the homeless pursuant to subpart E of part 291 of title 24, Code of Federal Regulations, during the period that the properties are so available.

"(10) PROTECTION OF EXISTING CONTRACTS.—This subsection may not be construed to alter, affect, or annul any legally binding obligations entered into with respect to a qualified HUD property before the property becomes a qualified HUD property.

"(11) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) COMMUNITY DEVELOPMENT CORPORATION.—The term 'community development corporation' means a nonprofit organization whose primary purpose is to promote community development by providing housing opportunities for low-income families.

"(B) COST RECOVERY BASIS.—The term 'cost recovery basis' means, with respect to any sale of a residential property by the Secretary, that the purchase price paid by the purchaser is equal to or greater than the sum of: (i) the appraised value of the property, as determined in accordance with such requirements as the Secretary shall establish; and (ii) the costs incurred by the Secretary in connection with such property during the period beginning on the date on which the Secretary acquires title to the property and ending on the date on which the sale is consummated.

"(C) MULTIFAMILY HOUSING PROJECT.—The term 'multifamily housing project' has the meaning given the term in section 203 of the Housing and Community Development Amendments of 1978.

"(D) RESIDENTIAL PROPERTY.—The term 'residential property' means a property that is a multifamily housing project or a single family property.

"(E) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(F) SEVERE PHYSICAL PROBLEMS.—The term 'severe physical problems' means, with respect to a dwelling unit, that the unit—

"(i) lacks hot or cold piped water, a flush toilet, or both a bathtub and a shower in the unit, for the exclusive use of that unit;

"(ii) on not less than three separate occasions during the preceding winter months, was uncomfortably cold for a period of more than 6 consecutive hours due to a malfunction of the heating system for the unit;

"(iii) has no functioning electrical service, exposed wiring, any room in which there is not a functioning electrical outlet, or has experienced three or more blown fuses or tripped circuit breakers during the preceding 90-day period;

"(iv) is accessible through a public hallway in which there are no working light fixtures, loose or missing steps or railings, and no elevator; or

"(v) has severe maintenance problems, including water leaks involving the roof, windows, doors, basement, or pipes or plumbing fixtures, holes or open cracks in walls or ceilings, severe paint peeling or broken plaster, and signs of rodent infestation.

"(G) SINGLE FAMILY PROPERTY.—The term 'single family property' means a 1- to 4-family residence.

"(H) SUBSTANDARD.—The term 'substandard' means, with respect to a multifamily housing project, that 25 percent or more of the dwelling units in the project have severe physical problems.

"(I) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' has the meaning given such term in section 102(a) of the Housing and Community Development Act of 1974.

"(J) UNOCCUPIED.—The term 'unoccupied' means, with respect to a residential property, that the unit of general local government having jurisdiction over the area in which the project is located has certified in writing that the property is not inhabited.

"(12) REGULATIONS.—

"(A) INTERIM.—Not later than 30 days after the date of the enactment of this subsection, the Secretary shall issue such interim regulations as are necessary to carry out this subsection.

"(B) FINAL.—Not later than 60 days after the date of the enactment of this subsection, the Secretary shall issue such final regulations as are necessary to carry out this subsection.".

SEC. 642. TRANSFER OF HUD ASSETS IN REVITALIZATION AREAS.

In carrying out the program under section 204(h) of the National Housing Act (12 U.S.C. 1710(h)), upon the request of the chief executive officer of a county or the government of appropriate jurisdiction and not later than 60 days after such request is made, the Secretary of Housing and Urban Development shall designate as a revitalization area all portions of such county that meet the criteria for such designation under paragraph (3) of such section.

SEC. 643. RISK-SHARING DEMONSTRATION.

Section 249 of the National Housing Act (12 U.S.C. 1715z–14) is amended—

(1) by striking the section heading and inserting the following:

"RISK-SHARING DEMONSTRATION";

(2) by striking "reinsurance" each place such term appears and insert "risk-sharing";

(3) in subsection (a)—

(A) in the first sentence, by inserting "and with insured community development financial institutions" after "private mortgage insurers";

(B) in the second sentence—

(i) by striking "two" and inserting "four"; and

(ii) by striking "March 15, 1988" and inserting "the expiration of the 5-year period beginning on the date of the enactment of the Taxpayer Relief Act of 2000"; and

(C) in the third sentence—

(i) by striking "insured" and inserting "for which risk of nonpayment is shared"; and

(ii) by striking "10 percent" and inserting "20 percent";

(4) in subsection (b)—

(A) in the first sentence—

(i) by striking "to provide" and inserting ", in providing";

(ii) by striking "through" and inserting ", to enter into"; and

(iii) by inserting "and with insured community development financial institutions" before the period at the end;

(B) in the second sentence, by inserting "and insured community development financial institutions" after "private mortgage insurance companies";

(C) by striking paragraph (1) and inserting the following new paragraph:

"(1) assume a secondary percentage of loss on any mortgage insured pursuant to section 203(b), 234, or 245 covering a one- to four-family dwelling, which percentage of loss shall be set forth in the risk-sharing contract, with the first percentage of loss to be borne by the Secretary;"; and

(D) in paragraph (2)—

(i) by striking "carry out (under appropriate delegation) such" and inserting "perform or delegate underwriting,";

(ii) by striking "function as the Secretary pursuant to regulations," and inserting "functions as the Secretary"; and

(iii) by inserting before the period at the end the following: "and shall set forth in the risk-sharing contract";

(5) in subsection (c)—

(A) in the first sentence—

(i) by striking "of" the first place it appears and inserting "for";

(ii) by inserting "received by the Secretary with a private mortgage insurer or insured community development financial institution" after "sharing of premiums"

(iii) by striking "insurance reserves" and inserting "loss reserves";

(iv) by striking "such insurance" and inserting "such risk-sharing contract"; and

(v) by striking "right" and inserting "rights"; and

(B) in the second sentence—

(i) by inserting "or insured community development financial institution" after "private mortgage insurance company"; and

(ii) by striking "for insurance" and inserting "for risk-sharing";

(6) in subsection (d), by inserting "or insured community development financial institution" after "private mortgage insurance company"; and

(7) by adding at the end the following new subsection:

"(e) INSURED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—For purposes of this section, the term 'insured community development financial institution' means a community development financial institution, as such term is defined in section 103 of Reigle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702) that is an insured depository institution (as such term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or an insured credit union (as such term is defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).".

SEC. 644. PREVENTION AND TREATMENT OF SUBSTANCE ABUSE; SERVICES PROVIDED THROUGH RELIGIOUS ORGANIZATIONS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following part:

"PART G—SERVICES PROVIDED THROUGH RELIGIOUS ORGANIZATIONS

"SEC. 581. APPLICABILITY TO DESIGNATED PROGRAMS.

"(a) DESIGNATED PROGRAMS.—Subject to subsection (b), this part applies to discretionary and formula grant programs administered by the Substance Abuse and Mental Health Services Administration that make awards of financial assistance to public or private entities for the purpose of carrying out activities to prevent or treat substance abuse (in this part referred to as a 'designated program'). Designated programs include the program under subpart II of part B of title XIX (relating to formula grants to the States).

"(b) LIMITATION.—This part does not apply to any award of financial assistance under a designated program for a purpose other than the purpose specified in subsection (a).

"(c) DEFINITIONS.—For purposes of this part (and subject to subsection (b)):

"(1) The term 'designated program' has the meaning given such term in subsection (a).

"(2) The term 'financial assistance' means a grant, cooperative agreement, or contract.

"(3) The term 'program beneficiary' means an individual who receives program services.

"(4) The term 'program participant' means a public or private entity that has received financial assistance under a designated program.

"(5) The term 'program services' means treatment for substance abuse, or preventive services regarding such abuse, provided pursuant to an award of financial assistance under a designated program.

"(6) The term 'religious organization' means a nonprofit religious organization.

"SEC. 582. RELIGIOUS ORGANIZATIONS AS PROGRAM PARTICIPANTS.

"(a) IN GENERAL.—Notwithstanding any other provision of law, a religious organization, on the same basis as any other nonprofit private provider—

"(1) may receive financial assistance under a designated program; and

"(2) may be a provider of services under a designated program.

"(b) RELIGIOUS ORGANIZATIONS.—The purpose of this section is to allow religious organizations to be program participants on the same basis as any other nonprofit private provider without impairing the religious character of such organizations, and without diminishing the religious freedom of program beneficiaries.

"(c) NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS.—

"(1) ELIGIBILITY AS PROGRAM PARTICIPANTS.—Religious organizations are eligible to be program participants on the same basis as any other nonprofit private organization as long as the programs are implemented consistent with the Establishment Clause and Free Exercise Clause of the First Amendment to the United States Constitution. Nothing in this Act shall be construed to restrict the ability of the Federal Government, or a State or local government receiving funds under such programs, to apply to religious organizations the same eligibility conditions in designated programs as are applied to any other nonprofit private organization.

"(2) NONDISCRIMINATION.—Neither the Federal Government nor a State or local government receiving funds under designated programs shall discriminate against an organization that is or applies to be a program participant on the basis that the organization has a religious character.

"(d) RELIGIOUS CHARACTER AND FREEDOM.—

"(1) RELIGIOUS ORGANIZATIONS.—Except as provided in this section, any religious organization that is a program participant shall retain its independence from Federal, State, and local government, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

"(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government nor a State shall require a religious organization to—

"(A) alter its form of internal governance; or

"(B) remove religious art, icons, scripture, or other symbols,

in order to be a program participant.

"(e) EMPLOYMENT PRACTICES.—Nothing in this section shall be construed to modify or affect the provisions of any other Federal or State law or regulation that relates to discrimination in employment. A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 regarding employment practices shall not be affected by its participation in, or receipt of funds from, a designated program.

"(f) RIGHTS OF PROGRAM BENEFICIARIES.—

"(1) IN GENERAL.—If an individual who is a program beneficiary or a prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection such program participant shall refer such individual to, and the appropriate Federal, State, or local government that administers a designated program or is a program participant shall provide to such individual (if otherwise eligible for such services), program services that—

"(A) are from an alternative provider that is accessible to, and has the capacity to provide such services to, such individual; and

"(B) have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection.

Upon referring a program beneficiary to an alternative provider, the program participant shall notify the appropriate Federal, State, or local government agency that administers the program of such referral.

"(2) NOTICES.—Program participants, public agencies that refer individuals to designated programs, and the appropriate Federal, State, or local governments that administer designated programs or are program participants shall ensure that notice is provided to program beneficiaries or prospective program beneficiaries of their rights under this section.

"(3) ADDITIONAL REQUIREMENTS.—A program participant making a referral pursuant to paragraph (1) shall—

"(A) prior to making such referral, consider any list that the State or local government makes available of entities in the geographic area that provide program services; and

"(B) ensure that the individual makes contact with the alternative provider to which the individual is referred.

"(4) NONDISCRIMINATION.—A religious organization that is a program participant shall not in providing program services or engaging in outreach activities under designated programs discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

"(g) FISCAL ACCOUNTABILITY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any religious organization that is a program participant shall be subject to the same regulations as other recipients of awards of Federal financial assistance to account, in accordance with generally accepted auditing principles, for the use of the funds provided under such awards.

"(2) LIMITED AUDIT.—With respect to the award involved, a religious organization that is a program participant shall segregate Federal amounts provided under award into a separate account from non-Federal funds. Only the award funds shall be subject to audit by the government.

"(h) COMPLIANCE.—With respect to compliance with this section by an agency, a religious organization may obtain judicial review

of agency action in accordance with chapter 7 of title 5, United States Code.

"SEC. 583. LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.

"No funds provided under a designated program shall be expended for sectarian worship, instruction, or proselytization.

"SEC. 584. EDUCATIONAL REQUIREMENTS FOR PERSONNEL IN DRUG TREATMENT PROGRAMS.

"(a) FINDINGS.—The Congress finds that—

"(1) establishing unduly rigid or uniform educational qualification for counselors and other personnel in drug treatment programs may undermine the effectiveness of such programs; and

"(2) such educational requirements for counselors and other personnel may hinder or prevent the provision of needed drug treatment services.

"(b) NONDISCRIMINATION.—In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training includes basic content substantially equivalent to the content provided by nonreligious organizations that the State or local government would credit for purposes of determining whether the relevant requirements have been satisfied.".

Subtitle F—Other Provisions

SEC. 651. ACCELERATION OF PHASE-IN OF INCREASE IN VOLUME CAP ON PRIVATE ACTIVITY BONDS.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 146(d) (relating to State ceiling) are amended to read as follows:

"(1) IN GENERAL.—The State ceiling applicable to any State for any calendar year shall be the greater of—

"(A) an amount equal to $75 ($62.50 in the case of calendar year 2001) multiplied by the State population, or

"(B) $225,000,000 ($187,500,000 in the case of calendar year 2001).

"(2) COST-OF-LIVING ADJUSTMENT.—In the case of a calendar year after 2002, each of the dollar amounts contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $5 ($5,000 in the case of the dollar amount in paragraph (1)(B)), such increase shall be rounded to the nearest multiple thereof.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to calendar years after 2000.

SEC. 652. MODIFICATIONS TO EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) EXPENSING NOT LIMITED TO SITES IN TARGETED AREAS.—Subsection (c) of section 198 is amended to read as follows:

"(c) QUALIFIED CONTAMINATED SITE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified contaminated site' means any area—

"(A) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(a)(1) in the hands of the taxpayer, and

"(B) at or on which there has been a release (or threat of release) or disposal of any hazardous substance.

"(2) NATIONAL PRIORITIES LISTED SITES NOT INCLUDED.—Such term shall not include any site which is on, or proposed for, the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

"(3) TAXPAYER MUST RECEIVE STATEMENT FROM STATE ENVIRONMENTAL AGENCY.—An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirement of paragraph (1)(B).

"(4) APPROPRIATE STATE AGENCY.—For purposes of paragraph (3), the chief executive officer of each State may, in consultation with the Administrator of the Environmental Protection Agency, designate the appropriate State environmental agency within 60 days of the date of the enactment of this section. If the chief executive officer of a State has not designated an appropriate environmental agency within such 60-day period, the appropriate environmental agency for such State shall be designated by the Administrator of the Environmental Protection Agency.".

(b) EXTENSION OF TERMINATION DATE.—Subsection (h) of section 198 is amended by striking "2001" and inserting "2003".

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

SEC. 653. EXTENSION OF DC HOMEBUYER TAX CREDIT.

Section 1400C(i) (relating to application of section) is amended by striking "2002" and inserting "2004".

TITLE VII—ADMINISTRATIVE, MISCELLANEOUS, AND TECHNICAL PROVISIONS

Subtitle A—Administrative Provisions

SEC. 701. EXEMPTION OF CERTAIN REPORTING REQUIREMENTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) shall not apply to any report required to be submitted under any of the following provisions of law:

(1) Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)).

(2) Section 16(c) of the Foreign Trade Zones Act (19 U.S.C. 81p(c)).

(3) The following provisions of the Tariff Act of 1930:

(A) Section 330(c)(1) (19 U.S.C. 1330(c)(1)).

(B) Section 607(c) (19 U.S.C. 1607(c)).

(4) Section 5 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356n).

(5) Section 351(a)(2) of the Trade Expansion Act of 1962 (19 U.S.C. 1981(a)(2)).

(6) Section 502 of the Automotive Products Trade Act of 1965 (19 U.S.C. 2032).

(7) Section 3131 of the Customs Enforcement Act of 1986 (19 U.S.C. 2081).

(8) The following provisions of the Trade Act of 1974 (19 U.S.C. 2101 et seq.):

(A) Section 102(b)(4)(A)(ii)(I) (19 U.S.C. 2112(b)(4)(A)(ii)(I)).

(B) Section 102(e)(1) (19 U.S.C. 2112(e)(1)).

(C) Section 102(e)(2) (19 U.S.C. 2112(e)(2)).

(D) Section 104(d) (19 U.S.C. 2114(d)).

(E) Section 125(e) (19 U.S.C. 2135(e)).

(F) Section 135(e)(1) (19 U.S.C. 2155(e)(1)).

(G) Section 141(c) (19 U.S.C. 2171(c)).

(H) Section 162 (19 U.S.C. 2212).

(I) Section 163(b) (19 U.S.C. 2213(b)).

(J) Section 163(c) (19 U.S.C. 2213(c)).

(K) Section 203(b) (19 U.S.C. 2253(b)).

(L) Section 302(b)(2)(C) (19 U.S.C. 2412(b)(2)(C)).

(M) Section 303 (19 U.S.C. 2413).

(N) Section 309 (19 U.S.C. 2419).

(O) Section 407(a) (19 U.S.C. 2437(a)).

(P) Section 502(f) (19 U.S.C. 2462(f)).

(Q) Section 504 (19 U.S.C. 2464).

(9) The following provisions of the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.):

(A) Section 2(b) (19 U.S.C. 2503(b)).

(B) Section 3(c) (19 U.S.C. 2504(c)).

(C) Section 305(c) (19 U.S.C. 2515(c)).

(10) Section 303(g)(1) of the Convention on Cultural Property Implementation Act (19 U.S.C. 2602(g)(1)).

(11) The following provisions of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.):

(A) Section 212(a)(1)(A) (19 U.S.C. 2702(a)(1)(A)).

(B) Section 212(a)(2) (19 U.S.C. 2702(a)(2)).

(12) The following provisions of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2901 et seq.):

(A) Section 1102 (19 U.S.C. 2902).

(B) Section 1103 (19 U.S.C. 2903).

(C) Section 1206(b) (19 U.S.C. 3006(b)).

(13) Section 123(a) of the Customs and Trade Act of 1990 (Public Law 101–382) (19 U.S.C. 2083).

(14) Section 243(b)(2) of the Caribbean Basin Economic Recovery Expansion Act of 1990 (Public Law 101–382).

(15) The following provisions of the Internal Revenue Code of 1986:

(A) Section 6103(p)(5).

(B) Section 7608.

(C) Section 7802(f)(3).

(D) Section 8022(3).

(E) Section 9602(a).

(16) The following provisions relating to the revenue laws of the United States:

(A) Section 1552(c) of the Tax Reform Act of 1986 (100 Stat. 2753).

(B) Section 231 of the Deficit Reduction Act of 1984 (26 U.S.C. 801 note).

(C) Section 208 of the Tax Treatment Extension Act of 1977 (26 U.S.C. 911 note).

(D) Section 7105 of the Technical and Miscellaneous Revenue Act of 1988 (45 U.S.C. 369).

(17) Section 4008 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1308).

(18) Section 426 of the Black Lung Benefits Act (30 U.S.C. 936(b)).

(19) Section 7502(g) of title 31, United States Code.

(20) The following provisions of the Social Security Act:

(A) Section 215(i)(2)(C)(i) (42 U.S.C. 415(i)(2)(C)(i)).

(B) Section 221(i)(2) (42 U.S.C. 421(i)(2)).

(C) Section 221(i)(3) (42 U.S.C. 421(i)(3)).

(D) Section 233(e)(1) (42 U.S.C. 433(e)(1)).

(E) Section 452(a)(10) (42 U.S.C. 652(a)(10)).

(F) Section 452(g)(3)(B) (42 U.S.C. 652(g)(3)(B)).

(G) Section 506(a)(1) (42 U.S.C. 706(a)).

(H) Section 908 (42 U.S.C. 1108).

(I) Section 1114(f) (42 U.S.C. 1314(f)).

(J) Section 1120 (42 U.S.C. 1320).

(K) Section 1161 (42 U.S.C. 1320c–10).

(L) Section 1875(b) (42 U.S.C. 1395ll(b)).

(M) Section 1881 (42 U.S.C. 1395rr).

(N) Section 1882 (42 U.S.C. 1395ss(f)(2)).

(21) Section 104(b) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 904 note).

(22) Section 10 of the Railroad Retirement Act of 1937 (45 U.S.C. 231f).

(23) The following provisions of the Railroad Retirement Act of 1974:

(A) Section 22(a)(1) (45 U.S.C. 231u(a)(1)).

(B) Section 22(b)(1) (45 U.S.C. 231u(b)(1)).

(24) Section 502 of the Railroad Retirement Solvency Act of 1983 (45 U.S.C. 231f–1).

(25) Section 47121(c) of title 49, United States Code.

(26) The following provisions of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 101 Stat. 1330–182):

(A) Section 4007(c)(4) (42 U.S.C. 1395ww note).

(B) Section 4079 (42 U.S.C. 1395mm note).

(C) Section 4205 (42 U.S.C. 1395i–3 note).

(D) Section 4215 (42 U.S.C. 1396r note).

(27) The following provisions of the Inspector General Act of 1978 (Public Law 95–452):

(A) Section 5(b).

(B) Section 5(d).

(28) The following provisions of the Public Health Service Act:

(A) In section 308(a) (42 U.S.C. 242m(a)), subparagraphs (A), (B), (C), and (D) of paragraph (1).

(B) Section 403 (42 U.S.C. 283).

(29) Section 404 of the Health Services and Centers Amendments of 1978 (42 U.S.C. 242p) (Public Law 95–626).

(30) The following provisions of the Older Americans Act of 1965:

(A) Section 206(d) (42 U.S.C. 3017(d)).

(B) Section 207 (42 U.S.C. 3018).

(31) Section 308 of the Age Discrimination Act of 1975 (42 U.S.C. 6106a(b)).

(32) Section 509(c)(3) of the Americans with Disabilities Act 0f 1990 (42 U.S.C. 12209(c)(3)).

(33) Section 4207(f) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1395b–1 note).

SEC. 702. EXTENSION OF DEADLINES FOR IRS COMPLIANCE WITH CERTAIN NOTICE REQUIREMENTS.

(a) ANNUAL INSTALLMENT AGREEMENT NOTICE.—Section 3506 of the Internal Revenue Service Restructuring and Reform Act of 1998 is amended by striking "July 1, 2000" and inserting "September 1, 2001".

(b) NOTICE REQUIREMENTS RELATING TO COMPUTATION OF PENALTY.—Subsection (c) of section 3306 of the Internal Revenue Service Restructuring and Reform Act of 1998 is amended—

(1) by striking "December 31, 2000" and inserting "June 30, 2001", and

(2) by adding at the end the following: "In the case of any notice of penalty issued after June 30, 2001, and before July 1, 2003, the requirements of section 6751(a) of the Internal Revenue Code of 1986 shall be treated as met if such notice contains a telephone number at which the taxpayer can request a

copy of the taxpayer's assessment and payment history with respect to such penalty.".

(c) NOTICE REQUIREMENTS RELATING TO INTEREST IMPOSED.—Subsection (c) of section 3308 of the Internal Revenue Service Restructuring and Reform Act of 1998 is amended—

(1) by striking "December 31, 2000" and inserting "June 30, 2001", and

(2) by adding at the end the following: "In the case of any notice issued after June 30, 2001, and before July 1, 2003, to which section 6631 of the Internal Revenue Code of 1986 applies, the requirements of section 6631 of such Code shall be treated as met if such notice contains a telephone number at which the taxpayer can request a copy of the taxpayer's payment history relating to interest amounts included in such notice.".

SEC. 703. EXTENSION OF AUTHORITY FOR UNDERCOVER OPERATIONS.

Paragraph (6), and the last sentence, of section 7608(c) are each amended by striking "January 1, 2001" and inserting "January 1, 2006".

SEC. 704. CONFIDENTIALITY OF CERTAIN DOCUMENTS RELATING TO CLOSING AND SIMILAR AGREEMENTS AND TO AGREEMENTS WITH FOREIGN GOVERNMENTS.

(a) CLOSING AND SIMILAR AGREEMENTS TREATED AS RETURN INFORMATION.—Paragraph (2) of section 6103(b) (defining return information) is amended by striking "and" at the end of subparagraph (B), by inserting "and" at the end of subparagraph (C), and by inserting after subparagraph (C) the following new subparagraph:

"(D) any agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement,".

(b) AGREEMENTS WITH FOREIGN GOVERNMENTS.—

(1) IN GENERAL.—Subchapter B of chapter 61 (relating to miscellaneous provisions) is amended by inserting after section 6104 the following new section:

"SEC. 6105. CONFIDENTIALITY OF INFORMATION ARISING UNDER TREATY OBLIGATIONS.

"(a) IN GENERAL.—Tax convention information shall not be disclosed.

"(b) EXCEPTIONS.—Subsection (a) shall not apply—

"(1) to the disclosure of tax convention information to persons or authorities (including courts and administrative bodies) which are entitled to such disclosure pursuant to a tax convention,

"(2) to any generally applicable procedural rules regarding applications for relief under a tax convention, or

"(3) in any case not described in paragraph (1) or (2), to the disclosure of any tax convention information not relating to a particular taxpayer if the Secretary determines, after consultation with each other party to the tax convention, that such disclosure would not impair tax administration.

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

"(1) TAX CONVENTION INFORMATION.—The term 'tax convention information' means any—

"(A) agreement entered into with the competent authority of one or more foreign governments pursuant to a tax convention,

"(B) application for relief under a tax convention,

"(C) any background information related to such agreement or application,

"(D) document implementing such agreement, and

"(E) any other information exchanged pursuant to a tax convention which is treated as confidential or secret under the tax convention.

"(2) TAX CONVENTION.—The term 'tax convention' means—

"(A) any income tax or gift and estate tax convention, or

"(B) any other convention or bilateral agreement (including multilateral conventions and agreements and any agreement with a possession of the United States) providing for the avoidance of double taxation, the prevention of fiscal evasion, nondiscrimination with respect to taxes, the exchange of tax relevant information with the United States, or mutual assistance in tax matters.

"(d) CROSS REFERENCES.—

"For penalties for the unauthorized disclosure of tax convention information which is return or return information, see sections 7213, 7213A, and 7431.".

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 61 is amended by inserting after the item relating to section 6104 the following new item:

"Sec. 6105. Confidentiality of information arising under treaty obligations.".

(c) EXCEPTION FROM PUBLIC INSPECTION AS WRITTEN DETERMINATION.—

(1) CLOSING AND SIMILAR AGREEMENTS.—Paragraph (1) of section 6110(b) is amended to read as follows:

"(1) WRITTEN DETERMINATION.—

"(A) IN GENERAL.—The term 'written determination' means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice.

"(B) EXCEPTIONS.—Such term shall not include any matter referred to in subparagraph (C) or (D) of section 6103(b)(2).".

(2) AGREEMENTS WITH FOREIGN GOVERNMENTS.—Paragraph (1) of section 6110(l) is amended by inserting "or 6105" after "6104".

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

SEC. 705. INCREASE IN THRESHOLD FOR JOINT COMMITTEE REPORTS ON REFUNDS AND CREDITS.

(a) GENERAL RULE.—Subsections (a) and (b) of section 6405 are each amended by striking "$1,000,000" and inserting "$2,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, except that such amendment shall not apply with respect to any refund or credit with respect to a report that has been made before such date of

the enactment under section 6405 of the Internal Revenue Code of 1986.

SEC. 706. TREATMENT OF MISSING CHILDREN WITH RESPECT TO CERTAIN TAX BENEFITS.

(a) IN GENERAL.—Subsection (c) of section 151 (relating to additional exemption for dependents) is amended by adding at the end the following new paragraph:

"(6) TREATMENT OF MISSING CHILDREN.—

"(A) IN GENERAL.—Solely for the purposes referred to in subparagraph (B), a child of the taxpayer—

"(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

"(ii) who was (without regard to this paragraph) the dependent of the taxpayer for the portion of the taxable year before the date of the kidnapping,

shall be treated as a dependent of the taxpayer for all taxable years ending during the period that the child is kidnapped.

"(B) PURPOSES.—Subparagraph (A) shall apply solely for purposes of determining—

"(i) the deduction under this section,

"(ii) the credit under section 24 (relating to child tax credit), and

"(iii) whether an individual is a surviving spouse or a head of a household (such terms are defined in section 2).

"(C) COMPARABLE TREATMENT FOR EARNED INCOME CREDIT.—For purposes of section 32, an individual—

"(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such individual or the taxpayer, and

"(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping,

shall be treated as meeting the requirement of section 32(c)(3)(A)(ii) with respect to a taxpayer for all taxable years ending during the period that the individual is kidnapped.

"(D) TERMINATION OF TREATMENT.—Subparagraphs (A) and (C) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18)."

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

SEC. 707. AMENDMENTS TO STATUTES REFERENCING YIELD ON 52-WEEK TREASURY BILLS.

(a) AMENDMENT TO THE ACT OF FEBRUARY 26, 1931.—Section 6 of the Act of February 26, 1931 (40 U.S.C. 258e–1) (relating to the

interest rate on compensation owed for takings of property) is amended—

(1) in paragraph (1), by striking "the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately before" and inserting "the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding"; and

(2) in paragraph (2), by striking "the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately before" and inserting "the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding".

(b) AMENDMENT TO TITLE 18, UNITED STATES CODE.—Section 3612(f)(2)(B) of title 18, United States Code (relating to the interest rate on unpaid criminal fines and penalties of more than $2,500) is amended by striking "the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled before" and inserting 'the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding.".

(c) AMENDMENT TO THE INTERNAL REVENUE CODE.—Section 995(f)(4) (relating to the interest rate on tax-deferred liability of shareholders of domestic international sales corporations) is amended by striking "the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the 1-year period" and inserting "the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period".

(d) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) AMENDMENT TO SECTION 1961.—Section 1961(a) of title 28, United States Code (relating to the interest rate on money judgments in civil cases recovered in Federal district court) is amended by striking "the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to" and inserting "the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding.".

(2) AMENDMENT TO SECTION 2516.—Section 2516(b) of title 28, United States Code (relating to the interest rate on a judgment against the United States affirmed by the Supreme Court after review on petition of the United States) is amended by striking "the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately before" and inserting "the weekly average 1-year constant maturity Treasury yield, as published

by the Board of Governors of the Federal Reserve System, for the calendar week preceding".

SEC. 708. ADJUSTMENTS FOR CONSUMER PRICE INDEX ERROR.

(a) DETERMINATIONS BY OMB.—As soon as practicable after the date of the enactment of this Act, the Director of the Office of Management and Budget shall determine with respect to each applicable Federal benefit program whether the CPI computation error for 1999 has or will result in a shortfall in payments to beneficiaries under such program (as compared to payments that would have been made if the error had not occurred). As soon as practicable after the date of the enactment of this Act, but not later than 60 days after such date, the Director shall direct the head of the Federal agency which administers such program to make a payment or payments that, insofar as the Director finds practicable and feasible—

(1) are targeted to the amount of the shortfall experienced by individual beneficiaries, and

(2) compensate for the shortfall.

(b) COORDINATION WITH FEDERAL AGENCIES.—As soon as practicable after the date of the enactment of this Act, each Federal agency that administers an applicable Federal benefit program shall, in accordance with such guidelines as are issued by the Director pursuant to this section, make an initial determination of whether, and the extent to which, the CPI computation error for 1999 has or will result in a shortfall in payments to beneficiaries of an applicable Federal benefit program administered by such agency. Not later than 30 days after such date, the head of such agency shall submit a report to the Director and to each House of the Congress of such determination, together with a complete description of the nature of the shortfall.

(c) IMPLEMENTATION PURSUANT TO AGENCY REPORTS.—Upon receipt of the report submitted by a Federal agency pursuant to subsection (b), the Director shall review the initial determination of the agency, the agency's description of the nature of the shortfall, and the compensation payments proposed by the agency. Prior to directing payment of such payments pursuant to subsection (a), the Director shall make appropriate adjustments (if any) in the compensation payments proposed by the agency that the Director determines are necessary to comply with the requirements of subsection (a) and transmit to the agency a summary report of the review, indicating any adjustments made by the Director. The agency shall make the compensation payments as directed by the Director pursuant to subsection (a) in accordance with the Director's summary report.

(d) INCOME DISREGARD UNDER FEDERAL MEANS-TESTED BENEFIT PROGRAMS.—A payment made under this section to compensate for a shortfall in benefits shall, in accordance with guidelines issued by the Director pursuant to this section, be disregarded in determining income under title VIII of the Social Security Act or any applicable Federal benefit program that is means-tested.

(e) FUNDING.—Funds otherwise available under each applicable Federal benefit program for making benefit payments under such program are hereby made available for making compensation payments under this section in connection with such program.

(f) NO JUDICIAL REVIEW.—No action taken pursuant to this section shall be subject to judicial review.

(g) DIRECTOR'S REPORT.—Not later than April 1, 2001, the Director shall submit to each House of the Congress a report on the activities performed by the Director pursuant to this section.

(h) DEFINITIONS.—For purposes of this section:

(1) APPLICABLE FEDERAL BENEFIT PROGRAM.—The term "applicable Federal benefit program" means any program of the Government of the United States providing for regular or periodic payments or cash assistance paid directly to individual beneficiaries, as determined by the Director of the Office of Management and Budget.

(2) FEDERAL AGENCY.—The term "Federal agency" means a department, agency, or instrumentality of the Government of the United States.

(3) CPI COMPUTATION ERROR FOR 1999.—The term "CPI computation error for 1999" means the error in the computation of the Consumer Price Index announced by the Bureau of Labor Statistics on September 28, 2000.

(i) TAX PROVISIONS.—If any Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) reflects the CPI computation error for 1999—

(1) the correct amount of such Index shall (in such manner and to such extent as the Secretary of the Treasury determines to be appropriate) be taken into account for purposes of such Code, and

(2) tables prescribed under section 1(f) of such Code to reflect such correct amount shall apply in lieu of any tables that were prescribed based on the erroneous amount.

SEC. 709. PREVENTION OF DUPLICATION OF LOSS THROUGH ASSUMPTION OF LIABILITIES GIVING RISE TO A DEDUCTION.

(a) IN GENERAL.—Section 358 (relating to basis to distributees) is amended by adding at the end the following new subsection:

"(h) SPECIAL RULES FOR ASSUMPTION OF LIABILITIES TO WHICH SUBSECTION (d) DOES NOT APPLY.—

"(1) IN GENERAL.—If, after application of the other provisions of this section to an exchange or series of exchanges, the basis of property to which subsection (a)(1) applies exceeds the fair market value of such property, then such basis shall be reduced (but not below such fair market value) by the amount (determined as of the date of the exchange) of any liability—

"(A) which is assumed in exchange for such property, and

"(B) with respect to which subsection (d)(1) does not apply to the assumption.

"(2) EXCEPTIONS.—Except as provided by the Secretary, paragraph (1) shall not apply to any liability if—

"(A) the trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange, or

"(B) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange.

"(3) LIABILITY.—For purposes of this subsection, the term 'liability' shall include any fixed or contingent obligation to make payment, without regard to whether the obligation is otherwise taken into account for purposes of this title."

(b) DETERMINATION OF AMOUNT OF LIABILITY ASSUMED.—Section 357(d)(1) is amended by inserting "section 358(h)," after "section 358(d),".

(c) APPLICATION OF COMPARABLE RULES TO PARTNERSHIPS AND S CORPORATIONS.—The Secretary of the Treasury or his delegate—

(1) shall prescribe rules which provide appropriate adjustments under subchapter K of chapter 1 of the Internal Revenue Code of 1986 to prevent the acceleration or duplication of losses through the assumption of (or transfer of assets subject to) liabilities described in section 358(h)(3) of such Code (as added by subsection (a)) in transactions involving partnerships, and

(2) may prescribe rules which provide appropriate adjustments under subchapter S of chapter 1 of such Code in transactions described in paragraph (1) involving S corporations rather than partnerships.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to assumptions of liability after October 18, 1999.

(2) RULES.—The rules prescribed under subsection (c) shall apply to assumptions of liability after October 18, 1999, or such later date as may be prescribed in such rules.

Subtitle B—Miscellaneous Provisions

SEC. 710. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) is amended by striking "or a diesel-powered train" each place it appears and by striking "or train".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) is amended by striking all that follows "section 6421(e)(2)" and inserting a period.

(C) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

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."

(D) Subsection (e) of section 4082 is amended by striking "section 4041(a)(1)" and inserting "subsections (d)(3) and (a)(1) of section 4041, respectively".

(E) Paragraph (3) of section 4083(a) is amended by striking "or a diesel-powered train".

(F) Paragraph (3) of section 6421(f) is amended to read as follows:

"(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081."

(G) Paragraph (3) of section 6427(l) is amended to read as follows:

"(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof."

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) 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) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2001.

SEC. 711. REPEAL OF REDUCTION OF DEDUCTIONS FOR MUTUAL LIFE INSURANCE COMPANIES.

(a) IN GENERAL.—Section 809 (relating to reductions in certain deductions of mutual life insurance companies) is hereby repealed.

(b) CONFORMING AMENDMENTS RELATED TO REPEAL OF SECTION 809.—

(1) Subsections (a)(2)(B) and (b)(1)(B) of section 807 are each amended by striking "the sum of (i)" and by striking "plus (ii) any excess described in section 809(a)(2) for the taxable year,".

(2)(A) The last sentence of section 807(d)(1) is amended by striking "(as defined in section 809(b)(4)(B))".

(B) Subsection (d) of section 807 is amended by adding at the end the following new paragraph:

"(6) STATUTORY RESERVES.—For purposes of this subsection, the term 'statutory reserves' means the aggregate amount set forth in the annual statement with respect to items described in subsection (c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c)."

(3) Subsection (c) of section 808 is amended to read as follows:

"(c) AMOUNT OF DEDUCTION.—The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year."

(4) Subparagraph (A) of section 812(b)(3) is amended by striking "sections 808 and 809" and inserting "section 808".

(5) Subsection (c) of section 817 is amended by striking "(other than section 809)".

(6) Subsection (c) of section 842 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(7) The table of sections for subpart C of part I of subchapter L of chapter 1 is amended by striking the item relating to section 809.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 712. REPEAL OF POLICYHOLDERS SURPLUS ACCOUNT PROVISIONS.

(a) REPEAL.—Section 815 (relating to distributions to shareholders from pre-1984 policyholders surplus accounts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 801 is amended by striking subsection (c).

(2) The table of sections for subpart D of part I of subchapter L of chapter 1 is amended by striking the item relating to section 815.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 713. CREDIT TO HOLDERS OF QUALIFIED AMTRAK BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 (relating to credits against tax) is amended by adding at the end the following new subpart:

"Subpart H—Nonrefundable Credit for Holders of Qualified Amtrak Bonds

"Sec. 54. Credit to holders of qualified Amtrak bonds.

"SEC. 54. CREDIT TO HOLDERS OF QUALIFIED AMTRAK BONDS.

"(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified Amtrak bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified Amtrak bond is 25 percent of the annual credit determined with respect to such bond.

"(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified Amtrak bond is the product of—

"(A) the applicable credit rate, multiplied by

"(B) the outstanding face amount of the bond.

"(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate with respect to an issue is the rate equal to an average market yield (as of the day before the date of sale of the issue) on outstanding long-term corporate debt obligations (determined under regulations prescribed by the Secretary).

"(4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this part (other than this subpart and subpart C).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

"(d) QUALIFIED AMTRAK BOND.—For purposes of this part—

"(1) IN GENERAL.—The term 'qualified Amtrak bond' means any bond issued as part of an issue if—

"(A) 95 percent or more of the proceeds of such issue are to be used for any qualified project,

"(B) the bond is issued by the National Railroad Passenger Corporation,

"(C) the issuer—

"(i) designates such bond for purposes of this section,

"(ii) certifies that it meets the State contribution requirement of paragraph (3) with respect to such project and that it has received the required State contribution payment before the issuance of such bond, and

"(iii) certifies that it has obtained the written approval of the Secretary of Transportation for such project, including a finding by the Inspector General of the Department of Transportation that there is a reasonable likelihood that the proposed program will result in a positive incremental financial contribution to the National Railroad Passenger Corporation and that the investment evaluation process includes a return on investment, leveraging of funds (including State capital and operating contributions), cost effectiveness, safety improvement, mobility improvement, and feasibility,

"(D) the term of each bond which is part of such issue does not exceed 20 years,

"(E) the payment of principal with respect to such bond is the obligation of the National Railroad Passenger Corporation (regardless of the establishment of the trust account under subsection (j)), and

"(F) the issue meets the requirements of subsection (h).

"(2) TREATMENT OF CHANGES IN USE.—For purposes of paragraph (1)(A), the proceeds of an issue shall not be treated as used for a qualified project to the extent that the issuer takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall prescribe regulations specifying remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a qualified Amtrak bond.

"(3) STATE CONTRIBUTION REQUIREMENT.—

"(A) IN GENERAL.—For purposes of paragraph (1)(C)(ii), the State contribution requirement of this paragraph is met with respect to any qualified project if the National Railroad Passenger Corporation has a written binding commitment from 1 or more States to make matching contributions not later than the date of issuance of the issue of not less than 20 percent of the cost of the qualified project.

"(B) USE OF STATE MATCHING CONTRIBUTIONS.—The matching contributions described in subparagraph (A) with respect to each qualified project shall be used—

"(i) as necessary to redeem bonds which are a part of the issue with respect to such project, and

"(ii) in the case of any remaining amount, at the election of the National Railroad Passenger Corporation and the contributing State—

"(I) to fund a qualified project,

"(II) to redeem other qualified Amtrak bonds, or

"(III) for the purposes of subclauses (I) and (II).

"(C) STATE MATCHING CONTRIBUTIONS MAY NOT INCLUDE FEDERAL FUNDS.—For purposes of this paragraph, State matching contributions shall not be derived, directly or indirectly, from Federal funds, including any transfers from the Highway Trust Fund under section 9503.

"(D) NO STATE CONTRIBUTION REQUIREMENT FOR CERTAIN QUALIFIED PROJECTS.—With respect to any qualified project described in paragraph (2)(B) or (4) of subsection (e), the State contribution requirement of this paragraph is zero.

"(4) QUALIFIED PROJECT.—

"(A) IN GENERAL.—The term 'qualified project' means—

"(i) the acquisition, financing, or refinancing of equipment, rolling stock, and other capital improvements for the northeast rail corridor between Wash-

ington, D.C. and Boston, Massachusetts (including the project described in subsection (e)(2)(B)),

"(ii) the acquisition, financing, or refinancing of equipment, rolling stock, and other capital improvements for the improvement of train speeds or safety (or both) on the high-speed rail corridors designated under section 104(d)(2) of title 23, United States Code, and

"(iii) the acquisition, financing, or refinancing of equipment, rolling stock, and other capital improvements for other intercity passenger rail corridors, including station rehabilitation or construction, track or signal improvements, or the elimination of grade crossings.

"(B) REFINANCING RULES.—For purposes of subparagraph (A), a refinancing shall constitute a qualified project only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred by the National Railroad Passenger Corporation—

"(i) after the date of the enactment of this section,

"(ii) for a term of not more than 3 years,

"(iii) to finance or acquire capital improvements described in subparagraph (A), and

"(iv) in anticipation of being refinanced with proceeds of a qualified Amtrak bond.

"(e) LIMITATIONS ON AMOUNT OF BONDS DESIGNATED.—

"(1) IN GENERAL.—There is a qualified Amtrak bond limitation for each fiscal year. Such limitation is—

"(A) $1,000,000,000 for each of the fiscal years 2001 through 2010, and

"(B) except as provided in paragraph (5), zero after fiscal year 2010.

"(2) BONDS FOR RAIL CORRIDORS.—

"(A) IN GENERAL.—Not more than $3,000,000,000 of the limitation under paragraph (1) may be designated for any 1 rail corridor described in clause (i) or (ii) of subsection (d)(4)(A).

"(B) SPECIFIC QUALIFIED PROJECT ALLOCATION.—Of the amount described in subparagraph (A), the Secretary of Transportation shall allocate $92,000,000 for the acquisition and installation of platform facilities, performance of railroad force account work necessary to complete improvements below street grade, and any other necessary improvements related to construction at the railroad station at the James A. Farley Post Office Building in New York City, New York.

"(3) BONDS FOR OTHER PROJECTS.—Not more than 10 percent of the limitation under paragraph (1) for any fiscal year may be allocated to qualified projects described in subsection (d)(4)(A)(iii).

"(4) BONDS FOR ALASKA RAILROAD.—The Secretary of Transportation may allocate to the Alaska Railroad a portion of the qualified Amtrak limitation for any fiscal year in order to allow the Alaska Railroad to issue bonds which meet the re-

quirements of this section for use in financing any project described in subsection (d)(4)(A)(iii). For purposes of this section, the Alaska Railroad shall be treated in the same manner as the National Railroad Passenger Corporation.

"(5) CARRYOVER OF UNUSED LIMITATION.—If for any fiscal year—

"(A) the limitation amount under paragraph (1), exceeds

"(B) the amount of bonds issued during such year which are designated under subsection (d)(1)(C)(i),

the limitation amount under paragraph (1) for the following fiscal year (through fiscal year 2014) shall be increased by the amount of such excess.

"(6) PREFERENCE FOR GREATER STATE PARTICIPATION.—In selecting qualified projects for allocation of the qualified Amtrak bond limitation under this subsection, the Secretary of Transportation shall give preference to any project with a State matching contribution rate exceeding 20 percent.

"(f) OTHER DEFINITIONS.—For purposes of this subpart—

"(1) BOND.—The term 'bond' includes any obligation.

"(2) CREDIT ALLOWANCE DATE.—The term 'credit allowance date' means—

"(A) March 15,

"(B) June 15,

"(C) September 15, and

"(D) December 15.

Such term includes the last day on which the bond is outstanding.

"(3) STATE.—The term 'State' means the several States and the District of Columbia, and any subdivision thereof.

"(4) PROGRAM.—The term 'program' means 1 or more projects implemented over 1 or more years to support the development of intercity passenger rail corridors.

"(g) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

"(h) SPECIAL RULES RELATING TO ARBITRAGE.—

"(1) IN GENERAL.—Subject to paragraph (2), an issue shall be treated as meeting the requirements of this subsection if as of the date of issuance, the issuer reasonably expects—

"(A) to spend at least 95 percent of the proceeds of the issue for 1 or more qualified projects within the 3-year period beginning on such date,

"(B) to incur a binding commitment with a third party to spend at least 10 percent of the proceeds of the issue, or to commence construction, with respect to such projects within the 6-month period beginning on such date, and

"(C) to proceed with due diligence to complete such projects and to spend the proceeds of the issue.

"(2) RULES REGARDING CONTINUING COMPLIANCE AFTER 3-YEAR DETERMINATION.—If at least 95 percent of the proceeds of the issue is not expended for 1 or more qualified projects within the 3-year period beginning on the date of issuance, an issue

shall be treated as continuing to meet the requirements of this subsection if either—

"(A) the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 3-year period, or

"(B) the following requirements are met:

"(i) The issuer spends at least 75 percent of the proceeds of the issue for 1 or more qualified projects within the 3-year period beginning on the date of issuance.

"(ii) The issuer has proceeded with due diligence to spend the proceeds of the issue within such 3-year period and continues to proceed with due diligence to spend such proceeds.

"(iii) The issuer pays to the Federal Government any earnings on the proceeds of the issue that accrue after the end of such 3-year period.

"(iv) Either—

"(I) at least 95 percent of the proceeds of the issue is expended for 1 or more qualified projects within the 4-year period beginning on the date of issuance, or

"(II) the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 4-year period.

"(i) RECAPTURE OF PORTION OF CREDIT WHERE CESSATION OF COMPLIANCE.—

"(1) IN GENERAL.—If any bond which when issued purported to be a qualified Amtrak bond ceases to be a qualified Amtrak bond, the issuer shall pay to the United States (at the time required by the Secretary) an amount equal to the sum of—

"(A) the aggregate of the credits allowable under this section with respect to such bond (determined without regard to subsection (c)) for taxable years ending during the calendar year in which such cessation occurs and the 2 preceding calendar years, and

"(B) interest at the underpayment rate under section 6621 on the amount determined under subparagraph (A) for each calendar year for the period beginning on the first day of such calendar year.

"(2) FAILURE TO PAY.—If the issuer fails to timely pay the amount required by paragraph (1) with respect to such bond, the tax imposed by this chapter on each holder of any such bond which is part of such issue shall be increased (for the taxable year of the holder in which such cessation occurs) by the aggregate decrease in the credits allowed under this section to such holder for taxable years beginning in such 3 calendar years which would have resulted solely from denying any credit under this section with respect to such issue for such taxable years.

"(3) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (2) only with respect to

credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under paragraph (2) shall not be treated as a tax imposed by this chapter for purposes of determining —

"(i) the amount of any credit allowable under this part, or

"(ii) the amount of the tax imposed by section 55.

"(j) USE OF TRUST ACCOUNT.—

"(1) IN GENERAL.—The amount of any matching contribution with respect to a qualified project described in subsection (d)(3)(B)(i) or (d)(3)(B)(ii)(II) and the temporary period investment earnings on proceeds of the issue with respect to such project, and any earnings thereon, shall be held in a trust account by a trustee independent of the National Railroad Passenger Corporation to be used to the extent necessary to redeem bonds which are part of such issue.

"(2) USE OF REMAINING FUNDS IN TRUST ACCOUNT.—Upon the repayment of the principal of all qualified Amtrak bonds issued under this section, any remaining funds in the trust account described in paragraph (1) shall be available—

"(A) to the trustee described in paragraph (1), to meet any remaining obligations under any guaranteed investment contract used to secure earnings sufficient to repay the principal of such bonds, and

"(B) to the issuer, for any qualified project.

"(k) OTHER SPECIAL RULES.—

"(1) PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

"(2) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any qualified Amtrak bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

"(3) CREDITS MAY BE STRIPPED.—Under regulations prescribed by the Secretary—

"(A) IN GENERAL.—There may be a separation (including at issuance) of the ownership of a qualified Amtrak bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

"(B) CERTAIN RULES TO APPLY.—In the case of a separation described in subparagraph (A), the rules of section 1286 shall apply to the qualified Amtrak bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

"(4) TREATMENT FOR ESTIMATED TAX PURPOSES.—Solely for purposes of sections 6654 and 6655, the credit allowed by this section to a taxpayer by reason of holding a qualified Amtrak bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.

"(5) CREDIT MAY BE TRANSFERRED.—Nothing in any law or rule of law shall be construed to limit the transferability of the credit allowed by this section through sale and repurchase agreements.

"(6) REPORTING.—Issuers of qualified Amtrak bonds shall submit reports similar to the reports required under section 149(e).".

(b) REPORTING.—Subsection (d) of section 6049 (relating to returns regarding payments of interest), as amended by section 505(d), is amended by adding at the end the following new paragraph:

"(9) REPORTING OF CREDIT ON QUALIFIED AMTRAK BONDS.—

"(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(g) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(f)(2)).

"(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

"(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.".

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Subpart H. Nonrefundable Credit for Holders of Qualified Amtrak Bonds.".

(2) Section 6401(b)(1) is amended by striking "and G" and inserting "G, and H".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after September 30, 2000.

(e) MULTI-YEAR CAPITAL SPENDING PLAN AND OVERSIGHT.—

(1) AMTRAK CAPITAL SPENDING PLAN.—

(A) IN GENERAL.—The National Railroad Passenger Corporation shall annually submit to the President and Congress a multi-year capital spending plan, as approved by the Board of Directors of the Corporation.

(B) CONTENTS OF PLAN.—Such plan shall identify the capital investment needs of the Corporation over a period of not less than 5 years and the funding sources available to finance such needs and shall prioritize such needs according to corporate goals and strategies.

(C) INITIAL SUBMISSION DATE.—The first plan shall be submitted before the issuance of any qualified Amtrak bonds by the National Railroad Passenger Corporation pursuant to section 54 of the Internal Revenue Code of 1986 (as added by this section).

(2) OVERSIGHT OF AMTRAK TRUST ACCOUNT AND QUALIFIED PROJECTS.—

(A) TRUST ACCOUNT OVERSIGHT.—The Secretary of the Treasury shall annually report to Congress as to whether the amount deposited in the trust account established by the National Railroad Passenger Corporation under section 54(i) of such Code (as so added) is sufficient to fully repay at maturity the principal of any outstanding qualified Amtrak bonds issued pursuant to section 54 of such Code (as so added), together with amounts expected to be deposited into such account, as certified by the National Railroad Passenger Corporation in accordance with procedures prescribed by the Secretary of the Treasury.

(B) PROJECT OVERSIGHT.—The National Railroad Passenger Corporation shall contract for an annual independent assessment of the costs and benefits of the qualified projects financed by such qualified Amtrak bonds, including an assessment of the investment evaluation process of the Corporation. The annual assessment shall be included in the plan submitted under paragraph (1).

(C) OVERSIGHT FUNDING.—Not more than 0.5 percent of the amounts made available through the issuance of qualified Amtrak bonds by the National Railroad Passenger Corporation pursuant to section 54 of such Code (as so added) may be used by the National Railroad Passenger Corporation for assessments described in subparagraph (B).

(f) PROTECTION OF HIGHWAY TRUST FUND.—

(1) CERTIFICATION BY THE SECRETARY OF THE TREASURY.—The issuance of any qualified Amtrak bonds by the National Railroad Passenger Corporation or the Alaska Railroad pursuant to section 54 of the Internal Revenue Code of 1986 (as added by this section) is conditioned on certification by the Secretary of the Treasury, after consultation with the Secretary of Transportation, within 30 days of a request by the issuer, that with respect to funds of the Highway Trust Fund described under paragraph (2), the issuer either—

(A) has not received such funds during fiscal years commencing with fiscal year 2001 and ending before the fiscal year the bonds are issued, or

(B) has repaid to the Highway Trust Fund any such funds which were received during such fiscal years.

(2) APPLICABILITY.—This subsection shall apply to funds received directly, or indirectly from a State or local transit authority, from the Highway Trust Fund established under section 9503 of the Internal Revenue Code of 1986, except for funds authorized to be expended under section 9503(c) of such Code, as in effect on the date of the enactment of this Act.

(3) NO RETROACTIVE EFFECT.—Nothing in this subsection shall adversely affect the entitlement of the holders of qualified

Amtrak bonds to the tax credit allowed pursuant to section 54 of the Internal Revenue Code of 1986 (as so added) or to repayment of principal upon maturity.

SEC. 714. FARM, FISHING, AND RANCH RISK MANAGEMENT ACCOUNTS.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by inserting after section 468B the following new section:

"SEC. 468C. FARM, FISHING, AND RANCH RISK MANAGEMENT ACCOUNTS.

"(a) DEDUCTION ALLOWED.—In the case of an individual engaged in an eligible farming business or commercial fishing, there shall be allowed as a deduction for any taxable year the amount paid in cash by the taxpayer during the taxable year to a Farm, Fishing, and Ranch Risk Management Account (hereinafter referred to as the 'FFARRM Account').

"(b) LIMITATION.—

"(1) CONTRIBUTIONS.—The amount which a taxpayer may pay into the FFARRM Account for any taxable year shall not exceed 20 percent of so much of the taxable income of the taxpayer (determined without regard to this section) which is attributable (determined in the manner applicable under section 1301) to any eligible farming business or commercial fishing.

"(2) DISTRIBUTIONS.—Distributions from a FFARRM Account may not be used to purchase, lease, or finance any new fishing vessel, add capacity to any fishery, or otherwise contribute to the overcapitalization of any fishery. The Secretary of Commerce shall implement regulations to enforce this paragraph.

"(c) ELIGIBLE BUSINESSES.—For purposes of this section—

"(1) ELIGIBLE FARMING BUSINESS.—The term 'eligible farming business' means any farming business (as defined in section 263A(e)(4)) which is not a passive activity (within the meaning of section 469(c)) of the taxpayer.

"(2) COMMERCIAL FISHING.—The term 'commercial fishing' has the meaning given such term by section (3) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) but only if such fishing is not a passive activity (within the meaning of section 469(c)) of the taxpayer.

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

"(1) IN GENERAL.—The term 'FFARRM Account' means a trust created or organized in the United States for the exclusive benefit of the taxpayer, but only if the written governing instrument creating the trust meets the following requirements:

"(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deduction under subsection (a) for such year.

"(B) The trustee is a bank (as defined in section 408(n)) 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) The assets of the trust consist entirely of cash or of obligations which have adequate stated interest (as de-

fined in section 1274(c)(2)) and which pay such interest not less often than annually.

"(D) All income of the trust is distributed currently to the grantor.

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

"(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a FFARRM 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).

"(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

"(1) IN GENERAL.—Except as provided in paragraph (2), there shall be includible in the gross income of the taxpayer for any taxable year—

"(A) any amount distributed from a FFARRM Account of the taxpayer during such taxable year, and

"(B) any deemed distribution under—

"(i) subsection (f)(1) (relating to deposits not distributed within 5 years),

"(ii) subsection (f)(2) (relating to cessation in eligible farming business), and

"(iii) subparagraph (B) or (C) of subsection (f)(3) (relating to prohibited transactions and pledging account as security).

"(2) EXCEPTIONS.—Paragraph (1)(A) shall not apply to—

"(A) any distribution to the extent attributable to income of the Account, and

"(B) the distribution of any contribution paid during a taxable year to a FFARRM Account to the extent that such contribution exceeds the limitation applicable under subsection (b) if requirements similar to the requirements of section 408(d)(4) are met.

For purposes of subparagraph (A), distributions shall be treated as first attributable to income and then to other amounts.

"(f) SPECIAL RULES.—

"(1) TAX ON DEPOSITS IN ACCOUNT WHICH ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

"(A) IN GENERAL.—If, at the close of any taxable year, there is a nonqualified balance in any FFARRM Account—

"(i) there shall be deemed distributed from such Account during such taxable year an amount equal to such balance, and

"(ii) the taxpayer's tax imposed by this chapter for such taxable year shall be increased by 10 percent of such deemed distribution.

The preceding sentence shall not apply if an amount equal to such nonqualified balance is distributed from such Account to the taxpayer before the due date (including extensions) for filing the return of tax imposed by this chapter for such year (or, if earlier, the date the taxpayer files such return for such year).

"(B) NONQUALIFIED BALANCE.—For purposes of subparagraph (A), the term 'nonqualified balance' means any balance in the Account on the last day of the taxable year which is attributable to amounts deposited in such Account before the 4th preceding taxable year.

"(C) ORDERING RULE.—For purposes of this paragraph, distributions from a FFARRM Account (other than distributions of current income) shall be treated as made from deposits in the order in which such deposits were made, beginning with the earliest deposits.

"(2) CESSATION IN ELIGIBLE BUSINESS.—At the close of the first disqualification period after a period for which the taxpayer was engaged in an eligible farming business or commercial fishing, there shall be deemed distributed from the FFARRM Account of the taxpayer an amount equal to the balance in such Account (if any) at the close of such disqualification period. For purposes of the preceding sentence, the term 'disqualification period' means any period of 2 consecutive taxable years for which the taxpayer is not engaged in an eligible farming business or commercial fishing.

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

"(A) Section 220(f)(8) (relating to treatment on death).

"(B) Section 408(e)(2) (relating to loss of exemption of account where individual engages in prohibited transaction).

"(C) Section 408(e)(4) (relating to effect of pledging account as security).

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

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

"(4) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a FFARRM Account on the last day of a taxable year if such payment is made on account of such taxable year and is made on or before the due date (without regard to extensions) for filing the return of tax for such taxable year.

"(5) INDIVIDUAL.—For purposes of this section, the term 'individual' shall not include an estate or trust.

"(6) DEDUCTION NOT ALLOWED FOR SELF-EMPLOYMENT TAX.—The deduction allowable by reason of subsection (a) shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2.

"(g) REPORTS.—The trustee of a FFARRM Account shall make such reports regarding such Account to the Secretary and to the person for whose benefit the Account is maintained 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 persons at such time and in such manner as may be required by such regulations.".

(b) TAX ON EXCESS CONTRIBUTIONS.—

(1) Subsection (a) of section 4973 (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended by striking "or" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) a FFARRM Account (within the meaning of section 468C(d)), or".

(2) Section 4973 is amended by adding at the end the following new subsection:

"(g) EXCESS CONTRIBUTIONS TO FFARRM ACCOUNTS.—For purposes of this section, in the case of a FFARRM Account (within the meaning of section 468C(d)), the term 'excess contributions' means the amount by which the amount contributed for the taxable year to the Account exceeds the amount which may be contributed to the Account under section 468C(b) for such taxable year. For purposes of this subsection, any contribution which is distributed out of the FFARRM Account in a distribution to which section 468C(e)(2)(B) applies shall be treated as an amount not contributed.".

(3) The section heading for section 4973 is amended to read as follows:

"SEC. 4973. EXCESS CONTRIBUTIONS TO CERTAIN ACCOUNTS, ANNUITIES, ETC.".

(4) The table of sections for chapter 43 is amended by striking the item relating to section 4973 and inserting the following new item:

"Sec. 4973. Excess contributions to certain accounts, annuities, etc.".

(c) TAX ON PROHIBITED TRANSACTIONS.—

(1) Subsection (c) of section 4975 (relating to tax on prohibited transactions) is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR FFARRM ACCOUNTS.—A person for whose benefit a FFARRM Account (within the meaning of section 468C(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 FFARRM Account by reason of the application of section 468C(f)(3)(A) to such account.".

(2) Paragraph (1) of section 4975(e) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

"(E) a FFARRM Account described in section 468C(d),".

(d) FAILURE TO PROVIDE REPORTS ON FFARRM ACCOUNTS.—Paragraph (2) of section 6693(a) (relating to failure to provide reports on certain tax-favored accounts or annuities) is amended by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

"(C) section 468C(g) (relating to FFARRM Accounts),".

(e) CLERICAL AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by inserting after the item relating to section 468B the following new item:

"Sec. 468C. Farm, Fishing and Ranch Risk Management Accounts.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 715. EXTENSION OF ENHANCED DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY.

(a) EXPANSION OF COMPUTER TECHNOLOGY DONATIONS TO PUBLIC LIBRARIES.—

(1) IN GENERAL.—Paragraph (6) of section 170(e) (relating to special rule for contributions of computer technology and equipment for elementary or secondary school purposes) is amended by striking "qualified elementary or secondary educational contribution" each place it occurs in the headings and text and inserting "qualified computer contribution".

(2) EXPANSION OF ELIGIBLE DONEES.—Clause (i) of section 170(e)(6)(B) (relating to qualified elementary or secondary educational contribution) is amended by striking "or" at the end of subclause (I), by adding "or" at the end of subclause (II), and by inserting after subclause (II) the following new subclause:

"(III) a public library (within the meaning of section 213(2)(A) of the Library Services and Technology Act (20 U.S.C. 9122(2)(A)), as in effect on the date of the enactment of the Community Renewal and New Markets Act of 2000, established and maintained by an entity described in subsection (c)(1),".

(3) EXTENSION OF DONATION PERIOD.—Clause (ii) of section 170(e)(6)(B) is amended by striking "2 years" and inserting "3 years".

(b) CONFORMING AMENDMENTS.—

(1) Section 170(e)(6)(B)(iv) is amended by striking "in any grades of the K–12".

(2) The heading of paragraph (6) of section 170(e) is amended by striking "ELEMENTARY OR SECONDARY SCHOOL PURPOSES" and inserting "EDUCATIONAL PURPOSES".

(c) EXTENSION OF DEDUCTION.—Section 170(e)(6)(F) (relating to termination) is amended by striking "December 31, 2000" and inserting "December 31, 2003".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 2000.

SEC. 716. RELIEF FROM FEDERAL TAX LIABILITY ARISING WITH RESPECT TO CERTAIN CLAIMS AGAINST THE DEPARTMENT OF AGRICULTURE FOR DISCRIMINATION IN FARM CREDIT AND BENEFIT PROGRAMS.

Notwithstanding any provision of the Internal Revenue Code of 1986, in the case of a person who is certified to be a member of the plaintiff class in the settlement of the consolidated actions entitled "Pigford, et al. v. Glickman", No. 97–1978 (D.D.C.) (PLF), and "Brewington et al. v. Glickman", No. 98–1693 (D.D.C.) (PLF), gross income for purposes of subtitle A of such Code shall not include—

(1) any cash payment received before, on, or after the date of the enactment of this Act by, or made on behalf of, a person under such settlement, and

(2) any amount which (but for this section) would be includible in gross income by reason of the discharge of indebtedness pursuant to such settlement.

SEC. 717. EXPANSION OF CREDIT FOR ADOPTION EXPENSES.

(a) INCREASE IN EXPENSES ALLOWABLE FOR ADOPTION.—Paragraph (1) of section 23(b) (relating to dollar limitation) is amended to read as follows:

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The aggregate amount of qualified adoption expenses which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed the applicable amount.

"(B) APPLICABLE AMOUNT.—For purposes of subparagraph (A)—

"(i) CHILD WITH SPECIAL NEEDS.—In the case of a child with special needs, the applicable amount for a taxable year shall be the amount determined in accordance with the following table:

"For taxable years beginning in:	*The applicable amount is:*
2001	*$8,000*
2002	*$10,000*
2003 and thereafter	*$12,000.*

"(ii) OTHER CHILDREN.—In the case of a child who is not a child with special needs, the applicable amount for a taxable year shall be the amount determined in accordance with the following table:

"For taxable years beginning in:	*The applicable amount is:*
2001	*$6,000*
2002	*$7,000*
2003	*$8,000*
2004	*$9,000*
2005 and thereafter	*$10,000.".*

(b) INCREASE IN INCOME LIMITATION.—Clause (i) of section 23(b)(2)(A) (relating to income limitation) is amended by striking "$75,000" and inserting "$150,000".

(c) EXTENSION OF SUNSET.—Subparagraph (B) of section 23(d)(2) (relating to eligible child) is amended by striking "2001" and inserting "2005".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 718. STUDY CONCERNING UNITED STATES INSURANCE COMPANIES WITH CERTAIN OFFSHORE REINSURANCE AFFILIATES.

(a) STUDY.—The Secretary of the Treasury shall conduct a study on the extent to which United States tax on investment income of United States insurance companies is being avoided through the use of affiliated corporations in Bermuda or other offshore locations. In conducting such study, the Secretary shall—

(1) address issues concerning the application of current United States tax law in preventing such avoidance,

(2) examine changes to United States tax law which may be needed to prevent such avoidance, and

(3) make such recommendations as the Secretary considers appropriate.

(b) SUBMISSION OF STUDY TO CONGRESS.—Not later than December 31, 2001, the Secretary shall submit the study conducted under subsection (a), together with recommendations thereon, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 719. TREATMENT OF INDIAN TRIBAL GOVERNMENTS UNDER FEDERAL UNEMPLOYMENT TAX ACT.

(a) IN GENERAL.—Section 3306(c)(7) (defining employment) is amended—

(1) by inserting "or in the employ of an Indian tribe," after "service performed in the employ of a State, or any political subdivision thereof,"; and

(2) by inserting "or Indian tribes" after "wholly owned by one or more States or political subdivisions".

(b) PAYMENTS IN LIEU OF CONTRIBUTIONS.—Section 3309 (relating to State law coverage of services performed for nonprofit organizations or governmental entities) is amended—

(1) in subsection (a)(2) by inserting ", including an Indian tribe," after "the State law shall provide that a governmental entity";

(2) in subsection (b)(3)(B) by inserting ", or of an Indian tribe" after "of a State or political subdivision thereof";

(3) in subsection (b)(3)(E) by inserting "or tribal" after "the State"; and

(4) in subsection (b)(5) by inserting "or of an Indian tribe" after "an agency of a State or political subdivision thereof".

(c) STATE LAW COVERAGE.—Section 3309 (relating to State law coverage of services performed for nonprofit organizations or governmental entities) is amended by adding at the end the following new subsection:

"(d) ELECTION BY INDIAN TRIBE.—The State law shall provide that an Indian tribe may make contributions for employment as if the employment is within the meaning of section 3306 or make payments in lieu of contributions under this section, and shall provide that an Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe. State law may require a tribe to post a payment bond or take other reasonable measures to assure the making of payments in lieu of contributions under this section. Notwithstanding the requirements of section 3306(a)(6), if, within 90 days of having received a notice of delinquency, a tribe fails to make contributions, payments in lieu of contributions, or payment of penalties or interest (at amounts or rates comparable to those applied to all other employers covered under the State law) assessed with respect to such failure, or if the tribe fails to post a required payment bond, then service for the tribe shall not be excepted from employment under section 3306(c)(7) until any such failure is corrected. This subsection shall apply to an Indian tribe within the

meaning of section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).".

(d) DEFINITIONS.—Section 3306 (relating to definitions) is amended by adding at the end the following new subsection:

"(u) INDIAN TRIBE.—For purposes of this chapter, the term 'Indian tribe' has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), and includes any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.".

(e) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to service performed on or after the date of the enactment of this Act.

(2) TRANSITION RULE.—For purposes of the Federal Unemployment Tax Act, service performed in the employ of an Indian tribe (as defined in section 3306(u) of the Internal Revenue Code of 1986 (as added by this section)) shall not be treated as employment (within the meaning of section 3306 of such Code) if—

(A) it is service which is performed before the date of the enactment of this Act and with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid, and

(B) such Indian tribe reimburses a State unemployment fund for unemployment benefits paid for service attributable to such tribe for such period.

Subtitle C—Technical Corrections

SEC. 721. AMENDMENTS RELATED TO TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999.

(a) AMENDMENTS RELATED TO SECTION 502 OF THE ACT.—

(1) Section 280C(c)(1) is amended by striking "or credit" after "deduction" each place it appears.

(2) Section 30A is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

"(f) DENIAL OF DOUBLE BENEFIT.—Any wages or other expenses taken into account in determining the credit under this section may not be taken into account in determining the credit under section 41."

(b) AMENDMENT RELATED TO SECTION 545 OF THE ACT.—Clause (ii) of section 857(b)(7)(B) is amended to read as follows:

"(ii) EXCEPTION FOR CERTAIN AMOUNTS.—Clause (i) shall not apply to amounts received directly or indirectly by a real estate investment trust—

"(I) for services furnished or rendered by a taxable REIT subsidiary that are described in paragraph (1)(B) of section 856(d), or

"(II) from a taxable REIT subsidiary that are described in paragraph (7)(C)(ii) of such section."

(c) CLARIFICATION RELATED TO SECTION 538 OF THE ACT.—The reference to section 332(b)(1) of the Internal Revenue Code of 1986

in Treasury Regulation section 1.1502-34 shall be deemed to include a reference to section 732(f) of such Code.

(d) EFFECTIVE DATE.—Subsection (c) and the amendments made by this section shall take effect as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999 to which they relate.

SEC. 722. AMENDMENTS RELATED TO TAX AND TRADE RELIEF EXTENSION ACT OF 1998.

(a) AMENDMENT RELATED TO SECTION 1004(b) OF THE ACT.—Subsection (d) of section 6104 is amended by adding at the end the following new paragraph:

"(6) APPLICATION TO NONEXEMPT CHARITABLE TRUSTS AND NONEXEMPT PRIVATE FOUNDATIONS.—The organizations referred to in paragraphs (1) and (2) of section 6033(d) shall comply with the requirements of this subsection relating to annual returns filed under section 6033 in the same manner as the organizations referred to in paragraph (1).".

(b) AMENDMENT RELATED TO SECTION 4003 OF THE ACT.—Subsection (b) of section 4003 of the Tax and Trade Relief Extension Act of 1998 is amended by inserting "(7)(A)(i)(II)," after "(5)(A)(ii)(I),".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Tax and Trade Relief Extension Act of 1998 to which they relate.

SEC. 723. AMENDMENTS RELATED TO INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998.

(a) AMENDMENTS RELATED TO INNOCENT SPOUSE RELIEF.—

(1) ELECTION MAY BE MADE ANY TIME AFTER DEFICIENCY ASSERTED.—Subparagraph (B) of section 6015(c)(3) is amended by striking "shall be made" and inserting "may be made at any time after a deficiency for such year is asserted but".

(2) CLARIFICATION REGARDING DISALLOWANCE OF REFUNDS AND CREDITS UNDER SECTION 6015(c).—

(A) IN GENERAL.—Section 6015 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) CREDITS AND REFUNDS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), notwithstanding any other law or rule of law (other than section 6511, 6512(b), 7121, or 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section.

"(2) RES JUDICATA.—In the case of any election under subsection (b) or (c), if a decision of a court in any prior proceeding for the same taxable year has become final, such decision shall be conclusive except with respect to the qualification of the individual for relief which was not an issue in such proceeding. The exception contained in the preceding sentence shall not apply if the court determines that the individual participated meaningfully in such prior proceeding.

"(3) CREDIT AND REFUND NOT ALLOWED UNDER SUBSECTION (c).—No credit or refund shall be allowed as a result of an election under subsection (c).".

(B) CONFORMING AMENDMENT.—Paragraph (3) of section 6015(e) is amended to read as follows:

"(3) LIMITATION ON TAX COURT JURISDICTION.—If a suit for refund is begun by either individual filing the joint return pursuant to section 6532—

"(A) the Tax Court shall lose jurisdiction of the individual's action under this section to whatever extent jurisdiction is acquired by the district court or the United States Court of Federal Claims over the taxable years that are the subject of the suit for refund, and

"(B) the court acquiring jurisdiction shall have jurisdiction over the petition filed under this subsection.".

(3) CLARIFICATIONS REGARDING REVIEW BY TAX COURT.—

(A) Paragraph (1) of section 6015(e) is amended in the matter preceding subparagraph (A) by inserting after "individual" the following: "against whom a deficiency has been asserted and".

(B) Subparagraph (A) of section 6015(e)(1) is amended to read as follows:

"(A) IN GENERAL.—In addition to any other remedy provided by law, the individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed—

"(i) at any time after the earlier of—

"(I) the date the Secretary mails, by certified or registered mail to the taxpayer's last known address, notice of the Secretary's final determination of relief available to the individual, or

"(II) the date which is 6 months after the date such election is filed with the Secretary, and

"(ii) not later than the close of the 90th day after the date described in clause (i)(I).".

(C) Subparagraph (B)(i) of section 6015(e)(1) is amended—

(i) by striking "until the expiration of the 90-day period described in subparagraph (A)" and inserting "until the close of the 90th day referred to in subparagraph (A)(ii)", and

(ii) by inserting "under subparagraph (A)" after "filed with the Tax Court".

(D)(i) Subsection (e) of section 6015 is amended by adding at the end the following new paragraph:

"(5) WAIVER.—An individual who elects the application of subsection (b) or (c) (and who agrees with the Secretary's determination of relief) may waive in writing at any time the restrictions in paragraph (1)(B) with respect to collection of the outstanding assessment (whether or not a notice of the Secretary's final determination of relief has been mailed).".

(ii) Paragraph (2) of section 6015(e) is amended to read as follows:

"(2) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS.—The running of the period of limitations in section 6502 on the collection of the assessment to which the petition under paragraph (1)(A) relates shall be suspended—

"(A) for the period during which the Secretary is prohibited by paragraph (1)(B) from collecting by levy or a proceeding in court and for 60 days thereafter, and

"(B) if a waiver under paragraph (5) is made, from the date the claim for relief was filed until 60 days after the waiver is filed with the Secretary.".

(b) AMENDMENTS RELATED TO PROCEDURE AND ADMINISTRATION.—

(1) DISPUTES INVOLVING $50,000 OR LESS.—Section 7463 is amended by adding at the end the following new subsection:

"(f) ADDITIONAL CASES IN WHICH PROCEEDINGS MAY BE CONDUCTED UNDER THIS SECTION.—At the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings may be conducted under this section (in the same manner as a case described in subsection (a)) in the case of—

"(1) a petition to the Tax Court under section 6015(e) in which the amount of relief sought does not exceed $50,000, and

"(2) an appeal under section 6330(d)(1)(A) to the Tax Court of a determination in which the unpaid tax does not exceed $50,000.".

(2) AUTHORITY TO ENJOIN COLLECTION ACTIONS.—

(A) Section 6330(e)(1) is amended by adding at the end the following: "Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.".

(B) Section 7421(a) is amended by inserting "6330(e)(1)," after "6246(b),".

(3) CLARIFICATION.—Paragraph (3) of section 6331(k) is amended by striking "(3), (4), and (5)" and inserting "(3) and (4)".

(c) AMENDMENT RELATED TO SECTION 1103 OF THE ACT.—Paragraph (6) of section 6103(k) is amended—

(1) by inserting "and an officer or employee of the Office of Treasury Inspector General for Tax Administration" after "internal revenue officer or employee", and

(2) by striking "INTERNAL REVENUE" in the heading and inserting "CERTAIN".

(d) AMENDMENT RELATED TO SECTION 3401 OF THE ACT.—Section 6330(d)(1)(A) is amended by striking "to hear" and inserting "with respect to".

(e) AMENDMENT RELATED TO SECTION 3509 OF THE ACT.—Subparagraph (A) of section 6110(g)(5) is amended by inserting ", any Chief Counsel advice," after "technical advice memorandum".

(f) EFFECTIVE DATES.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act. The amendments made by subsections (c), (d), and (e) shall take ef-

fect as if included in the provisions of the Internal Revenue Service Restructuring and Reform Act of 1998 to which they relate.

SEC. 724. AMENDMENTS RELATED TO TAXPAYER RELIEF ACT OF 1997.

(a) AMENDMENT RELATED TO SECTION 101 OF THE ACT.—Paragraph (4) of section 6211(b) is amended by striking "sections 32 and 34" and inserting "sections 24(d), 32, and 34".

(b) AMENDMENT RELATED TO SECTION 302 OF THE ACT.—The last sentence of section 3405(e)(1)(B) is amended by inserting "(other than a Roth IRA)" after "individual retirement plan".

(c) AMENDMENT TO SECTION 311 OF THE ACT.—Paragraph (3) of section 311(e) of the Taxpayer Relief Act of 1997 (relating to election to recognize gain on assets held on January 1, 2001) is amended by adding at the end the following new sentence: "Such an election shall not apply to any asset which is disposed of (in a transaction in which gain or loss is recognized in whole or in part) before the close of the 1-year period beginning on the date that the asset would have been treated as sold under such election."

(d) AMENDMENT RELATED TO SECTION 402 OF THE ACT.—The flush sentence at the end of clause (ii) of section 56(a)(1)(A) is amended by inserting before "or to any other property" the following: "(and the straight line method shall be used for such 1250 property)".

(e) AMENDMENTS RELATED TO SECTION 1072 OF THE ACT.—

(1) Clause (ii) of section 415(c)(3)(D) and subparagraph (B) of section 403(b)(3) are each amended by striking "section 125 or" and inserting "section 125, 132(f)(4), or".

(2) Paragraph (2) of section 414(s) is amended by striking "section 125, 402(e)(3)" and inserting "section 125, 132(f)(4), 402(e)(3)".

(f) AMENDMENT RELATED TO SECTION 1454 OF THE ACT.—Subsection (a) of section 7436 is amended by inserting before the period at the end of the first sentence "and the proper amount of employment tax under such determination".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Taxpayer Relief of 1997 to which they relate.

SEC. 725. AMENDMENTS RELATED TO BALANCED BUDGET ACT OF 1997.

(a) AMENDMENTS RELATED TO SECTION 9302 OF THE ACT.—

(1) Paragraph (1) of section 9302(j) of the Balanced Budget Act of 1997 is amended by striking "tobacco products and cigarette papers and tubes" and inserting "cigarettes".

(2)(A) Subsection (h) of section 5702 is amended to read as follows:

"(h) MANUFACTURER OF CIGARETTE PAPERS AND TUBES.—'Manufacturer of cigarette papers and tubes' means any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption."

(B) Section 5702, as amended by subparagraph (A), is amended by striking subsection (f) and by redesignating subsections (g) through (p) as subsections (f) through (o), respectively.

(3) Subsection (c) of section 5761 is amended by adding at the end the following: "This subsection and section 5754 shall

not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under this subsection. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 9302 of the Balanced Budget Act of 1997.

SEC. 726. AMENDMENTS RELATED TO SMALL BUSINESS JOB PROTECTION ACT OF 1996.

(a) AMENDMENT RELATED TO SECTION 1201 OF THE ACT.—Subparagraph (B) of section 51(d)(2) is amended—

(1) by striking "plan approved" and inserting "program funded", and

(2) by striking "(relating to assistance for needy families with minor children)".

(b) AMENDMENT RELATED TO SECTION 1302 OF THE ACT.—Clause (i) of section 1361(e)(1)(A) is amended by striking "or" before "(III)" and by adding at the end the following: "or (IV) an organization described in section 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary,".

(c) AMENDMENT RELATED TO SECTION 1401 OF THE ACT.—Clause (ii) of section 401(k)(10)(B) is amended by adding at the end the following new sentence: "Such term includes a distribution of an annuity contract from—

"(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

"(II) an annuity plan described in section 403(a).".

(d) AMENDMENT RELATED TO SECTION 1427 OF THE ACT.—Clause (ii) of section 219(c)(1)(B) is amended by striking "and" at the end of subclause (I), by redesignating subclause (II) as subclause (III), and by inserting after subclause (I) the following new subclause:

"(II) the amount of any designated nondeductible contribution (as defined in section 408(o)) on behalf of such spouse for such taxable year, and".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 to which they relate.

SEC. 727. AMENDMENT RELATED TO REVENUE RECONCILIATION ACT OF 1990.

(a) AMENDMENT RELATED TO SECTION 11511 OF THE ACT.—Subparagraph (C) of section 43(c)(1) is amended—

(1) by inserting "(as defined in section 193(b))" after "expenses", and

(2) by striking "under section 193".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 11511 of the Revenue Reconciliation Act of 1990.

SEC. 728. OTHER TECHNICAL CORRECTIONS.

(a) MODIFIED ENDOWMENT CONTRACTS.—

(1) Paragraph (2) of section 7702A(a) is amended by inserting "or this paragraph" before the period.

(2) Clause (ii) of section 7702A(c)(3)(A) is amended by striking "under the contract" and inserting "under the old contract".

(3) The amendments made by this subsection shall take effect as if included in the amendments made by section 5012 of the Technical and Miscellaneous Revenue Act of 1988.

(b) AFFILIATED CORPORATIONS IN CONTEXT OF WORTHLESS SECURITIES.—

(1) Subparagraph (A) of section 165(g)(3) is amended to read as follows:

"(A) the taxpayer owns directly stock in such corporation meeting the requirements of section 1504(a)(2), and".

(2) Paragraph (3) of section 165(g) is amended by striking the last sentence.

(3) The amendments made by this subsection shall apply to taxable years beginning after December 31, 1984.

(c) CERTAIN ANNUITIES ISSUED BY TAX-EXEMPT ORGANIZATIONS NOT TREATED AS DEBT INSTRUMENTS UNDER ORIGINAL ISSUE DISCOUNT RULES.—

(1) Clause (ii) of section 1275(a)(1)(B) is amended by striking "subchapter L" and inserting "subchapter L (or by an entity described in section 501(c) and exempt from tax under section 501(a) which would be subject to tax under subchapter L were it not so exempt)".

(2) The amendment made by this subsection shall take effect as if included in the amendments made by section 41 of the Tax Reform Act of 1984.

(d) TENTATIVE CARRYBACK ADJUSTMENTS OF LOSSES FROM SECTION 1256 CONTRACTS.—

(1) Subsection (a) of section 6411 is amended by striking "section 1212(a)(1)" and inserting "subsection (a)(1) or (c) of section 1212".

(2) The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 504 of the Economic Recovery Tax Act of 1981.

(e) CORRECTION OF CALCULATION OF AMOUNTS TO BE DEPOSITED IN HIGHWAY TRUST FUND.—

(1) Subsection (b) of section 9503 is amended by striking paragraph (5) and redesignating paragraph (6) as paragraph (5).

(2) The amendment made by paragraph (1) shall apply with respect to taxes received in the Treasury after the date of the enactment of this Act.

(f) EXPENDITURES FROM VACCINE INJURY COMPENSATION TRUST FUND.—Section 9510(c)(1)(A) is amended by striking "December 31, 1999" and inserting "October 18, 2000".

SEC. 729. CLERICAL CHANGES.

(1) Clause (i) of section 45(d)(7)(A) is amended by striking "paragraph (3)(A)" and inserting "subsection (c)(3)(A)".

(2) Subsection (f) of section 67 is amended by striking "the last sentence" and inserting "the second sentence".

(3) The heading for paragraph (5) of section 408(d) is amended to read as follows:

"(5) DISTRIBUTIONS OF EXCESS CONTRIBUTIONS AFTER DUE DATE FOR TAXABLE YEAR AND CERTAIN EXCESS ROLLOVER CONTRIBUTIONS.—".

(4) Paragraph (3) of section 475(g) is amended by striking "267(b) of" and inserting "267(b) or".

(5) The heading for subparagraph (B) of section 529(e)(3) is amended by striking "UNDER GUARANTEED PLANS".

(6) Clause (iii) of section 530(d)(4)(B) is amended by striking "; or" at the end and inserting ", or".

(7) Paragraphs (1)(C) and (2)(C) of section 664(d) are each amended by striking the period after "subsection (g))".

(8)(A) Subsection (e) of section 678 is amended by striking "an electing small business corporation" and inserting "an S corporation".

(B) Clause (v) of section 6103(e)(1)(D) is amended to read as follows:

> *"(v) if the corporation was an S corporation, any person who was a shareholder during any part of the period covered by such return during which an election under section 1362(a) was in effect, or".*

(9) Paragraph (7) of section 856(c) is amended by striking "paragraph (4)(B)(ii)(III)" and inserting "paragraph (4)(B)(iii)(III)"

(10) Subparagraph (A) of section 856(l)(4) is amended by striking "paragraph (9)(D)(ii)" and inserting "subsection (d)(9)(D)(ii)".

(11) Subparagraph (B) of section 871(f)(2) is amended by striking "19 U.S.C." and inserting "(19 U.S.C.".

(12) Subparagraph (B) of section 995(b)(3) is amended by striking "the Military Security Act of 1954 (22 U.S.C. 1934)" and inserting "section 38 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2778)".

(13) Section 1391(g)(3)(C) is amended by striking "paragraph (1)(B)" and inserting "paragraph (1)".

(14)(A) Paragraph (2) of section 2035(c) is amended by striking "paragraph (1)" and inserting "subsection (a)".

(B) Subsection (d) of section 2035 is amended by inserting "and paragraph (1) of subsection (c)" after "Subsection (a)".

(15) Paragraph (5) of section 3121(a) is amended by striking the semicolon at the end of subparagraph (G) and inserting a comma.

(16) Subparagraph (B) of section 4946(c)(3) is amended by striking "the lowest rate of compensation prescribed for GS–16 of the General Schedule under section 5332" and inserting "the lowest rate of basic pay for the Senior Executive Service under section 5382".

(17) Subsection (p) of section 6103 is amended—

(A) in paragraph (4), in the matter preceding subparagraph (A)—

(i) by striking the second comma after "(13)", and

(ii) by striking "(7)" and all that follows through "shall, as a condition" and inserting "(7), (8), (9), (12), (15), or (16) or any other person described in subsection (l)(16) shall, as a condition", and

(B) in paragraph (4)(F)(ii), by striking the second comma after "(14)".

(18) Paragraph (5) of section 6166(k) is amended by striking "2035(d)(4)" and inserting "2035(c)(2)".

(19) Subsection (a) of section 6512 is amended by striking "; and" at the end of paragraphs (1), (2), and (5) and inserting ", and".

(20) Paragraph (1) of section 6611(g) is amended by striking the comma after "(b)(3)".

(21) Subparagraphs (A) and (B) of section 6655(e)(5) are amended by striking "subsections (d)(5) and (l)(3)(B)" and inserting "subsection (d)(5)".

(22) The subchapter heading for subchapter D of chapter 67 is amended by capitalizing the first letter of the second word.

(23)(A) Section 6724(d)(1)(B) is amended by striking clauses (xiv) through (xvii) and inserting the following:

"(xiv) subparagraph (A) or (C) of subsection (c)(4) of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuels),

"(xv) section 4101(d) (relating to information reporting with respect to fuels taxes),

"(xvi) subparagraph (C) of section 338(h)(10) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss), or

"(xvii) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts), and".

(B) Section 6010(o)(4)(C) of the Internal Revenue Service Restructuring and Reform Act of 1998 is amended by striking "inserting 'or', and by adding at the end" and inserting "inserting ', or', and by adding after subparagraph (Z)".

(24) Subsection (a) of section 7421 is amended by striking "6672(b)" and inserting "6672(c)".

(25) Paragraph (3) of section 7430(c) is amended—

(A) in the paragraph heading, by striking "ATTORNEYS" and inserting "ATTORNEYS'", and

(B) in subparagraph (B), by striking "attorneys fees" each place it appears and inserting "attorneys' fees".

(26) Paragraph (2) of section 7603(b) is amended by striking the semicolon at the end of subparagraphs (A), (B), (C), (D), (E), (F), and (G) and inserting a comma.

(27) Clause (ii) of section 7802(b)(2)(B) is amended by striking "; and" at the end and inserting ", and".

(28) Paragraph (3) of section 7811(a) is amended by striking "taxpayer assistance order" and inserting "Taxpayer Assistance Order".

(29) Paragraph (1) of section 7811(d) is amended by striking "Ombudsman's" and inserting "National Taxpayer Advocate's".

(30) Paragraph (3) of section 7872(f) is amended by striking "foregoing" and inserting "forgoing".

Subtitle D—Pay-Go Adjustment

SEC. 731. AVOIDANCE OF A PAY-GO SEQUESTRATION FOR FISCAL YEAR 2001.

(a) PAY-GO ADJUSTMENTS.—(1) In preparing the final sequestration report required by section 254(f)(3) of the Balanced Budget and Emergency Deficit Control Act of 1985 for fiscal year 2001, in addition to the information required by that section, the Director of the Office of Management and Budget shall change any balance of direct spending and receipts legislation for fiscal year 2001 under section 252 of that Act to zero.

(2) Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying the conference report on the bill H.R. 2015 of the 105th Congress (House Report No. 105–217, filed July 30, 1997), the legislation enacted in sections 504 and 505 of the Department of Transportation and Related Agencies Appropriations Act, 2001, section 312 of the Legislative Branch Appropriations Act, 2001, and section 1003 of division B of H.R. 4516 (106th Congress), as enacted, that would have been estimated by the Office of Management and Budget as changing direct spending or receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 were it included in an Act other than an appropriations Act shall be treated as direct spending or receipts legislation, as appropriate, under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXEMPTION OF CERTAIN BUDGETARY REPORTS FROM TERMINATION.—Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) does not apply to any report required to be submitted under any of the following provisions of law:

(1) Sections 1105(a), 1106(a) and (b), and 1109(a) of title 31, United States Code, and any other law relating to the budget of the United States Government.

(2) The Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.).

(3) Sections 202(e)(1) and (3) of the Congressional Budget Act of 1974 (2 U.S.C. 602(e)(1) and (3)).

(4) Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 685(e)).

Following is explanatory language for H.R. 5542 as introduced on October 25, 2000. References in the following to the "conference agreement" refer to the text of that bill.

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TITLE I. FSC REPEAL AND EXTRATERRITORIAL INCOME EXCLUSION

REPEAL OF FSC PROVISIONS AND EXCLUSION FOR EXTRATERRITORIAL INCOME (secs. 101–104 of the bill and secs. 114, 921–927, and 941–943 of the Code)

PRESENT LAW

Summary of U.S. income taxation of foreign persons

Income earned by a foreign corporation from its foreign operations generally is subject to U.S. tax only when such income is distributed to a U.S. person that holds stock in such corporation. Accordingly, a U.S. person that conducts foreign operations through a foreign corporation generally is subject to U.S. tax on the income from those operations when the income is repatriated to the United States through a dividend distribution to the U.S. person.[1] The income is reported on the U.S. person's tax return for the year the distribution is received, and the United States imposes tax on such income at that time. An indirect foreign tax credit may reduce the U.S. tax imposed on such income.

Foreign sales corporations

The income of an eligible foreign sales corporation ("FSC") is partially subject to U.S. income tax and partially exempt from U.S. income tax. In addition, a U.S. corporation generally is not subject to U.S. income tax on dividends distributed from the FSC out of certain earnings.

A FSC must be located and managed outside the United States, and must perform certain economic processes outside the United States. A FSC is often owned by a U.S. corporation that produces goods in the United States. The U.S. corporation either supplies goods to the FSC for resale abroad or pays the FSC a commission in connection with such sales. The income of the FSC, a portion of which is exempt from U.S. income tax under the FSC rules, equals the FSC's gross markup or gross commission income less the expenses incurred by the FSC. The gross markup or the gross commission is determined according to specified pricing rules.

A FSC generally is not subject to U.S. income tax on its exempt foreign trade income. The exempt foreign trade income of a FSC is treated as foreign-source income that is not effectively con-

[1] A variety of anti-deferral regimes impose current U.S. tax on income earned by a U.S. person through a foreign corporation. The Internal Revenue Code of 1986, as amended, (the "Code") sets forth the following anti-deferral regimes: the controlled foreign corporation rules of subpart F (secs. 951–954), the passive foreign investment company rules (secs. 1291–1298), the foreign personal holding company rules (secs. 551–558), the personal holding company rules (secs. 541–547), the accumulated earnings tax rules (secs. 531–537), and the foreign investment company rules (sec. 1246). Detailed rules for coordination among the anti-deferral regimes are provided to prevent a U.S. person from being subject to U.S. tax on the same item of income under multiple regimes.

nected with the conduct of a trade or business within the United States.

Foreign trade income, other than exempt foreign trade income, generally is treated as U.S.-source income effectively connected with the conduct of a trade or business conducted through a permanent establishment within the United States. Thus, a FSC's income, other than exempt foreign trade income, generally is subject to U.S. tax currently and is treated as U.S.-source income for purposes of the foreign tax credit limitation.

Foreign trade income of a FSC is defined as the FSC's gross income attributable to foreign trading gross receipts. Foreign trading gross receipts generally are the gross receipts attributable to the following types of transactions: the sale of export property; the lease or rental of export property; services related and subsidiary to such a sale or lease of export property; engineering and architectural services for projects outside the United States; and export management services. Investment income and carrying charges are excluded from the definition of foreign trading gross receipts.

The term "export property" generally means property (1) which is manufactured, produced, grown or extracted in the United States by a person other than a FSC; (2) which is held primarily for sale, lease, or rental in the ordinary course of a trade or business for direct use or consumption outside the United States; and (3) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States. The term "export property" does not include property leased or rented by a FSC for use by any member of a controlled group of which the FSC is a member; patents, copyrights (other than films, tapes, records, similar reproductions, and other than computer software, whether or not patented), and other intangibles; oil or gas (or any primary product thereof); unprocessed softwood timber; or products the export of which is prohibited or curtailed. Export property also excludes property designated by the President as being in short supply.

If export property is sold to a FSC by a related person (or a commission is paid by a related person to a FSC with respect to export property), the income with respect to the export transaction must be allocated between the FSC and the related person. The taxable income of the FSC and the taxable income of the related person are computed based upon a transfer price determined under section 482 or under one of two formulas specified in the FSC provisions.

The portion of a FSC's foreign trade income that is treated as exempt foreign trade income depends on the pricing rule used to determine the income of the FSC. If the amount of income earned by the FSC is based on section 482 pricing, the exempt foreign trade income generally is 30 percent of the foreign trade income the FSC derives from a transaction. If the income earned by the FSC is determined under one of the two formulas specified in the FSC provisions, the exempt foreign trade income generally is 15/23 of the foreign trade income the FSC derives from the transaction.

A FSC is not required or deemed to make distributions to its shareholders. Actual distributions are treated as being made first out of earnings and profits attributable to foreign trade income,

and then out of any other earnings and profits. A U.S. corporation generally is allowed a 100 percent dividends-received deduction for amounts distributed from a FSC out of earnings and profits attributable to foreign trade income. The 100 percent dividends-received deduction is not allowed for nonexempt foreign trade income determined under section 482 pricing. Any distribution made by a FSC out of earnings and profits attributable to foreign trade income to a foreign shareholder is treated as U.S.-source income that is effectively connected with a business conducted through a permanent establishment of the shareholder within the United States. Thus, the foreign shareholder is subject to U.S. tax on such a distribution.

HOUSE BILL

No provision. However, H.R. 4986, as passed by the House, repeals the present-law FSC rules and replaces them with an exclusion for extraterritorial income.

SENATE AMENDMENT

No provision. However, the Senate Finance Committee reported favorably an amended version of H.R. 4986 to the Senate (the "Senate Finance Committee amendment"). The Senate has taken no action with respect to the Senate Finance Committee amendment. The Senate Finance Committee amendment generally follows H.R. 4986, as passed by the House, with one amendment to strike a provision providing for a dividends-received deduction for certain dividends allocable to qualifying foreign trade income. Like H.R. 4986, the Senate Finance Committee amendment repeals the present-law FSC rules and replaces them with an exclusion for extraterritorial income.

CONFERENCE AGREEMENT

The conference agreement generally follows H.R. 4986, as passed by the House, and the Senate Finance Committee amendment, with some modifications. The conference agreement, like the Senate Finance Committee amendment, does not include the provision in the House bill that provides a dividends-received deduction for certain dividends allocable to qualifying foreign trade income.

Repeal of the FSC rules

The conference agreement repeals the present-law FSC rules found in sections 921 through 927 of the Code.

Exclusion of extraterritorial income

The conference agreement provides that gross income for U.S. tax purposes does not include extraterritorial income. Because the exclusion of such extraterritorial income is a means of avoiding double taxation, no foreign tax credit is allowed for income taxes paid with respect to such excluded income. Extraterritorial income is eligible for the exclusion to the extent that it is "qualifying foreign trade income." Because U.S. income tax principles generally deny deductions for expenses related to exempt income, otherwise

deductible expenses that are allocated to qualifying foreign trade income generally are disallowed.

The conference agreement applies in the same manner with respect to both individuals and corporations who are U.S. taxpayers. In addition, the exclusion from gross income applies for individual and corporate alternative minimum tax purposes.

Qualifying foreign trade income

Under the conference agreement, qualifying foreign trade income is the amount of gross income that, if excluded, would result in a reduction of taxable income by the greatest of (1) 1.2 percent of the "foreign trading gross receipts" derived by the taxpayer from the transaction,[2] (2) 15 percent of the "foreign trade income" derived by the taxpayer from the transaction, or (3) 30 percent of the "foreign sale and leasing income" derived by the taxpayer from the transaction. The amount of qualifying foreign trade income determined using 1.2 percent of the foreign trading gross receipts is limited to 200 percent of the qualifying foreign trade income that would result using 15 percent of the foreign trade income. Notwithstanding the general rule that qualifying foreign trade income is based on one of the three calculations that results in the greatest reduction in taxable income, a taxpayer may choose instead to use one of the other two calculations that does not result in the greatest reduction in taxable income. Although these calculations are determined by reference to a reduction of taxable income (a net income concept), qualifying foreign trade income is an exclusion from gross income. Hence, once a taxpayer determines the appropriate reduction of taxable income, that amount must be "grossed up" for related expenses in order to determine the amount of gross income excluded.[3]

If a taxpayer uses 1.2 percent of foreign trading gross receipts to determine the amount of qualifying foreign trade income with respect to a transaction, the taxpayer or any other related persons will be treated as having no qualifying foreign trade income with respect to any other transaction involving the same property.[4] For example, assume that a manufacturer and a distributor of the same product are related persons. The manufacturer sells the product to the distributor at an arm's-length price of $80 (generating $30 of profit) and the distributor sells the product to an unrelated customer outside of the United States for $100 (generating $20 of profit). If the distributor chooses to calculate its qualifying foreign trade income on the basis of 1.2 percent of foreign trading gross receipts, then the manufacturer will be considered to have no qualifying foreign trade income and, thus, would have no excluded income. The distributor's qualifying foreign trade income would be 1.2 percent of $100, and the manufacturer's qualifying foreign trade income would be zero. This limitation is intended to prevent a duplication of exclusions from gross income because the distributor's $100 of gross receipts includes the $80 of gross receipts of the

[2] The term "transaction" means (1) any sale, exchange, or other disposition; (2) any lease or rental; and (3) any furnishing of services.

[3] For an example of these calculations, see the General Example, below.

[4] Persons are considered to be related if they are treated as a single employer under section 52(a) or (b) (determined without taking into account section 1563(b), thus including foreign corporations) or section 414(m) or (o).

manufacturer. Absent this limitation, $80 of gross receipts would have been double counted for purposes of the exclusion. If both persons were permitted to use 1.2 percent of their foreign trading gross receipts in this example, then the related-person group would have an exclusion based on $180 of foreign trading gross receipts notwithstanding that the related-person group really only generated $100 of gross receipts from the transaction. However, if the distributor chooses to calculate its qualifying foreign trade income on the basis of 15 percent of foreign trade income (15 percent of $20 of profit), then the manufacturer would also be eligible to calculate its qualifying foreign trade income in the same manner (15 percent of $30 of profit).[5] Thus, in the second case, each related person may exclude an amount of income based on their respective profits. The total foreign trade income of the related-person group is $50. Accordingly, allowing each person to calculate the exclusion based on their respective foreign trade income does not result in duplication of exclusions.

Under the conference agreement, a taxpayer may determine the amount of qualifying foreign trade income either on a transaction-by-transaction basis or on an aggregate basis for groups of transactions, so long as the groups are based on product lines or recognized industry or trade usage. Under the grouping method, the conferees intend that taxpayers be given reasonable flexibility to identify product lines or groups on the basis of recognized industry or trade usage. In general, provided that the taxpayer's grouping is not unreasonable, it will not be rejected merely because the grouped products fall within more than one of the two-digit Standard Industrial Classification codes.[6] The Secretary of the Treasury is granted authority to prescribe rules for grouping transactions in determining qualifying foreign trade income.

Qualifying foreign trade income must be reduced by illegal bribes, kickbacks and similar payments, and by a factor for operations in or related to a country associated in carrying out an international boycott, or participating or cooperating with an international boycott.

In addition, the conference agreement directs the Secretary of the Treasury to prescribe rules for marginal costing in those cases in which a taxpayer is seeking to establish or maintain a market for qualifying foreign trade property.

Foreign trading gross receipts

Under the conference agreement, "foreign trading gross receipts" are gross receipts derived from certain activities in connection with "qualifying foreign trade property" with respect to which certain "economic processes" take place outside of the United States. Specifically, the gross receipts must be (1) from the sale, exchange, or other disposition of qualifying foreign trade property; (2) from the lease or rental of qualifying foreign trade property for use by the lessee outside of the United States; (3) for services which are related and subsidiary to the sale, exchange, disposition, lease,

[5] The manufacturer also could compute qualifying foreign trade income based on 30 percent of foreign sale and leasing income.

[6] By reference to Standard Industrial Classification codes, the conferees intend to include industries as defined in the North American Industrial Classification System.

or rental of qualifying foreign trade property (as described above); (4) for engineering or architectural services for construction projects located outside of the United States; or (5) for the performance of certain managerial services for unrelated persons. Gross receipts from the lease or rental of qualifying foreign trade property include gross receipts from the license of qualifying foreign trade property. Consistent with the policy adopted in the Taxpayer Relief Act of 1997,[7] this includes the license of computer software for reproduction abroad.

Foreign trading gross receipts do not include gross receipts from a transaction if the qualifying foreign trade property or services are for ultimate use in the United States, or for use by the United States (or an instrumentality thereof) and such use is required by law or regulation. Foreign trading gross receipts also do not include gross receipts from a transaction that is accomplished by a subsidy granted by the government (or any instrumentality thereof) of the country or possession in which the property is manufactured.

A taxpayer may elect to treat gross receipts from a transaction as not foreign trading gross receipts. As a consequence of such an election, the taxpayer could utilize any related foreign tax credits in lieu of the exclusion as a means of avoiding double taxation. It is intended that this election be accomplished by the taxpayer's treatment of such items on its tax return for the taxable year. Provided that the taxpayer's taxable year is still open under the statute of limitations for making claims for refund under section 6511, a taxpayer can make redeterminations as to whether the gross receipts from a transaction constitute foreign trading gross receipts.

Foreign economic processes

Under the conference agreement, gross receipts from a transaction are foreign trading gross receipts only if certain economic processes take place outside of the United States. The foreign economic processes requirement is satisfied if the taxpayer (or any person acting under a contract with the taxpayer) participates outside of the United States in the solicitation (other than advertising), negotiation, or making of the contract relating to such transaction and incurs a specified amount of foreign direct costs attributable to the transaction.[8] For this purpose, foreign direct costs include only those costs incurred in the following categories of activities: (1) advertising and sales promotion; (2) the processing of customer orders and the arranging for delivery; (3) transportation outside of the United States in connection with delivery to the customer; (4) the determination and transmittal of a final invoice or statement of account or the receipt of payment; and (5) the assumption of credit risk. An exception from the foreign economic

[7] The Taxpayer Relief Act of 1997, Public Law 105–34.

[8] The foreign direct costs attributable to the transaction generally must exceed 50 percent of the total direct costs attributable to the transaction, but the requirement also will be satisfied if, with respect to at least two categories of direct costs, the foreign direct costs equal or exceed 85 percent of the total direct costs attributable to each category.

processes requirement is provided for taxpayers with foreign trading gross receipts for the year of $5 million or less.[9]

The foreign economic processes requirement must be satisfied with respect to each transaction and, if so, any gross receipts from such transaction could be considered as foreign trading gross receipts. For example, all of the lease payments received with respect to a multi-year lease contract, which contract met the foreign economic processes requirement at the time it was entered into, would be considered as foreign trading gross receipts. On the other hand, a sale of property that was formerly a leased asset, which was not sold pursuant to the original lease agreement, generally would be considered a new transaction that must independently satisfy the foreign economic processes requirement.

A taxpayer's foreign economic processes requirement is treated as satisfied with respect to a sales transaction (solely for the purpose of determining whether gross receipts are foreign trading gross receipts) if any related person has satisfied the foreign economic processes requirement in connection with another sales transaction involving the same qualifying foreign trade property.

Qualifying foreign trade property

Under the conference agreement, the threshold for determining if gross receipts will be treated as foreign trading gross receipts is whether the gross receipts are derived from a transaction involving "qualifying foreign trade property." Qualifying foreign trade property is property manufactured, produced, grown, or extracted ("manufactured") within or outside of the United States that is held primarily for sale, lease, or rental,[10] in the ordinary course of a trade or business, for direct use, consumption, or disposition outside of the United States.[11] In addition, not more than 50 percent of the fair market value of such property can be attributable to the sum of (1) the fair market value of articles manufactured outside of the United States plus (2) the direct costs of labor performed outside of the United States.[12]

The conferees understand that under current industry practice, the purchaser of an aircraft contracts separately for the aircraft engine and the airframe, albeit contracting with the airframe manufacturer to attach the separately purchased engine. The conferees intend that an aircraft engine be qualifying foreign trade property (assuming that all other requirements are satisfied) if (1) it is specifically designed to be separated from the airframe to which it is attached without significant damage to either the engine or the airframe, (2) it is reasonably expected to be separated from the airframe in the ordinary course of business (other than by reason of

[9] For this purpose, the receipts of related persons are aggregated and, in the case of pass-through entities, the determination of whether the foreign trading gross receipts exceed $5 million is made both at the entity and at the partner/shareholder level.

[10] In addition, consistent with the policy adopted in the Taxpayer Relief Act of 1997, computer software licensed for reproduction is considered as property held primarily for sale, lease, or rental.

[11] "United States" includes Puerto Rico for these purposes because Puerto Rico is included in the customs territory of the United States.

[12] For this purpose, the fair market value of any article imported into the United States is its appraised value as determined under the Tariff Act of 1930. In addition, direct labor costs are determined under the principles of section 263A and do not include costs that would be treated as direct labor costs attributable to "articles," again applying principles of section 263A.

temporary separation for servicing, maintenance, or repair) before the end of the useful life of either the engine or the airframe, whichever is shorter, and (3) the terms under which the aircraft engine was sold were directly and separately negotiated between the manufacturer of the aircraft engine and the person to whom the aircraft will be ultimately delivered. By articulating this application of the foreign destination test in the case of certain separable aircraft engines, the conferees intend no inference with respect to the application of any destination test under present law or with respect to any other rule of law outside the conference agreement. [13]

The conference agreement excludes certain property from the definition of qualifying foreign trade property. The excluded property is (1) property leased or rented by the taxpayer for use by a related person, (2) certain intangibles,[14] (3) oil and gas (or any primary product thereof), (4) unprocessed softwood timber, (5) certain products the transfer of which are prohibited or curtailed to effectuate the policy set forth in Public Law 96–72, and (6) property designated by Executive order as in short supply. In addition, it is the intention of the conferees that property that is leased or licensed to a related person who is the lessor, licensor, or seller of the same property in a sublease, sublicense, sale, or rental to an unrelated person for the ultimate and predominate use by the unrelated person outside of the United States is not excluded property by reason of such lease or license to a related person.

With respect to property that is manufactured outside of the United States, rules are provided to ensure consistent U.S. tax treatment with respect to manufacturers. The conference agreement requires that property manufactured outside of the United States be manufactured by (1) a domestic corporation, (2) an individual who is a citizen or resident of the United States, (3) a foreign corporation that elects to be subject to U.S. taxation in the same manner as a U.S. corporation, or (4) a partnership or other pass-through entity all of the partners or owners of which are described in (1), (2), or (3) above.[15]

Foreign trade income

Under the conference agreement, "foreign trade income" is the taxable income of the taxpayer (determined without regard to the exclusion of qualifying foreign trade income) attributable to foreign trading gross receipts. Certain dividends-paid deductions of cooperatives are disregarded in determining foreign trade income for this purpose.

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[13] See, e.g., sections 927(a)(1)(B) and 993(c)(1)(B).

[14] The intangibles that are treated as excluded property under the bill are: patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, and other than computer software (whether or not patented), for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property. Computer software that is licensed for reproduction outside of the United States is not excluded from the definition of qualifying foreign trade property.

[15] Except as provided by the Secretary of the Treasury, tiered partnerships or pass-through entities will be considered as partnerships or pass-through entities for purposes of this rule if each of the partnerships or entities is directly or indirectly wholly-owned by persons described in (1), (2), or (3) above.

Foreign sale and leasing income

Under the conference agreement, "foreign sale and leasing income" is the amount of the taxpayer's foreign trade income (with respect to a transaction) that is properly allocable to activities that constitute foreign economic processes (as described above). For example, a distribution company's profit from the sale of qualifying foreign trade property that is associated with sales activities, such as solicitation or negotiation of the sale, advertising, processing customer orders and arranging for delivery, transportation outside of the United States, and other enumerated activities, would constitute foreign sale and leasing income.

Foreign sale and leasing income also includes foreign trade income derived by the taxpayer in connection with the lease or rental of qualifying foreign trade property for use by the lessee outside of the United States. Income from the sale, exchange, or other disposition of qualifying foreign trade property that is or was subject to such a lease [16] (i.e., the sale of the residual interest in the leased property) gives rise to foreign sale and leasing income. Except as provided in regulations, a special limitation applies to leased property that (1) is manufactured by the taxpayer or (2) is acquired by the taxpayer from a related person for a price that was other than arm's length. In such cases, foreign sale and leasing income may not exceed the amount of foreign sale and leasing income that would have resulted if the taxpayer had acquired the leased property in a hypothetical arm's-length purchase and then engaged in the actual sale or lease of such property. For example, if a manufacturer leases qualifying foreign trade property that it manufactured, the foreign sale and leasing income derived from that lease may not exceed the amount of foreign sale and leasing income that the manufacturer would have earned with respect to that lease had it purchased the property for an arm's-length price on the day that the manufacturer entered into the lease. For purposes of calculating the limit on foreign sale and leasing income, the manufacturer's basis and, thus, depreciation would be based on this hypothetical arm's-length price. This limitation is intended to prevent foreign sale and leasing income from including profit associated with manufacturing activities.

For purposes of determining foreign sale and leasing income, only directly allocable expenses are taken into account in calculating the amount of foreign trade income. In addition, income properly allocable to certain intangibles is excluded for this purpose.

General example

The following is an example of the calculation of qualifying foreign trade income.

XYZ Corporation, a U.S. corporation, manufactures property that is sold to unrelated customers for use outside of the United States. XYZ Corporation satisfies the foreign economic processes requirement through conducting activities such as solicitation, negotiation, transportation, and other sales-related activities outside of

[16] For this purpose, such a lease includes a lease that gave rise to exempt foreign trade income under the FSC provisions.

the United States with respect to its transactions. During the year, qualifying foreign trade property was sold for gross proceeds totaling $1,000. The cost of this qualifying foreign trade property was $600. XYZ Corporation incurred $275 of costs that are directly related to the sale and distribution of qualifying foreign trade property. XYZ Corporation paid $40 of income tax to a foreign jurisdiction related to the sale and distribution of the qualifying foreign trade property. XYZ Corporation also generated gross income of $7,600 (gross receipts of $24,000 and cost of goods sold of $16,400) and direct expenses of $4,225 that relate to the manufacture and sale of products other than qualifying foreign trade property. XYZ Corporation also incurred $500 of overhead expenses. XYZ Corporation's financial information for the year is summarized as follows:

	Total	Other property	QFTP [17]
Gross receipts	$25,000.00	$24,000.00	$1,000.00
Cost of goods sold	17,000.00	16,400.00	600.00
Gross income	8,000.00	7,600.00	400.00
Direct expenses	4,500.00	4,225.00	275.00
Overhead expenses	500.00		
Net income	3,000.00		

[17] "QFTP" refers to qualifying foreign trade property.

Illustrated below is the computation of the amount of qualifying foreign trade income that is excluded from XYZ Corporation's gross income and the amount of related expenses that are disallowed. In order to calculate qualifying foreign trade income, the amount of foreign trade income first must be determined. Foreign trade income is the taxable income (determined without regard to the exclusion of qualifying foreign trade income) attributable to foreign trading gross receipts. In this example, XYZ Corporation's foreign trading gross receipts equal $1,000. This amount of gross receipts is reduced by the related cost of goods sold, the related direct expenses, and a portion of the overhead expenses in order to arrive at the related taxable income.[18] Thus, XYZ Corporation's foreign trade income equals $100, calculated as follows:

Foreign trading gross receipts	$1,000.00
Cost of goods sold	600.00
Gross income	400.00
Direct expenses	275.00
Apportioned overhead expenses	25.00
Foreign trade income	100.00

Foreign sale and leasing income is defined as an amount of foreign trade income (calculated taking into account only directly-related expenses) that is properly allocable to certain specified for-

[18] Overhead expenses must be apportioned in a reasonable manner that does not result in a material distortion of income. In this example, the apportionment of the $500 of overhead expenses on the basis of gross income is assumed not to result in a material distortion of income and is assumed to be a reasonable method of apportionment. Thus, $25 ($500 of total overhead expenses multiplied by 5 percent, i.e., $400 of gross income from the sale of qualifying foreign trade property divided by $8,000 of total gross income) is apportioned to qualifying foreign trading gross receipts. The remaining $475 ($500 of total overhead expenses less the $25 apportioned to qualifying income) is apportioned to XYZ Corporation's other income.

eign activities. Assume for purposes of this example that of the $125 of foreign trade income ($400 of gross income from the sale of qualifying foreign trade property less only the direct expenses of $275), $35 is properly allocable to such foreign activities (e.g., solicitation, negotiation, advertising, foreign transportation, and other enumerated sales-like activities) and, therefore, is considered to be foreign sale and leasing income.

Qualifying foreign trade income is the amount of gross income that, if excluded, will result in a reduction of taxable income equal to the greatest of (1) 30 percent of foreign sale and leasing income, (2) 1.2 percent of foreign trading gross receipts, or (3) 15 percent of foreign trade income. Thus, in order to calculate the amount that is excluded from gross income, taxable income must be determined and then "grossed up" for allocable expenses in order to arrive at the appropriate gross income figure. First, for each method of calculating qualifying foreign trade income, the reduction in taxable income is determined. Then, the $275 of direct and $25 of overhead expenses, totaling $300, attributable to foreign trading gross receipts is apportioned to the reduction in taxable income based on the proportion of the reduction in taxable income to foreign trade income. This apportionment is done for each method of calculating qualifying foreign trade income. The sum of the taxable income reduction and the apportioned expenses equals the respective qualifying foreign trade income (i.e., the amount of gross income excluded) under each method, as follows:

	1.2% FTGR [1]	15% FTI [2]	30% FS&LI [3]
Reduction of taxable income:			
1.2% of FTGR (1.2% * $1,000)	12.00		
15% of FTI (15% * $100)		15.00	
30% of FS&LI (30% * $35)			10.50
Gross-up for disallowed expenses:			
$300 * ($12/$100)	36.00		
$300 * ($15/$100)		45.00	
$275 * ($10.50/$100) [4]			28.88
Qualifying foreign trade income	48.00	60.00	39.38

[1] "FTGR" refers to foreign trading gross receipts.
[2] "FTI" refers to foreign trade income.
[3] "FS&LI" refers to foreign sale and leasing income.
[4] Because foreign sale and leasing income only takes into account direct expenses, it is appropriate to take into account only such expenses for purposes of this calculation.

In the example, the $60 of qualifying foreign trade income is excluded from XYZ Corporation's gross income (determined based on 15 percent of foreign trade income).[19] In connection with excluding $60 of gross income, certain expenses that are allocable to this income are not deductible for U.S. Federal income tax purposes. Thus, $45 ($300 of related expenses multiplied by 15 percent, i.e., $60 of qualifying foreign trade income divided by $400 of gross income from the sale of qualifying foreign trade property) of expenses are disallowed.[20]

[19] Note that XYZ Corporation could choose to use one of the other two methods notwithstanding that they would result in a smaller exclusion.

[20] The $300 of allocable expenses includes both the $275 of direct expenses and the $25 of overhead expenses. Thus, the $45 of disallowed expenses represents the sum of $41.25 of direct expenses plus $3.75 of overhead expenses. If qualifying foreign trade income were determined

Continued

	Other property	QFTP	Excluded/ disallowed	Total
Gross receipts	$24,000.00	$1,000.00		
Cost of goods sold	16,400.00	600.00		
Gross income	7,600.00	400.00	(60.00)	7,940.00
Direct expenses	4,225.00	275.00	(41.25)	4,458.75
Overhead expenses	475.00	25.00	(3.75)	496.25
Taxable income				2,985.00

XYZ Corporation paid $40 of income tax to a foreign jurisdiction related to the sale and distribution of the qualifying foreign trade property. A portion of this $40 of foreign income tax is treated as paid with respect to the qualifying foreign trade income and, therefore, is not creditable for U.S. foreign tax credit purposes. In this case, $6 of such taxes paid ($40 of foreign taxes multiplied by 15 percent, i.e., $60 of qualifying foreign trade income divided by $400 of gross income from the sale of qualifying foreign trade property) is treated as paid with respect to the qualifying foreign trade income and, thus, is not creditable.

The results in this example are the same regardless of whether XYZ Corporation manufactures the property within the United States or outside of the United States through a foreign branch. If XYZ Corporation were an S corporation or limited liability company, the results also would be the same, and the exclusion would pass through to the S corporation owners or limited liability company owners as the case may be.

Other rules

Foreign-source income limitation

The conference agreement provides a limitation with respect to the sourcing of taxable income applicable to certain sale transactions giving rise to foreign trading gross receipts. This limitation only applies with respect to sale transactions involving property that is manufactured within the United States. The special source limitation does not apply when qualifying foreign trade income is determined using 30 percent of the foreign sale and leasing income from the transaction.

This foreign-source income limitation is determined in one of two ways depending on whether the qualifying foreign trade income is calculated based on 1.2 percent of foreign trading gross receipts or on 15 percent of foreign trade income. If the qualifying foreign trade income is calculated based on 1.2 percent of foreign trading gross receipts, the related amount of foreign- source income may not exceed the amount of foreign trade income that (without taking into account this special foreign-source income limitation) would be treated as foreign-source income if such foreign trade income were reduced by 4 percent of the related foreign trading gross receipts.

For example, assume that foreign trading gross receipts are $2,000 and foreign trade income is $100. Assume also that the taxpayer chooses to determine qualifying foreign trade income based

using 30 percent of foreign sale and leasing income, the disallowed expenses would include only the appropriate portion of the direct expenses.

on 1.2 percent of foreign trading gross receipts. Taxable income after taking into account the exclusion of the qualifying foreign trade income and the disallowance of related deductions is $76. Assume that the taxpayer manufactured its qualifying foreign trade property in the United States and that title to such property passed outside of the United States. Absent a special sourcing rule, under section 863(b) (and the regulations thereunder) the $76 of taxable income would be sourced as $38 U.S. source and $38 foreign source. Under the special sourcing rule, the amount of foreign-source income may not exceed the amount of the foreign trade income that otherwise would be treated as foreign source if the foreign trade income were reduced by 4 percent of the related foreign trading gross receipts. Reducing foreign trade income by 4 percent of the foreign trading gross receipts (4 percent of $2,000, or $80) would result in $20 ($100 foreign trade income less $80). Applying section 863(b) to the $20 of reduced foreign trade income would result in $10 of foreign-source income and $10 of U.S.-source income. Accordingly, the limitation equals $10. Thus, although under the general sourcing rule $38 of the $76 taxable income would be treated as foreign source, the special sourcing rule limits foreign-source income in this example to $10 (with the remaining $66 being treated as U.S.-source income).

If the qualifying foreign trade income is calculated based on 15 percent of foreign trade income, the amount of related foreign-source income may not exceed 50 percent of the foreign trade income that (without taking into account this special foreign-source income limitation) would be treated as foreign-source income.

For example, assume that foreign trade income is $100 and the taxpayer chooses to determine its qualifying foreign trade income based on 15 percent of foreign trade income. Taxable income after taking into account the exclusion of the qualifying foreign trade income and the disallowance of related deductions is $85. Assume that the taxpayer manufactured its qualifying foreign trade property in the United States and that title to such property passed outside of the United States. Absent a special sourcing rule, under section 863(b) the $85 of taxable income would be sourced as $42.50 U.S. source and $42.50 foreign source. Under the special sourcing rule, the amount of foreign-source income may not exceed 50 percent of the foreign trade income that otherwise would be treated as foreign source. Applying section 863(b) to the $100 of foreign trade income would result in $50 of foreign-source income and $50 of U.S.-source income. Accordingly, the limitation equals $25, which is 50 percent of the $50 foreign-source income. Thus, although under the general sourcing rule $42.50 of the $85 taxable income would be treated as foreign source, the special sourcing rule limits foreign-source income in this example to $25 (with the remaining $60 being treated as U.S.-source income).[21]

[21] The foreign-source income limitation provisions also apply when source is determined solely in accordance with section 862 (e.g., a distributor of qualifying foreign trade property that is manufactured in the United States by an unrelated person and sold for use outside of the United States).

Treatment of withholding taxes

The conference agreement generally provides that no foreign tax credit is allowed for foreign taxes paid or accrued with respect to qualifying foreign trade income (i.e., excluded extraterritorial income). In determining whether foreign taxes are paid or accrued with respect to qualifying foreign trade income, foreign withholding taxes generally are treated as not paid or accrued with respect to qualifying foreign trade income.[22] Accordingly, the conference agreement's denial of foreign tax credits would not apply to such taxes. For this purpose, the term "withholding tax" refers to any foreign tax that is imposed on a basis other than residence and that is otherwise a creditable foreign tax under sections 901 or 903.[23] It is intended that such taxes would be similar in nature to the gross-basis taxes described in sections 871 and 881.

If, however, qualifying foreign trade income is determined based on 30 percent of foreign sale and leasing income, the special rule for withholding taxes is not applicable. Thus, in such cases foreign withholding taxes may be treated as paid or accrued with respect to qualifying foreign trade income and, accordingly, are not creditable under the conference agreement.

Election to be treated as a U.S. corporation

The conference agreement provides that certain foreign corporations may elect, on an original return, to be treated as domestic corporations. The election applies to the taxable year when made and all subsequent taxable years unless revoked by the taxpayer or terminated for failure to qualify for the election. Such election is available for a foreign corporation (1) that manufactures property in the ordinary course of such corporation's trade or business, or (2) if substantially all of the gross receipts of such corporation are foreign trading gross receipts. For this purpose, "substantially all" is based on the relevant facts and circumstances.

In order to be eligible to make this election, the foreign corporation must waive all benefits granted to such corporation by the United States pursuant to a treaty.[24] Absent such a waiver, it would be unclear, for example, whether the permanent establishment article of a relevant tax treaty would override the electing corporation's treatment as a domestic corporation under this provision. A foreign corporation that elects to be treated as a domestic corporation is not permitted to make an S corporation election. The Secretary is granted authority to prescribe rules to ensure that the electing foreign corporation pays its U.S. income tax liabilities and to designate one or more classes of corporations that may not make such an election.[25] If such an election is made, for purposes of section 367 the foreign corporation is treated as transferring (as of the first day of the first taxable year to which the election applies) all

[22] With respect to the withholding taxes that are paid or accrued (a prerequisite to the taxes being otherwise creditable), the provision in the bill treats such taxes as not being paid or accrued *with respect* to qualifying foreign trade income.

[23] This also would apply to any withholding tax that is creditable for U.S. foreign tax credit purposes under an applicable treaty.

[24] The waiver of treaty benefits applies to the corporation itself and not, for example, to employees of or independent contractors associated with the corporation.

[25] For example, the Secretary of the Treasury may prescribe rules to prevent "per se" corporations under the entity-classification rules from making such an election.

of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

If a corporation fails to meet the applicable requirements, described above, for making the election to be treated as a domestic corporation for any taxable year beginning after the year of the election, the election will terminate. In addition, a taxpayer, at its option and at any time, may revoke the election to be treated as a domestic corporation. In the case of either a termination or a revocation, the electing foreign corporation will not be considered as a domestic corporation effective beginning on the first day of the taxable year following the year of such termination or revocation. For purposes of section 367, if the election to be treated as a domestic corporation is terminated or revoked, such corporation is treated as a domestic corporation transferring (as of the first day of the first taxable year to which the election ceases to apply) all of its property to a foreign corporation in connection with an exchange to which section 354 applies. Moreover, once a termination occurs or a revocation is made, the former electing corporation may not again elect to be taxed as a domestic corporation under the provisions of the conference agreement for a period of five tax years beginning with the first taxable year that begins after the termination or revocation.

For example, assume a U.S. corporation owns 100 percent of a foreign corporation. The foreign corporation manufactures outside of the United States and sells what would be qualifying foreign trade property were it manufactured by a person subject to U.S. taxation. Such foreign corporation could make the election under this provision to be treated as a domestic corporation. As a result, its earnings no longer would be deferred from U.S. taxation. However, by electing to be subject to U.S. taxation, a portion of its income would be qualifying foreign trade income.[26] The requirement that the foreign corporation be treated as a domestic corporation (and, therefore, subject to U.S. taxation) is intended to provide parity between U.S. corporations that manufacture abroad in branch form and U.S. corporations that manufacture abroad through foreign subsidiaries. The election, however, is not limited to U.S.-owned foreign corporations. A foreign-owned foreign corporation that wishes to qualify for the treatment provided under the conference agreement could avail itself of such election (unless otherwise precluded from doing so by Treasury regulations).

Shared partnerships

The conference agreement provides rules relating to allocations of qualifying foreign trade income by certain shared partnerships. To the extent that such a partnership (1) maintains a separate account for transactions involving foreign trading gross receipts with each partner, (2) makes distributions to each partner based on the amounts in the separate account, and (3) meets such other requirements as the Treasury Secretary may prescribe by regulations, such partnership then would allocate to each partner items of income, gain, loss, and deduction (including qualifying foreign trade

[26] The sourcing limitation described above would not apply to this example because the property is manufactured outside of the United States.

income) from such transactions on the basis of the separate accounts. It is intended that with respect to, and only with respect to, such allocations and distributions (i.e., allocations and distributions related to transactions between the partner and the shared partnership generating foreign trading gross receipts), these rules would apply in lieu of the otherwise applicable partnership allocation rules such as those in section 704(b). For this purpose, a partnership is a foreign or domestic entity that is considered to be a partnership for U.S. Federal income tax purposes.

Under the conference agreement, any partner's interest in the shared partnership is not taken into account in determining whether such partner is a "related person" with respect to any other partner for purposes of the conference agreement's provisions. Also, the election to exclude certain gross receipts from foreign trading gross receipts must be made separately by each partner with respect to any transaction for which the shared partnership maintains a separate account.

Certain assets not taken into account for purposes of interest expense allocation

The conference agreement also provides that qualifying foreign trade property that is held for lease or rental, in the ordinary course of a trade or business, for use by the lessee outside of the United States is not taken into account for interest allocation purposes.

Distributions of qualifying foreign trade income by cooperatives

Agricultural and horticultural producers often market their products through cooperatives, which are member-owned corporations formed under Subchapter T of the Code. At the cooperative level, the conference agreement provides the same treatment of foreign trading gross receipts derived from products marketed through cooperatives as it provides for foreign trading gross receipts of other taxpayers. That is, the qualifying foreign trade income attributable to those foreign trading gross receipts is excluded from the gross income of the cooperative. Absent a special rule, however, patronage dividends or per-unit retain allocations attributable to qualifying foreign trade income paid to members of cooperatives would be taxable in the hands of those members. The conferees believe that this would disadvantage agricultural and horticultural producers who choose to market their products through cooperatives relative to those individuals who market their products directly or through pass-through entities such as partnerships, limited liability companies, or S corporations. Accordingly, the conference agreement provides that the amount of any patronage dividends or per-unit retain allocations paid to a member of an agricultural or horticultural cooperative (to which Part I of Subchapter T applies), which is allocable to qualifying foreign trade income of the cooperative, is treated as qualifying foreign trade income of the member (and, thus, excludable from such member's gross income). In order to qualify, such amount must be designated by the organization as allocable to qualifying foreign trade income in a written notice mailed to its patrons not later than the payment

period described in section 1382(d). The cooperative cannot reduce its income (e.g., cannot claim a "dividends-paid deduction") under section 1382 for such amounts.

Gap period before administrative guidance is issued

The conferees recognize that there may be a gap in time between the enactment of the bill and the issuance of detailed administrative guidance. It is intended that during this gap period before administrative guidance is issued, taxpayers and the Internal Revenue Service may apply the principles of present-law regulations and other administrative guidance under sections 921 through 927 to analogous concepts under the conference agreement. Some examples of the application of the principles of present-law regulations to the conference agreement are described below. These limited examples are intended to be merely illustrative and are not intended to imply any limitation regarding the application of the principles of other analogous rules or concepts under present law.

Marginal costing and grouping

Under the conference agreement, the Secretary of the Treasury is provided authority to prescribe rules for using marginal costing and for grouping transactions in determining qualifying foreign trade income. It is intended that similar principles under present-law regulations apply for these purposes.[27]

Excluded property

The conference agreement provides that qualifying foreign trade property does not include property leased or rented by the taxpayer for use by a related person. It is intended that similar principles under present-law regulations apply for this purpose. Thus, excluded property does not apply, for example, to property leased by the taxpayer to a related person if the property is held for sublease, or is subleased, by the related person to an unrelated person and the property is ultimately used by such unrelated person predominantly outside of the United States.[28] In addition, consistent with the policy adopted in the Taxpayer Relief Act of 1997, computer software that is licensed for reproduction outside of the United States is not excluded property. Accordingly, the license of computer software to a related person for reproduction outside of the United States for sale, sublicense, lease, or rental to an unrelated person for use outside of the United States is not treated as excluded property by reason of the license to the related person.

Foreign trading gross receipts

Under the conference agreement, foreign trading gross receipts are gross receipts from, among other things, the sale, exchange, or other disposition of qualifying foreign trade property, and from the

[27] See, e.g., Treas. Reg. sec. 1.924(d)–1(c)(5) and (e); Temp. Treas. Reg. sec. 1.925(a)–1T(c)(8); Temp. Treas. Reg. sec. 1.925(b)–1T.

[28] See Temp. Treas. Reg. sec. 1.927(a)–1T(f)(2)(i). The bill also provides that oil or gas or primary products from oil or gas are excluded from the definition of qualifying foreign trade property. It is intended that similar principles under present-law regulations apply for these purposes. Thus, for this purpose, petrochemicals, medicinal products, insecticides, and alcohols are not considered primary products from oil or gas and, thus, are not treated as excluded property. See Temp. Treas. Reg. sec. 1.927(a)–1T(g)(2)(iv).

lease of qualifying foreign trade property for use by the lessee outside of the United States. It is intended that the principles of present-law regulations that define foreign trading gross receipts apply for this purpose. For example, a sale includes an exchange or other disposition and a lease includes a rental or sublease and a license or a sublicense.[29]

Foreign use requirement

Under the conference agreement, property constitutes qualifying foreign trade property if, among other things, the property is held primarily for lease, sale, or rental, in the ordinary course of business, for direct use, consumption, or disposition outside of the United States.[30] It is intended that the principles of the present-law regulations apply for purposes of this foreign use requirement. For example, for purposes of determining whether property is sold for use outside of the United States, property that is sold to an unrelated person as a component to be incorporated into a second product which is produced, manufactured, or assembled outside of the United States will not be considered to be used in the United States (even if the second product ultimately is used in the United States), provided that the fair market value of such seller's components at the time of delivery to the purchaser constitutes less than 20 percent of the fair market value of the second product into which the components are incorporated (determined at the time of completion of the production, manufacture, or assembly of the second product).[31]

In addition, for purposes of the foreign use requirement, property is considered to be used by a purchaser or lessee outside of the United States during a taxable year if it is used predominantly outside of the United States.[32] For this purpose, property is considered to be used predominantly outside of the United States for any period if, during that period, the property is located outside of the United States more than 50 percent of the time.[33] An aircraft or other property used for transportation purposes (e.g., railroad rolling stock, a vessel, a motor vehicle, or a container) is considered to be used outside of the United States for any period if, for the period, either the property is located outside of the United States more than 50 percent of the time or more than 50 percent of the miles traveled in the use of the property are traveled outside of the United States.[34] An orbiting satellite is considered to be located outside of the United States for these purposes.[35]

Foreign economic processes

Under the conference agreement, gross receipts from a transaction are foreign trading gross receipts eligible for exclusion from the tax base only if certain economic processes take place outside of the United States. The foreign economic processes requirement

[29] See Temp. Treas. Reg. sec. 1.924(a)–1T(a)(2).
[30] Foreign trading gross receipts eligible for exclusion from the tax base do not include gross receipts from a transaction if the qualifying foreign trade property is for ultimate use in the United States.
[31] See Temp. Treas. Reg. sec. 1.927(a)–1T(d)(4)(ii).
[32] See Temp. Treas. Reg. sec. 1.927(a)–1T(d)(4)(iii), (iv), and (v).
[33] See Temp. Treas. Reg. sec. 1.927(a)–1T(d)(4)(vi).
[34] Id.
[35] Id.

compares foreign direct costs to total direct costs. It is intended that the principles of the present-law regulations apply during the gap period for purposes of the foreign economic processes requirement including the measurement of direct costs. The conferees recognize that the measurement of foreign direct costs under the present-law regulations often depend on activities conducted by the FSC, which is a separate entity. The conferees are aware that some of these concepts will have to be modified when new guidance is promulgated as a result of the conference agreement's elimination of the requirement for a separate entity.

Effective date

In general

The conference agreement is effective for transactions entered into after September 30, 2000. In addition, no corporation may elect to be a FSC after September 30, 2000.

The conference agreement also provides a rule requiring the termination of a dormant FSC when the FSC has been inactive for a specified period of time. Under this rule, a FSC that generates no foreign trade income for any five consecutive years beginning after December 31, 2001, will cease to be treated as a FSC.

Transition rules

Winding down existing FSCs and binding contract relief

The conference agreement provides a transition period for existing FSCs and for binding contractual agreements. The new rules do not apply to transactions in the ordinary course of business[36] involving a FSC before January 1, 2002. Furthermore, the new rules do not apply to transactions in the ordinary course of business after December 31, 2001, if such transactions are pursuant to a binding contract between a FSC (or a person related to the FSC on September 30, 2000) and any other person (that is not a related person) and such contract is in effect on September 30, 2000, and all times thereafter. For this purpose, binding contracts include purchase options, renewal options, and replacement options that are enforceable against a lessor or seller (provided that the options are a part of a contract that is binding and in effect on September 30, 2000).

Old earnings and profits of corporations electing to be treated as domestic corporations

A transition rule also is provided for certain corporations electing to be treated as a domestic corporation under the bill. In the case of a corporation to which this transition rule applies, the corporation's earnings and profits accumulated in taxable years ending before October 1, 2000 are not included in the gross income of the shareholder by reason of the deemed asset transfer for section 367 purposes that the bill provides. Thus, although the electing corporation may be treated as transferring all of its assets to a domestic corporation in a reorganization described in section

[36] The mere entering into of a single transaction, such as a lease, would not, in and of itself, prevent the transaction from being in the ordinary course of business.

368(a)(1)(F), the earnings and profits amount that would otherwise be treated as a deemed dividend to the U.S. shareholder under the regulations under section 367(b) will not include the earnings and profits accumulated in taxable years ending before October 1, 2000. This treatment is similar to the treatment of earnings and profits of a foreign insurance company that makes the election to be treated as a domestic corporation under section 953(d), which election was a model for the election to be treated as a domestic corporation under the bill. Under section 953(d), earnings and profits accumulated in taxable years beginning before January 1, 1988 were not included in the earnings and profits amount that would be a deemed dividend for section 367(b) purposes.

Like the pre-1988 earnings and profits of a domesticating foreign insurance company under section 953(d), the earnings and profits to which this transition rule applies would continue to be treated as earnings and profits of a foreign corporation even after the corporation elects to be treated as a domestic corporation. Thus, a distribution out of earnings and profits of an electing corporation accumulated in taxable years ending before October 1, 2000 would be treated as a distribution made by a foreign corporation.[37] Rules similar to those applicable to corporations making the section 953(d) election that prevent the repatriation of pre-election period earnings and profits without current U.S. taxation apply for this purpose. Thus, for example, the earnings and profits accumulated in taxable years beginning before October 1, 2000 would continue to be taken into account for section 1248 purposes.[38]

The earnings and profits to which the transition rule applies are the earnings and profits accumulated by the electing corporation in taxable years ending before October 1, 2000. The transition rule will not apply to earnings and profits accumulated before that date that are succeeded to after that date by the electing corporation in a transaction to which section 381 applies unless, like the electing corporation, the distributor or transferor (from whom the electing corporation acquired the earnings and profits) could have itself made the election under the bill to be treated as a domestic corporation and would have been eligible for the transition relief.

The transition rule for old earnings and profits applies to two classes of taxpayers. The first class is FSCs in existence on September 30, 2000 that make an election to be treated as a domestic corporation because they satisfy the requirement that substantially all of their gross receipts are foreign trading gross receipts. To be eligible for the transition relief, the election must be made not later than for the FSC's first taxable year beginning after December 31, 2001.

The second class of corporations to which this transition relief applies is certain controlled foreign corporations (as defined in section 957). Notwithstanding other requirements for making the election to be treated as a domestic corporation provided under the bill's general provisions, such controlled foreign corporations are eligible under the transition rule to make the election to be treated

[37] It is anticipated that ordering rules similar to those that have been applied in guidance under section 953(d) would apply to distributions from the electing corporation. See Notice 89–79, 1989–2 C.B. 392.

[38] See the rules of section 953(d)(4)(ii), (iii) and (iv).

as a domestic corporation and will not have the resulting deemed asset transfer cause a deemed inclusion of earnings and profits for earnings and profits accumulated in taxable years ending before October 1, 2000. To be eligible for the transition relief, such a controlled foreign corporation must be in existence on September 30, 2000. The controlled foreign corporation must be wholly owned, directly or indirectly, by a domestic corporation.[39] The controlled foreign corporation must never have made an election to be treated as a FSC and must make the election to be treated as a domestic corporation not later than for its first taxable year beginning after December 31, 2001. In addition, the controlled foreign corporation must satisfy certain tests with respect to its income and activities. For administrative convenience, these tests are limited to the three taxable years preceding the first taxable year for which the election to be treated as a domestic corporation applies. First, during that three-year period, all of the controlled foreign corporation's gross income must be subpart F income. Thus, the income was subject to full inclusion to the U.S. shareholder and, accordingly, subject to current U.S. taxation. Second, during that three-year period, the controlled foreign corporation must have, in the ordinary course of its trade or business, entered into transactions in which it regularly sold or paid commissions to a related FSC (which also was in existence on September 30, 2000).[40] If an electing corporation in this second class ceases to be (directly or indirectly) wholly owned by the domestic corporation that owns it on September 30, 2000, the election to be treated as a domestic corporation is terminated.

Limitation on use of the gross receipts method

Similar to the limitation on use of the gross receipts method under the conference agreement's operative provisions, the conference agreement provides a rule that limits the use of the gross receipts method for transactions after the effective date of the conference agreement if that same property generated foreign trade income to a FSC using the gross receipts method. Under the rule, if any person used the gross receipts method under the FSC regime, neither that person nor any related person will have qualifying foreign trade income with respect to any other transaction involving the same item of property.

Coordination of new regime with prior law

Notwithstanding the transition period, FSCs (or related persons) may elect to have the rules of the conference agreement apply in lieu of the rules applicable to FSCs. Thus, for transactions to which the transition rules apply (i.e., transactions after September 30, 2000 that occur (1) before January 1, 2002 or (2) after December 31, 2001 pursuant to a binding contract which is in effect on

[39] The ultimate owner must be an actual domestic corporation, not a corporation that elects to be treated as a domestic corporation under the bill. In addition, although the controlled foreign corporation must be wholly owned for this purpose, it is intended that the mere nominal ownership of an insignificant number of shares of insignificant value (which may, for example, be required by foreign law) by someone unrelated to the domestic parent would not cause the controlled foreign corporation to fail to be wholly owned for these purposes.

[40] It is intended that, if the controlled foreign corporation's and related FSC's taxable years are still open under the statute of limitations for claims for refund under section 6511, redeterminations with respect to sales or commissions paid to the FSC are permitted for this purpose. See Temp. Treas. Reg. sec. 1.925(a)–1T(d)(4).

September 30, 2000), taxpayers may choose to apply either the FSC rules or the amendments made by this bill, but not both. In addition, a taxpayer would not be able to avail itself of the rules of the conference agreement in addition to the rules applicable to domestic international sales corporations because the conference agreement provides that the exclusion of extraterritorial income will not apply if a taxpayer is a member of any controlled group of which a domestic international sales corporation is a member.

TITLE II. SMALL BUSINESS TAX RELIEF PROVISIONS

A. EXTENSION OF THE WORK OPPORTUNITY TAX CREDIT (sec. 201 of the bill and sec. 51 of the Code)

PRESENT LAW

The work opportunity tax credit ("WOTC") is available on an elective basis for employers hiring individuals from one or more of eight targeted groups. The credit generally is equal to 25 percent of qualified first-year wages for employment of at least 120 hours but less than 400 hours and 40 percent of qualified first-year wages for employment of 400 hours or more. Qualified first-year wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer.

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 $2,400. With respect to qualified summer youth employees, the maximum credit is 40 percent of up to $3,000 of qualified first-year wages, for a maximum credit of $1,200. The credit is only effective for wages paid to, or incurred with respect to, qualified individuals who begin work for the employer before January 1, 2002.

The employer's deduction for wages is reduced by the amount of the credit.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision. However, H.R. 833, as passed by the Senate, permanently extends the WOTC.

Effective date.—The provision is effective for wages paid to, or incurred with respect to, qualified individuals who begin work for the employer on or after July 1, 1999. Subsequent to Senate passage of H.R. 833, Public Law 106–170 extended the WOTC for 30 months (through December 31, 2001) and clarified the definition of the first year of employment for purposes of the WOTC.

CONFERENCE AGREEMENT

The conference agreement extends the WOTC for 30 months (through June 30, 2004). It is effective for wages paid to, or incurred with respect to, qualified individuals who begin work for the employer on or after January 1, 2002, and before July 1, 2004.

B. Increase the Maximum Dollar Amount of Reforestation Expenditures Eligible for Amortization and Credit (sec. 202 of the bill and secs. 48(b) and 194 of the Code)

PRESENT LAW

Amortization of reforestation costs (sec. 194)

A taxpayer may elect to amortize up to $10,000 ($5,000 in the case of a separate return by a married individual) of qualifying reforestation expenditures incurred during the taxable year with respect to qualifying timber property. Amortization is taken over 84 months (seven years) and is subject to a mandatory half-year convention.[41] In the case of an individual, the amortization deduction is allowed in determining adjusted gross income (i.e., an "above-the-line deduction") rather than as an itemized deduction. The amount eligible for amortization has not been increased since the election was added to the Code in 1980.[42]

Qualifying reforestation expenditures are the direct costs a taxpayer incurs in connection with the forestation or reforestation of a site by planting or seeding, and include costs for the preparation of the site, the cost of the seed or seedlings, and the cost of the labor and tools (including depreciation of long lived assets such as tractors and other machines) used in the reforestation activity. Qualifying reforestation expenditures do not include expenditures that would otherwise be deductible and do not include costs for which the taxpayer has been reimbursed under a governmental cost sharing program, unless the amount of the reimbursement is also included in the taxpayer's gross income.

Qualifying timber property includes any woodlot or other site that is located in the United States that will contain trees in significant commercial quantities and that is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products. The regulations require that the site consist of at least one acre that is devoted to such activities.[43] A taxpayer may hold qualifying timber property in fee or by lease. Where the property is held by one person for life with the remainder to another person, the life tenant is considered the owner of the property for this purpose.

Reforestation amortization is subject to recapture as ordinary income on sale of qualifying timber property within 10 years of the year in which the qualifying reforestation expenditures were incurred.[44]

Reforestation tax credit (sec. 48(b))

A tax credit is allowed equal to 10 percent of the reforestation expenditures incurred during the year that are properly elected to be amortized. An amount allowed as a credit is subject to recapture

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[41] Under the half-year convention, all reforestation expenditures are considered to be incurred on the first day of the first month of the second half of the taxable year. Thus, an amortization deduction equal to 6/84 of the expenditures for the year is allowed in the first and eighth years and an amortization deduction equal to 1/7 (12/84) of such expenditures is allowed in the second through seventh years.

[42] Sec. 301(a) of the Multiemployer Pension Plan Amendments Act of 1980.

[43] Treas. Reg. sec. 1.194–3(a).

[44] Sec. 1245(b)(7); Treas. Reg. sec. 1.194–1(c).

if the qualifying timber property to which the expenditure relates is disposed of within five years.

HOUSE BILL

No provision, but H.R. 3081 as passed by the House increases the amount of reforestation expenditures eligible for seven-year amortization and the reforestation credit from $10,000 to $25,000 per taxable year (from $5,000 to $12,500 in the case of a separate return by a married individual).

For taxable years beginning in 2001 through 2003, H.R. 3081 removes the limitation on the amount of expenditures eligible for seven-year amortization.

Effective date.—The provision is effective for expenditures paid or incurred in taxable years beginning after December 31, 2000. For taxable years beginning in 2001, 2002, and 2003, the amount of reforestation expenditures eligible for the credit is limited to $25,000 and no limit applies to the amount of expenditures eligible for seven-year amortization. For taxable years beginning after 2003, the amount of reforestation expenditures eligible for seven-year amortization and for the credit is limited to $25,000.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in H.R. 3081.

C. CAPITAL GAINS TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES OF TIMBER (sec. 202(c) of the bill and sec. 631(b) of the Code)

PRESENT LAW

Gain on the cutting and sale of timber generally is eligible for capital gains treatment, provided the growing timber has been held for more than one year. If the taxpayer sells the timber at the time it is cut, the capital gain is measured as the difference between the sales price of the timber less cost of sales and any unrecovered costs of growing the timber.

If the taxpayer sells the timber prior to its being cut, a special rule allows the taxpayer to treat the sale as a capital gain, provided the taxpayer retains an economic interest in the timber and holds the timber for more than one year prior to the date of disposal. The date of disposal is deemed to be the date the timber is cut, unless the taxpayer receives payment for the timber prior to the date it is cut and elects to treat the date of payment as the date of disposal.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

In the case of a sale of timber by the owner of the land from which the timber is cut, the requirement that a taxpayer retain an economic interest in the timber in order to treat gains on sales prior to the time the timber is cut as capital gains does not apply. Outright sales of timber by the landowner will qualify for capital gains treatment in the same manner as sales with a retained economic interest qualify under present law, except that the date-of-disposal rule will not apply.

Effective date.—The provision is effective for sales of timber after the date of enactment.

D. Increase Section 179 Expensing (sec. 1203 of the bill and sec. 179 of the Code)

PRESENT LAW

Present law provides that, in lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $20,000 (for taxable years beginning in 2000) of the cost of qualifying property placed in service for the taxable year (sec. 179). In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $20,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. In addition, the amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations).

The $20,000 amount is increased to $25,000 for taxable years beginning in 2003 and thereafter. The increase is phased in as follows: for taxable years beginning in 2001 or 2002, the amount is $24,000; and for taxable years beginning in 2003 and thereafter, the amount is $25,000.

HOUSE BILL

No provision. However, H.R. 3081, as passed by the House, provides that the maximum dollar amount that may be deducted under section 179 is increased to $30,000 for taxable years beginning in 2001 and thereafter.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

SENATE AMENDMENT

No provision. However, H.R. 833, as passed by the Senate, includes a provision identical to the provision of H.R. 3081, as passed by the House.

CONFERENCE AGREEMENT

The conference agreement includes the provision in H.R. 3081 and H.R. 833, with a modification. Under the conference agree-

ment, the maximum dollar amount that may be deducted under section 179 is increased to $35,000 for taxable years beginning in 2001 and thereafter.

E. Increase Deduction for Business Meals (sec. 204 of the bill and sec. 274(n) of the Code)

PRESENT LAW

Ordinary and necessary business expenses, as well as expenses incurred for the production of income, are generally deductible, subject to a number of restrictions and limitations (secs. 162 and 212). No deduction generally is allowed for personal, living, or family expenses (sec. 262).

Meal and entertainment expenses incurred for business reasons or for the production of income are deductible if certain legal and substantiation requirements are met. Generally, the amount allowable as a deduction for business meal and entertainment expenses is limited to 50 percent of the otherwise deductible amount (sec. 274(n)). Exceptions to this 50-percent rule are provided for food and beverages provided to crew members of certain vessels and off-shore oil or gas platforms or drilling rigs, as well as to individuals subject to the hours of service limitations of the Department of Transportation. No deduction is allowed for meal or beverage expenses unless they are not lavish or extravagant under the circumstances (sec. 274(k)(1)(A)). In addition, no deduction is allowed for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose (sec. 274(a)(3)).

An expense for food or beverages is not deductible unless the taxpayer establishes that the item was directly related to the "active conduct" of the taxpayer's trade or business or, in the case of an item directly preceding or following a substantial and bona fide business discussion, that the item was "associated with" the active conduct of the taxpayer's trade or business (sec. 274(a)(1)(A)). Accordingly, a business meal expense generally is not deductible unless there is a substantial and bona fide business discussion during, directly preceding, or directly following the meal. Also, the taxpayer or an employee of the taxpayer must be present at the meal (sec. 274(k)(1)(B)).

Separate requirements apply to deductions with respect to individuals who are traveling away from home in pursuit of a trade or business. The absence of a business discussion is irrelevant for purposes of the "active conduct" and "associated with" tests described above if the individual either has the meal alone or has the meal with other persons provided that no deduction is claimed with respect to those other persons.

No deduction is allowed with respect to business meal and entertainment expenses unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (1) the amount of the expense, (2) the time and place of the expense, (3) the business purpose of the expense, and (4) the business relationship of the taxpayer to the persons entertained (sec. 274(d)). The Code authorizes the IRS to provide simpler rules for amounts below a threshold specified by the IRS. Ac-

cordingly, the IRS provides standard meal allowances (generally $30 per day, but higher in specified high-cost areas and for employees "in the transportation industry") that taxpayers who are traveling away from home on business may utilize as an alternative to the substantiation procedures specified above (Treas. Reg. sec. 1.274(d)–1T).

HOUSE BILL

No provision. However, H.R. 3081, as passed by the House, increases the business meals deduction from the present-law 50 percent to 55 percent for taxable years beginning in 2001 and to 60 percent for taxable years beginning in 2002 and thereafter. The bill does not alter the 50-percent limitation with respect to the business entertainment deduction.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

SENATE AMENDMENT

No provision. However, H.R. 833, as passed by the Senate, phases in an increase from 50 percent to 80 percent in the deductible percentage of business meal expense for small businesses. The present-law 50 percent limitation continues to apply to entertainment expenses. The increase in the deductible percentage is phased in according to the following schedule:

Taxable years beginning in:	*Deductible percentage:*
2001	55
2002	60
2003	65
2004	70
2005	75
2006 and thereafter	80

Effective date.—The provision is effective for taxable years beginning after 2000.

CONFERENCE AGREEMENT

The conference agreement increases the business meals deduction from the present-law 50 percent to 70 percent for taxable years beginning after December 31, 2000.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

F. Increased Deduction for Business Meals While Operating Under Department of Transportation Hours of Service Limitations (sec. 205 of the bill and sec. 274(n) of the Code)

PRESENT LAW

Ordinary and necessary business expenses, as well as expenses incurred for the production of income, are generally deductible, subject to a number of restrictions and limitations. Generally, the amount allowable as a deduction for food and beverage is limited to 50 percent of the otherwise deductible amount. Exceptions to this 50 percent rule are provided for food and beverages provided

to crew members of certain vessels and offshore oil or gas platforms or drilling rigs.

The 1997 Act increased to 80 percent the deductible percentage of the cost of food and beverages consumed while away from home by an individual during, or incident to, a period of duty subject to the hours of service limitations of the Department of Transportation.

Individuals subject to the hours of service limitations of the Department of Transportation include:

(1) certain air transportation employees such as pilots, crew, dispatchers, mechanics, and control tower operators pursuant to Federal Aviation Administration regulations,

(2) interstate truck operators and interstate bus drivers pursuant to Department of Transportation regulations,

(3) certain railroad employees such as engineers, conductors, train crews, dispatchers and control operations personnel pursuant to Federal Railroad Administration regulations, and

(4) certain merchant mariners pursuant to Coast Guard regulations.

The increase in the deductible percentage is phased in according to the following schedule:

Taxable years beginning in:	*Deductible percentage:*
1998, 1999	55
2000, 2001	60
2002, 2003	65
2004, 2005	70
2006, 2007	75
2008 and thereafter	80

HOUSE BILL

No provision. However, H.R. 3081, as passed by the House, accelerates the increase in the deduction for business meals while operating under Department of Transportation hours of service limitations so that it becomes 80 percent in 2001 and thereafter.

Effective date.—The provision is effective for taxable years beginning after 2000.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in H.R. 3081.

G. Repeal of Modification of Installment Method (sec. 206 of the bill and secs. 453 and 453A of the Code)

PRESENT LAW

The installment method of accounting allows a taxpayer to defer the recognition of income from the disposition of certain property until payment is received. Sales to customers in the ordinary course of business are not eligible for the installment method, except for sales of property that is used or produced in the trade or business of farming and sales of timeshares and residential lots if an election to pay interest under section 453(l)(2)(B) is made. Sec-

tion 536(a) of the Ticket to Work and Work Incentives Improvement Act of 1999 prohibited the use of the installment method for a transaction that would otherwise be required to be reported using the accrual method of accounting, effective for dispositions occurring on or after December 17, 1999.

A pledge rule provides that if an installment obligation is pledged as security for any indebtedness, the net proceeds[45] of such indebtedness are treated as a payment on the obligation, triggering the recognition of income. Actual payments received on the installment obligation subsequent to the receipt of the loan proceeds are not taken into account until such subsequent payments exceed the loan proceeds that were treated as payments. The pledge rule does not apply to sales of property used or produced in the trade or business of farming, to sales of timeshares and residential lots where the taxpayer elects to pay interest under section 453(l)(2)(B), or to dispositions where the sales price does not exceed $150,000. The Ticket to Work and Work Incentives Improvement Act of 1999 provided that the right to satisfy a loan with an installment obligation will be treated as a pledge of the installment obligation, effective for dispositions occurring on or after December 17, 1999.

HOUSE BILL

No provision. However, H.R. 3081, as passed by the House, repeals the prohibition on the use of the installment method of accounting for dispositions of property that would otherwise be reported for Federal income tax purposes using the accrual method of accounting. Accordingly, any disposition of property that otherwise qualifies to be reported using the installment method of accounting may be reported using that method without regard to whether the disposition would otherwise be reported using the accrual method of accounting.

The provision leaves unchanged the rule added by section 536(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 that modified the installment method pledge rule.

Effective date.—The provision is effective for sales or other dispositions on or after December 17, 1999.

SENATE AMENDMENT

No provision. However, H.R. 833, as passed by the Senate, contains the provisions enacted in the Ticket to Work and Work Incentives Improvement Act of 1999 prohibiting the use of the installment method for a transaction that would otherwise be required to be reported using the accrual method of accounting and expanding the pledge rule.

CONFERENCE AGREEMENT

The conference agreement includes the provision in H.R. 3081.

[45] The net proceeds equal the gross loan proceeds less the direct expenses of obtaining the loan.

H. Coordinate Farmers and Fisherman Income Averaging and the Alternative Minimum Tax (sec. 207 of the bill and secs. 55 and 1301 of the Code)

PRESENT LAW

An individual taxpayer engaged in a farming business as defined by section 263A(e)(4) may elect to compute his or her current year tax liability by averaging, over the prior three-year period, all or portion of his or her taxable income from the trade or business of farming. The averaging election is not coordinated with the alternative minimum tax. Thus, some farmers may become subject to the alternative minimum tax solely as a result of the averaging election.

HOUSE BILL

No provision. However, H.R. 3081, as passed by the House, extends to individuals engaged in the trade or business of fishing the same election to income average that is available to farmers. For this purpose, the trade or business of fishing is the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) and includes the trade or business of catching, taking, or harvesting fish that are intended to enter commerce through sale, barter or trade.

The bill also coordinates farmers and fishermen income averaging with the alternative minimum tax. Under the bill, a farmer or fisherman will owe alternative minimum tax only to the extent he or she will owe alternative minimum tax had averaging not been elected. This result is achieved by excluding the impact of the election to average farm and fishing income from the calculation of both regular tax and tentative minimum tax, solely for the purpose of determining alternative minimum tax.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

SENATE AMENDMENT

No provision. However, the provision of H.R. 3081 is included in S. 3152.

CONFERENCE AGREEMENT

The conference agreement follows H.R. 3081 and S. 3152.

I. Repeal Special Occupational Taxes on Producers and Marketers of Alcoholic Beverages (sec. 208 of the bill and secs. 5081, 5091, 5111, 5121, 5131, and 5276 of the Code)

PRESENT LAW

Under present law, special occupational taxes are imposed on producers and others engaged in the marketing of distilled spirits, wine, and beer. These excise taxes are imposed as part of a broader Federal tax and regulatory engine governing the production and marketing of alcoholic beverages. The special occupational taxes

are payable annually, on July 1 of each year. The present tax rates are as follows:

Producers: Distilled spirits and wines (sec. 5081)—$1,000 per year, per premise; Brewers (sec. 5091)—$1,000 per year, per premise.

Wholesale dealers (sec. 5111): Liquors, wines, or beer—$500 per year.

Retail dealers (sec. 5121): Liquors, wines, or beer—$250 per year.

Nonbeverage use of distilled spirits (sec. 5131)—$500 per year.

Industrial use of distilled spirits (sec. 5276)—$250 per year.

HOUSE BILL

No provision, but H.R., 3081, as passed by the House repeals the special occupational taxes on producers and marketers of alcoholic beverages. The provision is effective on July 1, 2001. The provision does not affect liability for taxes imposed with respect to periods before July 1, 2001.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision of H.R. 3081, as passed by the House.

J. Exclusion From Gross Income for Certain Forgiven Mortgage Obligations (sec. 209 of the bill and sec. 108 of the Code)

PRESENT LAW

Gross income includes all income from whatever source derived, including income from the discharge of indebtedness. However, gross income does not include discharge of indebtedness income if: (1) the discharge occurs in a Title 11 case; (2) the discharge occurs when the taxpayer is insolvent; (3) the indebtedness discharged is qualified farm indebtedness; or (4) except in the case of a C corporation, the indebtedness discharged is qualified real property business indebtedness. No exclusion is provided under present law for qualified residential indebtedness.

HOUSE BILL

No provision. However, H.R. 3081, as passed by the House, permits eligible individuals to elect an exclusion from discharge of indebtedness income to the extent such income is attributable to the sale of real property securing qualified residential indebtedness. Qualified residential indebtedness is defined as indebtedness incurred or assumed by the taxpayer for the acquisition, construction, reconstruction, or substantial improvement of the taxpayer's principal residence (within the meaning of section 121) and which is secured by such residence. For this purpose, refinanced indebtedness qualifies for the exclusion only to the extent that the principal amount of the refinanced indebtedness does not exceed the principal amount of the indebtedness before the refinancing. The exclu-

sion does not apply to qualified farm indebtedness or qualified real property business indebtedness.

Effective date.—The provision is effective for discharges of indebtedness after December 31, 2000.

SENATE AMENDMENT

No provision. However, the provision of H.R. 3081 is included in S. 3152.

CONFERENCE AGREEMENT

The conference agreement follows H.R. 3081 and S. 3152.

K. Clarification of Cash Accounting Rules for Small Businesses (sec. 210 of the bill and sec. 446 of the Code)

PRESENT LAW

Section 446(c) of the Code generally allows a taxpayer to select the method of accounting it will use to compute its taxable income if such method clearly reflects the income of the taxpayer. A taxpayer is entitled to adopt any one of the permissible methods for each separate trade or business, subject to certain restrictions. The regulations under section 446 require that a taxpayer use an accrual method of accounting with regard to purchases and sales of merchandise whenever section 471 requires the taxpayer to account for such items as inventory.[46] In general, section 471 provides that whenever, in the opinion of the Secretary of the Treasury, the use of inventories is necessary to clearly determine the income of the taxpayer, inventories must be taken by the taxpayer. Treas. Reg. sec. 1.471–1 requires a taxpayer to account for inventories when the production, purchase, or sale of merchandise is an income-producing factor in the taxpayer's business. Treas. Reg. sec. 1.162–3 requires taxpayers carrying materials and supplies (other than incidental materials and supplies) on hand to deduct the cost of materials and supplies only in the amount that they are actually consumed and used in operations during the tax year.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that, notwithstanding any other provision of the Code, a taxpayer is not required to use an accrual method of accounting if the average annual gross receipts of the taxpayer (or any predecessor) do not exceed $2.5 million for all prior taxable years beginning after October 31, 1999 (including the prior taxable years of any predecessor). Thus, even if the production, purchase, or sale of merchandise is an income-producing factor in the taxpayer's business, the taxpayer is not required to

[46] Treas. Reg. sec. 1.446–1(c)(2)

use an accrual method of accounting with regard to such purchases and sales if the average annual gross receipts of the taxpayer do not exceed $2.5 million.

The provision also provides that a taxpayer meeting the average annual gross receipts test is not required to account for inventories under section 471. If a taxpayer elects not to account for inventory under section 471, the taxpayer is required to treat such inventory in the same manner as a material or supply that is not incidental. It is the intention of the conferees that a taxpayer that elects to treat inventory as a material or supply is to include in expense the charges for materials and supplies only in the amount that they are actually consumed and used in operation during the taxable year for which the return is made, provided that the costs of such materials and supplies have not been deducted in determining the net income or loss or taxable income for any previous year.[47]

Average annual gross receipts are determined by averaging the gross receipts of the three taxable year period ending with such prior taxable year.

For example, assume a calendar year entity had gross receipts of $1.5 million in 1998, $2.5 million in 1999, $3.5 million in 2000, and $4.5 million in 2001. In addition, the sale of inventory is an income-producing factor in the taxpayer's business. Average annual gross receipts are $2.5 million in 2000 and $3.5 million in 2001. In calendar year 2001, the entity may use the cash method of accounting notwithstanding that the production, purchase, or sale of merchandise is an income-producing factor in the taxpayer's trade or business, because it had average annual gross receipts of $2.5 million or less for all prior taxable years. In calendar year 2002, the entity may not use the cash method of accounting with regard to purchases and sales of merchandise, because average annual gross receipts for a prior taxable year (2001) exceed $2.5 million.

In addition, the rules of paragraph (2) and (3) section 448(c) (regarding the aggregation of related taxpayers, taxpayers not in existence for the entire three year period, short taxable years, definition of gross receipts, and treatment of predecessors) shall apply for purposes of determining the average annual gross receipts test.

Effective date.—The provision is effective for taxable years beginning after date of enactment. Any change in the taxpayer's method of accounting permitted as a result of the provision is treated as a voluntary change initiated by the taxpayer with the consent of the Secretary of the Treasury. Any required section 481(a) adjustment is to be taken into account over a period not to exceed four years under principles consistent with those in Rev. Proc. 99–49.[48]

L. Authorize Payment of Interest on Business Checking Accounts (sec. 211 of the bill)

The bill would eliminate the Federal prohibition on depository institutions paying interest on demand deposits. Thus, under the

[47] See Treas. Reg. sec. 1.162–3.
[48] 1999–52 I.R.B. 725.

bill, depository institutions would be permitted to pay interest on business checking accounts.

Effective date.—The repeal of the prohibition on the payment of interest would be effective two years after the date of enactment. During the two year period beginning on the date of enactment, the bill would permit depository institutions to offer business customers checking accounts that allow the funds in the account to be swept into an interest-bearing account on a daily basis.

TITLE III. HEALTH INSURANCE AND LONG-TERM CARE INSURANCE PROVISIONS

A. Accelerate 100-Percent Self-Employed Health Insurance Deduction (sec. 301 of the bill and sec. 162(l) of the Code)

PRESENT LAW

Under present law, the individual income tax treatment of health insurance expenses depends on the individual's circumstances. Self-employed individuals may deduct a portion of health insurance expenses for the individual and his or her spouse and dependents. The deductible percentage of health insurance expenses of a self-employed individual is 60 percent in 2000 through 2001, 70 percent in 2002, and 100 percent in 2003 and thereafter. The deduction for health insurance expenses of self-employed individuals is not available for any month in which the taxpayer is eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse.

Employees can exclude from income 100 percent of employer-provided health insurance.

Individuals who itemize deductions may deduct their health insurance expenses only to the extent that the total medical expenses of the individual exceed 7.5 percent of adjusted gross income (sec. 213). Subject to certain dollar limitations, premiums for qualified long-term care insurance are treated as medical expenses for purposes of the itemized deduction for medical expenses (sec. 213). The amount of qualified long-term care insurance premiums that may be taken into account for 2000 is as follows: $220 in the case of an individual 40 years old or less; $410 in the case of an individual who is over 40 but not more than 50; $820 in the case of an individual who is more than 50 but not more than 60; $2,220 in the case of an individual who is more than 60 but not more than 70; and $2,750 in the case of an individual who is more than 70. These dollar limits are indexed for inflation.

The self-employed health deduction also applies to qualified long-term care insurance premiums treated as medical care for purposes of the itemized deduction for medical expenses.

HOUSE BILL

No provision. However, H.R. 3081, as passed by the House, increases the deduction for health insurance expenses (and qualified long-term care insurance expenses) of self-employed individuals to 100 percent beginning in 2001. H.R. 3081 also provides that the deduction is not available in any month in which the taxpayer participates in an employer-subsidized health plan.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

SENATE AMENDMENT

No provision. However, H.R. 833, as passed by the Senate, increases the deduction for health insurance expenses (and qualified long-term care insurance expenses) of self-employed individuals to 100 percent beginning in 2001.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

CONFERENCE AGREEMENT

The conference agreement includes the provision in H.R. 3081.

B. Above-the-Line Deduction for Health Insurance Expenses (sec. 302 of the bill and new sec. 222 of the Code)

PRESENT LAW

Under present law, the individual income tax treatment of health insurance expenses depends on the individual's circumstances. Self-employed individuals may deduct a portion of health insurance expenses for the individual and his or her spouse and dependents. The deductible percentage of health insurance expenses of a self-employed individual is 60 percent in 2000 and 2001; 70 percent in 2002; and 100 percent in 2003 and thereafter. The deduction for health insurance expenses of self-employed individuals is not available for any month in which the taxpayer is eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse. The deduction applies to qualified long-term care insurance premiums treated as medical expenses under the itemized deduction for medical expenses, described below.

Employees can exclude from income 100 percent of employer-provided health insurance or qualified long-term care insurance.

Individuals who itemize deductions may deduct their health insurance expenses only to the extent that the total medical expenses of the individual exceed 7.5 percent of adjusted gross income (sec. 213). Subject to certain dollar limitations, premiums for qualified long-term care insurance are treated as medical expenses for purposes of the itemized deduction for medical expenses (sec. 213). The amount of qualified long-term care insurance premiums that may be taken into account for 2000 is as follows: $220 in the case of an individual 40 years old or less; $410 in the case of an individual who is more than 40 but not more than 50; $820 in the case of an individual who is more than 50 but not more than 60; $2,200 in the case of an individual who is more than 60 but not more than 70; and $2,750 in the case of an individual who is more than 70. These dollar limits are indexed for inflation.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision. However, H.R. 833, as passed by the Senate, provides an above-the-line deduction for a percentage of the amount paid during the year for insurance which constitutes medical care (as defined under sec. 213, other than long-term care insurance treated as medical care under sec. 213) for the taxpayer and his or her spouse and dependents.[49] The deductible percentage is: 25 percent in 2002, 2003, and 2004; 35 percent in 2005; 65 percent in 2006; and 100 percent in 2007 and thereafter.

The deduction is not available to an individual for any month in which the individual is covered under an employer-sponsored health plan if at least 50 percent of the cost of the coverage is paid or incurred by the employer.[50] Thus, the individual must pay for more than 50 percent of the cost of the coverage in order to be eligible for the deduction. For purposes of this rule, any amount excludable from the gross income of the employee under the exclusion for employer-provided health coverage is treated as paid or incurred by the employer; thus, for example, health insurance purchased by an employee through a cafeteria plan with salary reduction amounts is considered to be paid for by the employer.[51] In determining whether the 50-percent threshold is met, all health plans of the employer in which the employee participates are treated as a single plan. If the employer pays for less than 50 percent of the cost of all health plans in which the individual participates, the deduction is available only with respect to each plan with respect to which the employer subsidy is less than 50 percent. Cost is determined as under the health care continuation rules.

The deduction is not available with respect to insurance providing coverage for accidents, disability, dental care, vision care, or a specific disease or making payments of a fixed amount per day (or other period) on account of hospitalization. Such insurance and employer payments for such insurance are not taken into account in determining whether the employee pays for more than 50 percent of the cost of health insurance.

The deduction is not available to individuals enrolled in Medicare, Medicaid, the Federal Employees Health Benefit Program ("FEHBP"),[52] Champus, VA, Indian Health Service, or Children's Health Insurance programs. Thus, for example, the deduction is not available with respect to Medigap coverage, because such coverage is provided to individuals enrolled in Medicare.

The provision authorizes the Secretary to prescribe rules necessary to carry out the provision, including appropriate reporting requirements for employers.

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[49] The deduction only applies to health insurance that constitutes medical care; it does not apply to medical expenses. The deduction applies to self-insured arrangements (provided such arrangements constitute insurance, e.g., there is appropriate risk-shifting) and coverage under employer plans treated as insurance under section 104. Another provision of the bill provides a similar deduction for qualified long-term care insurance expenses.

[50] This rule is applied separately with respect to qualified long-term care insurance.

[51] Excludable employer contributions to a health flexible spending arrangement or medical savings account (including salary reduction contributions) are also considered amounts paid by the employer for health insurance that constitutes medical care. Salary reduction contributions are not considered to be amounts paid by the employee.

[52] This rule does not prevent individuals covered by the FEHBP from deducting premiums for health care continuation coverage, provided the requirements for the deduction are otherwise met.

Effective date.—The provision is effective for taxable years beginning after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement includes the provision in H.R. 833, except that the deductible percentage is 25 percent in 2001 through 2003, 35 percent in 2004, 65 percent in 2005, and 100 percent in 2006 and thereafter.

The following examples illustrate the application of the rule denying the deduction if the employer pays 50 percent or more of the cost of the coverage.

Example 1: Employee A participates in an employer-sponsored health plan. The annual cost for single coverage is $3,000, and the annual additional cost for coverage for A's spouse and dependents is $1,000. The employer pays 100 percent of the cost of individual coverage, but does not pay any additional amount for family coverage. A chooses family coverage. The total amount the employer pays for the insurance is $3,000, which is 75 percent of the total cost of the coverage ($4,000). A also purchases qualified long-term care insurance under an employer-sponsored plan, and pays for 100 percent of the cost of this coverage on an after-tax basis. The deduction is not available with respect to A's expenses for health insurance.[53]

Example 2: Employee B participates in two employer-sponsored health plans. One plan provides major medical coverage. The cost of this plan is $2,000 per year. The employer pays one-half of the cost of this plan. The second plan provides only dental insurance. The cost of the dental plan is $300 per year, which is paid by the employee. In determining whether B is entitled to the deduction, the dental plan is disregarded. Thus, the total cost of the health plans in which B participates is $2,000. The employer pays for 50 percent of this total cost. B may not deduct her share of the premium for the major medical plan, nor the cost of the dental insurance.

Example 3: Employee C participates in an employer-sponsored health plan. The cost of the plan is $4,000. The employer pays $1,000 of the cost of the plan directly, and Employee C pays the remainder of the $3,000 cost of the plan by salary reduction through a cafeteria plan. The $1,000 employer contribution and the $3,000 salary reduction contributions are all employer payments. Thus, the employer pays for the entire cost of the plan, and the deduction is not available.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

[53] Under another provision of the bill, a deduction is available with respect to A's qualified long-term care insurance premiums.

C. Above-the-Line Deduction for Long-Term Care Insurance Expenses (secs. 1302 and 1304 of the bill and new sec. 222 of the Code)

PRESENT LAW

Under present law, the individual income tax treatment of health insurance expenses depends on the individual's circumstances. Self-employed individuals may deduct a portion of health insurance expenses for the individual and his or her spouse and dependents. The deductible percentage of health insurance expenses of a self-employed individual is 60 percent in 2000 and 2001; 70 percent in 2002; and 100 percent in 2003 and thereafter. The deduction for health insurance expenses of self-employed individuals is not available for any month in which the taxpayer is eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse. The deduction applies to qualified long-term care insurance premiums treated as medical expenses under the itemized deduction for medical expenses, described below.

Employees can exclude from income 100 percent of employer-provided health insurance or qualified long-term care insurance.

Individuals who itemize deductions may deduct their health insurance expenses only to the extent that the total medical expenses of the individual exceed 7.5 percent of adjusted gross income (sec. 213). Subject to certain dollar limitations, premiums for qualified long-term care insurance are treated as medical expenses for purposes of the itemized deduction for medical expenses (sec. 213). The amount of qualified long-term care insurance premiums that may be taken into account for 2000 is as follows: $220 in the case of an individual 40 years old or less; $410 in the case of an individual who is more than 40 but not more than 50; $820 in the case of an individual who is more than 50 but not more than 60; $2,200 in the case of an individual who is more than 60 but not more than 70; and $2,750 in the case of an individual who is more than 70. These dollar limits are indexed for inflation.

In order for a long-term care contract to be qualified for purposes of the Code, the contract must satisfy certain consumer protection provisions of the long-term care insurance model act and regulations promulgated by the National Association of Insurance Commissioners ("NAIC") adopted as of January 1993. In addition, issuers of qualified long-term care contracts are required to satisfy certain disclosure requirements. An excise tax is imposed with respect to the failure to meet the applicable disclosure requirements.[54]

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision. However, H.R. 833, as passed by the Senate, provides an above-the-line deduction for a percentage of the amount

[54] These provisions apply for all provisions of the Code relating to qualified long-term care contracts, not only the above-the-line deduction.

paid during the year for qualified long-term care insurance for the taxpayer and his or her spouse and dependents, subject to the present-law premium limitations.[55] The deductible percentage is: 25 percent in 2002, 2003, and 2004; 35 percent in 2005; 65 percent in 2006; and 100 percent in 2007 and thereafter.

The deduction is not available to an individual for any month in which the individual is covered under an employer-sponsored long-term care plan if at least 50 percent of the cost of the coverage is paid or incurred by the employer.[56] For purposes of this rule, any amounts excludable from the gross income of the employee with respect to qualified long-term care insurance are treated as paid or incurred by the employer. In determining whether the 50-percent threshold is met, all plans of the employer providing long-term care insurance in which the employee participates are treated as a single plan. If the employer pays less than 50 percent of the cost of all long-term care plans in which the individual participates, the deduction is available only with respect to each plan with respect to which the employer pays for less than 50 percent of the cost. Cost is determined as under the health care continuation rules.

The provision authorizes the Secretary to prescribe rules necessary to carry out the provision, including appropriate reporting requirements for employers.

Effective date.—The provision is effective for taxable years beginning after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement includes the provision in H.R. 833, except that the deductible percentage is 25 percent in 2001 through 2003, 35 percent in 2004, 65 percent in 2005, and 100 percent in 2006 and thereafter.[57]

The conference agreement adds additional consumer protection provisions for qualified long-term care contracts. In order to be a qualified contract for purposes of the Code, a long-term care insurance contract must satisfy the NAIC model act and regulations relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision. In addition, the conference agreement modifies the disclosure requirements applicable to issuers of long-term care contracts by adding the NAIC requirements regarding suitability and disclosure of rating practices. The conference agreement also updates present-law references to the NAIC model act and regulations to reflect current provisions.

Effective date.—The above-the-line deduction is effective for taxable years beginning after December 31, 2000. The consumer protection provisions are effective with respect to policies issued more than 1 year after the date of enactment.

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[55] The deduction only applies to insurance that constitutes medical care; it does not apply to long-term care expenses. The deduction applies to self-insured arrangements (provided such arrangements constitute insurance, e.g., there is appropriate risk-shifting) and coverage under employer plans treated as insurance under section 104. Another provision of the bill provides a similar deduction for health insurance expenses.

[56] This rule is applied separately with respect to health insurance.

[57] See the description of the above-the-line deduction for health insurance expenses for examples of the operation of the rule denying the deduction if the employer pays for 50 percent or more of the cost of the coverage.

D. MEDICAL SAVINGS ACCOUNTS ("MSAs") (sec. 303 of the bill and sec. 220 of the Code)

PRESENT LAW

Within limits, contributions to a medical savings account ("MSA")[58] are deductible in determining adjusted gross income ("AGI") if made by an eligible individual and are excludable from gross income and wages for employment tax purposes if made by the employer of an eligible individual. Earnings on amounts in an MSA are not currently taxable. Distributions from an MSA for medical expenses are not taxable. Distributions not used for medical expenses are taxable. In addition, distributions not used for medical expenses are subject to an additional 15-percent tax unless the distribution is made after age 65, death, or disability.

MSAs are available to self-employed individuals[59] and to employees covered under an employer-sponsored high deductible plan of a small employer. An employer is a small employer if it employed, on average, no more than 50 employees on business days during either the preceding or the second preceding year.

In order for an employee of a small employer to be eligible to make MSA contributions (or to have employer contributions made on his or her behalf), the employee must be covered under an employer-sponsored high deductible health plan (see the definition below) and must not be covered under any other health plan (other than a plan that provides certain permitted coverage).

Similarly, in order to be eligible to make contributions to an MSA, a self-employed individual must be covered under a high deductible health plan and no other health plan (other than a plan that provides certain permitted coverage, described below). A self-employed individual is not an eligible individual (by reason of being self-employed) if the high deductible plan under which the individual is covered is established or maintained by an employer of the individual (or the individual's spouse).

The maximum annual contribution that can be made to an MSA for a year is 65 percent of the deductible under the high deductible plan in the case of individual coverage and 75 percent of the deductible in the case of family coverage.

A high deductible plan is a health plan with an annual deductible of at least $1,550 and no more than $2,350 in the case of individual coverage and at least $3,100 and no more than $4,650 in the case of family coverage. In addition, the maximum out-of-pocket expenses with respect to allowed costs (including the deductible) must be no more than $3,100 in the case of individual coverage and no more than $5,700 in the case of family coverage.[60] A plan does not fail to qualify as a high deductible plan merely because it does not

[58] In general, an MSA is a trust or custodial account created exclusively for the benefit of the account holder and is subject to rules similar to those applicable to individual retirement arrangements. The trustee of an MSA can be a bank, insurance company, or other person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with applicable requirements.

[59] Self-employed individuals include more than 2-percent shareholders of S corporations who are treated as partners for purposes of fringe benefit rules pursuant to section 1372. Self-employed individuals are eligible for an MSA regardless of the size of the entity for which the individual performs services.

[60] These dollar amounts are for 2000. These amounts are indexed for inflation in $50 increments.

have a deductible for preventive care as required by State law. A plan does not qualify as a high deductible health plan if substantially all of the coverage under the plan is for permitted coverage (as described above). In the case of a self-insured plan, the plan must in fact be insurance (e.g., there must be appropriate risk shifting) and not merely a reimbursement arrangement.

The number of taxpayers benefiting annually from an MSA contribution is limited to a threshold level (generally 750,000 taxpayers). If it is determined in a year that the threshold level has been exceeded (called a "cut-off" year) then, in general, for succeeding years during the 4-year pilot period 1997–2000, only those individuals who (1) made an MSA contribution or had an employer MSA contribution for the year or a preceding year (i.e., are active MSA participants) or (2) are employed by a participating employer, is eligible for an MSA contribution. In determining whether the threshold for any year has been exceeded, MSAs of individuals who were not covered under a health insurance plan for the six month period ending on the date on which coverage under a high deductible plan commences would not be taken into account.[61] However, if the threshold level is exceeded in a year, previously uninsured individuals are subject to the same restriction on contributions in succeeding years as other individuals. That is, they would not be eligible for an MSA contribution for a year following a cut-off year unless they are an active MSA participant (i.e., had an MSA contribution for the year or a preceding year) or are employed by a participating employer.

The number of MSAs established has not exceeded the threshold level.

After December 31, 2000, no new contributions may be made to MSAs except by or on behalf of individuals who previously had MSA contributions and employees who are employed by a participating employer. An employer is a participating employer if (1) the employer made any MSA contributions for any year to an MSA on behalf of employees or (2) at least 20 percent of the employees covered under a high deductible plan made MSA contributions of at least $100 in the year 2000.

Self-employed individuals who made contributions to an MSA during the period 1997–2000 also may continue to make contributions after 2000.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement extends the MSA program through 2002. The same rules that apply to the limit on MSAs for 1999 apply to 2000 and 2001. Thus, for example, the threshold level in those years is 750,000 taxpayers.

[61] Permitted coverage, as described above, does not constitute coverage under a health insurance plan for this purpose.

Effective date.—The provision is effective on the date of enactment.

E. Deduction for Providing Long-Term Care to Household Members (sec. 305 of the bill and new sec. 223 of the Code)

PRESENT LAW

Under present law, the individual income tax treatment of health insurance expenses depends on the individual's circumstances. Self-employed individuals may deduct a portion of health insurance expenses for the individual and his or her spouse and dependents. The deductible percentage of health insurance expenses of a self-employed individual is 60 percent in 2000 and 2001; 70 percent in 2002; and 100 percent in 2003 and thereafter. The deduction for health insurance expenses of self-employed individuals is not available for any month in which the taxpayer is eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse. The deduction applies to qualified long-term care insurance premiums treated as medical expenses under the itemized deduction for medical expenses, described below.

Employees can exclude from income 100 percent of employer-provided health insurance or qualified long-term care insurance.

Individuals who itemize deductions may deduct their health insurance expenses only to the extent that the total medical expenses of the individual exceed 7.5 percent of adjusted gross income (sec. 213). Subject to certain dollar limitations, premiums for qualified long-term care insurance are treated as medical expenses for purposes of the itemized deduction for medical expenses (sec. 213). The amount of qualified long-term care insurance premiums that may be taken into account for 2000 is as follows: $220 in the case of an individual 40 years old or less; $410 in the case of an individual who is more than 40 but not more than 50; $820 in the case of an individual who is more than 50 but not more than 60; $2,200 in the case of an individual who is more than 60 but not more than 70; and $2,750 in the case of an individual who is more than 70. These dollar limits are indexed for inflation.

To qualify as a dependent under present law, an individual must: (1) be a specified relative or member of the taxpayer's household; (2) be a citizen or resident of the U.S. or resident of Canada or Mexico; (3) not be required to file a joint tax return with his or her spouse; (4) have gross income below the dependent exemption amount ($2,800 in 2000) if not the taxpayer's child; and (5) receive over half of his or her support from the taxpayer. If no one person contributes over half the support of an individual, the taxpayer is treated as meeting the support requirement if: (1) over half the support is received from persons each of whom, but for the fact that he or she did not provide over half such support, could claim the individual as a dependent; (2) the taxpayer contributes over 10 percent of such support; and (3) other caregivers who provide over 10 percent of the support file written declarations stating that they will not claim the individual as a dependent.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides taxpayers who maintain a household including one or more qualifying individuals a deduction with respect to each qualifying individual with long-term care needs, regardless of the expenses incurred in the care of the qualifying dependent. The deduction does not reduce adjusted gross income (i.e., is not "above-the-line"); however, the deduction is available whether or not the taxpayer itemizes deductions. The deductible amount is reduced by amounts received under a long-term care contract (whether or not qualified and including contracts that pay on a per diem or similar basis) covering the qualifying dependent. The deduction is phased out for higher income taxpayers in the same manner as the personal exemption amount.[62] The deduction is taken into account in determining alternative minimum taxable income.

The deductible amount is $3,000 in 2001 and increases by $1,000 each year thereafter until the limit is $10,000 in 2010 and thereafter.

An individual is a qualifying individual with respect to a taxpayer if the individual (1) is the spouse of the taxpayer or a relative of the taxpayer determined under the rules relating to the dependency exemption, and (2) lives in a household maintained by the taxpayer for the entire taxable year. In addition, if the individual is not the taxpayer's spouse or a child of the taxpayer (as determined under the dependency rules), the individual's gross income for the year must be less than the sum of the personal exemption amount, the standard deduction for a single taxpayer and, if applicable, the additional deduction for the elderly and blind.

A qualifying individual must be certified before the due date for the return for the taxable year (without regard to extensions) as having long-term care needs (as described below based on the age of the individual) for at least 180 consecutive days. Some portion of the 180-day period must fall within the taxable year. The deduction is not available unless the certification was made no more than 39½ months before the due date for the return (or such other time as specified by the Secretary).

In general, an individual who is at least six years of age is considered to have long-term care needs if the individual is unable to perform at least three activities of daily living ("ADLs") without substantial assistance due to a loss of functional capacity including individuals born with a condition that is comparable to a loss of functional capacity. As under the present-law rules relating to

[62] The deduction is added to the taxpayer's personal exemptions for purposes of the personal exemption phaseout. For 2000, the personal exemption amount phases out over the following ranges of adjusted gross income: $193,400–$315,900 for married taxpayers filing a joint return; $161,150–$283,650 for taxpayers filing as heads of households; and $128,950–$251,450 for unmarried taxpayers.

long-term care, ADLs are eating, toileting, transferring, bathing, dressing and continence. Substantial assistance includes both hands-on assistance (that is, the physical assistance of another person without which the individual would be unable to perform the ADL) and stand-by assistance (that is, the presence of another person within arm's reach of the individual that is necessary to prevent, by physical intervention, injury to the individual when performing the ADL).

As an alternative to the two-ADL test, an individual is considered to have long-term care needs if the individual (1) requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment and (2) is unable to perform, without reminding or cuing assistance, at least one ADL or to the extent provided in regulations,[63] is unable to engage in age appropriate activities.

A child between the ages of two and six is considered to have long-term care needs if the child requires substantial assistance with two of the following ADLs: eating, transferring, and mobility.

A child under the age of two is considered to have long-term care needs if the child requires specific durable medical equipment (e.g., a respirator) by reason of a severe health condition or requires a skilled practitioner to address the child's condition when the parents are absent.

For purposes of the provision, a taxpayer would be considered to be maintaining a household for any period only if over one-half the cost of maintaining the household for the period is provided by the taxpayer (or, if married, the taxpayer and his or her spouse). If the taxpayer is married at the end of the taxable year, the deduction is available only if the taxpayer and his or her spouse file a joint return. An individual legally separated is not considered married. An individual is not considered married if the individual (1) files a separate return for the year, (2) maintains a household which constitutes the principal place of abode for a qualifying individual for more than one-half of the year, and (3) during the last six months of the year the individual's spouse is not a member of the individual's household.

The deduction is not available unless the taxpayer identification number of the qualifying individual is included on the taxpayer's return for the year. In addition, the deduction is not available unless the taxpayer includes on the return a physician identification number (e.g., the Unique Physician Identification Number currently required for Medicare billing). The IRS is authorized to use mathematical error procedures to deny claims for the deduction during return processing if the taxpayer does not provide valid taxpayer identification numbers and physician identification numbers.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

[63] The regulations are to be prescribed by the Secretary, in consultation with the Secretary of Health and Human Services.

TITLE IV. PENSION AND INDIVIDUAL RETIREMENT ARRANGEMENT PROVISIONS [1]

Subtitle A. Individual Retirement Arrangements ("IRAs") (sec. 401–404 of the bill) (sec. 101 of the House bill, secs. 101–104 of the Senate amendment, and secs. 219, 408, and 408A of the Code)

PRESENT LAW

In general

There are two general types of individual retirement arrangements ("IRAs") under present law: traditional IRAs, to which both deductible and nondeductible contributions may be made, and Roth IRAs. The Federal income tax rules regarding each type of IRA (and IRA contribution) differ.

Traditional IRAs

Under present law, an individual may make deductible contributions to an IRA up to the lesser of $2,000 or the individual's compensation if neither the individual nor the individual's spouse is an active participant in an employer-sponsored retirement plan. In the case of a married couple, deductible IRA contributions of up to $2,000 can be made for each spouse (including, for example, a homemaker who does not work outside the home), if the combined compensation of both spouses is at least equal to the contributed amount. If the individual (or the individual's spouse) is an active participant in an employer-sponsored retirement plan, the $2,000 deduction limit is phased out for taxpayers with modified adjusted gross income ("AGI") over certain levels for the taxable year.

The AGI phase-out limits for taxpayers who are active participants in employer-sponsored plans are as follows:

Single Taxpayers

Taxable years beginning in:	*AGI Phase-out range*
2000	$32,000–42,000
2001	33,000–43,000
2002	34,000–44,000
2003	40,000–50,000
2004	45,000–55,000
2005 and thereafter	50,000–60,000

Taxpayers Filing Joint Returns

Taxable years beginning in:	*Phase-out range*
2000	$52,000–62,000
2001	53,000–63,000
2002	54,000–64,000
2003	60,000–70,000
2004	65,000–75,000
2005	70,000–80,000

[1] The provisions of the bill as passed by the House and the Senate did not contain provisions relating to pensions and individual retirement arrangements. Provisions described under the House bill refer to the provisions of H.R. 1102, the "Comprehensive Retirement Security and Pension Reform Act of 2000," as passed by the House. For legislative history, see H.R. Rep. No. 106–753. Provisions described under the Senate amendment refer to the provisions of H.R. 1102, the "Retirement Security and Savings Act of 2000," as reported by the Senate Committee on Finance on September 13, 2000. For legislative history, see S.Rep. No. 106–411.

Taxpayers Filing Joint Returns—Continued

	Phase-out range
2006	75,000–85,000
2007 and thereafter	80,000–100,000

The AGI phase-out range for married taxpayers filing a separate return is $0 to $10,000.

If the individual is not an active participant in an employer-sponsored retirement plan, but the individual's spouse is, the $2,000 deduction limit is phased out for taxpayers with AGI between $150,000 and $160,000.

To the extent an individual cannot or does not make deductible contributions to an IRA or contributions to a Roth IRA, the individual may make nondeductible contributions to a traditional IRA.

Amounts held in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal is a return of nondeductible contributions). Includible amounts withdrawn prior to attainment of age 59½ are subject to an additional 10-percent early withdrawal tax, unless the withdrawal is due to death or disability, is made in the form of certain periodic payments, is used to pay medical expenses in excess of 7.5 percent of AGI, is used to purchase health insurance for an unemployed individual, is used for education expenses, or is used for first-time homebuyer expenses of up to $10,000.

Roth IRAs

Individuals with AGI below certain levels may make nondeductible contributions to a Roth IRA. The maximum annual contribution that may be made to a Roth IRA is the lesser of $2,000 or the individual's compensation for the year. The contribution limit is reduced to the extent an individual makes contributions to any other IRA for the same taxable year. As under the rules relating to IRAs generally, a contribution of up to $2,000 for each spouse may be made to a Roth IRA provided the combined compensation of the spouses is at least equal to the contributed amount. The maximum annual contribution that can be made to a Roth IRA is phased out for single taxpayers with AGI between $95,000 and $110,000 and for taxpayers filing a joint return with AGI between $150,000 and $160,000. For married taxpayers filing a separate return, the phase-out range is $0 to $10,000.

Taxpayers with modified AGI of $100,000 or less generally may convert a traditional IRA into a Roth IRA. The amount converted is includible in income as if a withdrawal had been made, except that the 10-percent early withdrawal tax does not apply and, if the conversion occurred in 1998, the income inclusion may be spread ratably over 4 years. Married taxpayers who file separate returns cannot convert a traditional IRA into a Roth IRA.

Amounts held in a Roth IRA that are withdrawn as a qualified distribution are neither includible in income, nor subject to the additional 10-percent tax on early withdrawals. A qualified distribution is a distribution that (1) is made after the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA, and (2) which is made after attainment of age 59½, on account of death or disability, or is made for first-time homebuyer expenses of up to $10,000.

To the extent attributable to earnings, distributions from a Roth IRA that are not qualified distributions are includible in income and subject to the 10-percent early withdrawal tax (unless an exception applies).[2] The same exceptions to the early withdrawal tax that apply to IRAs apply to Roth IRAs.

Taxation of charitable contributions

Generally, a taxpayer who itemizes deductions may deduct cash contributions to charity, as well as the fair market value of contributions of property. The amount of the deduction otherwise allowable for the 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.

For donations of cash by individuals, total deductible contributions to public charities may not exceed 50 percent of a taxpayer's AGI for a taxable year. To the extent a taxpayer has not exceeded the 50-percent limitation, contributions of cash to private foundations and certain other nonprofit organizations and contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's AGI. If a taxpayer makes a contribution in one year which exceeds the applicable 50-percent or 30-percent limitation, the excess amount of the contribution may be carried over and deducted during the next five taxable years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with AGI in excess of a threshold amount, which is indexed annually for inflation. The threshold amount for 2000 is $128,950 ($64,475 for married individuals filing separate returns). For those deductions that are subject to the reduction, the total amount of itemized deductions is reduced by 3 percent of AGI over the threshold amount, but not by more than 80 percent of itemized deductions subject to the reduction. The effect of this reduction may be to limit a taxpayer's ability to deduct charitable contributions.

HOUSE BILL

Increase in annual contribution limits

The House bill increases the maximum annual dollar contribution limit for IRA contributions from $2,000 to $3,000 in 2001, $4,000 in 2002, and $5,000 in 2003. The limit is indexed for inflation in $500 increments in 2004 and thereafter.

Additional catch-up contributions

In the case of individuals who have attained age 50 before the end of the taxable year, the IRA contribution limit is $5,000, beginning in 2001.

Increase in AGI limits for deductible IRA contributions

No provision.

[2] Early distribution of converted amounts may also accelerate income inclusion of converted amounts that are taxable under the 4-year rule applicable to 1998 conversions.

Roth IRAs

No provision.

Deemed IRAs under employer plans

No provision.

Tax-free IRA withdrawals for charitable purposes

No provision.

Effective date

The provision is effective for taxable years beginning after December 31, 2000.

SENATE AMENDMENT

Increase in annual contribution limits

The Senate amendment is the same as the House bill.

Additional catch-up contributions

The bill provides that individuals who have attained age 50 may make additional catch-up IRA contributions. The otherwise maximum contribution limit (before application of the AGI phase-out limits) for an individual who has attained age 50 before the end of the taxable year is increased by 50 percent.

Increase in AGI limits for deductible IRA contributions

Under the bill, the increases in the AGI phase-out limits for active participants in an employer-sponsored plan are evened out. In addition, the phase-out range for married taxpayers filing separately is conformed to the phase-out range for single taxpayers. The AGI phase-out limits under the bill are as follows.

Taxpayers Filing Returns Other Than Joint Returns

Taxable years beginning in:	*AGI Phase-out range*
2001	$36,000–46,000
2002	40,000–50,000
2003	44,000–54,000
2004	48,000–58,000
2005 and thereafter	50,000–60,000

Taxpayers Filing Joint Returns

Taxable years beginning in:	*AGI Phase-out range*
2001	$56,000–66,000
2002	60,000–70,000
2003	64,000–74,000
2004	68,000–78,000
2005	72,000–82,000
2006	76,000–86,000
2007 and thereafter	80,000–100,000

The present-law income phase-out range for an individual who is not an active participant in an employer-sponsored plan, but whose spouse is, remains at $150,000 to $160,000.

Roth IRAs

The bill increases the income phase-out range for Roth IRA contributions to $190,000 to $220,000 for married couples filing a joint return. In addition, the bill applies to married taxpayers filing a separate return the same phase-out range that applies to single taxpayers.

Under the bill, the income limit for conversions of traditional IRAs to Roth IRAs is $200,000 for married couples filing a joint return. For all other taxpayers (including married taxpayers filing a separate return), the limit is $100,000.

Deemed IRAs under employer plans

The bill provides that, if an eligible retirement plan permits employees to make voluntary employee contributions to a separate account or annuity that (1) is established under the plan, and (2) meets the requirements applicable to either traditional IRAs or Roth IRAs, then the separate account or annuity is deemed to be a traditional IRA or a Roth IRA, as applicable, for all purposes of the Code. For example, the reporting requirements applicable to IRAs apply. The deemed IRA, and contributions thereto, are not subject to the Code rules pertaining to the eligible retirement plan. In addition, the deemed IRA, and contributions thereto, are not taken into account in applying such rules to any other contributions under the plan. The deemed IRA, and contributions thereto, are subject to the exclusive benefit and fiduciary rules of ERISA to the extent otherwise applicable to the plan, but are not subject to the ERISA reporting and disclosure, participation, vesting, funding, and enforcement requirements that apply to the eligible retirement plan. An eligible retirement plan is a qualified plan (sec. 401(a)), tax-sheltered annuity (sec. 403(b)), or a governmental section 457 plan.

Tax-free IRA withdrawals for charitable purposes

The bill provides an exclusion from gross income for qualified charitable distributions from an IRA: (1) to an organization to which deductible contributions can be made; (2) to a charitable remainder annuity trust or charitable remainder unitrust; (3) to a pooled income fund (as defined in sec. 642(c)(5)); or (4) for the issuance of a charitable gift annuity. The exclusion applies with respect to distributions described in (2), (3), or (4) only if no person holds an income interest in the trust, fund, or annuity attributable to such distributions other than the IRA owner, his or her spouse, or a charitable organization.

In determining the character of distributions from a charitable remainder annuity trust or a charitable remainder unitrust to which a qualified charitable distribution from an IRA is made, the charitable remainder trust is required to treat as ordinary income the portion of the distribution from the IRA to the trust which would have been includible in income but for the provision, and is required to treat any remaining portion of the distribution as corpus. Similarly, in determining the amount includible in gross income by reason of a payment from a charitable gift annuity purchased with a qualified charitable distribution from an IRA, the taxpayer is not permitted to treat the portion of the distribution

from the IRA that would have been taxable but for the provision and which is used to purchase the annuity as an investment in the annuity contract.

A qualified charitable distribution is any distribution from an IRA which (1) is made after age 70½ of the account holder, (2) qualifies as a charitable contribution (within the meaning of sec. 170(c)), and (3) is made directly to the organization or to a charitable remainder annuity trust, charitable remainder unitrust, pooled income fund, or charitable gift annuity (as described above).[3] A taxpayer is not permitted to claim a charitable contribution deduction for amounts transferred from his or her IRA to a charity or to a trust, fund, or annuity that, because of the provision, are excluded from the taxpayer's income. Conversely, if the amounts transferred would otherwise be nontaxable, e.g., a qualified distribution from a Roth IRA, the regularly applicable deduction rules would apply.

Effective date

The provisions are generally effective for taxable years beginning after December 31, 2000. The provision relating to deemed IRAs under employer plans is effective for plan years beginning after December 31, 2001.

CONFERENCE AGREEMENT

Increase in annual contribution limits

The conference agreement follows the House bill and the Senate amendment.

Additional catch-up contributions

The conference agreement follows the Senate amendment, with modifications. Under the conference agreement, the maximum catch-up amount is phased in over the same period as the increase in the IRA contribution limit. The maximum catch-up contribution is $500 in 2001, $1,000 in 2002, and $1,500 in 2003. The $1,500 amount is indexed for inflation beginning after 2003 (when the indexing of the $5,000 basic contribution limit begins).

Increase in AGI limits for deductible IRA contributions

The conference agreement follows the Senate amendment.

Roth IRAs

The conference agreement follows the Senate amendment.

Deemed IRAs under employer plans

The conference agreement follows the Senate amendment. As under the Senate amendment, if an eligible retirement plan permits employees to make voluntary employee contributions to a separate account or annuity that (1) is established under the plan, and (2) meets the requirements applicable to either traditional IRAs or

[3] It is intended that, in the case of transfer to a trust, fund, or annuity, the full amount distributed from an IRA will meet the definition of a qualified charitable distribution if the charitable organization's interest in the distribution would qualify as a charitable contribution under section 170.

Roth IRAs, then the separate account or annuity is deemed to be a traditional IRA or a Roth IRA, as applicable, for all purposes of the Code. For example, the IRA reporting requirements apply. The deemed IRA, and contributions thereto, are not subject to the Code rules pertaining to the eligible retirement plan. In addition, the deemed IRA, and contributions thereto, are not taken into account in applying such rules to any other contributions under the plan. The deemed IRA, and contributions thereto, are subject to the exclusive benefit and fiduciary rules of ERISA to the extent otherwise applicable to the plan, but are not subject to the ERISA reporting and disclosure, participation, vesting, funding, and enforcement requirements that apply to the eligible retirement plan. Except as otherwise specified, the provision does not affect the treatment of the deemed IRA as part of the qualified plan.

Tax-free IRA withdrawals for charitable purposes

The conference agreement follows the Senate amendment, with the modification that the tax-free treatment is available only for a distribution made to an organization to which charitable contributions (as defined in sec. 170(c)) can be made, and not for distributions to charitable remainder trusts, pooled income funds, or for the issuance of charitable gift annuities. The conferees clarify that the exclusion does not apply unless the distribution meets the requirements generally applicable to deductible contributions (other than the percentage limits on such deductions). Thus, for example, the substantiation rules and the rule limiting the deductible amount of a contribution to the excess, if any, of the value of the contribution over the value of any benefit received by the donor, would apply. It is intended that the Secretary will issue such rules as are necessary to apply to distributions made to organizations pursuant to the provision.

The conference agreement also clarifies that amounts that would have been includible in gross income but for the provision are not deductible in any year. In addition, such amounts are not taken into account in determining the deductible amount for any year.

Except as provided in the provision, a distribution under the provision is treated the same as other IRA distributions. Thus, for example, the distribution is taken into account in determining whether the minimum distribution requirements are satisfied.

Effective date

The provisions are generally effective for taxable years beginning after December 31, 2000. The provision relating to deemed IRAs under employer plans is effective for plan years beginning after December 31, 2001.

Subtitle B. Expanding Coverage (secs. 411–418 of the bill)

A. Increase in Benefit and Contribution Limits (sec. 201 of the House bill, sec. 201 of the Senate amendment, and secs. 401(a)(17), 402(g), 408(p), 415, and 457 of the Code)

PRESENT LAW

In general

Under present law, limits apply to contributions and benefits under qualified plans (sec. 415), the amount of compensation that may be taken into account under a plan for determining benefits (sec. 401(a)(17)), the maximum amount of elective deferrals that an individual may make to a salary reduction plan or tax sheltered annuity (sec. 402(g)), and deferrals under an eligible deferred compensation plan of a tax-exempt organization or a State or local government (sec. 457).

Limitations on contributions and benefits

Under present law, the limits on contributions and benefits under qualified plans are based on the type of plan. Under a defined contribution plan, the qualification rules limit the annual additions to the plan with respect to each plan participant to the lesser of (1) 25 percent of compensation or (2) $30,000 (for 2000). Annual additions are the sum of employer contributions, employee contributions, and forfeitures with respect to an individual under all defined contribution plans of the same employer. The $30,000 limit is indexed for inflation in $5,000 increments.

Under a defined benefit plan, the maximum annual benefit payable at retirement is generally the lesser of (1) 100 percent of average compensation, or (2) $135,000 (for 2000). The dollar limit is adjusted for inflation in $5,000 increments.

Under present law, in general, the dollar limit on annual benefits is reduced if benefits under the plan begin before the social security retirement age (currently, age 65) and increased if benefits begin after social security retirement age.

Compensation limitation

Under present law, the annual compensation of each participant that may be taken into account for purposes of determining contributions and benefits under a plan, applying the deduction rules, and for nondiscrimination testing purposes is limited to $170,000 (for 2000). The compensation limit is indexed for inflation in $10,000 increments.

Elective deferral limitations

Under present law, under certain salary reduction arrangements, 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 an individual may make to a qualified cash or deferred arrangement (a "section 401(k) plan"), a tax-sheltered annuity ("section 403(b) annuity") or a salary reduction simplified employee pension plan

("SEP") is $10,500 (for 2000). The maximum annual amount of elective deferrals that an individual may make to a SIMPLE plan is $6,000. These limits are indexed for inflation in $500 increments.

Section 457 plans

The maximum annual deferral under a deferred compensation plan of a State or local government or a tax-exempt organization (a "section 457 plan") is the lesser of (1) $8,000 (for 2000) or (2) 33½ percent of compensation. The $8,000 limit is indexed for inflation in $500 increments. Under a special catch-up rule, the section 457 plan may provide that, for one or more of the participant's last 3 years before retirement, the otherwise applicable limit is increased to the lesser of (1) $15,000 or (2) the sum of the otherwise applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

HOUSE BILL

Limits on contributions and benefits

The House bill increases the $30,000 annual addition limit for defined contribution plans to $40,000. This amount is indexed for inflation in $1,000 increments.[4]

The House bill increases the $135,000 annual benefit limit under a defined benefit plan to $160,000. The dollar limit is reduced for benefit commencement before age 62 and increased for benefit commencement after age 65.

Compensation limitation

The House bill increases the limit on compensation that may be taken into account under a plan to $200,000. This amount is indexed for inflation in $5,000 increments.

Elective deferral limitations

The House bill increases the dollar limit on annual elective deferrals under section 401(k) plans, section 403(b) annuities and salary reduction SEPs to $11,000 in 2001, and in $1,000 annual increments thereafter until the limits reach $15,000 in 2005. The $15,000 limit is indexed for inflation in $500 increments beginning in 2006. Beginning in 2001, the House bill increases the maximum annual elective deferrals that may be made to a SIMPLE plan in $1,000 annual increments until the limit reaches $10,000 in 2004. The $10,000 limit is indexed for inflation in $500 increments beginning in 2005.

Section 457 plans

The House bill increases the dollar limit on deferrals under a section 457 plan to conform to the elective deferral limitation. Thus, the limit is $11,000 in 2001, and is increased in $1,000 annual increments thereafter until the limit reaches $15,000 in 2005. The $15,000 limit is indexed for inflation in $500 increments begin-

[4] The 25 percent of compensation limitation is increased to 100 percent of compensation under another provision of the House bill.

ning in 2006. The limit is twice the otherwise applicable dollar limit in the three years prior to retirement.[5]

Effective date

The House bill is effective for years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except with respect to the provision relating to the defined contribution plan dollar limit. The Senate amendment retains the present-law $30,000 limit, and indexes the limit for inflation in $1,000 increments.

Effective date.—Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill. In adopting rules regarding the application of the increase in the defined benefit plan limits under the bill, the conferees intend that the Secretary will apply rules similar to those adopted in Notice 99–44 regarding benefit increases due to the repeal of the combined plan limit under former section 415(e). Thus, for example, a defined benefit plan could provide for benefit increases to reflect the provisions of the bill for a current or former employee who has commenced benefits under the plan prior to the effective date of the bill if the employee or former employee has an accrued benefit under the plan (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in the section 415 limits under the bill). As under the notice, the maximum amount of permitted increase is generally the amount that could have been provided had the provisions of the bill been in effect at the time of the commencement of benefit. In no case can benefits reflect increases that could not be paid prior to the effective date because of the limits in effect under present law. In addition, in no case can plan amendments providing increased benefits under the relevant provision of the bill be effective prior to the effective date of the provision.

B. Plan Loans for S Corporation Shareholders, Partners, and Sole Proprietors (sec. 202 of the House bill, sec. 202 of the Senate amendment, and sec. 4975 of the Code)

PRESENT LAW

The Internal Revenue Code prohibits certain transactions ("prohibited transactions") between a qualified plan and a disqualified person in order to prevent persons with a close relationship to the qualified plan from using that relationship to the detriment of plan participants and beneficiaries.[6] Certain types of transactions are exempted from the prohibited transaction rules, including loans

[5] Another provision of the House bill increases the 33⅓ percentage of compensation limit to 100 percent.

[6] Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), also contains prohibited transaction rules. The Code and ERISA provisions are substantially similar, although not identical.

from the plan to plan participants, if certain requirements are satisfied. In addition, the Secretary of Labor can grant an administrative exemption from the prohibited transaction rules if she finds the exemption is administratively feasible, in the interest of the plan and plan participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. Pursuant to this exemption process, the Secretary of Labor grants exemptions both with respect to specific transactions and classes of transactions.

The statutory exemptions to the prohibited transaction rules do not apply to certain transactions in which the plan makes a loan to an owner-employee.[7] Loans to participants other than owner-employees are permitted if loans are available to all participants on a reasonably equivalent basis, are not made available to highly compensated employees, are made in accordance with specific provisions in the plan, bear a reasonable rate of interest, and are adequately secured. In addition, the Code places limits on the amount of loans and the repayment terms.

For purposes of the prohibited transaction rules, an owner-employee means (1) a sole proprietor, (2) a partner who owns more than 10 percent of either the capital interest or the profits interest in the partnership, (3) an employee or officer of an S corporation who owns more than 5 percent of the outstanding stock of the corporation, and (4) the owner of an individual retirement arrangement ("IRA"). The term owner-employee also includes certain family members of an owner-employee and certain corporations owned by an owner-employee.

Under the Internal Revenue Code, a two-tier excise tax is imposed on disqualified persons who engage in a prohibited transaction. The first level tax is equal to 15 percent of the amount involved in the transaction. The second level tax is imposed if the prohibited transaction is not corrected within a certain period, and is equal to 100 percent of the amount involved.

HOUSE BILL

The House bill generally eliminates the special present-law rules relating to plan loans made to an owner-employee (other than the owner of an IRA). Thus, the general statutory exemption applies to such transactions. Present law continues to apply with respect to IRAs.

Effective date.—The House bill is effective with respect to loans made after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.[8]

Effective date.—The Senate amendment is effective for years beginning after December 31, 2000.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

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[7] Certain transactions involving a plan and S corporation shareholders are permitted.

[8] The Senate amendment also amends the corresponding provisions of ERISA.

Effective date.—The conference agreement follows the Senate amendment. Thus, as under the Senate amendment, a loan that is a prohibited transaction solely because of the present-law restriction would cease to be a prohibited transaction on January 1, 2000. However, the loan would continue to be a prohibited transaction prior to January 1, 2000.

C. MODIFICATION OF TOP-HEAVY RULES (sec. 203 of the House bill, sec. 203 of the Senate amendment, and sec. 416 of the Code)

PRESENT LAW

In general

Under present law, additional qualification requirements apply to plans that primarily benefit an employer's key employees ("top-heavy plans"). These additional requirements provide (1) more rapid vesting for plan participants who are non-key employees and (2) minimum nonintegrated employer contributions or benefits for plan participants who are non-key employees.

Definition of top-heavy plan

In general, a top-heavy plan is a plan under which more than 60 percent of the contributions or benefits are provided to key employees.

For purposes of determining whether a plan is a top-heavy plan, benefits derived both from employer and employee contributions, including employee elective contributions, are taken into account. In addition, the accrued benefit of a participant in a defined benefit plan and the account balance of a participant in a defined contribution plan includes any amount distributed within the 5-year period ending on the determination date.

An individual's accrued benefit or account balance is not taken into account in determining whether a plan is top-heavy if the individual has not performed services for the employer during the 5-year period ending on the determination date.

SIMPLE plans are not subject to the top-heavy rules.

Definition of key employee

A key employee is an employee who, during the plan year containing the determination date for the plan year in question or any of the 4 preceding plan years, is (1) an officer earning over one-half of the defined benefit plan dollar limitation of section 415 ($67,500 for 2000), (2) a 5-percent owner of the employer, (3) a 1-percent owner of the employer earning over $150,000, or (4) one of the 10 employees earning more than the defined contribution plan dollar limit ($30,000 for 2000) with the largest ownership interests in the employer. A family ownership attribution rule applies to the determination of 1-percent owner status, 5-percent owner status, and largest ownership interest. Under this attribution rule, an individual is treated as owning stock owned by the individual's spouse, children, grandchildren, or parents.

Minimum benefit for non-key employees

A minimum benefit generally must be provided to all non-key employees in a top-heavy plan. In general, a top-heavy defined ben-

efit plan must provide a minimum benefit equal to the lesser of (1) 2 percent of compensation multiplied by the employee's years of service, or (2) 20 percent of compensation. A top-heavy defined contribution plan must provide a minimum annual contribution equal to the lesser of (1) 3 percent of compensation, or (2) the percentage of compensation at which contributions were made for key employees (including employee elective contributions made by key employees and employer matching contributions).

For purposes of the minimum benefit rules, only benefits derived from employer contributions (other than amounts employees have elected to defer) to the plan are taken into account, and an employee's social security benefits are disregarded (i.e., the minimum benefit is nonintegrated). Employer matching contributions may be used to satisfy the minimum contribution requirement; however, in such a case the contributions are not treated as matching contributions for purposes of applying the special nondiscrimination requirements applicable to employee elective contributions and matching contributions under sections 401 (k) and (m). Thus, such contributions would have to meet the general nondiscrimination test of section 401(a)(4).[9]

Top-heavy vesting

Benefits under a top-heavy plan must vest at least as rapidly as under one of the following schedules: (1) 3-year cliff vesting, which provides for 100 percent vesting after 3 years of service; and (2) 2–6 year graded vesting, which provides for 20 percent vesting after 2 years of service, and 20 percent more each year thereafter so that a participant is fully vested after 6 years of service.[10]

Qualified cash or deferred arrangements

Under a qualified cash or deferred arrangement (a "section 401(k) plan"), an employee may elect to have the employer make payments as contributions to a qualified 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. A special nondiscrimination test applies to elective deferrals under cash or deferred arrangements, which compares the elective deferrals of highly compensated employees with elective deferrals of nonhighly compensated employees. (This test is called the actual deferral percentage test or the "ADP" test). Employer matching contributions under qualified defined contribution plans are also subject to a similar nondiscrimination test. (This test is called the actual contribution percentage test or the "ACP" test.)

Under a design-based safe harbor, a cash or deferred arrangement is deemed to satisfy the ADP test if the plan satisfies one of two contribution requirements and satisfies a notice requirement.

[9] Tres. Reg. sec. 1.416–1 Q&A M–19.

[10] Benefits under a plan that is not top heavy must vest at least as rapidly as under one of the following schedules: (1) 5-year cliff vesting; and (2) 3–7 year graded vesting, which provides for 20 percent vesting after 3 years of service and 20 percent more each year thereafter so that a participant is fully vested after 7 years of service.

Definition of top-heavy plan

The provision provides that a plan consisting of a cash-or-deferred arrangement that satisfies the design-based safe harbor for such plans and matching contributions that satisfy the safe harbor rule for such contributions is not a top-heavy plan. Matching or nonelective contributions provided under such a plan may be taken into account in satisfying the minimum contribution requirements applicable to top-heavy plans.[11]

In determining whether a plan is top-heavy, the provision provides that distributions during the year ending on the date the top-heavy determination is being made are taken into account; however, the present-law 5-year rule applies with respect to in-service distributions. Similarly, the provision provides that an individual's accrued benefit or account balance is not taken into account if the individual has not performed services for the employer during the 1-year period ending on the date the top-heavy determination is being made.

Definition of key employee

The provision (1) provides that an employee is not considered a key employee by reason of officer status unless the employee earns more than $150,000 in compensation for the year, and (2) repeals the top-10 owner key employee category.

The provision repeals the 4-year lookback rule for determining key employee status and provides that an employee is a key employee only if he or she is a key employee during the plan year containing the determination date for the plan year in question.

The family ownership attribution rule no longer applies in determining whether an individual is a 5-percent owner of the employer for purposes of the top-heavy rules only. The family ownership attribution rule continues to apply to other provisions that cross reference the top-heavy rules, such as the definition of highly compensated employee and the definition of 1-percent owner under the top-heavy rules.

Minimum benefit for non-key employees

Under the provision, matching contributions are taken into account in determining whether the minimum benefit requirement has been satisfied.[12]

The provision provides that, in determining the minimum benefit required under a defined benefit plan, a year of service does not include any year in which no employee benefits under the plan (as determined under sec. 410).

Effective date

The provision is effective for years beginning after December 31, 2000.

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[11] This provision is not intended to preclude the use of nonelective contributions that are used to satisfy the safe harbor rules from being used to satisfy other qualified retirement plan nondiscrimination rules, including those involving cross-testing.

[12] Thus, this provision overrides the provision in Treasury regulations that, if matching contributions are used to satisfy the minimum benefit requirement, then they are not treated as matching contributions for purposes of the section 401(m) nondiscrimination rules.

SENATE AMENDMENT

The Senate amendment follows the House bill, with the following modifications.

Under the Senate amendment, an employee is considered a key employee if, during the prior year, the employee was (1) an officer with compensation in excess of $85,000 (for 2000), (2) a 5-percent owner, or (3) a 1-percent owner with compensation in excess of $150,000. The present-law limits on the number of officers treated as key employees under (1) continue to apply. An employee who was not an employee in the preceding plan year, or who was an employee only for part of the year, is treated as a key employee if it can be reasonably anticipated that the employee will meet the definition of a key employee for current plan year.

The Senate amendment provides that, in determining the minimum benefit required under a defined benefit plan, a year of service does not include any year in which no key employee or former key employee benefits under the plan (as determined under sec. 410).

Effective date.—The Senate amendment is effective for years beginning after December 31, 2000.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications. Under the conference agreement, an employee is a key employee if, during the plan year containing the determination date for the plan year in question, the employee was (1) an officer with compensation in excess of $115,000 (indexed for inflation after 2001), (2) a 5-percent owner, or (3) a 1-percent owner with compensation in excess of $150,000. The present-law limits on the number of officers treated as key employees under (1) continue to apply. As under the House bill, the family ownership attribution rule no longer applies in determining whether an individual is a 5-percent owner of the employer for purposes of the top-heavy rules only. The family ownership attribution rule continues to apply to other provisions that cross reference the top-heavy rules, such as the definition of highly compensated employee and the definition of 1-percent owner under the top-heavy rules.

The conference agreement follows the Senate amendment in providing that, in determining the minimum benefit required under a defined benefit plan, a year of service does not include any year in which no key employee or former key employee benefits under the plan (as determined under sec. 410).

Effective date.—The conference agreement is effective for years beginning after December 31, 2000.

D. Elective Deferrals Not Taken Into Account for Purposes of Deduction Limits (sec. 204 of the House bill, sec. 204 of the Senate amendment, and sec. 404 of the Code)

PRESENT LAW

Employer contributions to one or more qualified retirement plans are deductible subject to certain limits. In general, the deduction limit depends on the kind of plan.

In the case of a defined benefit pension plan or a money purchase pension plan, the employer generally may deduct the amount necessary to satisfy the minimum funding cost of the plan for the year. If a defined benefit pension plan has more than 100 participants, the maximum amount deductible is at least equal to the plan's unfunded current liabilities.

In the case of a profit-sharing or stock bonus plan, the employer generally may deduct an amount equal to 15 percent of compensation of the employees covered by the plan for the year.

If an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees (or a money purchase pension plan and another kind of defined contribution plan), the total deduction for all plans for a plan year generally is limited to the greater of (1) 25 percent of compensation or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year (or the amount of the plan's unfunded current liabilities, in the case of a plan with more than 100 participants).

For purposes of the deduction limits, employee elective deferral contributions to a section 401(k) plan are treated as employer contributions and, thus, are subject to the generally applicable deduction limits.

Subject to certain exceptions, nondeductible contributions are subject to a 10-percent excise tax.

HOUSE BILL

Under the House bill, elective deferral contributions are not subject to the deduction limits, and the application of a deduction limitation to any other employer contribution to a qualified retirement plan does not take into account elective deferral contributions.

Effective date.—The House bill is effective for years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

E. REPEAL OF COORDINATION REQUIREMENTS FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS (sec. 205 of the House bill, sec. 205 of the Senate amendment, and sec. 457 of the Code)

PRESENT LAW

Compensation deferred under an eligible deferred compensation plan of a tax-exempt or State and local government employer (a "section 457 plan") is not includible in gross income until paid or made available. In general, the maximum permitted annual deferral under such a plan is the lesser of (1) $8,000 (in 2000) or (2)

33⅓ percent of compensation. The $8,000 limit is indexed for inflation in $500 increments.

The $8,000 limit (as modified under the catch-up rule), applies to all deferrals under all section 457 plans in which the individual participates. In addition, in applying the $8,000 limit, contributions under a tax-sheltered annuity ("section 403(b) annuity"), elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan"), salary reduction contributions under a simplified employee pension plan ("SEP"), and contributions under a SIMPLE plan are taken into account. Further, the amount deferred under a section 457 plan is taken into account in applying a special catch-up rule for section 403(b) annuities.

HOUSE BILL

The House bill repeals the rules coordinating the section 457 dollar limit with contributions under other types of plans.[13]

Effective date.—The House bill is effective for years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

F. Eliminate IRS User Fees for Certain Requests Regarding Employer Plans (sec. 206 of the House bill)

PRESENT LAW

An employer that maintains a retirement plan for the benefit of its employees may request from the Internal Revenue Service ("IRS") a determination as to whether the form of the plan satisfies the requirements applicable to tax-qualified plans (sec. 401(a)). In order to obtain a determination letter on the qualified status of the plan, the employer must pay a user fee. The Secretary determines the user fee to be made for various types of requests, subject to statutory minimum requirements for average fees based on the category of the request. The user fee for a employee plan determination letter request may range from $125 to $1,250, depending upon the scope of the request and the type and format of the plan.[14]

In general, a qualified plan which does not meet the qualification requirements as a result of a disqualifying provision may be amended retroactively to comply with such requirements if the necessary amendments are adopted within the remedial amendment period. The remedial amendment period with respect to plan amendments needed to reflect changes in the law generally ends by

[13] The limits on deferrals under a section 457 plan are modified under other provisions of the House bill.

[14] Authorization for the user fees was originally enacted in section 10511 of the Revenue Act of 1987 (Pub. L. No. 100–203, December 22, 1987). The authorization was extended through September 30, 2003, by Public Law Number 104–117 (An Act to provide that members of the Armed Forces preforming services for the peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes (March 20, 1996)).

the due date for the employer's tax return for the taxable year in which the change in the law occurs. The Secretary is authorized to extend the otherwise applicable remedial amendment period. Pursuant to this authority, the Secretary has provided extended remedial amendment periods with respect to recent legislation affecting qualified plans.[15]

HOUSE BILL

Under the House bill, a small employer (100 or fewer employees) is not required to pay a user fee for any determination letter request with respect to the qualified status of a retirement plan that the employer maintains, if the request is made within the first 5 plan years of the plan. The House bill applies only to requests by employers for determination letters concerning the qualified retirement plans they maintain. Therefore, a sponsor of a prototype plan is required to pay a user fee for a request for a notification letter, opinion letter, or similar ruling. A small employer that adopts a prototype plan, however, is not required to pay a user fee for a determination letter request with respect to the employer's plan.

Effective date.—The House bill is effective for determination letter requests made after December 31, 2000.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modification. Under the conference agreement, a small employer also is not required to pay a user fee for a determination letter request made prior to the end of a remedial amendment period beginning within the first 5 plan years of the plan. In addition, determination letter requests for which user fees are not required under the conference agreement are not taken into account in determining average user fees.

G. DEDUCTION LIMITS (sec. 207 of the House bill, sec. 206 of the Senate amendment, and sec. 404 of the Code)

PRESENT LAW

Employer contributions to one or more qualified retirement plans are deductible subject to certain limits. In general, the deduction limit depends on the kind of plan. Subject to certain exceptions, nondeductible contributions are subject to a 10-percent excise tax.

In the case of a defined benefit pension plan or a money purchase pension plan, the employer generally may deduct the amount necessary to satisfy the minimum funding cost of the plan for the year. If a defined benefit pension plan has more than 100 participants, the maximum amount deductible is at least equal to the plan's unfunded current liabilities.

[15] See, e.g., Rev. Proc. 99–23, 1999–16 IRB 6.

In some cases, the amount of deductible contributions is limited by compensation. In the case of a profit-sharing or stock bonus plan, the employer generally may deduct an amount equal to 15 percent of compensation of the employees covered by the plan for the year.

If an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees (or a money purchase pension plan and another kind of defined contribution plan), the total deduction for all plans for a plan year generally is limited to the greater of (1) 25 percent of compensation or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year (or the amount of the plan's unfunded current liabilities, in the case of a plan with more than 100 participants).

In the case of an employee stock ownership plan ("ESOP"), principal payments on a loan used to acquire qualifying employer securities are deductible up to 25 percent of compensation.

For purposes of the deduction limits, employee elective deferral contributions to a qualified cash or deferred arrangement ("section 401(k) plan") are treated as employer contributions and, thus, are subject to the generally applicable deduction limits.[16]

For purposes of the deduction rules, compensation generally includes only taxable compensation, and thus does not include salary reduction amounts, such as elective deferrals under a section 401(k) plan or a tax-sheltered annuity ("section 403(b) annuity"), elective contributions under a deferred compensation plan of a tax-exempt organization or a State or local government ("section 457 plan"), and salary reduction contributions under a section 125 cafeteria plan. For purposes of the contribution limits under section 415, compensation does include such salary reduction amounts.

HOUSE BILL

Under the House bill, the definition of compensation for purposes of the deduction rules includes salary reduction amounts treated as compensation under section 415. In addition, the annual limitation on the amount of deductible contributions to a profit-sharing or stock bonus plan is increased from 15 percent to 20 percent of compensation of the employees covered by the plan for the year.

Effective date.—The House bill is effective for years beginning after December 31, 2000.

SENATE AMENDMENT

Under the Senate amendment, the definition of compensation for purposes of the deduction rules includes salary reduction amounts treated as compensation under section 415. In addition, the annual limitation on the amount of deductible contributions to a profit-sharing or stock bonus plan is increased from 15 percent to 25 percent of compensation of the employees covered by the plan for the year. Also, the Senate amendment provides that, except to the extent provided in regulations, a money purchase pension plan

[16] Another provision in the House bill provides that elective deferrals are not subject to the deduction limits.

is treated like a profit-sharing or stock bonus plan for purposes of the deduction rules.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The conferees intend that the Treasury regulations authorized by the conference agreement will address the need for an appropriate increase of the annual limitation on the amount of deductible contributions to a money purchase pension plan by an amount that equals the minimum funding requirement attributable to the prior plan year, but only to the extent that such amount was not deductible for the prior taxable year because the amount was not contributed prior to the due date of the employer's federal income tax return for the prior taxable year (even though the amount was contributed within 8½ months after the end of the prior plan year and therefore satisfied the minimum funding requirement).

H. OPTION TO TREAT ELECTIVE DEFERRALS AS AFTER-TAX CONTRIBUTIONS (sec. 208 of the House bill, sec. 207 of the Senate amendment, and new sec. 402A of the Code)

PRESENT LAW

A qualified cash or deferred arrangement ("section 401(k) plan") or a tax-sheltered annuity ("section 403(b) annuity") may permit a participant to elect to have the employer make payments as contributions to the plan or to the participant directly in cash. Contributions made to the plan at the election of a participant are elective deferrals. Elective deferrals must be nonforfeitable and are subject to an annual dollar limitation (sec. 402(g))[17] and distribution restrictions. In addition, elective deferrals under a section 401(k) plan are subject to special nondiscrimination rules. Elective deferrals that do not exceed the annual dollar limitation (and earnings attributable thereto) are not includible in a participant's gross income until distributed from the plan.

Elective deferrals for a taxable year that exceed the annual dollar limitation ("excess deferrals") are includible in gross income for the taxable year. If an employee makes elective deferrals under a plan (or plans) of a single employer that exceed the annual dollar limitation ("excess deferrals"), then the plan may provide for the distribution of the excess deferrals, with earnings thereon. If the excess deferrals are made to more than one plan of unrelated employers, then the plan may permit the individual to allocate excess deferrals among the various plans, no later than the March 1 (April 15 under the applicable regulations) following the end of the taxable year. If excess deferrals are distributed not later than April 15 following the end of the taxable year, along with earnings attributable to the excess deferrals, then the excess deferrals are not again includible in income when distributed. The earnings are includible in income in the year distributed. If excess deferrals (and income thereon) are not distributed by the applicable April 15, then the excess deferrals (and income thereon) are includible in income

[17] The limit on elective deferrals is $10,500 for 2000. This limit is increased under another provision of the bill.

when received by the participant. Thus, excess deferrals that are not distributed by the applicable April 15th are taxable both in the taxable year when the deferral was made and in the year the participant receives a distribution of the excess deferral.

Individuals with adjusted gross income below certain levels generally may make nondeductible contributions to a Roth IRA and may convert a deductible or nondeductible IRA into a Roth IRA. Amounts held in a Roth IRA that are withdrawn as a qualified distribution are not includible in income, nor subject to the additional 10-percent tax on early withdrawals. A qualified distribution is a distribution that (1) is made after the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA, and (2) is made after attainment of age 59½, is made on account of death or disability, or is a qualified special purpose distribution (i.e., for first-time homebuyer expenses of up to $10,000). A distribution from a Roth IRA that is not a qualified distribution is includible in income to the extent attributable to earnings, and is subject to the 10-percent tax on early withdrawals (unless an exception applies).[18]

HOUSE BILL

A section 401(k) plan or a section 403(b) annuity is permitted to include a "qualified plus contribution program" that permits a participant to elect to have all or a portion of the participant's elective deferrals under the plan treated as designated plus contributions. Designated plus contributions are elective deferrals that the participant designates as not excludable from the participant's gross income.

The annual dollar limitation on a participant's designated plus contributions is the section 402(g) annual limitation on elective deferrals, reduced by the participant's elective deferrals that the participant does not designate as designated plus contributions. Designated plus contributions are treated as any other elective deferral for purposes of nonforfeitability requirements and distribution restrictions. Under a section 401(k) plan, designated plus contributions also are treated as any other elective deferral for purposes of the special nondiscrimination requirements.

The plan is required to establish a separate account, and maintain separate recordkeeping, for a participant's designated plus contributions (and earnings allocable thereto). A qualified distribution from a participant's designated plus contributions account is not includible in the participant's gross income. A qualified distribution is a distribution that is made after the end of a specified nonexclusion period and that is (1) made on or after the date on which the participant attains age 59½, (2) made to a beneficiary (or to the estate of the participant) on or after the death of the participant, or (3) attributable to the participant's being disabled.[19] The nonexclusion period is the 5-year-taxable period beginning with the earlier of (1) the first taxable year for which the participant made a designated plus contribution to any designated plus

[18] Early distributions of converted amounts may also accelerate income inclusion of converted amounts that are taxable under the 4-year rule applicable to 1998 conversions.

[19] A qualified special purpose distribution, as defined under the rules relating to Roth IRAs, does not qualify as a tax-free distribution from a designated plus contributions account.

contribution account established for the participant under the plan, or (2) if the participant has made a rollover contribution to the designated plus contribution account that is the source of the distribution from a designated plus contribution account established for the participant under another plan, the first taxable year for which the participant made a designated plus contribution to the previously established account.

A distribution from a designated plus contributions account that is a corrective distribution of an elective deferral (and income allocable thereto) that exceeds the section 402(g) annual limit on elective deferrals is not a qualified distribution.

A participant is permitted to roll over a distribution from a designated plus contributions account only to another designated plus contributions account or a Roth IRA of the participant.

The Secretary of the Treasury is directed to require the plan administrator of each section 401(k) plan or section 403(b) annuity that permits participants to make designated plus contributions to make such returns and reports regarding designated plus contributions to the Secretary, plan participants and beneficiaries, and other persons that the Secretary may designate.

Effective date.—The House bill is effective for taxable years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment refers to designated plus contributions as "Roth contributions."

The Senate amendment also includes additional clarifications in the legislative history. The Senate amendment provides that it is intended that the Secretary generally will not permit retroactive designations of elective deferrals as Roth contributions. The Senate amendment also clarifies that Roth contributions to a section 403(b) annuity are treated the same as other salary reduction contributions to the annuity (except that Roth contributions are includible in gross income). The Senate amendment provides that it is intended that the Secretary will provide ordering rules regarding the return of excess contributions under the special nondiscrimination rules (pursuant to sec. 401(k)(8)) in the event a participant has made both Roth contributions and regular elective contributions. It is intended that such rules will generally permit a plan to allow participants to designate which contributions are returned first or to permit the plan to specify which contributions are returned first.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The conference agreement clarifies the treatment of excess deferrals to the extent attributable to excess Roth contributions. In general, the conference agreement conforms the treatment of excess Roth contributions to the treatment of excess deferrals attributable to non-Roth elective deferrals. If excess Roth contributions (including earnings thereon) are distributed no later than the April 15th following the taxable year, then the Roth contributions are not includible in gross income as a result of the distribution, because such contributions are includible in gross income when made. Earnings

on such excess contributions are treated the same as earnings on excess deferrals distributed no later than April 15th, i.e., they are includible in income when distributed. If excess Roth contributions are not distributed no later than the applicable April 15th, then such contributions (and earnings thereon) are taxable when distributed. Thus, as is the case with excess elective deferrals that are not distributed by the applicable April 15th, the contributions are includible in income in the year when made and again when distributed from the plan. Earnings on such contributions are taxable when received.

It is intended that the Secretary will provide ordering rules regarding the return of excess deferrals in the event a participant has made both Roth contributions and regular contributions to the plan. It is intended that such rules will generally permit a plan to allow participants to designate which contributions are returned first or to permit the plan to specify which contributions are returned first. It is also intended that the Secretary will provide ordering rules to determine the extent to which a distribution consists of excess Roth contributions.

Subtitle C. Enhancing Fairness for Women (secs. 421–427 of the bill)

A. Additional Salary Reduction Catch-Up Contributions (sec. 301 of the House bill, sec. 301 of the Senate amendment, and sec. 414 of the Code)

PRESENT LAW

Elective deferral limitations

Under present law, under certain salary reduction arrangements, 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 an individual may make to a qualified cash or deferred arrangement (a "401(k) plan"), a tax-sheltered annuity ("section 403(b) annuity") or a salary reduction simplified employee pension plan ("SEP") is $10,500 (for 2000). The maximum annual amount of elective deferrals that an individual may make to a SIMPLE plan is $6,000. These limits are indexed for inflation in $500 increments.

Section 457 plans

The maximum annual deferral under a deferred compensation plan of a State or local government or a tax-exempt organization (a "section 457 plan") is the lesser of (1) $8,000 (for 2000) or (2) 33⅓ percent of compensation. The $8,000 dollar limit is indexed for inflation in $500 increments. Under a special catch-up rule, the section 457 plan may provide that, for one or more of the participant's last 3 years before retirement, the otherwise applicable limit is increased to the lesser of (1) $15,000 or (2) the sum of the otherwise applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

HOUSE BILL

The provision provides that the otherwise applicable dollar limit on elective deferrals under a section 401(k) plan, section 403(b) annuity, or SIMPLE, or deferrals under a section 457 plan are increased for individuals who have attained age 50 by the end of the year.[20] Additional contributions are permitted to be made by an individual who has attained age 50 before the end of the plan year and with respect to whom no other elective deferrals may otherwise be made to the plan for the year because of the application of any limitation of the Code (e.g., the annual limit on elective deferrals) or of the plan. Under the provision, the additional amount of elective contributions that are permitted to be made by an eligible individual participating in such a plan is the lesser of (1) $5,000, or (2) the participant's compensation for the year reduced by any other elective deferrals of the participant for the year.[21] This $5,000 amount is indexed for inflation in $500 increments in 2006 and thereafter.

Catch-up contributions made under the provision are not subject to any other contribution limits and are not taken into account in applying other contribution limits. Such contributions are subject to applicable nondiscrimination rules.[22]

An employer is permitted to make matching contributions with respect to catch-up contributions. Any such matching contributions are subject to the normally applicable rules.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

SENATE AMENDMENT

The bill provides that individuals who have attained age 50 may be permitted to make additional catch-up elective contributions to employer-sponsored retirement plans.[23]

In the case of employer-sponsored retirement plans, the provision applies to elective deferrals under a section 401(k) plan, section 403(b) annuity, SIMPLE, or a section 457 plan. Additional contributions may be made by an individual who has attained age 50 before the end of the plan year and with respect to whom no other elective deferrals may otherwise be made to the plan for the year because of the application of any limitation of the Code (e.g., the annual limit on elective deferrals) or of the plan.[24] Under the bill, the additional amount of elective contributions that could be made by an eligible individual participating in such a plan is the lesser of (1) the applicable percent of the maximum dollar amount of elective deferrals otherwise excludable from the gross income of the participant for the year (under sec. 402(g)) or (2) the participant's compensation for the year reduced by any other elective deferrals

[20] Another provision of the bill increases the dollar limit on elective deferrals under such arrangements.

[21] In the case of a section 457 plan, this catch-up rule does not apply during the participant's last 3 years before retirement (in those years, the regularly applicable dollar limit is doubled).

[22] Another provision of the bill provides that elective contributions are deductible without regard to the otherwise applicable deduction limits.

[23] Another provision of the bill provides for catch-up contributions to IRAs.

[24] A plan is not required to permit participants to make catch-up contributions.

of the participant for the year.[25] The applicable percent is 10 percent in 2001, and increases by 10 percentage points until the applicable percent is 50 in 2005 and thereafter.

Catch-up contributions made under the bill are not subject to any other contribution limits and are not taken into account in applying other contribution limits. In addition, such contributions are not subject to otherwise applicable nondiscrimination rules or the top-heavy rules.

An employer is permitted to make matching contributions with respect to catch-up contributions. Any such matching contributions are subject to the normally applicable rules.

Effective date.—The provision is effective for contributions in taxable years beginning after December 31, 2000.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with a modification. Although catch-up contributions are subject to applicable nondiscrimination rules, a plan will not be treated as failing to meet the applicable nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features if the plan allows all eligible individuals participating in the plan to make the same election with respect to catch-up contributions. For purposes of this rule, all plans of related employers are treated as a single plan.

B. Equitable Treatment for Contributions of Employees to Defined Contribution Plans (sec. 302 of the House bill, sec. 302 of the Senate amendment and secs. 413(b), 415, and 452 of the Code)

PRESENT LAW

Present law imposes limits on the contributions that may be made to tax-favored retirement plans.

Defined contribution plans

In the case of a tax-qualified defined contribution plan, the limit on annual additions that can be made to the plan on behalf of an employee is the lesser of $30,000 (for 2000) or 25 percent of the employee's compensation (sec. 415(c)). Annual additions include employer contributions, including contributions made at the election of the employee (i.e., employee elective deferrals), after-tax employee contributions, and any forfeitures allocated to the employee. For this purpose, compensation means taxable compensation of the employee, plus elective deferrals, and similar salary reduction contributions. A separate limit applies to benefits under a defined benefit plan.

For years before January 1, 2000, an overall limit applies if an employee is a participant in both a defined contribution plan and a defined benefit plan of the same employer.

[25] In the case of a section 457 plans, this catch-up rule does not apply during the participant's last 3 years before retirement. Under another provision in the bill, in those years, the regularly applicable dollar limit is doubled.

Tax-sheltered annuities

In the case of a tax-sheltered annuity (a "section 403(b) annuity"), the annual contribution generally cannot exceed the lesser of the exclusion allowance or the section 415(c) defined contribution limit. The exclusion allowance for a year is equal to 20 percent of the employee's includible compensation, multiplied by the employee's years of service, minus excludable contributions for prior years under qualified plans, tax-sheltered annuities or section 457 plans of the employer.

In addition to this general rule, employees of nonprofit educational institutions, hospitals, home health service agencies, health and welfare service agencies, and churches may elect application of one of several special rules that increase the amount of the otherwise permitted contributions. The election of a special rule is irrevocable; an employee may not elect to have more than one special rule apply.

Under one special rule, in the year the employee separates from service, the employee may elect to contribute up to the exclusion allowance, without regard to the 25 percent of compensation limit under section 415. Under this rule, the exclusion allowance is determined by taking into account no more than 10 years of service.

Under a second special rule, the employee may contribute up to the lesser of: (1) the exclusion allowance; (2) 25 percent of the participant's includible compensation; or (3) $15,000.

Under a third special rule, the employee may elect to contribute up to the section 415(c) limit, without regard to the exclusion allowance. If this option is elected, then contributions to other plans of the employer are also taken into account in applying the limit.

For purposes of determining the contribution limits applicable to section 403(b) annuities, includible compensation means the amount of compensation received from the employer for the most recent period which may be counted as a year of service under the exclusion allowance. In addition, includible compensation includes elective deferrals and similar salary reduction amounts.

Treasury regulations include provisions regarding application of the exclusion allowance in cases where the employee participates in a section 403(b) annuity and a defined benefit plan. The Taxpayer Relief Act of 1997 directed the Secretary of the Treasury to revise these regulations, effective for years beginning after December 31, 1999, to reflect the repeal of the overall limit on contributions and benefits.

Section 457 plans

Compensation deferred under an eligible deferred compensation plan of a tax-exempt or State and local governmental employer (a "section 457 plan") is not includible in gross income until paid or made available. In general, the maximum permitted annual deferral under such a plan is the lesser of (1) $8,000 (in 2000) or (2) 33⅓ percent of compensation. The $8,000 limit is increased for inflation in $500 increments.

HOUSE BILL

Increase in defined contribution plan limit

The bill increases the 25 percent of compensation limitation on annual additions under a defined contribution plan to 100 percent.[26]

Conforming limits on tax-sheltered annuities

The bill repeals the exclusion allowance applicable to contributions to tax-sheltered annuities. Thus, such annuities are subject to the limits applicable to tax-qualified plans.

The bill also directs the Secretary of the Treasury to revise the regulations relating to the exclusion allowance under section 403(b)(2) to render void the requirement that contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance. For taxable years beginning after December 31, 1999, the regulatory provisions regarding the exclusion allowance are to be applied as if the requirement that contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance were void.

Section 457 plans

The bill increases the 33⅓ percent of compensation limitation on deferrals under a section 457 plan to 100 percent of compensation.

Effective date

The provision generally is effective for years beginning after December 31, 2000. The provision regarding the regulations under section 403(b)(2) is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

C. FASTER VESTING OF EMPLOYER MATCHING CONTRIBUTIONS (sec. 303 of the House bill, sec. 303 of the Senate amendment, and sec. 411 of the Code)

PRESENT LAW

Under present law, 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 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,

[26] Another provision of the bill increases the defined contribution plan dollar limit.

40 percent after 4 years of service, 60 percent after 5 years of service, 80 percent after 6 years of service, and 100 percent after 7 years of service.[27]

HOUSE BILL

The bill applies faster vesting schedules to employer matching contributions. Under the provision, employer matching contributions must vest at least as rapidly as under one of the following two alternative minimum vesting schedules. A plan satisfies the first schedule if a participant acquires a nonforfeitable right to 100 percent of employer matching contributions upon the completion of 3 years of service. A plan satisfies the second schedule if a participant has a nonforfeitable right to 20 percent of employer matching contributions for each year of service beginning with the participant's second year of service and ending with 100 percent after 6 years of service.

Effective date.—The provision is effective for contributions for plan years beginning after December 31, 2000, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement. The provision does not apply to any employee until the employee has an hour of service after the effective date. In applying the new vesting schedule, service before the effective date must be taken into account.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

D. SIMPLIFY AND UPDATE THE MINIMUM DISTRIBUTION RULES (sec. 304 of the House bill, sec. 304 of the Senate amendment, and secs. 401(a)19 and 457 of the Code)

PRESENT LAW

In general

Minimum distribution rules apply to all types of tax-favored retirement vehicles, including qualified plans, individual retirement arrangements ("IRAs"), tax-sheltered annuities ("section 403(b) annuities"), and eligible deferred compensation plans of tax-exempt and State and local government employers ("section 457 plans"). In general, under these rules, distribution of minimum benefits must begin no later than the required beginning date. Minimum distribution rules also apply to benefits payable with respect to a plan participant who has died. Failure to comply with the minimum distribution rules results in an excise tax imposed on the individual plan participant equal to 50 percent of the required minimum distribution not distributed for the year. The excise tax can be waived if the individual establishes to the satisfaction of the

[27] The minimum vesting requirements are also contained in Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

Secretary that the shortfall in the amount distributed was due to reasonable error and reasonable steps are being taken to remedy the shortfall.

Distributions prior to the death of the individual

In the case of distributions prior to the death of the plan participant, the minimum distribution rules are satisfied if either (1) the participant's entire interest in the plan is distributed by the required beginning date, or (2) the participant's interest in the plan is to be distributed (in accordance with regulations), beginning not later than the required beginning date, over a permissible period. The permissible periods are (1) the life of the participant, (2) the lives of the participant and a designated beneficiary, (3) the life expectancy of the participant, or (4) the joint life and last survivor expectancy of the participant and a designated beneficiary. In calculating minimum required distributions, life expectancies of the participant and the participant's spouse may be recomputed annually.

In the case of qualified plans, tax-sheltered annuities, and section 457 plans, the required beginning date is the April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70½ or (2) 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. If commencement of benefits is delayed beyond age 70½ from a defined benefit plan, then the accrued benefit of the employee must be actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits under the plan.[28] In the case of distributions from an IRA other than a Roth IRA, the required beginning date is the April 1 following the calendar year in which the IRA owner attains age 70½. The pre-death minimum distribution rules do not apply to Roth IRAs.

In general, under proposed regulations, in order to satisfy the minimum distribution rules, annuity payments under a defined benefit plan must be paid in periodic payments made at intervals not longer than one year over a permissible period, and must be nonincreasing, or increase only as a result of the following: (1) cost-of-living adjustments; (2) cash refunds of employee contributions; (3) benefit increases under the plan; or (4) an adjustment due to death of the employee's beneficiary. In the case of a defined contribution plan, the minimum required distribution is determined by dividing the employee's benefit by the applicable life expectancy.

Distributions after the death of the plan participant

The minimum distribution rules also apply to distributions to beneficiaries of deceased participants. In general, if the participant dies after minimum distributions have begun, the remaining interest must be distributed at least as rapidly as under the minimum distribution method being used as of the date of death. If the par-

[28] State and local government plans and church plans are not required to actuarially increase benefits that begin after age 70½.

ticipant dies before minimum distributions have begun, then the entire remaining interest must generally be distributed within 5 years of the participant's death. The 5-year rule does not apply if distributions begin within 1 year of the participant's death and are payable over the life of a designated beneficiary or over the life expectancy of a designated beneficiary. A surviving spouse beneficiary is not required to begin distribution until the date the deceased participant would have attained age 70½.

HOUSE BILL

Modification of post-death distribution rules

The provision applies the present-law rules applicable if the participant dies before distribution of minimum benefits has begun to all post-death distributions. Thus, in general, if the employee dies before his or her entire interest has been distributed, distribution of the remaining interest is required to be made within 5 years of the date of death, or begin within one year of the date of death and paid over the life or life expectancy of a designated beneficiary. In the case of a surviving spouse, distributions are not required to begin until the April 1 of the calendar year following the year in which the surviving spouse attains age 70½. Minimum distributions that have already begun could be recalculated under the new rule.

Reduction in excise tax

The bill reduces the excise tax on failures to satisfy the minimum distribution rules to 10 percent of the amount that was required to be distributed but was not distributed.

Treasury regulations

The Secretary of the Treasury is directed to update, simplify, and finalize the regulations relating to the minimum distribution rules and to reflect in such regulations current life expectancies and to revise the required distribution methods so that, under reasonable assumptions, the amount of the required distribution does not decrease over time. The regulations are to permit recalculation of distributions for future years to reflect the change in the regulations, and to permit the election of a new designated beneficiary and method of calculating life expectancy. The regulations are to be effective for years beginning after December 31, 2000, and are to apply to individuals regardless of whether minimum distributions had begun.

Effective date

In general, the provision is effective for years beginning after December 31, 2000. The provision regarding Treasury regulations is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment provides that final Treasury regulations are to be issued no later than December 31, 2001, and the

Senate amendment does not require that such regulations are to be effective for years beginning after December 31, 2000.

Effective date.—Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—In general, the provision is effective for years beginning after December 31, 2000. The provision regarding Treasury regulations is effective on the date of enactment. The conference agreement also provides a transition rule with respect to the provision providing that the required beginning date in the case of a surviving spouse is no earlier than April 1 of the calendar year after the surviving spouse attains age 70½. The conference agreement provides that, in the case of an individual who died before the date of enactment and prior to his or her required beginning date and whose beneficiary is the surviving spouse, minimum distributions to the surviving spouse are not required to begin earlier than the date distributions would have been required to begin under present law.

E. Clarification of Tax Treatment of Division of Section 457 Plan Benefits Upon Divorce (sec. 305 of the House bill, sec. 305 of the Senate amendment, and sec. 457 of the Code)

PRESENT LAW

Under present law, benefits provided under a qualified retirement plan for a participant may not be assigned or alienated to creditors of the participant, except in very limited circumstances. One exception to the prohibition on assignment or alienation rule is a qualified domestic relations order ("QDRO"). A QDRO is a domestic relations order that creates or recognizes a right of an alternate payee to any plan benefit payable with respect to a participant, and that meets certain procedural requirements.

Under present law, a distribution from a governmental plan or a church plan is treated as made pursuant to a QDRO if it is made pursuant to a domestic relations order that creates or recognizes a right of an alternate payee to any plan benefit payable with respect to a participant. Such distributions are not required to meet the procedural requirements that apply with respect to distributions from qualified plans.

Under present law, amounts distributed from a qualified plan generally are taxable to the participant in the year of distribution. However, if amounts are distributed to the spouse (or former spouse) of the participant by reason of a QDRO, the benefits are taxable to the spouse (or former spouse). Amounts distributed pursuant to a QDRO to an alternate payee other than the spouse (or former spouse) are taxable to the plan participant.

Section 457 of the Internal Revenue Code provides rules for deferral of compensation by an individual participating in an eligible deferred compensation plan ("section 457 plan") of a tax-exempt or State and local government employer. The QDRO rules do not apply to section 457 plans.

HOUSE BILL

The bill applies the taxation rules for qualified plan distributions pursuant to a QDRO to distributions made pursuant to a domestic relations order from a section 457 plan. In addition, a section 457 plan is not treated as violating the restrictions on distributions from such plans due to payments to an alternate payee under a QDRO. The special rule applicable to governmental plans and church plans applies for purposes of determining whether a distribution is pursuant to a QDRO.

Effective date.—The provision is effective for transfers, distributions, and payments made after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, with a modification to the effective date.

Effective date.—The provision relating to taxation of distributions is effective for transfers, distributions, and payments made after December 31, 2000. The other provisions are effective on January 1, 2001, except that, in the case of a domestic relations order entered into before such date, the plan administrator (1) shall treat such order as a QDRO if the administrator is paying benefits pursuant to the order and (2) may treat any other such order entered into before the effective date as a QDRO.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

F. MODIFICATIONS RELATING TO HARDSHIP WITHDRAWALS (sec. 306 of the House bill, sec. 306 of the Senate amendment and secs. 401(k) and 402 of the Code)

PRESENT LAW

Elective deferrals under a qualified cash or deferred arrangement (a "section 401(k) plan") may not be distributable prior to the occurrence of one or more specified events. One event upon which distribution is permitted is the financial hardship of the employee. Applicable Treasury regulations[29] provide that a distribution is made on account of hardship only if the distribution is made on account of an immediate and heavy financial need of the employee and is necessary to satisfy the heavy need.

The Treasury regulations provide a safe harbor under which a distribution may be deemed necessary to satisfy an immediate and heavy financial need. One requirement of this safe harbor is that the employee be prohibited from making elective contributions and employee contributions to the plan and all other plans maintained by the employer for at least 12 months after receipt of the hardship distribution.

Under present law, hardship withdrawals of elective deferrals from a qualified cash or deferred arrangement (or 403(b) annuity) are not eligible rollover distributions. Other types of hardship distributions, e.g., employer matching contributions distributed on ac-

[29] Treas. Reg. sec. 1.401(k)–1.

count of hardship, are eligible rollover distributions. Different withholding rules apply to distributions that are eligible rollover distributions and to distributions that are not eligible rollover distributions. Eligible rollover distributions that are not directly rolled over are subject to withholding at a flat rate of 20-percent. Distributions that are not eligible rollover distributions are subject to elective withholding. Periodic distributions are subject to withholding as if the distribution were wages; nonperiodic distributions are subject to withholding at a rate of 10 percent. In either case, the individual may elect not to have withholding apply.

HOUSE BILL

The Secretary of the Treasury is directed to revise the applicable regulations to reduce from 12 months to 6 months the period during which an employee must be prohibited from making elective contributions and employee contributions in order for a distribution to be deemed necessary to satisfy an immediate and heavy financial need. The revised regulations are to be effective for years beginning after December 31, 2000.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment also provides that any hardship distribution made pursuant to the terms of a plan is not an eligible rollover distribution. Thus, such distributions may not be rolled over, and are subject to the withholding rules applicable to distributions that are not eligible rollover distributions. The bill does not modify the rules under which hardship distributions may be made. For example, as under present law, hardship distributions of qualified employer matching contributions may only be made under the rules applicable to elective deferrals.

Effective date.—The provision directing the Secretary to revise the rules relating to safe harbor hardship distributions is effective on the date of enactment.

The provision providing that hardship distributions are not eligible rollover distributions is effective for distributions made after December 31, 2000. The Secretary has the authority to issue transitional guidance with respect to this provision to provide sufficient time for plans to implement the new rule.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—The provision directing the Secretary to revise the regulations relating to safe harbor hardship distributions is effective on the date of enactment. The provision relating to rollover of hardship distributions is generally effective for distributions after December 31, 2001. For distributions occurring during calendar year 2001, a plan may treat a distribution that is a hardship distribution under the terms of the plan as not an eligible rollover distribution for all purposes of the Code. Thus, for example, if a plan treats a hardship distribution made in 2001 as not an eligible

rollover distribution, the distribution could not be rolled over and the withholding rules applicable to distributions that are not eligible rollover distributions would apply.

G. Pension Coverage for Domestic and Similar Workers (sec. 307 of the Senate amendment and sec. 4972 of the Code)

PRESENT LAW

Under present law, within limits, employers may make deductible contributions to qualified retirement plans for employees. Subject to certain exceptions, a 10-percent excise tax applies to nondeductible contributions to such plans.

Employers of household workers may establish a pension plan for such workers. Contributions to such plans are not deductible because they are not made in connection with a trade or business of the employer.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the provision, the 10-percent excise tax on nondeductible contributions does not apply to contributions to a SIMPLE plan or a SIMPLE IRA which are nondeductible solely because the contributions are not a trade or business expense under section 162 because they are not made in connection with a trade or business of the employer. Thus, for example, employers of household workers could make contributions to such plans without imposition of the excise tax. As under present law, the contributions are not deductible. The present-law rules applicable to such plans, e.g., contribution limits and nondiscrimination rules, continue to apply. The provision does not apply with respect to contributions on behalf of the employer and members of his or her family.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

CONFERENCE AGREEMENT

The conference follows the Senate amendment, except that the conference agreement does not limit the waiver of the excise tax to contributions to a SIMPLE plan or SIMPLE IRA. The conference agreement provides that the 10-percent excise tax on nondeductible contributions does not apply to contributions to a SIMPLE IRA or plan, SEP, or qualified plan which are not deductible solely because the contributions are not made in connection with a trade or business of the taxpayer. Thus, for example, employers of household workers could make contributions to such plans without imposition of the excise tax. As under present law, the contributions are not deductible. The present-law rules applicable to such plans, e.g., contribution limits and nondiscrimination rules, continue to apply. The provision does not apply with respect to contributions on behalf of the employer and members of his or her family. For this purpose, family members include the individual, the individual's brothers and sisters, the brothers and sisters of the individual's

parents and grandparents, and ancestors and lineal descendants of the foregoing, and a spouse of any of the foregoing.

No inference is intended with respect to application of the excise tax under present law to contributions that are not deductible because they are not made in connection with a trade or business of the employer.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

Subtitle D. Increasing Portability for Participants (secs. 431–439 of the bill)

A. Rollovers of Retirement Plan and IRA Distributions (secs. 401–403 of the House bill, sec. 401–403 of the Senate amendment and secs. 401, 402, 403(b), 408, 457, and 3405 of the Code)

PRESENT LAW

In general

Present law permits the rollover of funds from a tax-favored retirement plan to another tax-favored retirement plan. The rules that apply depend on the type of plan involved. Similarly, the rules regarding the tax treatment of amounts that are not rolled over depend on the type of plan involved.

Distributions from qualified plans

Under present law, an "eligible rollover distribution" from a tax-qualified employer-sponsored retirement plan may be rolled over tax free to a traditional individual retirement arrangement ("IRA")[30] or another qualified plan.[31] An "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified plan, except the term does not include (1) any distribution which is one of a series of substantially equal periodic payments made (a) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or (b) for a specified period of 10 years or more, (2) any distribution to the extent such distribution is required under the minimum distribution rules, and (3) certain hardship distributions. The maximum amount that can be rolled over is the amount of the distribution includible in income, i.e., after-tax employee contributions cannot be rolled over. Qualified plans are not required to accept rollovers.

Distributions from tax-sheltered annuities

Eligible rollover distributions from a tax-sheltered annuity ("section 403(b) annuity") may be rolled over into an IRA or another section 403(b) annuity. Distributions from a section 403(b) annuity cannot be rolled over into a tax-qualified plan. Section 403(b) annuities are not required to accept rollovers.

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[30] A "traditional" IRA refers to IRAs other than Roth IRAs or SIMPLE IRAs. All references to IRAs in the description of this provision refer only to traditional IRAs.

[31] An eligible rollover distribution may either be rolled over by the distributee within 60 days of the date of the distribution or, as described below, directly rolled over by the distributing plan.

IRA distributions

Distributions from a traditional IRA, other than minimum required distributions, can be rolled over into another IRA. In general, distributions from an IRA cannot be rolled over into a qualified plan or section 403(b) annuity. An exception to this rule applies in the case of so-called "conduit IRAs." Under the conduit IRA rule, amounts can be rolled from a qualified plan into an IRA and then subsequently rolled back to another qualified plan if the amounts in the IRA are attributable solely to rollovers from a qualified plan. Similarly, an amount may be rolled over from a section 403(b) annuity to an IRA and subsequently rolled back into a section 403(b) annuity if the amounts in the IRA are attributable solely to rollovers from a section 403(b) annuity.

Distributions from section 457 plans

A "section 457 plan" is an eligible deferred compensation plan of a State or local government or tax-exempt employer that meets certain requirements. In some cases, different rules apply under section 457 to governmental plans and plans of tax-exempt employers. For example, governmental section 457 plans are like qualified plans in that plan assets are required to be held in a trust for the exclusive benefit of plan participants and beneficiaries. In contrast, benefits under a section 457 plan of a tax-exempt employer are unfunded, like nonqualified deferred compensation plans of private employers.

Section 457 benefits can be transferred to another section 457 plan. Distributions from a section 457 plan cannot be rolled over to another section 457 plan, a qualified plan, a section 403(b) annuity, or an IRA.

Rollovers by surviving spouses

A surviving spouse that receives an eligible rollover distribution may roll over the distribution into an IRA, but not a qualified plan or section 403(b) annuity.

Direct rollovers and withholding requirements

Qualified plans and section 403(b) annuities are required to provide that a plan participant has the right to elect that an eligible rollover distribution be directly rolled over to another eligible retirement plan. If the plan participant does not elect the direct rollover option, then withholding is required on the distribution at a 20-percent rate.[32]

The direct rollover rules do not apply to section 457 plans. Distributions from a section 457 plan are subject to wage withholding.

Notice of eligible rollover distribution

The plan administrator of a qualified plan or a section 403(b) annuity is required to provide a written explanation of rollover rules to individuals who receive a distribution eligible for rollover. In general, the notice is to be provided within a reasonable period

[32] Distributions from qualified plans and section 403(b) annuities that are not eligible rollover distributions are subject to elective withholding. Periodic distributions are subject to withholding as if the distribution were wages; nonperiodic distributions are subject to withholding at a rate of 10 percent. In either case, the individual may elect not to have withholding apply.

of time before making the distribution and is to include an explanation of (1) the provisions under which the individual may have the distribution directly rolled over to another eligible retirement plan, (2) the provision that requires withholding if the distribution is not directly rolled over, (3) the provision under which the distribution may be rolled over within 60 days of receipt, and (4) if applicable, certain other rules that may apply to the distribution. The Secretary has provided more specific guidance regarding timing and content of the notice and has issued a safe harbor notice that is deemed to satisfy the requirements regarding the content of the notice.

Taxation of distributions

As is the case with the rollover rules, different rules regarding taxation of benefits apply to different types of tax-favored arrangements. In general, distributions from a qualified plan, section 403(b) annuity, or IRA are includible in income in the year received. In certain cases, distributions from qualified plans are eligible for capital gains treatment and averaging. These rules do not apply to distributions from another type of plan. Distributions from a qualified plan, IRA, and section 403(b) annuity generally are subject to an additional 10-percent early withdrawal tax if made before age 59½. There are a number of exceptions to the early withdrawal tax. Some of the exceptions apply to all three types of plans, and others apply only to certain types of plans. For example, the 10-percent early withdrawal tax does not apply to IRA distributions for educational expenses, but does apply to similar distributions from qualified plans and section 403(b) annuities. Benefits under a section 457 plan are generally includible in income when paid or made available. The 10-percent early withdrawal tax does not apply to section 457 plans.

HOUSE BILL

In general

The bill provides that eligible rollover distributions from qualified retirement plans, section 403(b) annuities, and governmental section 457 plans generally may be rolled over to any of such plans or arrangements. Similarly, distributions from an IRA generally may be rolled over into a qualified plan, section 403(b) annuity, or governmental section 457 plan. The direct rollover and withholding rules are extended to distributions from a governmental section 457 plan, and such plans are required to provide the written notification regarding eligible rollover distributions.[33] The rollover notice (with respect to all plans) is required to include a description of the provisions under which distributions from the plan to which the distribution is rolled over may be subject to restrictions and tax consequences different than those applicable to distributions from

[33] The elective withholding rules applicable to distributions from qualified plans and section 403(b) annuities that are not eligible rollover distributions are also extended to distributions from governmental section 457 plans. Thus, periodic distributions from governmental section 457 plans that are not eligible rollover distributions are subject to withholding as if the distribution were wages and nonperiodic distributions from such plans that are not eligible rollover distributions are subject to withholding at a 10-percent rate. In either case, the individual may elect not to have withholding apply.

the distributing plan. Qualified plans, section 403(b) annuities, and section 457 plans are not required to accept rollovers.

Some special rules apply in certain cases. A distribution from a qualified plan is not eligible for capital gains or averaging treatment if there was a rollover to the plan that would not have been permitted under present law. Thus, in order to preserve capital gains and averaging treatment for a qualified plan distribution that is rolled over, the rollover must be made to a "conduit IRA" as under present law, and then rolled back into a qualified plan. Amounts distributed from a section 457 plan are subject to the early withdrawal tax to the extent the distribution consists of amounts attributable to rollovers from another type of plan. Section 457 plans are required to separately account for such amounts.

Rollover of after-tax contributions

The bill provides that employee after-tax contributions may be rolled over into another qualified plan or a traditional IRA. In the case of a rollover from a qualified plan to another qualified plan, the rollover may be accomplished only through a direct rollover. In addition, a qualified plan is permitted to accept rollovers of after-tax contributions only if the plan provides separate accounting for such contributions (and earnings thereon). After-tax contributions (including nondeductible contributions to an IRA) may not be rolled over from an IRA into a qualified plan, tax-sheltered annuity, or section 457 plan.

In the case of a distribution from a traditional IRA that is rolled over into an eligible rollover plan that is not an IRA, the distribution is attributed first to amounts other than after-tax contributions.

Expansion of spousal rollovers

The bill provides that surviving spouses may roll over distributions to a qualified plan, section 403(b) annuity, or governmental section 457 plan in which the surviving spouse participates.

Treasury regulations

The Secretary is directed to prescribe rules necessary to carry out the provisions. Such rules may include, for example, reporting requirements and mechanisms to address mistakes relating to rollovers. It is expected that the IRS will develop forms to assist individuals who roll over after-tax contributions to an IRA in keeping track of such contributions. Such forms could, for example, expand Form 8606—Nondeductible IRAs, to include information regarding after-tax contributions.

Effective date

The provisions are effective for distributions after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Effective date.—The provisions are effective for distributions after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. The conferees intend that the Secretary will revise the safe harbor rollover notice that plans may use to satisfy the rollover requirements. Until issuance of a new notice, the conferees intend that a plan will be treated as complying with the notice requirement if the plan makes a reasonable, good faith effort to comply. For example, the bill requires that the rollover notice include a description of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making the distribution. A plan will be treated as making a reasonable good faith effort to comply with this requirement if the notice states that distributions from the plan to which the rollover is made may be subject to different restrictions and tax consequences than those that apply to distributions from the plan from which the rollover is made.

Effective date.—The provisions are effective for distributions after December 31, 2000, except that the provision allowing after-tax contributions to be rolled over is effective for distributions after December 31, 2001.

B. WAIVER OF 60-DAY RULE (sec. 404 of the House bill, sec. 404 of the Senate amendment, and secs. 402 and 408 of the Code)

PRESENT LAW

Under present law, amounts received from an IRA or qualified plan may be rolled over tax free if the rollover is made within 60 days of the date of the distribution. The Secretary does not have the authority to waive the 60-day requirement.

HOUSE BILL

The bill provides that the Secretary may waive the 60-day rollover period if the failure to waive such requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Effective date.—The provision applies to distributions made after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

C. TREATMENT OF FORMS OF DISTRIBUTION (sec. 405 of the House bill, sec. 405 of the Senate amendment, and sec. 411(d)(6) of the Code)

PRESENT LAW

An amendment of a qualified retirement plan may not decrease the accrued benefit of a plan participant. An amendment is treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) except as provided by Treasury regulations, eliminating an optional form of benefit (sec. 411(d)(6)).[34]

The Treasury Department has recently issued final regulations specifying situations in which optional forms of benefit may be eliminated. These regulations provide that, if certain requirements are satisfied, optional forms of benefit may be eliminated or reduced in connection with the voluntary transfer of benefits between defined contribution plans in connection with an asset or stock acquisition, merger, or other similar transaction involving a change in employer or in connection with the participant's change in employment status to an employment status with respect to which the participant is not entitled to additional allocations under the transferor plan.[35] The regulations also permit defined contribution plans to eliminate or restrict optional forms of benefit if the participant is entitled to receive a single-sum distribution that is otherwise identical to the optional form of benefit that is being eliminated or restricted.[36]

A plan that is a transferee of a plan that is subject to the joint and survivor rules is also subject to those rules.

HOUSE BILL

Transfers between defined contribution plans

A defined contribution plan to which benefits are transferred is not treated as reducing a participant's or beneficiary's accrued benefit even though it does not provide all of the forms of distribution previously available under the transferor plan if (1) the plan receives from another defined contribution plan a direct transfer of the participant's or beneficiary's benefit accrued under the transferor plan, or the plan results from a merger or other transaction that has the effect of a direct transfer (including consolidations of benefits attributable to different employers within a multiple employer plan), (2) the terms of both the transferor plan and the transferee plan authorize the transfer, (3) the transfer occurs pursuant to a voluntary election by the participant or beneficiary that is made after the participant or beneficiary received a notice describing the consequences of making the election, (4) in the case of a plan that provides for an annuity as the normal form of distribution in accordance with the joint and survivor rules (sec. 417), the participant's spouse (if any) consents to the transfer in a manner similar to the consent required by section 417, and (5) the trans-

[34] A similar provision is contained in Title I of ERISA.
[35] Treas. reg. sec. 1.411(d)–4, Q&A–3, paragraph (b).
[36] Treas. reg. sec. 1.411(d)–4, Q&A–2, paragraph (e).

feree plan allows the participant or beneficiary to receive distribution of his or her benefit under the transferee plan in the form of a single sum distribution. The bill does not modify the rules relating to survivor annuities under section 417. Thus, as under present law, a plan that is a transferee of a plan subject to the joint and survivor rules is also subject to those rules.

Elimination of optional forms of benefit in the case of defined contribution plans offering a single-sum distribution

Except to the extent provided by the Secretary of the Treasury in regulations, a defined contribution plan is not treated as reducing a participant's accrued benefit if (1) a plan amendment eliminates a form of distribution previously available under the plan, (2) a single sum distribution is available to the participant at the same time or times as the form of distribution eliminated by the amendment, and (3) the single sum distribution is based on the same or greater portion of the participant's accrued benefit as the form of distribution eliminated by the amendment.

Early retirement benefits, retirement-type subsidies, and optional forms of benefit

The provision directs the Secretary of the Treasury to provide by regulations that the prohibitions against eliminating or reducing an early retirement benefit, a retirement-type subsidy, or an optional form of benefit shall not apply to plan amendments that do not adversely affect the rights of participants in a material manner but that do eliminate or reduce early retirement benefits, retirement-type subsidies, and optional forms of benefit that create significant burdens and complexities for a plan and its participants.

It is intended that the factors to be considered in determining whether an amendment has a materially adverse effect on a participant would include (1) all of the participant's early retirement benefits, retirement-type subsidies, and optional forms of benefits that are reduced or eliminated by the amendment, (2) the extent to which early retirement benefits, retirement-type subsidies, and optional forms of benefit in effect with respect to a participant after the amendment effective date provide rights that are comparable to the rights that are reduced or eliminated by the plan amendment, (3) the number of years before the participant attains normal retirement age under the plan (or early retirement age, as applicable), (4) the size of the participant's benefit that is affected by the plan amendment, in relation to the amount of the participant's compensation, and (5) the number of years before the plan amendment is effective.

Treasury regulations

The Secretary is directed to issue, not later than December 31, 2001, final regulations under section 411(d)(6), including regulations required under the provision.

Effective date

The provision is effective for years beginning after December 31, 2000, except that the direction to the Secretary is effective on the date of enactment.

SENATE AMENDMENT

Transfers between defined contribution plans

The Senate amendment provision regarding transfers of defined contribution plan benefits is the same as the House bill, except that the Senate amendment does not include the requirement that, in the case of a plan with an annuity as the normal form of distribution, the spouse, if any, must consent to the transfer. As under present law, a plan that is a transferee of a plan subject to the joint and survivor rules is subject to the joint and survivor rules.

Elimination of optional forms of benefit in the case of defined contribution plans offering a single-sum distribution

The Senate amendment does not include the provision regarding elimination of forms of distribution in the case of plans offering a lump sum.

Early retirement benefits, retirement-type subsidies, and optional forms of benefit

The Senate amendment directs the Secretary of the Treasury to provide by regulations that the prohibitions against eliminating or reducing an early retirement benefit, a retirement-type subsidy, or an optional form of benefit do not apply to plan amendments that eliminate or reduce early retirement benefits, retirement-type subsidies, and optional forms of benefit that create significant burdens and complexities for a plan and its participants, but only if such an amendment does not adversely affect the rights of any participant in more than a de minimis manner.

For this purpose, the factors to be considered in determining whether an amendment has more than a de minimis adverse effect on any participant include (1) all of the participant's early retirement benefits, retirement-type subsidies, and optional forms of benefits that are reduced or eliminated by the amendment, (2) the extent to which early retirement benefits, retirement-type subsidies, and optional forms of benefit in effect with respect to a participant after the amendment effective date provide rights that are comparable to the rights that are reduced or eliminated by the plan amendment, (3) the number of years before the participant attains normal retirement age under the plan (or early retirement age, as applicable), (4) the amount of the participant's benefit that is affected by the plan amendment, in relation to the amount of the participant's compensation,[37] and (5) the number of years before the plan amendment is effective.

Treasury regulations

The provision regarding issuance of Treasury regulations is the same as the House bill.

[37] In determining the amount of any subsidy under the provision, it is expected that the regulations will value the subsidy by reference to the date on which it would be the most valuable with respect to the participant.

Effective date

The effective date of the Senate amendment provision is the same as the House bill.[38]

CONFERENCE AGREEMENT

Transfers between defined contribution plans

The conference agreement follows the Senate amendment.

Elimination of optional forms of benefit in the case of defined contribution plans offering a single-sum distribution

The conference agreement follows the House bill.

Early retirement benefits, retirement-type subsidies, and optional forms of benefit

The conference agreement follows the Senate amendment. As under the Senate amendment, the Secretary is directed to provide by regulation that the prohibitions against eliminating or reducing an early retirement benefit, a retirement-type subsidy, or an optional form of benefit do not apply to plan amendments that eliminate or reduce early retirement benefits, retirement-type subsidies, and optional forms of benefit that create significant burdens and complexities for a plan and its participants and that do not adversely affect the rights of any participant in more than a de minimis manner.

For this purpose, the factors to be considered in determining whether an amendment has more than a de minimis adverse effect on any participant include (1) all of the participant's early retirement benefits, retirement-type subsidies, and optional forms of benefits that are reduced or eliminated by the amendment, (2) the extent to which early retirement benefits, retirement-type subsidies, and optional forms of benefit in effect with respect to a participant after the amendment effective date provide rights that are comparable to the rights that are reduced or eliminated by the plan amendment, (3) the number of years before the participant attains normal retirement age under the plan (or early retirement age, as applicable), (4) the amount of the participant's benefit that is affected by the plan amendment, in relation to the amount of the participant's compensation,[39] and (5) the number of years before the plan amendment is effective.

This provision of the bill does not affect the rules relating to involuntary cash outs (sec. 411(a)(11))[40] or survivor annuity requirements (sec. 417). Accordingly, if a participant is entitled to protections of the joint and survivor rules, those protections may not be eliminated. The intent of the provision authorizing regulations is solely to permit the elimination of early retirement benefits, retirement-type subsidies, or optional forms of benefit that have no more than a de minimis effect on any participant but cre-

[38] The Senate amendment also amends the corresponding provisions of ERISA.

[39] In determining the amount of any subsidy under the provision, it is expected that the regulations will value the subsidy by reference to the date on which it would be the most valuable with respect to the participant.

[40] Another provision of the bill provides that rollover amounts are not taken into account for purposes of the cash-out rules.

ate disproportionate burdens and complexities for a plan and its participants.

For example, assume the following. Employer A acquires employer B and merges B's defined benefit plan into A's defined benefit plan. The defined benefit plan maintained by B before the merger provides an early retirement subsidy for individuals age 55 with a specified number of years of service. E1 and E2 are employees of B and who transfer to A in connection with the merger. E1 is 25 years old and has compensation of $40,000. The present value of E's early retirement subsidy under B's plan is $75. E2 is 50 years old and also has compensation of $40,000. The present value of Y's early retirement subsidy under B's plan is $10,000.

Assume that A's plan has an early retirement subsidy for individuals who have attained age 50 with a specified number of years of service, but the subsidy is not the same as under B's plan. Under A's plan, the present value of E2's early retirement subsidy is $9,500. Maintenance of both subsidies would create burdens for the plan and complexities for the plan and its participants.

Treasury regulations could permit E1's early retirement subsidy under B's plan to be eliminated entirely (i.e., even if A's plan did not have an early retirement subsidy). Taking into account all relevant factors, including the value of the benefit, E1's compensation, and the number of years until E1 would be eligible to receive the subsidy, the subsidy is de minimis. Treasury regulations could permit E2's early retirement subsidy under B's plan to be eliminated as to be replaced by the subsidy under A's plan, because the difference in the subsidies is de minimis. However, A's subsidy could not be entirely eliminated.

Treasury regulations

The conference agreement follows the House bill and the Senate amendment, except that the conference agreement provides that the Secretary is to issue the required regulations not later than December 31, 2002. Such regulations are to be effective for plan years beginning after December 31, 2002, or such earlier date as is specified by the Secretary.

Effective date

The provision is effective for years beginning after December 31, 2000, except that the direction to the Secretary is effective on the date of enactment.

D. Rationalization of Restrictions on Distributions (sec. 406 of the House bill, sec. 406 of the Senate amendment, and secs. 401(k), 403(b), and 457 of the Code)

PRESENT LAW

Elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan"), tax-sheltered annuity ("section 403(b) annuity"), or an eligible deferred compensation plan of a tax-exempt organization or State or local government ("section 457 plan"), may not be distributable prior to the occurrence of one or more specified events. These permissible distributable events include "separation from service."

A separation from service occurs only upon a participant's death, retirement, resignation or discharge, and not when the employee continues on the same job for a different employer as a result of the liquidation, merger, consolidation or other similar corporate transaction. A severance from employment occurs when a participant ceases to be employed by the employer that maintains the plan. Under a so-called "same desk rule," a participant's severance from employment does not necessarily result in a separation from service.[41]

In addition to separation from service and other events, a section 401(k) plan that is maintained by a corporation may permit distributions to certain employees who experience a severance from employment with the corporation that maintains the plan but does not experience a separation from service because the employee continues on the same job for a different employer as a result of a corporate transaction. If the corporation disposes of substantially all of the assets used by the corporation in a trade or business, a distributable event occurs with respect to the accounts of the employees who continue employment with the corporation that acquires the assets. If the corporation disposes of its interest in a subsidiary, a distributable event occurs with respect to the accounts of the employees who continue employment with the subsidiary.

HOUSE BILL

The bill modifies the distribution restrictions applicable to section 401(k) plans, section 403(b) annuities, and section 457 plans to provide that distribution may occur upon severance from employment rather than separation from service. In addition, the provisions for distribution from a section 401(k) plan based upon a corporation's disposition of its assets or a subsidiary is repealed; this special rule is no longer necessary as a result of the changes made by the provision.

Effective date.—The provision is effective for distributions after December 31, 2000, regardless of when the severance of employment occurred.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

E. PURCHASE OF SERVICE CREDIT UNDER GOVERNMENTAL PENSION PLANS (sec. 407 of the House bill, sec. 407 of the Senate amendment, and secs. 403(b) and 457 of the Code)

PRESENT LAW

A qualified retirement plan maintained by a State or local government employer may provide that a participant may make after-tax employee contributions in order to purchase permissive service credit, subject to certain limits (sec. 415). Permissive service credit

[41] Rev. Rul. 79–336, 1979–2 C.B. 187.

means credit for a period of service recognized by the governmental plan only if the employee voluntarily contributes to the plan an amount (as determined by the plan) that does not exceed the amount necessary to fund the benefit attributable to the period of service and that is in addition to the regular employee contributions, if any, under the plan.

In the case of any repayment of contributions and earnings to a governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan (or another plan maintained by a State or local government employer within the same State), any such repayment is not taken into account for purposes of the section 415 limits on contributions and benefits. Also, service credit obtained as a result of such a repayment is not considered permissive service credit for purposes of the section 415 limits.

A participant may not use a rollover or direct transfer of benefits from a tax-sheltered annuity ("section 403(b) annuity") or an eligible deferred compensation plan of a tax-exempt organization of a State or local government ("section 457 plan") to purchase permissive service credits or repay contributions and earnings with respect to a forfeiture of service credit.

HOUSE BILL

A participant in a State or local governmental plan is not required to include in gross income a direct trustee-to-trustee transfer to a governmental defined benefit plan from a section 403(b) annuity or a section 457 plan if the transferred amount is used (1) to purchase permissive service credits under the plan, or (2) to repay contributions and earnings with respect to an amount previously refunded under a forfeiture of service credit under the plan (or another plan maintained by a State or local government employer within the same State).

Effective date.—The provision is effective for transfers after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

F. EMPLOYERS MAY DISREGARD ROLLOVERS FOR PURPOSES OF CASH-OUT RULES (sec. 408 of the House bill, sec. 408 of the Senate amendment, and sec. 411(a)(11) of the Code)

PRESENT LAW

If a qualified retirement plan participant ceases to be employed by the employer that maintains the plan, the plan may distribute the participant's nonforfeitable accrued benefit without the consent of the participant and, if applicable, the participant's spouse, if the present value of the benefit does not exceed $5,000. If such an involuntary distribution occurs and the participant subsequently re-

turns to employment covered by the plan, then service taken into account in computing benefits payable under the plan after the return need not include service with respect to which a benefit was involuntarily distributed unless the employee repays the benefit.[42]

Generally, a participant may roll over an involuntary distribution from a qualified plan to an IRA or to another qualified plan.[43]

HOUSE BILL

For purposes of the cash-out rule, a plan is permitted to provide that the present value of a participant's nonforfeitable accrued benefit is determined without regard to the portion of such benefit that is attributable to rollover contributions (and any earnings allocable thereto).

Effective date.—The provision is effective for distributions after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

G. MINIMUM DISTRIBUTION AND INCLUSION REQUIREMENTS FOR SECTION 457 PLANS (sec. 409 of the House bill, sec. 409 of the Senate amendment, and sec. 457 of the Code)

PRESENT LAW

A "section 457 plan" is an eligible deferred compensation plan of a State or local government or tax-exempt employer that meets certain requirements. For example, amounts deferred under a section 457 plan cannot exceed certain limits. Amounts deferred under a section 457 plan are generally includible in income when paid or made available. Amounts deferred under a plan of deferred compensation of a State or local government or tax-exempt employer that does not meet the requirements of section 457 are includible in income when the amounts are not subject to a substantial risk of forfeiture, regardless of whether the amounts have been paid or made available.[44]

Section 457 plans are subject to the minimum distribution rules applicable to tax-qualified pension plans. In addition, such plans are subject to additional minimum distribution rules (sec. 457(d)(2)(B)).

The limits on section 457 plans were first applied to plans of tax-exempt employers pursuant to the Tax Reform Act of 1986 (the "1986 Act"), generally effective for taxable years beginning after December 31, 1986. The limitations of section 457 do not apply to amounts deferred under a plan of a tax-exempt employer by an individual covered under such a plan on August 16, 1986, if the

[42] A similar provision is contained in Title I of ERISA.

[43] Other provisions of the bill expand the kinds of plans to which benefits may be rolled over.

[44] This rule of inclusion does not apply to amounts deferred under a tax-qualified retirement plan or similar plans.

amounts (1) were deferred from taxable years beginning before January 1, 1987, or (2) are deferred from taxable years beginning after December 31, 1986, pursuant to an agreement that was in writing on August 16, 1986, and on such date provided for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula. The provision in (2) ceases to apply if there is any modification to the agreement or formula.

HOUSE BILL

The House bill provides that amounts deferred under a section 457 plan of a State or local government are includible in income when paid.

The House bill also repeals the special minimum distribution rules applicable to section 457 plans. Thus, such plans are subject to the minimum distribution rules applicable to qualified plans.

Effective date.—The provision is effective for distributions after December 31, 2000.

SENATE AMENDMENT

The Senate amendment includes the House bill provisions.

In addition, the Senate amendment modifies the transition rule adopted in the 1986 Act relating to deferred compensation plans of tax-exempt employers. Under the bill, the transition rule applies to agreements providing cost-of-living adjustments to amounts that otherwise satisfy the requirements of the transition rule. The grandfather does not apply to the extent that the annual amount provided under such an agreement exceeds the annual grandfathered amount multiplied by the cumulative increase in the Consumer Price Index (as published by the Department of Labor).

Effective date.—The provision is generally effective for distributions after December 31, 2000. The provision relating to plans of tax-exempt organizations is effective for taxable years ending after the date of enactment for cost-of-living increases after September 1993.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

Subtitle E. Strengthening Pension Security and Enforcement (secs. 441–448 of the bill)

A. Phase in Repeal of 155 Percent of Current Liability Funding Limit; Deduction for Contributions to Fund Termination Liability (secs. 501 and 502 of the House bill, secs. 501 and 502 of the Senate amendment, and secs. 404(a)(1), 412(c)(7), and 4972(c) of the Code)

PRESENT LAW

Under present law, defined benefit pension plans are subject to minimum funding requirements designed to ensure that pension plans have sufficient assets to pay benefits. A defined benefit pension plan is funded using one of a number of acceptable actuarial cost methods.

No contribution is required under the minimum funding rules in excess of the full funding limit. The full funding limit is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 155 percent of the plan's current liability, over (2) the value of the plan's assets (sec. 412(c)(7)).[45] In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability full funding limit is based on projected benefits. The current liability full funding limit is scheduled to increase as follows: 160 percent for plan years beginning in 2001 or 2002, 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2005 and thereafter.[46] In no event is a plan's full funding limit less than 90 percent of the plan's current liability over the value of the plan's assets.

An employer sponsoring a defined benefit pension plan generally may deduct amounts contributed to satisfy the minimum funding standard for the plan year. Contributions in excess of the full funding limit generally are not deductible. Under a special rule, an employer that sponsors a defined benefit pension plan (other than a multiemployer plan) which has more than 100 participants for the plan year may deduct amounts contributed of up to 100 percent of the plan's unfunded current liability.

HOUSE BILL

Current liability full funding limit

The bill gradually increases and then repeals the current liability full funding limit. The current liability full funding limit is 160 percent of current liability for plan years beginning in 2001, 165 percent for plan years beginning in 2002, and 170 percent for plan years beginning in 2003. The current liability full funding limit is repealed for plan years beginning in 2004 and thereafter. Thus, in 2004 and thereafter, the full funding limit will be the excess, if any, of (1) the accrued liability under the plan (including normal cost), over (2) the value of the plan's assets.

Deduction for contributions to fund termination liability

The special rule allowing a deduction for unfunded current liability generally is extended to all defined benefit pension plans, i.e., the provision applies to multiemployer plans and plans with 100 or fewer participants. The special rule does not apply to plans not covered by the PBGC termination insurance program.[47]

The bill also modifies the rule by providing that the deduction is for up to 100 percent of unfunded termination liability, determined as if the plan terminated at the end of the plan year. In the case of a plan with less than 100 participants for the plan year, termination liability does not include the liability attributable to benefit increases for highly compensated employees resulting from

[45] The minimum funding requirements, including the full funding limit, are also contained in title I of ERISA.

[46] As originally enacted in the Pension Protection Act of 1997, the current liability full funding limit was 150 percent of current liability. The Taxpayer Relief Act of 1997 increased the current liability full funding limit to 155 percent in 1999 and 2000, and adopted the scheduled increases described in the text.

[47] The PBGC termination insurance program does not cover plans of professional service employers that have fewer than 25 participants.

a plan amendment which was made or became effective, whichever is later, within the last two years.

Effective date.—The provision is effective for plan years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

B. EXCISE TAX RELIEF FOR SOUND PENSION FUNDING (sec. 503 of the House bill, sec. 503 of the Senate amendment, and sec. 4972 of the Code)

PRESENT LAW

Under present law, defined benefit pension plans are subject to minimum funding requirements designed to ensure that pension plans have sufficient assets to pay benefits. A defined benefit pension plan is funded using one of a number of acceptable actuarial cost methods.

No contribution is required under the minimum funding rules in excess of the full funding limit. The full funding limit is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 155 percent of the plan's current liability, over (2) the value of the plan's assets (sec. 412(c)(7)). In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability full funding limit is based on projected benefits. The current liability full funding limit is scheduled to increase as follows: 160 percent for plan years beginning in 2001 or 2002, 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2005 and thereafter.[48] In no event is a plan's full funding limit less than 90 percent of the plan's current liability over the value of the plan's assets.

An employer sponsoring a defined benefit pension plan generally may deduct amounts contributed to satisfy the minimum funding standard for the plan year. Contributions in excess of the full funding limit generally are not deductible. Under a special rule, an employer that sponsors a defined benefit pension plan (other than a multiemployer plan) which has more than 100 participants for the plan year may deduct amounts contributed of up to 100 percent of the plan's unfunded current liability.

Present law also provides that contributions to defined contribution plans are deductible, subject to certain limitations.

Subject to certain exceptions, an employer that makes nondeductible contributions to a plan is subject to an excise tax equal to 10 percent of the amount of the nondeductible contributions for

[48] As originally enacted in the Pension Protection Act of 1997, the current liability full funding limit was 150 percent of current liability. The Taxpayer Relief Act of 1997 increased the current liability full funding limit to 155 percent in 1999 and 2000, and adopted the scheduled increases described in the text. Another proposal would gradually increase and then repeal the current liability full funding limit.

the year. The 10-percent excise tax does not apply to contributions to certain terminating defined benefit plans. The 10-percent excise tax also does not apply to contributions of up to 6 percent of compensation to a defined contribution plan for employer matching and employee elective deferrals.

HOUSE BILL

In determining the amount of nondeductible contributions, the employer is permitted to elect not to take into account contributions to a defined benefit pension plan except to the extent they exceed the accrued liability full funding limit. Thus, if an employer elects, contributions in excess of the current liability full funding limit are not subject to the excise tax on nondeductible contributions. An employer making such an election for a year is not permitted to take advantage of the present-law exceptions for certain terminating plans and certain contributions to defined contribution plans. The provision applies to terminated plans as well as ongoing plans.

Effective date.—The provision is effective for years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

C. Notice of Significant Reduction in Plan Benefit Accruals (sec. 504 of the House bill, secs. 521–523 of the Senate amendment, and secs. 411(d) and 417(e) and new sec. 4980F of the Code)

PRESENT LAW

Section 204(h) of Title I of ERISA provides that a defined benefit pension plan or a money purchase pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice ("section 204(h) notice"), setting forth the plan amendment (or a summary of the amendment written in a manner calculated to be understood by the average plan participant) and its effective date. The plan administrator must provide the section 204(h) notice to each plan participant, each alternate payee under an applicable qualified domestic relations order ("QDRO"), and each employee organization representing participants in the plan. The applicable Treasury regulations [49] provide, however, that a plan administrator need not provide the section 204(h) notice to any participant or alternate payee whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, nor to an employee organization that does not represent a participant to whom the sec-

[49] Treas. Reg. sec. 1.411(d)–6.

tion 204(h) notice must be provided. In addition, the regulations provide that the rate of future benefit accrual is determined without regard to optional forms of benefit, early retirement benefits, retirement-type subsidiaries, ancillary benefits, and certain other rights and features.

A covered amendment generally will not become effective with respect to any participants and alternate payees whose rate of future benefit accrual is reasonably expected to be reduced by the amendment but who do not receive a section 204(h) notice. An amendment will become effective with respect to all participants and alternate payees to whom the section 204(h) notice was required to be provided if the plan administrator (1) has made a good faith effort to comply with the section 204(h) notice requirements, (2) has provided a section 204(h) notice to each employee organization that represents any participant to whom a section 204(h) notice was required to be provided, (3) has failed to provide a section 204(h) notice to no more than a de minimis percentage of participants and alternate payees to whom a section 204(h) notice was required to be provided, and (4) promptly upon discovering the oversight, provides a section 204(h) notice to each omitted participant and alternate payee.

The Internal Revenue Code does not require any notice concerning a plan amendment that provides for a significant reduction in the rate of future benefit accrual.

The Internal Revenue Code prohibits the reduction of a participant's accrued benefit by plan amendment (sec. 411(d)(6)), and, for this purpose, except to the extent set forth in Treasury regulations, treats the elimination or reduction of an early retirement benefit or retirement-type subsidy or an optional form of benefit as a reduction of a participant's accrued benefit. However, this prohibition does not prevent a plan amendment from ceasing or reducing future accruals.

In the case of a pension plan that is subject to the joint and survivor annuity rules, the Internal Revenue Code (sec. 417(e)) restricts distributions before normal retirement age without the consent of the participant and the participant's spouse unless the value of the distribution does not exceed a dollar limit ($5,000 under sec. 411(a)(11)(A)). For this purpose, under Treasury regulations, a specific interest rate and mortality table are prescribed for purposes of determining whether the distribution exceeds the dollar limit and prohibits a lump sum distribution of an amount less than the amount determined under the applicable interest rate and mortality table even if the distribution exceeds the dollar limit.

HOUSE BILL

The provision adds to the Internal Revenue Code a requirement that the plan administrator of a defined benefit pension plan or a money purchase pension plan with more than 100 participants furnish a written notice concerning a plan amendment that provides for a significant reduction in the rate of future benefit accrual. The plan administrator is required to provide in this notice, in a manner calculated to be understood by the average plan participant, sufficient information (as defined in Treasury regulations) to allow participants to understand the effect of the amendment.

The notice requirement does not apply to governmental plans or church plans with respect to which an election to have the qualified plan participation, vesting, and funding rules apply has not been made (sec. 410(d)).

The plan administrator is required to provide this notice to each affected participant, each affected alternate payee, and each employee organization representing affected participants. For purposes of the provision, an affected participant or alternate payee is a participant or alternate payee to whom the significant reduction in the rate of future benefit accrual is reasonably expected to apply.

Except to the extent provided by Treasury regulations, the plan administrator is required to provide the notice within a reasonable time before the effective date of the plan amendment.

The provision imposes on a plan administrator that fails to comply with the notice requirement an excise tax equal to $100 per day per omitted participant and alternate payee. For failures due to reasonable cause and not to willful neglect, the total excise tax imposed during a taxable year of the employer will not exceed $500,000. Furthermore, in the case of a failure due to reasonable cause and not to willful neglect, the Secretary of the Treasury is authorized to waive the excise tax to the extent that the payment of the tax would be excessive relative to the failure involved.

It is intended that the Secretary will issue the necessary regulations with respect to disclosure within 90 days of enactment. It is also intended that such guidance may be relatively detailed because of the need to provide for alternative disclosures rather than a single disclosure methodology that may not fit all situations, and the need to consider the complex actuarial calculations and assumptions involved in providing necessary disclosures.

In addition, the provision directs the Secretary of the Treasury to prepare a report on the effects of conversions of traditional defined benefit plans to cash balance or hybrid formula plans. Such study is to examine the effect of such conversions on longer service participants, including the incidence and effects of "wear away" provisions under which participants earn no additional benefits for a period of time after the conversion. The Secretary is directed to submit such report, together with recommendations thereon, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate as soon as practicable, but not later than 60 days after the date of enactment.

Effective date.—The provision is effective for plan amendments taking effect on or after the date of enactment. The period for providing any notice required under the provision will not end before the last day of the 3-month period following the date of enactment. Prior to the issuance of Treasury regulations, a plan will be treated as meeting the requirements of the provision if the plan makes a good faith effort to comply with such requirements.

SENATE AMENDMENT

The provision adds to the Internal Revenue Code a requirement that the plan administrator of a pension plan furnish a written notice concerning a plan amendment that provides for a significant reduction in the rate of future benefit accrual, including any elimination or reduction of an early retirement benefit or retire-

ment-type subsidy.[50] The notice is required to set forth: (1) a summary of the amendment and the effective date of the amendment; (2) a statement that the amendment is expected to significantly reduce the rate of future benefit accrual; (3) a description of the classes of employees reasonably expected to be affected by the reduction in the rate of future benefit accrual; (4) examples illustrating the plan changes for these classes of employees; (5) in the event of an amendment that results in a conversion of a traditional defined benefit plan to a cash balance plan (described below), a notice that the plan administrator will provide, generally no later than 15 days prior to the effective date of the amendment, a "benefit estimation tool kit" (described below) that will enable affected participants who have completed at least 1 year of participation to personalize the illustrative examples; and (6) notice of each affected participant's right to request, and of the procedures for requesting, an annual benefit statement as provided under present law. The plan administrator is required to provide the notice not less than 45 days before the effective date of the plan amendment.

The notice requirement does not apply to plans to which ERISA sec. 204(h) does not apply, including governmental plans or church plans with respect to which an election to have the qualified plan participation, vesting, and funding rules apply has not been made (sec. 410(d)).

The plan administrator is required to provide this generalized notice to each affected participant and each affected alternate payee. For purposes of the provision, an affected participant or alternate payee is a participant or alternate payee to whom the reduction in the rate of future benefit accrual, including any elimination or significant reduction in early retirement benefit or retirement-type subsidy, is reasonably expected to apply.

As noted above, the provision requires the plan administrator to provide a benefit estimation tool kit, no later than 15 days prior to the amendment effective date, to a participant for whom the amendment may reasonably be expected to produce a significant reduction in the rate of future benefit accrual if the amendment has the effect of converting a traditional defined benefit plan to a cash balance plan. The plan administrator is not required to provide this benefit estimation tool kit to any participant who has less than 1 year of participation in the plan. For purposes of the provision, a "cash balance plan" means a defined benefit plan under which the accrued benefit is determined as an amount other than an annual benefit commencing at normal retirement age, and any defined benefit plan, or portion of such a plan, that has an effect similar to a defined benefit plan under which the accrued benefit is determined as an amount other than an annual benefit commencing at normal retirement age (as determined under Treasury regulations). If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a

[50] The provision also modifies the present-law notice requirement contained in section 204(h) of Title I of ERISA to provide that an applicable pension plan may not be amended to provide for a significant reduction in the rate of future benefit accrual in the event of an egregious failure by the plan administrator to comply with a notice requirement similar to the notice requirement that the provision adds to the Internal Revenue Code. In addition, the provision expands the current ERISA notice requirement regarding significant reductions in normal retirement benefit accrual rates to early retirement benefits and retirement-type subsidies.

manner as to have the effect of a conversion to a cash balance plan, the provision treats the sponsor of the plan or plans providing for such coordination as having adopted such a conversion as of the date such coordination begins. If a plan sponsor represents in communications to participants and beneficiaries that a plan amendment has an effect equivalent to a cash balance conversion, such amendment is (to the extent provided in Treasury regulations) treated as a cash balance conversion. In addition, the provision provides for the Secretary of the Treasury to issue regulations to prevent avoidance of the requirements of the provision through the use of 2 or more plan amendments rather than a single amendment.

The benefit estimation tool kit is designed to enable participants to estimate benefits under the old and new plan provisions. The provision permits the tool kit to be in the form of software (for use at home, at a workplace kiosk, or on a company intranet), worksheets, or calculation instructions, or other formats to be determined by the Secretary of the Treasury. The tool kit is required to include any necessary actuarial assumptions and formulas and to permit the participant to estimate both a single life annuity at appropriate ages and, when available, a lump sum distribution. The tool kit is required to disclose the interest rate used to compute a lump sum distribution and whether the value of early retirement benefits is included in the lump sum distribution.

The provision requires the benefit estimation tool kit to accommodate employee-provided variables with respect to age, years of service, retirement age, covered compensation, and interest rate (when variable rates apply). The tool kit is required to permit employees to recalculate estimated benefits by changing the values of these variables. The provision does not require the tool kit to accommodate employee variables with respect to qualified domestic relations orders, factors that result in unusual patterns of credited service (such as extended time away from the job), special benefit formulas for unusual situations, offsets from other plans, and forms of annuity distributions.

In the case of a cash balance conversion that occurs in connection with a business disposition or acquisition transaction and within 1 year following the date of the transaction, the provision requires the plan administrator to provide the benefit estimation tool kit prior to the end of the 2-year period following the date of the transaction to the affected participants who become participants as a result of the transaction.

The provision permits a plan administrator to provide any notice required under the provision to a person designated in writing by the individual to whom it would otherwise be provided. In addition, the provision authorizes the Secretary of the Treasury to allow any notice required under the provision to be provided by using new technologies.

The provision imposes on a plan administrator that fails to comply with the notice requirement an excise tax equal to $100 per day per omitted participant and alternate payee. No excise tax shall be imposed during any period during which any person subject to liability for the tax did not know that the failure existed and exercised reasonable diligence to meet the notice requirement. Also,

no excise tax shall be imposed on any failure if any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement and such person provides the required notice during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that the failure existed. If the person subject to liability for the excise tax exercised reasonable diligence to meet the notice requirement, the total excise tax imposed during a taxable year of the employer will not exceed $500,000. Furthermore, in the case of a failure due to reasonable cause and not to willful neglect, the Secretary of the Treasury is authorized to waive the excise tax to the extent that the payment of the tax is excessive or otherwise inequitable relative to the failure involved.

The provision adds to the Internal Revenue Code and ERISA requirements designed to prevent the use of "wear away" provisions under which participants earn no additional benefits for a period of time after a conversion of a traditional defined benefit plan to a cash balance plan. These requirements are in addition to the other provisions of the Internal Revenue Code that prohibit the reduction of a participant's accrued benefit by plan amendment (sec. 411(d)(6)). In the event of a conversion of a traditional defined benefit plan to a cash balance plan, the provision applies a minimum benefit requirement. This minimum benefit requirement requires a participant's accrued benefit under the cash balance plan to equal not less than (1) the benefit accrued for years of service prior to the conversion under the traditional defined benefit plan formula (not taking into account any early retirement benefit or retirement-type subsidy), plus (2) any benefit accrued for years of service after the conversion under the cash balance plan benefit formula. If the amendment provides that the accrued benefit initially credited to a participant's accumulation account (or its equivalent) on the effective date of the amendment satisfies the present value rules described below, the plan will not be treated as failing to provide to the participant an accrued benefit that includes such pre-conversion accrued benefit at any time after the effective date of the amendment merely because of a fluctuation in interest rates. The provision does not apply the minimum benefit requirement designed to prevent "wear away" to a cash balance conversion amendment to the extent that the amendment permits a participant to continue to accrue benefits in the same manner as under the terms of the plan in effect prior to the amendment (for example, by providing for the participant to receive the greater of the old or new formulas).

Under the provision, a plan is treated as satisfying the minimum benefit requirement designed to prevent "wear away" if a plan amendment provides that the present value of a participant's benefit accrued under a traditional defined benefit plan formula prior to a cash balance conversion is not less than the greater of (1) the present value determined using the applicable mortality table and the applicable interest rate in effect under the plan on the effective date of the cash balance conversion, or (2) the amount of the lump sum distribution that would be payable as of such effective date if the participant were eligible to receive a distribution under the terms of the plan as in effect immediately before such

effective date, but not taking into account any early retirement benefit or retirement-type subsidy.

Except as provided in regulations, the provision generally requires the present value of the accrued benefit of any participant under a cash balance plan to be equal to the balance in the participant's accumulation account (or its equivalent) as of the time of the present value determination. This requirement will not apply to any portion of the participant's benefit accrued prior to a cash balance conversion except to the extent the plan provides that the amount initially credited to a participant's accumulation account (or its equivalent) on the effective date of the conversion is not less than the benefit accrued for years of service prior to the conversion under the traditional defined benefit formula (not taking into account any early retirement benefit or retirement-type subsidy). This provision is solely intended to permit plan sponsors to provide interest credits in an amount greater than the amount currently permitted under the Internal Revenue Code. Regulations may condition satisfaction of this requirement on the plan crediting interest at rates not in excess of a maximum and not less than a minimum specified in the regulations.

Failure to comply with the requirements of the provision designed to prevent "wear away" results in the disqualification of the plan.

The provision directs the Secretary of the Treasury to define in regulations, within 12 months after the date of enactment, the terms "early retirement benefit" and "retirement-type subsidy." In addition, with respect to a participant who is eligible to accrue benefits under the terms of a defined benefit plan as in effect either before or after an amendment that results in a conversion to a cash balance plan, the provision directs the Secretary of the Treasury to prescribe regulations under which (1) the plan will be treated as meeting the requirements of sec. 411(b)(1)(A), (B), or (C) if such requirements are met separately with respect to each of the plan's methods of accruing benefits, and (2) the plan will not be treated as failing to meet the requirements of sec. 401(a)(4) merely because only participants as of the effective date of the amendment are so eligible, if the plan met the requirements of sec. 401(a)(4) under the terms of the plan as in effect before the amendment (subject to the terms and conditions provided by the regulations).

Under the provision, no inference is intended with respect to the proper treatment of cash balance plans or conversions to cash balance plans under the laws in effect prior to the effective date of the provision or under laws not affected by the provision. In addition, the provision is not intended to result in the treatment of a cash balance plan as a defined contribution plan, or to affect the rules relating to involuntary cash outs (sec. 411(a)(11))[51] or survivor annuity requirements (sec. 417).

Effective date.—The provision is effective for plan amendments taking effect on or after the date of enactment, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement. The period for providing any notice required

[51] Another provision provides that rollover amounts are not taken into account for purposes of the cash-out rules.

under the provision will not end before the last day of the 3-month period following the date of enactment. The notice requirements under the provision do not apply to any plan amendment taking effect on or after the date of enactment if, before September 5, 2000, notice is provided to participants and beneficiaries adversely affected by the plan amendment (or their representatives) that is reasonably expected to notify them of the nature and effective date of the plan amendment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications.[52] The conference agreement also requires a notice with respect to the elimination or reduction of an early retirement benefit or retirement-type subsidy. In addition, the conference agreement authorizes the Secretary of the Treasury to provide a simplified notice requirement or an exemption from the notice requirement for plans with less than 100 participants and to allow any notice required under the conference agreement to be provided by using new technologies. The conference agreement also authorizes the Secretary to provide a simplified notice requirement or an exemption from the notice requirement if participants are given the option to choose between benefits under the new plan formula and the old plan formula. In such cases, the conferees understand that the fiduciary rules applicable to pension plans may require appropriate disclosure to participants, even if no disclosure is required under the provision. With respect to the amount of the excise tax for failure to comply with the notice requirement, the conference agreement provides that no excise tax shall be imposed during any period during which any person subject to liability for the tax did not know that the failure existed and exercised reasonable diligence to meet the notice requirement. The conference agreement also provides that no excise tax shall be imposed on any failure if any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement and such person provides the required notice during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that the failure existed. Furthermore, the conference agreement provides that if the person subject to liability for the excise tax exercised reasonable diligence to meet the notice requirement, the total excise tax imposed during a taxable year of the employer will not exceed $500,000.

Effective date.—The conference agreement is effective for plan amendments taking effect on or after the date of enactment. The period for providing any notice required under the conference agreement will not end before the last day of the 3-month period following the date of enactment. Prior to the issuance of Treasury regulations, a plan will be treated as meeting the requirements of

[52] The conference agreement also modifies the present-law notice requirement contained in section 204(h) of Title I of ERISA to provide that an applicable pension plan may not be amended to provide for a significant reduction in the rate of future benefit accrual in the event of a failure by the plan administrator to comply with a notice requirement similar to the notice requirement that the conference agreement adds to the Internal Revenue Code. In addition, the conference agreement expands the current ERISA notice requirement regarding significant reductions in normal retirement benefit accrual rates to reductions in early retirement benefits and retirement-type subsidies.

the conference agreement if the plan makes a good faith effort to comply with such requirements. The notice requirement under the conference agreement does not apply to any plan amendment taking effect on or after the date or enactment if, before October 24, 2000, notice is provided to participants and beneficiaries adversely affected by the plan amendment (or their representatives) that is reasonably expected to notify them of the nature and effective date of the plan amendment.

D. Modifications to Section 415 Limits for Multiemployer Plans (sec. 505 of the House bill, sec. 504 of the Senate amendment, and sec. 415 of the Code)

PRESENT LAW

Under present law, limits apply to contributions and benefits under qualified plans (sec. 415). The limits on contributions and benefits under qualified plans are based on the type of plan.

Under a defined benefit plan, the maximum annual benefit payable at retirement is generally the lesser of (1) 100 percent of average compensation for the highest three years, or (2) $135,000 (for 2000). The dollar limit is adjusted for cost-of-living increases in $5,000 increments. The dollar limit is reduced in the case of retirement before the social security retirement age and increased in the case of retirement after the social security retirement age.

A special rule applies to governmental defined benefit plans. In the case of such plans, the defined benefit dollar limit is reduced in the case of retirement before age 62 and increased in the case of retirement after age 65. In addition, there is a floor on early retirement benefits. Pursuant to this floor, the minimum benefit payable at age 55 is $75,000.

In the case of a defined contribution plan, the limit on annual is additions if the lesser of (1) 25 percent of compensation[53] or (2) $30,000 (for 2000).

In applying these limits, plans of the same employer are aggregated. That is, all defined benefit plans of the same employer are treated as a single plan, and all defined contribution plans of the same employer are treated as a single plan. Under Treasury regulations, multiemployer plans are not aggregated with other multiemployer plans. However, if an employer maintains both a plan that is not a multiemployer plan and a mulitemployer plan, the plan that is not a multiemployer plan is aggregated with the multiemployer plan to the extent that benefits provided under the multiemployer plan are provided with respect to a common participant.[54]

HOUSE BILL

Under the House bill, the 100 percent of compensation defined benefit plan limit does not apply to multiemployer plans. In addition, multiemployer plans are not aggregated with any other plan maintained by the same employer, except for purposes of applying the dollar limitation on defined plans and the limits on annual additions to a plan that is not a multiemployer plan.

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[53] Another provision of the bill increases this limit to 100 percent of compensation.
[54] Treas. reg. sec. 1.415–8(e).

Effective date.—The provision is effective for years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill with respect to waiver of the 100 percent of compensation limit.

With respect to aggregation of multiemployer plans with other plans, the Senate amendment provides that multiemployer plans are not aggregated with single-employer defined benefit plans maintained by an employer contributing to the multiemployer plan for purposes of applying the 100 percent of compensation limit to such single-employer plan.

Effective date.—Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment with respect to the 100-percent of compensation limitation. Thus, the 100-percent of compensation defined benefit plan limit does not apply to multiemployer plans.

The conference agreement follows the Senate amendment with respect to the aggregation of multiemployer plans with other plans, with modifications.

E. INVESTMENT OF EMPLOYEE CONTRIBUTIONS IN 401(k) PLANS (sec. 505 of the Senate amendment and sec. 1524(b) of the Taxpayer Relief Act of 1997)

PRESENT LAW

The Employee Retirement Income Security Act of 1974, as amended ("ERISA") prohibits certain employee benefit plans from acquiring securities or real property of the employer who sponsors the plan if, after the acquisition, the fair market value of such securities and property exceeds 10 percent of the fair market value of plan assets. The 10-percent limitation does not apply to any "eligible individual account plans" that specifically authorize such investments. Generally, eligible individual account plans are defined contribution plans, including plans containing a cash or deferred arrangement ("401(k) plans").

The term "eligible individual account plan" does not include the portion of a plan that consists of elective deferrals (and earnings on the elective deferrals) made under section 401(k) if elective deferrals equal to more than 1 percent of any employee's eligible compensation are required to be invested in employer securities and employer real property. Eligible compensation is compensation that is eligible to be deferred under the plan. The portion of the plan that consists of elective deferrals (and earnings thereon) is still treated as an individual account plan, and the 10-percent limitation does not apply, as long as elective deferrals (and earnings thereon) are not required to be invested in employer securities or employer real property.

The rule excluding elective deferrals (and earnings thereon) from the definition of individual account plan does not apply if individual account plans are a small part of the employer's retirement plans. In particular, that rule does not apply to an individual

account plan for a plan year if the value of the assets of all individual account plans maintained by the employer do not exceed 10 percent of the value of the assets of all pension plans maintained by the employer (determined as of the last day of the preceding plan year). Multiemployer plans are not taken into account in determining whether the value of the assets of all individual account plans maintained by the employer exceed 10 percent of the value of the assets of all pension plans maintained by the employer. The rule excluding elective deferrals (and earnings thereon) from the definition of individual account plan does not apply to an employee stock ownership plan as defined in section 4975(e)(7) of the Internal Revenue Code.

The rule excluding elective deferrals (and earnings thereon) from the definition of individual account plan applies to elective deferrals for plan years beginning after December 31, 1998 (and earnings thereon). It does not apply with respect to earnings on elective deferrals for plan years beginning before January 1, 1999.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision modifies the effective date of the rule excluding certain elective deferrals (and earnings thereon) from the definition of individual account plan by providing that the rule does not apply to any elective deferral used to acquire employer securities or employer real property acquired before January 1, 1999.

Effective date.—The provision is effective as if included in the section of the Taxpayer Relief Act of 1997 that contained the rule excluding certain elective deferrals (and earnings thereon) from the definition of individual account plan.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

F. Periodic Pension Benefit Statements (sec. 506 of the Senate amendment and sec. 105(a) of ERISA)

PRESENT LAW

Title I of ERISA provides that a pension plan administrator must furnish a benefit statement to any participant or beneficiary who makes a written request for such a statement. This statement must indicate, on the basis of the latest available information, (1) the participant's or beneficiary's total accrued benefit, and (2) the participant's or beneficiary's vested accrued benefit or the earliest date on which the accrued benefit will become vested. A participant or beneficiary is not entitled to receive more than 1 benefit statement during any 12-month period. The plan administrator must furnish the benefit statement no later than 60 days after receipt of the request or, if later, 120 days after the close of the immediately preceding plan year.

In addition, the plan administrator must furnish a benefit statement to each participant whose employment terminates or

who has a 1-year break in service. For purposes of this benefit statement requirement, a "1-year break in service" is a calendar year, plan year, or other 12-month period designated by the plan during which the participant does not complete more than 500 hours of service for the employer. A participant is not entitled to receive more than 1 benefit statement with respect to consecutive breaks in service. The plan administrator must provide a benefit statement required upon termination of employment or a break in service no later than 180 days after the end of the plan year in which the termination of employment or break in service occurs.

HOUSE BILL

No provision.

SENATE AMENDMENT

A plan administrator of a defined contribution plan generally is required to furnish a benefit statement to each participant at least once annually and to a beneficiary upon written request.

In addition to providing a benefit statement to a participant or beneficiary upon written request, the plan administrator of a defined benefit plan generally is required either (1) to furnish a benefit statement at least once every 3 years to each participant who has a vested accrued benefit and who is employed by the employer at the time the plan administrator furnishes the benefit statements to participants, or (2) to annually furnish written, electronic, telephonic, or other appropriate notice to each participant of the availability of and the manner in which the participant may obtain the benefit statement.

The plan administrator of a multiemployer plan or a multiple employer plan is required to furnish a benefit statement only upon written request of a participant or beneficiary.[55]

The plan administrator is required to write the benefit statement in a manner calculated to be understood by the average plan participant and is permitted to furnish the statement in written, electronic, telephonic, or other appropriate form.

Effective date.—The provision is effective for plan years beginning after December 31, 2000.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following modifications. The conference agreement authorizes the Secretary of Labor to provide that years in which no employee or former employee benefits under a plan need not be taken into account in determining the applicable 3-year period.

Effective date.—The conference agreement is effective for plan years beginning after December 31, 2001.

[55] A multiple employer plan is a plan that is maintained by 2 or more unrelated employers but that is not maintained pursuant to a collective-bargaining agreement (sec. 413(c)).

G. Prohibited Allocations of Stock in an S Corporation ESOP (sec. 506 of the House bill, sec. 507 of the Senate amendment, and secs. 409 and 4979A of the Code)

PRESENT LAW

The Small Business Job Protection Act of 1996 allowed qualified retirement plan trusts described in section 401(a) to own stock in an S corporation. That Act treated the plan's share of the S corporation's income (and gain on the disposition of the stock) as includible in full in the trust's unrelated business taxable income ("UBTI").

The Tax Relief Act of 1997 repealed the provision treating items of income or loss of an S corporation as UBTI in the case of an employee stock ownership plan ("ESOP"). Thus, the income of an S corporation allocable to an ESOP is not subject to current taxation.

Present law provides a deferral of income on the sales of certain employer securities to an ESOP (sec. 1042). A 50-percent excise tax is imposed on certain prohibited allocations of securities acquired by an ESOP in a transaction to which section 1042 applies. In addition, such allocations are currently includible in the gross income of the individual receiving the prohibited allocation.

HOUSE BILL

In general

Under the provision, if there is a nonallocation year with respect to an ESOP maintained by an S corporation: (1) the amount allocated in a prohibited allocation to an individual who is a disqualified person is treated as distributed to such individual (i.e., the value of the prohibited allocation is includible in the gross income of the individual receiving the prohibited allocation); (2) an excise tax is imposed on the S corporation equal to 50 percent of the amount involved in a prohibited allocation; and (3) an excise tax is imposed on the S corporation with respect to any synthetic equity owned by a disqualified person.[56]

It is intended that the provision will limit the establishment of ESOPs by S corporations to those that provide broad-based employee coverage and that benefit rank-and-file employees as well as highly compensated employees and historical owners.

Definition of nonallocation year

A nonallocation year means any plan year of an ESOP holding shares in an S corporation if, at any time during the plan year, disqualified persons own at least 50 percent of the number of outstanding shares of the S corporation.

A person is a disqualified person if the person is either (1) a member of a "deemed 20-percent shareholder group" or (2) a "deemed 10-percent shareholder." A person is a member of a "deemed 20-percent shareholder group" if the aggregate number of deemed-owned shares of the person and his or her family members is at least 20 percent of the number of deemed-owned shares of

[56] The plan is not disqualified merely because an excise tax is imposed under the provision.

stock in the S corporation.[57] A person is a deemed 10-percent shareholder if the person is not a member of a deemed 20-percent shareholder group and the number of the person's deemed-owned shares is at least 10 percent of the number of deemed-owned shares of stock of the corporation.

In general, "deemed-owned shares" means: (1) stock allocated to the account of an individual under the ESOP, and (2) an individual's share of unallocated stock held by the ESOP. An individual's share of unallocated stock held by an ESOP is determined in the same manner as the most recent allocation of stock under the terms of the plan.

For purposes of determining whether there is a nonallocation year, ownership of stock generally is attributed under the rules of section 318,[58] except that: (1) the family attribution rules are modified to include certain other family members, as described below, (2) option attribution does not apply (but instead special rules relating to synthetic equity described below apply), and (3) "deemed-owned shares" held by the ESOP are treated as held by the individual with respect to whom they are deemed owned.

Under the provision, family members of an individual include (1) the spouse[59] of the individual, (2) an ancestor or lineal descendant of the individual or his or her spouse, (3) a sibling of the individual (or the individual's spouse) and any lineal descendant of the brother or sister, and (4) the spouse of any person described in (2) or (3).

The provision contains special rules applicable to synthetic equity interests. Except to the extent provided in regulations, the stock on which a synthetic equity interest is based is treated as outstanding stock of the S corporation and as deemed-owned shares of the person holding the synthetic equity interest if such treatment would result in the treatment of any person as a disqualified person or the treatment of any year as a nonallocation year. Thus, for example, disqualified persons for a year include those individuals who are disqualified persons under the general rule (i.e., treating only those shares held by the ESOP as deemed-owned shares) and those individuals who are disqualified individuals if synthetic equity interests are treated as deemed-owned shares.

"Synthetic equity" means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.[60]

Ownership of synthetic equity is attributed in the same manner as stock is attributed under the provision (as described above).

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[57] A family member of a member of a "deemed 20-percent shareholder group" with deemed owned shares also is treated as a disqualified person.

[58] These attribution rules also apply to stock treated as owned by reason of the ownership of synthetic equity.

[59] As under section 318, an individual's spouse is not treated as a member of the individual's family if the spouses are legally separated.

[60] The provisions relating to synthetic equity do not modify the rules relating to S corporations, e.g., the circumstances in which options or similar interests are treated as creating a second class of stock.

In addition, ownership of synthetic equity is attributed under the rules of section 318(a)(2) and (3) in the same manner as stock.

Definition of prohibited allocation

An ESOP of an S corporation is required to provide that no portion of the assets of the plan attributable to (or allocable in lieu of) S corporation stock may, during a nonallocation year, accrue (or be allocated directly or indirectly under any qualified plan of the S corporation) for the benefit of a disqualified person. A "prohibited allocation" refers to violations of this provision. A prohibited allocation occurs, for example, if income on S corporation stock held by an ESOP is allocated to the account of an individual who is a disqualified person.

Application of excise tax

In the case of a prohibited allocation, the S corporation is liable for an excise tax equal to 50 percent of the amount of the allocation. For example, if S corporation stock is allocated in a prohibited allocation, the excise tax is equal to 50 percent of the fair market value of such stock.

A special rule applies in the case of the first nonallocation year, regardless of whether there is a prohibited allocation. In that year, the excise tax also applies to the fair market value of the deemed-owned shares of any disqualified person held by the ESOP, even though those shares are not allocated to the disqualified person in that year.

As mentioned above, the S corporation also is liable for an excise tax with respect to any synthetic equity interest owned by any disqualified person in a nonallocation year. The excise tax is 50 percent of the value of the shares on which synthetic equity is based.

Treasury regulations

The Treasury Department is given the authority to prescribe such regulations as may be necessary to carry out the purposes of the provision.

Effective date

The provision generally is effective with respect to plan years beginning after December 31, 2001. In the case of an ESOP established after July 11, 2000, or an ESOP established on or before such date if the employer maintaining the plan was not an S corporation on such date, the proposal is effective with respect to plan years ending after July 11, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

Subtitle F. Reducing Regulatory Burdens (secs. 451–464 of the bill)

A. Modification of Timing of Plan Valuations (sec. 601 of the House bill, sec. 601 of the Senate amendment, and sec. 412 of the Code)

PRESENT LAW

Under present law, plan valuations are generally required annually for plans subject to the minimum funding rules. Under proposed Treasury regulations, except as provided by the Commissioner, the valuation must be as of a date within the plan year to which the valuation refers or within the month prior to the beginning of that year.[61]

HOUSE BILL

The provision incorporates into the statute the proposed regulation regarding the date of valuations. The provision also provides, as an exception to this general rule, that the valuation date with respect to a plan year may be any date within the immediately preceding plan year if, as of such date, plan assets are not less than 125 percent of the plan's current liability. Information determined as of such date is required to be adjusted actuarially, in accordance with Treasury regulations, to reflect significant differences in plan participants. An election to use a prior plan year valuation date, once made, may only be revoked with the consent of the Secretary.

Effective date.—The provision is effective for plan years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.[62]

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.[63]

B. ESOP Dividends May Be Reinvested Without Loss of Dividend Deduction (sec. 602 of the House bill, sec. 602 of the Senate amendment, and sec. 404 of the Code)

PRESENT LAW

An employer is entitled to deduct certain dividends paid in cash during the employer's taxable year with respect to stock of the employer that is held by an employee stock ownership plan ("ESOP"). The deduction is allowed with respect to dividends that, in accordance with plan provisions, are (1) paid in cash directly to the plan participants or their beneficiaries, (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or (3) used to make payments on loans (including payments of interest as well as principal) that

[61] Prop. reg. sec. 1.412(c)(9)–1(b)(1).
[62] The Senate amendment also amends the corresponding provisions of ERISA.
[63] The conference agreement also amends the corresponding provisions of ERISA.

were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

The Secretary may disallow the deduction for any ESOP dividend if he determines that the dividend constitutes, in substance, an evasion of taxation (sec. 404(k)(5)).

HOUSE BILL

In addition to the deductions permitted under present law for dividends paid with respect to employer securities that are held by an ESOP, an employer is entitled to deduct dividends that, at the election of plan participants or their beneficiaries, are (1) payable in cash directly to plan participants or beneficiaries, (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or (3) paid to the plan and reinvested in qualifying employer securities.

As under present law, the Secretary may disallow the deduction for any ESOP dividend if he determines that the dividend constitutes, in substance, an evasion of taxation (sec. 404(k)(5)).

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment, with the following modification. The conference agreement permits the Secretary of the Treasury to disallow the deduction for any ESOP dividend in the case of any dividend that constitutes the avoidance or evasion of taxation. For example, it is intended that the Secretary will disallow the deduction as an avoidance or evasion of taxation in circumstances similar to those that would result in a nonallocation year under the provision of the bill relating to S corporation ESOPs. The dividends deductible under the provision are treated the same as other plan earnings, i.e., they are not subject to the limits on elective deferrals or the special nondiscrimination rules applicable to section 401(k) plans, and are not treated as annual additions for purposes of the section 415 limits on contributions.

C. REPEAL TRANSITION RULE RELATING TO CERTAIN HIGHLY COMPENSATED EMPLOYEES (sec. 603 of the House bill, sec. 603 of the Senate amendment, and sec. 1114(c)(4) of the Tax Reform Act of 1986)

PRESENT LAW

Under present law, for purposes of the rules relating to qualified plans, a highly compensated employee is generally defined as an employee[64] who (1) was a 5-percent owner of the employer at any time during the year or the preceding year or (2) either (a) had compensation for the preceding year in excess of $85,000 (for 2000)

[64] An employee includes a self-employed individual.

or (b) at the election of the employer, had compensation in excess of $85,000 for the preceding year and was in the top 20 percent of employees by compensation for such year.

Under a rule enacted in the Tax Reform Act of 1986, a special definition of highly compensated employee applies for purposes of the nondiscrimination rules relating to qualified cash or deferred arrangements ("section 401(k) plans") and matching contributions. This special definition applies to an employer incorporated on December 15, 1924, that meets certain specific requirements.

HOUSE BILL

The provision repeals the special definition of highly compensated employee under the Tax Reform Act of 1986. Thus, the present-law definition applies.

Effective date.—The provision is effective for plan years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

D. Employees of Tax-Exempt Entities (sec. 604 of the House bill and sec. 604 of the Senate amendment)

PRESENT LAW

The Tax Reform Act of 1986 provided that nongovernmental tax-exempt employers were not permitted to maintain a qualified cash or deferred arrangement ("section 401(k) plan"). This prohibition was repealed, effective for years beginning after December 31, 1996, by the Small Business Job Protection Act of 1996.

Treasury regulations provide that, in applying the nondiscrimination rules to a section 401(k) plan (or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan), the employer may treat as excludable those employees of a tax-exempt entity who could not participate in the arrangement due to the prohibition on maintenance of a section 401(k) plan by such entities. Such employees may be disregarded only if more than 95 percent of the employees who could participate in the section 401(k) plan benefit under the plan for the plan year.[65]

Tax-exempt charitable organizations may maintain a tax-sheltered annuity (a "section 403(b) annuity") that allows employees to make salary reduction contributions.

HOUSE BILL

The Treasury Department is directed to revise its regulations under section 410(b) to provide that employees of a tax-exempt charitable organization who are eligible to make salary reduction

[65] Treas. Reg. sec. 1.410(b)–6(g).

contributions under a section 403(b) annuity may be treated as excludable employees for purposes of testing a section 401(k) plan, or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan of the employer, if (1) no employee of such tax-exempt entity is eligible to participate in the section 401(k) or 401(m) plan and (2) at least 95 percent of the employees who are not employees of the charitable employer are eligible to participate in such section 401(k) plan or section 401(m) plan.

The revised regulations are to be effective for years beginning after December 31, 1996.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

E. TREATMENT OF EMPLOYER-PROVIDED RETIREMENT ADVICE (sec. 605 of the House bill, sec. 605 of the Senate amendment, and sec. 132 of the Code)

PRESENT LAW

Under present law, certain employer-provided fringe benefits are excludable from gross income (sec. 132) and wages for employment tax purposes. These excludable fringe benefits include working condition fringe benefits and de minimis fringes. In general, a working condition fringe benefit is any property or services provided by an employer to an employee to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction as a business expense. A de minimis fringe benefit is any property or services provided by the employer the value of which, after taking into account the frequency with which similar fringes are provided, is so small as to make accounting for it unreasonable or administratively impracticable.

In addition, if certain requirements are satisfied, up to $5,250 annually of employer-provided educational assistance is excludable from gross income (sec. 127) and wages. This exclusion expires with respect to courses beginning after December 31, 2001.[66] Education not excludable under section 127 may be excludable as a working condition fringe.

There is no specific exclusion under present law for employer-provided retirement planning services. However, such services may be excludable as employer-provided educational assistance or a fringe benefit.

HOUSE BILL

Qualified retirement planning services provided to an employee and his or her spouse by an employer maintaining a qualified plan

[66] The exclusion does not apply with respect to graduate-level courses.

are excludable from income and wages. Qualified retirement planning services are advice and information regarding retirement planning. The exclusion is not limited to information regarding the qualified plan, and, thus, for example, applies to advice and information regarding retirement income planning for an individual and his or her spouse and how the employer's plan fits into the individual's overall retirement income plan. On the other hand, the exclusion does not apply to services that may be related to retirement planning, such as tax preparation, accounting, legal, or brokerage services.

The exclusion does not apply with respect to highly compensated employees unless the services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified plan.

Effective date.—The provision is effective with respect to years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. The conferees intend that the provision will clarify the treatment of retirement advice provided in a nondiscriminatory manner. It is intended that the Secretary, in determining the application of the exclusion to highly compensated employees, may permit employers to take into consideration employee circumstances other than compensation and position in providing advice to classifications of employees. Thus, for example, the Secretary may permit employers to limit certain advice to individuals nearing retirement age under the plan.

F. Reporting Simplification (sec. 606 of the House bill and sec. 606 of the Senate amendment)

PRESENT LAW

A plan administrator of a pension, annuity, stock bonus, profit-sharing or other funded plan of deferred compensation generally must file with the Secretary of the Treasury an annual return for each plan year containing certain information with respect to the qualification, financial condition, and operation of the plan. Title I of ERISA also may require the plan administrator to file annual reports concerning the plan with the Department of Labor and the Pension Benefit Guaranty Corporation ("PBGC"). The plan administrator must use the Form 5500 series as the format for the required annual return.[67] The Form 5500 series annual return/report, which consists of a primary form and various schedules, includes the information required to be filed with all three agencies. The plan administrator satisfies the reporting requirement with respect to each agency by filing the Form 5500 series annual return/

[67] Treas. Reg. sec. 301.6058–1(a).

report with the Department of Labor, which forwards the form to the Internal Revenue Service and the PBGC.

The Form 5500 series consists of 3 different forms: Form 5500, Form 5500–C/R, and Form 5500–EZ. Form 5500 is the most comprehensive of the forms and requires the most detailed financial information. Form 5500–C/R requires less information than Form 5500, and Form 5500–EZ, which consists of only 1 page, is the simplest of the forms.

The size of the plan determines which form a plan administrator must file. If the plan has more than 100 participants at the beginning of the plan year, the plan administrator generally must file Form 5500. If the plan has fewer than 100 participants at the beginning of the plan year, the plan administrator generally may file Form 5500–C/R. A plan administrator generally may file Form 5500–EZ if (1) the only participants in the plan are the sole owner of a business that maintains the plan (and such owner's spouse), or partners in a partnership that maintains the plan (and such partners' spouses), (2) the plan is not aggregated with another plan in order to satisfy the minimum coverage requirements of section 410(b), (3) the employer is not a member of a related group of employers, and (4) the employer does not receive the services of leased employees. If the plan satisfies the eligibility requirements for Form 5500–EZ and the total value of the plan assets as of the end of the plan year and all prior plan years does not exceed $100,000, the plan administrator is not required to file a return.

HOUSE BILL

The Secretary of the Treasury is directed to provide for the filing of a simplified annual return substantially similar to the Form 5500–EZ by a plan that (1) covers less than 25 employees on the first day of the plan year, (2) is not aggregated with another plan in order to satisfy the minimum coverage requirements of section 410(b), (3) is maintained by an employer that is not a member of a related group of employers, and (4) is maintained by an employer that does not receive the services of leased employees.

In addition, the Secretary is directed to modify the annual return filing requirements with respect to plans that satisfy the eligibility requirements for Form 5500–EZ to provide that if the total value of the plan assets of such a plan as of the end of the plan year and all prior plan years does not exceed $250,000, the plan administrator is not required to file a return.

Effective date.—The provision is effective on January 1, 2001.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment does not include the provision relating to annual returns for plans that cover less than 25 employees.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill, with the following modification. The conference agreement directs the Secretary of the Treasury to provide simplified reporting requirements

for plan years beginning after December 31, 2001, for certain plans with fewer than 25 employees.

G. IMPROVEMENT TO EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM (sec. 607 of the House bill and sec. 607 of the Senate amendment)

PRESENT LAW

A retirement plan that is intended to be a tax-qualified plan provides retirement benefits on a tax-favored basis if the plan satisfies all of the requirements of section 401(a). Similarly, an annuity that is intended to be a tax-sheltered annuity provides retirement benefits on a tax-favored basis if the program satisfies all of the requirements of section 403(b). Failure to satisfy all of the applicable requirements of section 401(a) or section 403(b) may disqualify a plan or annuity for the intended tax-favored treatment.

The Internal Revenue Service ("IRS") has established the Employee Plans Compliance Resolution System ("EPCRS"), which is a comprehensive system of correction programs for sponsors of retirement plans and annuities that are intended, but have failed, to satisfy the requirements of section 401(a) and section 403(b), as applicable.[68] EPCRS permits employers to correct compliance failures and continue to provide their employees with retirement benefits on a tax-favored basis.

The IRS has designed EPCRS to (1) encourage operational and formal compliance, (2) promote voluntary and timely correction of compliance failures, (3) provide sanctions for compliance failures identified on audit that are reasonable in light of the nature, extent, and severity of the violation, (4) provide consistent and uniform administration of the correction programs, and (5) permit employers to rely on the availability of EPCRS in taking corrective actions to maintain the tax-favored status of their retirement plans and annuities.

The basic elements of the programs that comprise EPCRS are self-correction, voluntary correction with IRS approval, and correction on audit. The Administrative Policy Regarding Self-Correction ("APRSC") permits a plan sponsor that has established compliance practices to correct certain insignificant failures at any time (including during an audit), and certain significant failures within a 2–year period, without payment of any fee or sanction. The Voluntary Compliance Resolution ("VCR") program, the Walk-In Closing Agreement Program ("Walk-In CAP"), and the Tax-Sheltered Annuity Voluntary Correction ("TVC") program permit an employer, at any time before an audit, to pay a limited fee and receive IRS approval of a correction. For a failure that is discovered on audit and corrected, the Audit Closing Agreement Program ("Audit CAP") provides for a sanction that bears a reasonable relationship to the nature, extent, and severity of the failure and that takes into account the extent to which correction occurred before audit.

The IRS has expressed its intent that EPCRS will be updated and improved periodically in light of experience and comments from those who use it.

[68] Rev. Proc. 98–22, 1998–12 I.R.B. 11, as modified by Rev. Proc. 99–13, 1999–5, I.R.B. 52.

HOUSE BILL

The Secretary of the Treasury is directed to continue to update and improve EPCRS, giving special attention to (1) increasing the awareness and knowledge of small employers concerning the availability and use of EPCRS, (2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures, (3) extending the duration of the self-correction period under APRSC for significant compliance failures, (4) expanding the availability to correct insignificant compliance failures under APRSC during audit, and (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

H. Repeal of the Multiple Use Test (sec. 608 of the House bill, sec. 608 of the Senate amendment, and sec. 401(m) of the Code)

PRESENT LAW

Elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan") are subject to a special annual nondiscrimination test ("ADP test"). The ADP test compares the actual deferral percentages ("ADPs") of the highly compensated employee group and the nonhighly compensated employee group. The ADP for each group generally is the average of the deferral percentages separately calculated for the employees in the group who are eligible to make elective deferrals for all or a portion of the relevant plan year. Each eligible employee's deferral percentage generally is the employee's elective deferrals for the year divided by the employee's compensation for the year.

The plan generally satisfies the ADP test if the ADP of the highly compensated employee group for the current plan year is either (1) not more than 125 percent of the ADP of the nonhighly compensated employee group for the prior plan year, or (2) not more than 200 percent of the ADP of the nonhighly compensated employee group for the prior plan year and not more than 2 percentage points greater than the ADP of the nonhighly compensated employee group for the prior plan year.

Employer matching contributions and after-tax employee contributions under a defined contribution plan also are subject to a special annual nondiscrimination test ("ACP test"). The ACP test compares the actual deferral percentages ("ACPs") of the highly compensated employee group and the nonhighly compensated employee group. The ACP for each group generally is the average of the contribution percentages separately calculated for the employ-

ees in the group who are eligible to make after-tax employee contributions or who are eligible for an allocation of matching contributions for all or a portion of the relevant plan year. Each eligible employee's contribution percentage generally is the employee's aggregate after-tax employee contributions and matching contributions for the year divided by the employee's compensation for the year.

The plan generally satisfies the ACP test if the ACP of the highly compensated employee group for the current plan year is either (1) not more than 125 percent of the ACP of the nonhighly compensated employee group for the prior plan year, or (2) not more than 200 percent of the ACP of the nonhighly compensated employee group for the prior plan year and not more than 2 percentage points greater than the ACP of the nonhighly compensated employee group for the prior plan year.

For any year in which (1) at least one highly compensated employee is eligible to participate in an employer's plan or plans that are subject to both the ADP test and the ACP test, (2) the plan subject to the ADP test satisfies the ADP test but the ADP of the highly compensated employee group exceeds 125 percent of the ADP of the nonhighly compensated employee group, and (3) the plan subject to the ACP test satisfies the ACP test but the ACP of the highly compensated employee group exceeds 125 percent of the ACP of the nonhighly compensated employee group, an additional special nondiscrimination test ("multiple use test") applies to the elective deferrals, employer matching contributions, and after-tax employee contributions. The plan or plans generally satisfy the multiple use test if the sum of the ADP and the ACP of the highly compensated employee group does not exceed the greater of (1) the sum of (A) 1.25 times the greater of the ADP or the ACP of the nonhighly compensated employee group, and (B) 2 percentage points plus (but not more than 2 times) the lesser of the ADP or the ACP of the nonhighly compensated employee group, or (2) the sum of (A) 1.25 times the lesser of the ADP or the ACP of the nonhighly compensated employee group, and (B) 2 percentage points plus (but not more than 2 times) the greater of the ADP or the ACP of the nonhighly compensated employee group.

HOUSE BILL

The provision repeals the multiple use test.

Effective date.—The provision is effective for years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

I. Flexibility in Nondiscrimination, Coverage, and Line of Business Rules (sec. 609 of the House bill, sec. 609 of the Senate amendment and secs. 401(a)(4), 410(b), and 414(r) of the Code)

PRESENT LAW

A plan is not a qualified retirement plan if the contributions or benefits provided under the plan discriminate in favor of highly compensated employees (sec. 401(a)(4)). The applicable Treasury regulations set forth the exclusive rules for determining whether a plan satisfies the nondiscrimination requirement. These regulations state that the form of the plan and the effect of the plan in operation determine whether the plan is nondiscriminatory and that intent is irrelevant.

Similarly, a plan is not a qualified retirement plan if the plan does not benefit a minimum number of employees (sec. 410(b)). A plan satisfies this minimum coverage requirement if and only if it satisfies one of the tests specified in the applicable Treasury regulations. If an employer is treated as operating separate lines of business, the employer may apply the minimum coverage requirements to a plan separately with respect to the employees in each separate line of business (sec. 414(r)). Under a so-called "gateway" requirement, however, the plan must benefit a classification of employees that does not discriminate in favor of highly compensated employees in order for the employer to apply the minimum coverage requirements separately for the employees in each separate line of business. A plan satisfies this gateway requirement only if it satisfies one of the tests specified in the applicable Treasury regulations.

HOUSE BILL

The Secretary of the Treasury is directed to provide by regulation applicable to years beginning after December 31, 2000, that a plan is deemed to satisfy the nondiscrimination requirements of section 401(a)(4) if the plan satisfies the pre-1994 facts and circumstances test, satisfies the conditions prescribed by the Secretary to appropriately limit the availability of such test,[69] and is submitted to the Secretary for a determination of whether it satisfies such test (to the extent provided by the Secretary).

Similarly, a plan complies with the minimum coverage requirement of section 410(b) if the plan satisfies the pre-1989 coverage rules, is submitted to the Secretary for a determination of whether it satisfies the pre-1989 coverage rules (to the extent provided by the Secretary), and satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of the pre-1989 coverage rules.[70]

The Secretary of the Treasury is directed to modify, on or before December 31, 2000, the existing regulations issued under section 414(r) in order to expand (to the extent that the Secretary may determine to be appropriate) the ability of a plan to demonstrate

[69] Any conditions prescribed by the Secretary cannot be effective before the first year beginning not less than 120 days after the date on which the condition is prescribed.

[70] Any conditions prescribed by the Secretary cannot be effective before the first year beginning not less than 120 days after the date on which the condition is prescribed.

compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, with the following modification. The Senate amendment provides that the regulations required with respect to the nondiscrimination requirements of section 401(a)(4), the minimum coverage requirements of section 410(b), and the line of business requirements of section 414(r) are to be issued or effective, whichever is applicable, by December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following modification. The conference agreement provides that the regulations required with respect to the nondiscrimination requirements of section 401(a)(4), the minimum coverage requirements of section 410(b), and the line of business requirements of section 414(r) are to be issued or effective, whichever is applicable, by December 31, 2002.

J. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL GOVERNMENT PLANS (sec. 610 of the House bill, sec. 610 of the Senate amendment, and sec. 1505 of the Taxpayer Relief Act of 1997, and secs. 401(a) and 401(k) of the Code)

PRESENT LAW

All governmental plans are exempt from the minimum coverage requirements (sec. 410(b)). A qualified retirement plan maintained by a State or local government is exempt from the rules concerning nondiscrimination (sec. 401(a)(4)) and minimum participation (sec. 401(a)(26)). All other governmental plans are not exempt from the nondiscrimination and minimum participation rules.

HOUSE BILL

The provision exempts all governmental plans (as defined in sec. 414(d)) from the nondiscrimination and minimum participation rules.

Effective date.—The provision is effective for plan years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

K. Notice and Consent Period Regarding Distributions; Disclosure of Optional Forms of Benefit (sec. 611 of the House bill, sec. 611 of the Senate amendment, and secs. 402(f), 411, and 417 of the Code)

PRESENT LAW

Notice and consent requirements apply to certain distributions from qualified retirement plans. These requirements relate to the content and timing of information that a plan must provide to a participant prior to a distribution, and to whether the plan must obtain the participant's consent to the distribution. The nature and extent of the notice and consent requirements applicable to a distribution depend upon the value of the participant's vested accrued benefit and whether the joint and survivor annuity requirements (sec. 417) apply to the participant.[71]

If the present value of the participant's vested accrued benefit exceeds $5,000, the plan may not distribute the participant's benefit without the written consent of the participant. The participant's consent to a distribution is not valid unless the participant has received from the plan a notice that contains a written explanation of (1) the material features and the relative values of the optional forms of benefit available under the plan, (2) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (3) the rules concerning the taxation of a distribution. If the joint and survivor annuity requirements apply to the participant, this notice also must contain a written explanation of (1) the terms and conditions of the qualified joint and survivor annuity ("QJSA"), (2) the participant's right to make, and the effect of, an election to waive the QJSA, (3) the rights of the participant's spouse with respect to a participant's waiver of the QJSA, and (4) the right to make, and the effect of, a revocation of a waiver of the QJSA. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

If the participant's vested accrued benefit does not exceed $5,000, the terms of the plan may provide for distribution without the participant's consent. The plan generally is required, however, to provide to the participant a notice that contains a written explanation of (1) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (2) the rules concerning the taxation of a distribution. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

The plan administrator is required to provide to the distributee of an eligible rollover distribution an explanation of the rollover and withholding rules applicable to the distribution. This notice must generally be provided no less than 30 days and not more than 90 days before the date of the distribution.

HOUSE BILL

A qualified retirement plan is required to provide the applicable distribution notice no less than 30 days and no more than 180

[71] Similar provisions are contained in Title I of ERISA.

days before the date distribution commences. The Secretary of the Treasury is directed to modify the applicable regulations to reflect the extension of the notice period to 180 days and to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

Effective date.—The provision is effective for years beginning after December 31, 2000.

SENATE AMENDMENT

The Senate amendment is the same as the House bill with respect to the notice and consent period regarding distributions.

In addition, the Senate amendment requires that plan participants be notified of the existence of certain differences between the values of optional forms of benefit. If a plan provides optional forms of benefits and the present values of such optional forms of benefits are not actuarially equivalent as of the annuity starting date, then the plan is required to provide certain information regarding such benefits in the notice required to be provided regarding joint and survivor annuities. The information must be sufficient (as determined in accordance with Treasury regulations) to allow the participant to understand the differences in the present values of the optional forms of benefits and the effect the participant's election as to the form of benefit will have on the value of the benefits provided under the plan. The information must be provided in a manner calculated to be reasonably understood by the average plan participant.

Effective date.—Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following modification. With respect to the disclosure of the differences between the values of optional forms of benefits, the conference agreement directs the Secretary of the Treasury to issue, not later than December 31, 2001, final regulations under section 417(a)(3). These regulations are to provide that, if a defined benefit plan offers both a qualified joint and survivor annuity and a single sum optional form of benefit, and the distributable amount under such single sum option is less than the present value (determined in accordance with section 417(e)) of the qualified joint and survivor annuity commencing as of the same annuity starting date, the applicable distribution notice shall include sufficient information to permit the participant to understand the difference between the present value of the qualified joint and survivor annuity and the amount of the single sum. If the plan offers an unmarried participant one or more annuity options that are substantially more valuable than the qualified joint and survivor annuity offered by the plan, the required comparison shall be made between the single sum option and the most valuable of the other annuity options. The conference agreement provides that the regulations shall apply to distributions made not earlier than 6 months after the date the regulations are issued.

L. Annual Report Dissemination (sec. 612 of the Senate amendment and sec. 104(b)(3) of ERISA)

PRESENT LAW

Title I of ERISA generally requires the plan administrator of each employee pension benefit plan and each employee welfare benefit plan to file an annual report concerning the plan with the Secretary of Labor within seven months after the end of the plan year. Within nine months after the end of the plan year, the plan administrator generally must provide to each participant and to each beneficiary receiving benefits under the plan a summary of the annual report filed with the Secretary of Labor for the plan year.

HOUSE BILL

No provision.

SENATE AMENDMENT

Within nine months after the end of each plan year, the plan administrator is required to make available for examination a summary of the annual report filed with the Secretary of Labor for the plan year. In addition, the plan administrator is required to furnish the summary to a participant, or to a beneficiary receiving benefits under the plan, upon request.

Effective date.—The provision is effective for reports for years beginning after December 31, 1999.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following modification. The conference agreement provides that the requirement that the summary annual report be provided to participants and beneficiaries is satisfied if the report is reasonably available through electronic means or other new technology.

M. Modifications to the SAVER Act (sec. 613 of the Senate amendment and sec. 517 of ERISA)

PRESENT LAW

The Savings Are Vital to Everyone's Retirement ("SAVER") Act[72] initiated a public-private partnership to educate American workers about retirement savings and directed the Department of Labor to maintain an ongoing program of public information and outreach. The Act also convened a National Summit on Retirement Savings held June 4–5, 1998, and to be held again in 2001 and 2005, co-hosted by the President and the bipartisan Congressional leadership. The National Summit brings together experts in the fields of employee benefits and retirement savings, key leaders of government, and interested parties from the private sector and general public. The delegates are selected by the Congressional leadership and the President. The National Summit is a public-private partnership, receiving substantial funding from private sector

[72] Pub. L. No. 105–92.

contributions. The goals of the National Summits are to: (1) advance the public's knowledge and understanding of retirement savings and facilitate the development of a broad-based, public education program; (2) identify the barriers which hinder workers from setting aside adequate savings for retirement and impede employers, especially small employers, from assisting their workers in accumulating retirement savings; and (3) develop specific recommendations for legislative, executive, and private sector actions to promote retirement income savings among American workers.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision clarifies that future National Summits on Retirement Savings are to be held in the month of September in 2001 and 2005, and would add an additional National Summit in 2009. To facilitate the administration of future National Summits, the Department of Labor is given authority to enter into cooperative agreements (pursuant to the Federal Grant and Cooperative Agreement Act of 1977) with its 1999 summit partner, the American Savings Education Council.

Six new statutory delegates are added to future National Summits: the Chairman and Ranking Member of the House Ways and Means Committee, the Senate Finance Committee, and the Subcommittee on Employer-Employee Relations of the House Committee on Education and the Workforce. Further, the President, in consultation with the Congressional leadership, may appoint up to three percent of the delegates (not to exceed 10) from a list of nominees provided by the private sector partner in Summit administration. The provision also clarifies that new delegates are to be appointed for each future National Summit (as was the intent of the original legislation) and sets deadlines for their appointment.

The provision also sets deadlines for the Department of Labor to publish the Summit agenda, gives the Department of Labor limited reception and representation authority, and mandates that the Department of Labor consult with the Congressional leadership in drafting the post-Summit report.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

N. STUDIES (sec. 614 of the Senate amendment)

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

Report on pension coverage

The bill directs the Secretary to report to the Senate Committee on Finance and the House Committee on Ways and Means regarding the effect of the bill on pension coverage, including any expansion of coverage for low- and moderate-income workers, levels of pension benefits, quality of coverage, worker's access to and participation in plans, and retirement security. This report is required to be submitted no later than five years after the date of enactment.

Studies of preretirement uses of benefits and investment decisions

The bill directs the Secretary to conduct a study of the present-law rules that permit individuals to access their IRA or qualified retirement plan benefits prior to retirement, including an analysis of the use of the existing rules and the extent to which such rules undermine the goal of accumulating adequate resources for retirement. In addition, the Secretary of the Treasury is directed to conduct a study of the types of investment decisions made by IRA owners and participants in self-directed qualified retirement plans, including an analysis of the existing restrictions on investments and the extent to which additional restrictions would facilitate the accumulation of adequate income for retirement. The studies are required to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means no later than January 1, 2002.

Effective date

The provisions are effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following modification. The conference agreement does not direct the Secretary to conduct the study relating to pre-retirement access to IRA or qualified retirement plan assets or the study relating to the types of investment decisions made by IRA owners and participants in self-directed qualified retirement plans.

Subtitle G. Other ERISA Provisions (secs. 471–478 of the bill)

A. Extension of PBGC Missing Participants Program (secs. 206(f) and 4050 of ERISA)

PRESENT LAW

The plan administrator of a single-employer defined benefit pension plan that is subject to Title IV of ERISA and terminates under a standard termination is required to distribute the assets of the plan. With respect to a participant whom the plan administrator cannot locate after a diligent search, the plan administrator satisfies the distribution requirement only by purchasing irrevocable commitments from an insurer to provide all benefit liabilities under the plan or transferring the participant's designated benefit to the Pension Benefit Guaranty Corporation ("PBGC"),

which holds the benefit of the missing participant as trustee until the PBGC locates the missing participant and distributes the benefit.

The PBGC missing participant program is not available to multiemployer plans or defined contribution plans and other plans not covered by Title IV of ERISA.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The PBGC is directed to prescribe for terminating multiemployer plans rules similar to the present-law missing participant rules applicable to terminating single employer plans that are subject to Title IV of ERISA.

In addition, plan administrators of certain types of plans not subject to the PBGC termination insurance program under present law are permitted, but not required, to elect to transfer missing participants' benefits to the PBGC upon plan termination. Specifically, the provision extends the missing participants program to defined contribution plans, defined benefit plans that have no more than 25 active participants and are maintained by professional service employers, and the portion of defined benefit plans that provide benefits based upon the separate accounts of participants and therefor are treated as defined contribution plans under ERISA.

Effective date.—The provision is effective for distributions made after final regulations under the provision are prescribed.

B. Reduce PBGC Premiums for Small and New Plans (sec. 4006 of ERISA)

PRESENT LAW

Under present law, the Pension Benefit Guaranty Corporation ("PBGC") provides insurance protection for participants and beneficiaries under certain defined benefit pension plans by guaranteeing certain basic benefits under the plan in the event the plan is terminated with insufficient assets to pay benefits promised under the plan. The guaranteed benefits are funded in part by premium payments from employers who sponsor defined benefit plans. The amount of the required annual PBGC premium for a single-employer plan is generally a flat rate premium of $19 per participant and an additional variable-rate premium based on a charge of $9 per $1,000 of unfunded vested benefits. Unfunded vested benefits under a plan generally means (1) the unfunded current liability for vested benefits under the plan, over (2) the value of the plan's assets, reduced by any credit balance in the funding standard account. No variable-rate premium is imposed for a year if contributions to the plan were at least equal to the full funding limit.

The PBGC guarantee is phased in ratably in the case of plans that have been in effect for less than 5 years, and with respect to benefit increases from a plan amendment that was in effect for less than 5 years before termination of the plan.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Reduced flat-rate premiums for new plans of small employers

Under the conference agreement, for the first five plan years of a new single-employer plan of a small employer, the flat-rate PBGC premium is $5 per plan participant.

A small employer is a contributing sponsor that, on the first day of the plan year, has 100 or fewer employees. For this purpose, all employees of the members of the controlled group of the contributing sponsor are taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, employees of all contributing sponsors (and their controlled group members) are taken into account in determining whether the plan is a plan of a small employer.

A new plan means a defined benefit plan maintained by a contributing sponsor if, during the 36-month period ending on the date of adoption of the plan, such contributing sponsor (or controlled group member or a predecessor of either) has not established or maintained a plan subject to PBGC coverage with respect to which benefits were accrued for substantially the same employees as are in the new plan.

Reduced variable-rate PBGC premium for new plans

The provision provides that the variable-rate premium is phased in for new defined benefit plans over a six-year period starting with the plan's first plan year. The amount of the variable-rate premium is a percentage of the variable premium otherwise due, as follows: 0 percent of the otherwise applicable variable-rate premium in the first plan year; 20 percent in the second plan year; 40 percent in the third plan year; 60 percent in the fourth plan year; 80 percent in the fifth plan year; and 100 percent in the sixth plan year (and thereafter).

A new defined benefit plan is defined as described above under the flat-rate premium provision relating to new small employer plans.

Reduced variable-rate PBGC premium for small plans

In the case of a plan of a small employer, the variable-rate premium is no more than $5 multiplied by the number of plan participants in the plan at the end of the preceding plan year. For purposes of this provision, a small employer is a contributing sponsor that, on the first day of the plan year, has 25 or fewer employees. For this purpose, all employees of the members of the controlled

group of the contributing sponsor are taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, employees of all contributing sponsors (and their controlled group members) are taken into account in determining whether the plan is a plan of a small employer.

Effective date

The reduction of the flat-rate premium for new plans of small employers and the reduction of the variable-rate premium for new plans are effective with respect to plans established after December 31, 2000. The reduction of the variable-rate premium for small plans is effective with respect to plan years beginning after December 31, 2000.

C. Authorization for PBGC to Pay Interest on Premium Overpayment Refunds (sec. 4007(b) of ERISA)

PRESENT LAW

The PBGC charges interest on underpayments of premiums, but is not authorized to pay interest on overpayments.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement allows the PBGC to pay interest on overpayments made by premium payors. Interest paid on overpayments is to be calculated at the same rate and in the same manner as interest is charged on premium underpayments.

Effective date.—The provision is effective with respect to interest accruing for periods beginning not earlier than the date of enactment.

D. Rules for Substantial Owner Benefits in Terminated Plans (secs. 4021, 4022, 4043 and 4044 of ERISA)

PRESENT LAW

Under present law, the PBGC provides participants and beneficiaries in a defined benefit pension plan with certain guarantees as to the receipt of benefits under the plan in case of plan termination. The employer sponsoring the defined benefit pension plan is required to pay premiums to the PBGC to provide insurance for the guaranteed benefits. In general, the PBGC will guarantee all basic benefits which are payable in periodic installments for the life (or lives) of the participant and his or her beneficiaries and are non-forfeitable at the time of plan termination. The amount of the guaranteed benefit is subject to certain limitations. One limitation is that the plan (or an amendment to the plan which increases benefits) must be in effect for 60 months before termination for the PBGC to guarantee the full amount of basic benefits for a plan par-

ticipant, other than a substantial owner. In the case of a substantial owner, the guaranteed basic benefit is phased in over 30 years beginning with participation in the plan. A substantial owner is one who owns the entire interest in an unincorporated trade or business, or who owns, directly or indirectly, more than 10 percent of the voting stock of a corporation or all the stock of a corporation, or, in the case of a partnership, one who owns, directly or indirectly, more than 10 percent of either the capital interest or profits interest. Special rules restricting the amount of benefit guaranteed and the allocation of assets also apply to substantial owners.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The provision provides that the 60 month phase-in of guaranteed benefits applies to a substantial owner with less than a 50 percent ownership interest. For a substantial owner with a 50 percent or more ownership interest ("majority owner"), the phase-in occurs over a 10–year period and depends on the number of years the plan has been in effect. The majority owner's guaranteed benefit is limited so that it may not be more than the amount phased in over 60 months for other participants. The rules regarding allocation of assets apply to substantial owners, other than majority owners, in the same manner as other participants.

Effective date.—The provision is effective for plan terminations with respect to which notices of intent to terminate are provided, or for which proceedings for termination are instituted by the PBGC, after December 31, 2000.

E. Multiemployer Plan Benefits Guarantee (sec. 4022A of ERISA)

PRESENT LAW

The PBGC guarantees benefits of workers in multiemployer plans. The monthly guarantee is equal to the participant's years of service multiplied by the sum of (1) 100 percent of the first $5 of the monthly benefit accrual rate, and (2) 75 percent of the next $15 of the accrual rate. The level of benefits guaranteed by the PBGC under the multiemployer program has not increased since 1980. For a retiree with 30 years of service, the maximum guaranteed annual benefit is $5,850. The maximum guarantee under the PBGC's single-employer program is adjusted each year to reflect changes in the social security wage index.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement adjusts the amount guaranteed in multiemployer plans to account for changes in the social security wage index since 1980. Under the conference agreement, the PBGC guarantees a monthly benefit equal to the participant's years of service multiplied by the sum of (1) 100 percent of the first $11 of the monthly benefit accrual rate, and (2) 75 percent of the next $33 of the accrual rate. Thus, the conference agreement increases the maximum annual guarantee for a retiree with 30 years of service to $12,870.

Effective date.—The provision applies to benefits payable after the date of enactment, except that the provision does not apply to benefits under any multiemployer plan that has received financial assistance from the PBGC under section 4261 of ERISA within the 1-year period ending on the date of enactment.

F. Civil Penalties for Breach of Fiduciary Responsibility (sec. 502 of ERISA)

PRESENT LAW

Present law requires the Secretary of Labor to assess a civil penalty against (1) a fiduciary who breaches a fiduciary responsibility under, or commits a violation of, part 4 of Title I of ERISA, or (2) any other person who knowingly participates in such a breach or violation. The penalty is equal to 20 percent of the "applicable recovery amount" that is paid pursuant to a settlement agreement with the Secretary of Labor or that a court orders to be paid in a judicial proceeding brought by the Secretary of Labor to enforce ERISA's fiduciary responsibility provisions. The Secretary of Labor may waive or reduce the penalty only if the Secretary finds in writing that either (1) the fiduciary or other person acted reasonably and in good faith, or (2) it is reasonable to expect that the fiduciary or other person cannot restore all the losses without severe financial hardship unless the waiver or reduction is granted.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement makes the assessment of the penalty discretionary with the Secretary of Labor, rather than mandatory. This change will allow the Secretary to refrain from imposing the penalty in certain cases as well as to assess a penalty of less than 20 percent of the applicable recovery amount. The requirement of a settlement agreement is also eliminated. The applicable recovery amount is any amount recovered by a plan or by a participant or beneficiary more than 30 days after the fiduciary's or other person's receipt of a written notice of the violation from the Department of Labor ("DOL"). Payments made after the 30-day grace pe-

riod,[73] whether they are made pursuant to a settlement agreement, or simply to discourage the DOL from bringing a legal action, are subject to the penalty, as are amounts recovered pursuant to a court order. ERISA section 502(l) is also amended to clarify that the term "applicable recovery amount" includes payments by third parties that are made on behalf of the relevant fiduciary or other persons liable for the amount that is recovered, including those who did not actually pay. These changes prevent avoidance of the penalty by having an unrelated third party pay the recovery amount.

Effective date.—The provision applies to any breach of fiduciary responsibility or other violation of part 4 of Title I of ERISA occurring on or after the date of enactment. The change with respect to "applicable recovery amount" includes a transition rule whereby a breach or other violation occurring before the date of enactment which continues past the 180th day from enactment (and which may have been discontinued during that period) is treated as having occurred after the date of enactment (to avoid having to make a complex determination regarding how much of the applicable recovery amount for such continuing violations should be attributed to the post-enactment part of the violation).

G. Benefit Suspension Notice (sec. 203 of ERISA)

PRESENT LAW

Under present law (ERISA sec. 203(a)(3)(B)), a plan will not fail to satisfy the vesting requirements with respect to a participant by reason of suspending payment of the participant's benefits while such participant is employed. Under the applicable Department of Labor ("DOL") regulations, such a suspension is only permissible if the plan notifies the participant during the first calendar month or payroll period in which the plan withholds benefit payments. Such notice must provide certain information and must also include a copy of the plan's provisions relating to the suspension of payments.

In the case of a plan that does not pay benefits to active participants upon attainment of normal retirement age, the employer must monitor plan participants to determine when any participant who is still employed attains normal retirement age. In order to suspend payment of such a participant's benefits, generally a plan must, as noted above, promptly provide the participant with a suspension notice.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement directs the Secretary of Labor to revise the regulations relating to the benefit suspension notice to

[73] The 30-day period may be extended by the Secretary of Labor.

generally permit the information currently required to be set forth in a suspension notice to be included in the summary plan description. The provision also directs the Secretary of Labor to eliminate the requirement that the notice include a copy of relevant plan provisions. However, individuals reentering the workforce to resume work with a former employer after they have begun to receive benefits will still receive the notification of the suspension of benefits (and a copy of the plan's provisions relating to suspension of payments). In addition, if a reduced rate of future benefit accruals will apply to a returning employee (as of his or her first date of participation in the plan after returning to work) who has begun to receive benefits, the notice must include a statement that the rate of future benefit accruals will be reduced.

Effective date.—The provision applies to plan years beginning after December 31, 2000.

Subtitle H. Provisions Relating to Plan Amendments (sec. 481 of the bill) (sec. 701 of the House bill and sec. 701 of the Senate amendment)

PRESENT LAW

Plan amendments to reflect amendments to the law generally must be made by the time prescribed for filing the income tax return of the employer for the employer's taxable year in which the change in the law occurs.

A plan amendment may not decrease the accrued benefit of a plan participant (sec. 411(d)(6)).

HOUSE BILL

The House bill permits certain plan amendments made pursuant to the changes made by the bill (or regulations issued under the provisions of the bill) to be retroactively effective. If the plan amendment meets the requirements of the bill, then the plan is treated as being operated in accordance with its terms and the amendment does not violate the prohibition of reductions of accrued benefits. In order for this treatment to apply, the plan amendment must be made on or before the last day of the first plan year beginning on or after January 1, 2003 (January 1, 2005, in the case of a governmental plan). If the amendment is required to be made to retain qualified status as a result of the changes in the bill (or regulations) the amendment must be made retroactively effective as of the date on which the change became effective with respect to the plan and the plan must be operated in compliance until the amendment is made. Amendments that are not required to retain qualified status but that are made pursuant to the changes made by the bill (or applicable regulations) may be made retroactive as of the first day the plan was operated in accordance with the amendment.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment does not provide relief from the prohibition on reductions of accrued benefits.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the modification described below. As under the House bill, the provision applies to plan amendments required to maintain qualified status, as well as other amendments pursuant to the provisions of the bill (or applicable regulations). A plan amendment is not considered to be pursuant to the bill (or applicable regulations) if it has an effective date before the effective date of the provision of the bill (or regulations) to which it relates. Similarly, the provision does not provide relief from section 411(d)(6) for periods prior to the effective date of the relevant provision of the bill (or regulations) or the plan amendment.

The conference agreement provides that the Secretary is given authority to provide exceptions to the relief from the prohibition on reductions in accrued benefits. It is intended that the Secretary will not permit inappropriate reductions in contributions or benefits that are not directly related to the provisions of the bill. For example, it is intended that a plan that incorporates the section 415 limits by reference could be retroactively amended to impose the section 415 limits in effect before the bill. On the other hand, suppose a plan that incorporates the section 401(a)(17) limit on compensation by reference provides for an employer contribution of 3 percent of compensation. It is expected that the Secretary would provide that the plan could not be amended retroactively to reduce the contribution percentage, even though the reduction will result in the same dollar level of contributions for some participants because of the increase in compensation taken into account under the plan. As another example, suppose that under present law a plan is top-heavy and therefore a minimum benefit is required under the plan, and that under the provisions of the bill, the plan would not be considered to be top heavy. It is expected that the Secretary would generally permit plans to be retroactively amended to reflect the new top-heavy provisions of the bill.

TITLE V. INCENTIVES FOR PUBLIC SCHOOL CONSTRUCTION AND MODERNIZATION (secs. 501–505 of the bill and secs. 103, 148, 1397E and new secs. 1397F and 1397G of the Code)

PRESENT LAW

Tax-exempt bonds

In general

Interest on debt incurred by States or local governments is excluded from income if the proceeds of the borrowing are used to carry out governmental functions of those entities or the debt is repaid with governmental funds (sec. 103). Like other activities carried out and paid for by States and local governments, the con-

struction, renovation, and operation of public schools is an activity eligible for financing with the proceeds of tax-exempt bonds.

Interest on bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such a private person is taxable unless the purpose of the borrowing is approved specifically in the Code or in a non-Code provision of a revenue Act. These bonds are called "private activity bonds." The term "private person" includes the Federal Government and all other individuals and entities other than States or local governments.

Private activities eligible for financing with tax-exempt private activity bonds

The Code includes several exceptions permitting States or local governments to act as conduits providing tax-exempt financing for private activities. Both capital expenditures and limited working capital expenditures of charitable organizations described in section 501(c)(3) of the Code—including elementary, secondary, and post-secondary schools—may be financed with tax-exempt private activity bonds ("qualified 501(c)(3) bonds").

In most cases, the volume of tax-exempt private activity bonds is restricted by aggregate annual limits imposed on bonds issued by issuers within each State. These annual volume limits equal $50 per resident of the State, or $150 million if greater. The annual State private activity bond volume limits are scheduled to increase to the greater of $75 per resident of the State or $225 million in calendar year 2007. The increase will be phased in ratably beginning in calendar year 2003.[1] This increase was enacted by the Tax and Trade Relief Extension Act of 1998. Qualified 501(c)(3) bonds are among the tax-exempt private activity bonds that are not subject to these volume limits.

Private activity tax-exempt bonds may not be used to finance schools owned or operated by private, for-profit businesses.

Arbitrage restrictions on tax-exempt bonds

The Federal income tax does not apply to income of States and local governments that is derived from the exercise of an essential governmental function. To prevent these tax-exempt entities from issuing more Federally subsidized tax-exempt bonds than is necessary for the activity being financed or from issuing such bonds earlier than necessary, the Code includes arbitrage restrictions limiting the ability to profit from investment of tax-exempt bond proceeds. In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

[1] Another provision of the conference agreement accelerates this increase in the volume limits in 2002.

The Code includes three exceptions applicable to education-related bonds. First, issuers of all types of tax-exempt bonds are not required to rebate arbitrage profits if all of the proceeds of the bonds are spent for the purpose of the borrowing within six months after issuance. In the case of governmental bonds (including bonds to finance public schools) the six-month expenditure exception is treated as satisfied if at least 95 percent of the proceeds is spent within six months and the remaining five percent is spent within 12 months after the bonds are issued.

Second, in the case of bonds to finance certain construction activities, including school construction and renovation, the six-month period is extended to 24 months for construction proceeds. Arbitrage profits earned on construction proceeds are not required to be rebated if all such proceeds (other than certain retainage amounts) are spent by the end of the 24-month period and prescribed intermediate spending percentages are satisfied.

Third, governmental bonds issued by "small" governments are not subject to the rebate requirement. Small governments are defined as general purpose governmental units that issue no more than $5 million of tax-exempt governmental bonds in a calendar year. The $5 million limit is increased to $10 million if at least $5 million of the bonds are used to finance public schools.

Another exception to the arbitrage restriction, enacted as part of the Tax Reform Act of 1984, provides that the pledge of income from investments in a Fund established under a provision of a State constitution adopted in 1876 as security for a limited amount of tax-exempt bonds will not cause interest on those bonds to be taxable. The terms of this exception are limited to State constitutional or statutory restrictions in effect as of October 9, 1969. The Fund consists of certain State lands that were set aside for the benefit of higher education, the income from mineral rights to these lands, and certain other earnings on Fund assets. The State constitution directs that monies held in the Fund are to be invested in interest-bearing obligations and other securities. The State constitution does not permit the expenditure or mortgage of the Fund for any purpose. Income from the Fund is apportioned between two university systems operated by the State. Tax-exempt bonds issued by the two university systems are secured by and payable from the income of the Fund. These bonds are used to finance buildings and other permanent improvements for the universities.

The General Assembly of the State approved proposed constitutional amendments regarding the manner in which amounts in the Fund are paid for the benefit of the two university systems. These amendments were voted on and passed by the State's citizens in November 1999. The State constitutional amendments have the effect of permitting the Fund to make annual distributions similar to standard university endowment funds, rather than the previous practice, which tied distributions to annual income performance, creating a variable pattern of distributions. Since these amendments were not in effect as of October 9, 1969, the amendments eliminate the benefits of the 1984 exception from the tax-exempt bond arbitrage restrictions.

Qualified Zone Academy Bonds ("QZABs")

As an alternative to traditional tax-exempt bonds, certain States and local governments are given the authority to issue "qualified zone academy bonds." Under present law, $400 million of qualified zone academy bonds may be issued per year in 1998, 1999, 2000, and 2001. The $400 million bond authority is allocated each year among the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit to qualified zone academies within such State. A State may carry over any unused allocation into subsequent years (the first two years following the unused limitation year; three years for carryforwards from 1998 or 1999).

To be a qualified zone academy bond, a bond must satisfy several requirements. First, the bond must be issued pursuant to an allocation of bond authority from the issuer's State educational agency. Second, at least 95 percent of the bond proceeds must be used for an eligible purpose at a qualified zone academy. Eligible purposes include renovating school facilities, acquiring equipment, developing course materials, or training teachers. A qualified zone academy is a public school (or an academic program within a public school) that is designed in cooperation with business and is either (1) located in an empowerment zone or enterprise community or (2) attended by students at least 35 percent of whom are estimated to be eligible for free or reduced-cost lunches under the National School Lunch Act. Finally, private businesses must have promised to contribute to the qualified zone academy certain property or services with a present value equal to at least 10 percent of the bond proceeds.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Extension of authority to issue present-law QZABs

The conference agreement extends authority to issue QZABs for two additional years, through December 31, 2003. Except as described below, present-law requirements for these bonds are retained.

Extension of modified QZAB authority to school construction

The conference agreement extends authority to issue QZABs, with modifications, to public school construction. The agreement authorizes issuance of up to $5 billion per year of school construction QZABs in 2001, 2002, and 2003. The $5 billion of annual authority will be allocated to the States (including the District of Columbia and U.S. possessions) by the Treasury Department on the following basis: 50 percent of the aggregate annual amount is allocated to the States based on population and 50 percent is allocated based on the portion of the State's population that lives in poverty. These allocations are to be based on the most recently available

Census Bureau data. The State allocations are subject to a "small State floor" of $25 million per State.

Unissued tax-credit bond authority may be carried forward for up to two years. As is true under the current QZAB allocation rules, bond authority is treated as allocated on a "FIFO" basis.

Subject to a special rule for certain larger school districts, Governors are granted interim authority to allocate their State's authorized school construction QZAB issuance among school districts in the State unless State legislatures prescribe different allocation rules. For larger local school districts, defined as districts having school age populations in excess of 40,000, the conference agreement provides a minimum allocation (which cannot be overridden by State action) in an amount equal to the percentage of the State's total population that resides in the school district. The term "school age population" is defined as children ages five through seventeen.

In addition to the $5 billion general aggregate annual bond authority, the conference agreement authorizes up to $200 million of school construction QZABs to be issued to finance public schools operated by or for the benefit of Indian tribes. This $200 million of additional authority is a one-time authorization which may be allocated by the Treasury Department among Indian tribes at any time during the five-year period when school construction QZABs and present-law QZABs may be issued. Both the allocation authority and the authority to issue these bonds expires after December 31, 2005.

School construction is defined as capital expenditures for new construction, renovation, or repair or public schools (real property of a character subject to the allowance for depreciation), including charter schools, and the acquisition of functionally related and subordinate land. Unlike present-law QZABs, contributions by private businesses are optional, but not required, for schools receiving school construction QZAB financing. Additionally, the school construction QZABs are not limited to schools within an empowerment zone or enterprise community, or to schools satisfying the free or reduced-cost lunch criteria.

Rules applicable to QZABs issued after December 31, 2000 and to school construction QZABs

The following administrative rules apply to QZABs issued after December 31, 2000, and to the new modified QZABs for school construction:

(1) The maximum term of the bonds is 15 years.

(2) Information reporting requirements similar to the requirements that apply under present law to tax-exempt bonds (sec. 149(e)) are extended to these bonds.

(3) Eligible recipients of the tax credits are expanded to include all C corporations (but not S corporations or individuals).

(4) Credits accrue to holders on a quarterly basis (rather than annually as under the present-law QZAB program).

(5) Credit rates are set by reference to the daily corporate rate index established by the Treasury Department, and the credit rate for each bond issue is set as of the day before the date the bonds are issued (i.e., sold).

(6) As under the present-law QZAB program, credits are includible in the bondholder's gross income, but tax credits may be claimed against both regular income tax and the alternative minimum tax.

(7) All property financed with tax-credit bonds must be owned by a State or local government. Further, all such property must be used for a qualified public school purpose during the entire period that the bonds are outstanding. Failure to use the property for a qualified purpose results in termination of tax credits beginning on the later of (a) the date of bond issuance of (b) three years before the change in use occurs. Issuers are obligated to pay the Federal Government an amount equal to all credits accruing after the stated date (plus interest); bondholders are secondarily liable for this amount.

(8) Tax-credit bonds may not be issued to refinance any outstanding debt except certain "bridge financing," defined as construction period financing that (a) is issued after the date of the conference agreement's enactment; (b) has a term not exceeding one year and (c) is issued for a project identified for tax-credit bond financing before issuance of the bridge financing.

(9) Arbitrage restrictions similar to those that apply to tax-exempt bonds (as modified by the conference agreement) are extended to present-law QZABs and school construction QZABs.

Bond proceeds must be spent for the purpose of the borrowing within 48 months after bonds are issued, with intermediate spending requirements being prescribed:

Within	Must spend at least
12 months	10 percent.
24 months	30 percent.
36 months	60 percent.
48 months	100 percent (less present-law retainage amounts (not exceeding 5 percent) which must be spent within 60 months).

Issuers failing to satisfy the intermediate 12, 24, or 36-month expenditure requirements must pay the Federal Government an amount equal to the investment earnings on all proceeds of the bond issue.

Issuers failing to satisfy the 48-month or 60-month expenditure requirements must redeem an amount of bonds having a face amount equal to the unspent proceeds.

A "small governmental unit" exception is provided to these arbitrage restrictions. This exception is coordinated with the present-law tax-exempt bond exception for these units (as that exception is modified by the agreement) to ensure that issuers do not claim double benefits.

Rules similar to the tax-exempt bond sinking fund restrictions are extended to tax- credit bonds. Under these rules, all replacement funds constituting a sinking fund under the tax-exempt bond rules must be invested in non-interest-bearing State and Local Government Series ("SLGS") obligations issued by the Treasury.

(10) A State must allocate its school construction QZAB authority in accordance with a qualified allocation plan. A qualified allocation plan is to contain, among other things: (a) an identifica-

tion of the State's needs for public school facilities, and (b) a description of how the State will make allocations to address those needs, including how the State will ensure the needs of both rural, suburban, and urban areas will be recognized, ensure that the needs of localities with the greatest needs will be met and give priority to the role of charter schools in achieving State educational objectives. This requirement applies to allocations of tax-credit bond authority made on the date that is six months after the date the conference agreement is enacted.

Effective date.—These provisions apply to bonds issued in calendar years beginning after December 31, 2000.

Increase in the amount of governmental bonds that may be issued by governments qualifying for the "small governmental unit" arbitrage rebate exception

The additional amount of governmental bonds for public schools that small governmental units may issue without being subject to the arbitrage rebate requirement is increased from $5 million to $10 million. Thus, these governmental units may issue up to $15 million of governmental bonds in a calendar year provided that at least $10 million of the bonds are used to finance public school construction expenditures. This exception is coordinated with the tax- credit bond exception for these units to ensure that issuers do not claim double benefits, i.e., both tax-credit bonds and tax-exempt bonds are taken into account for purposes of this limitation.

Effective date.—The provision applies to bonds issued in calendar years beginning after December 31, 2000.

Conform provisions relating to arbitrage treatment to reflect state constitutional amendments

The conference agreement conforms the 1984 exception to the State constitutional amendments to permit its continued applicability to bonds of the two university systems. Limitations on the aggregate amount of bonds which may benefit from the exception are not modified.

Effective date.—The provision takes effect on January 1, 2001.

Construction bond expenditure rule for governmental bonds for public schools

The present-law 24-month expenditure exception to the arbitrage rebate requirement is liberalized for certain public school bonds. Under the agreement, no rebate is required with respect to earnings on available construction proceeds of public school bonds if the proceeds are spent within 48 months after the bonds are issued and the following intermediate spending levels are satisfied:

Within	Must spend at least
12 months	10 percent.
24 months	30 percent.
36 months	60 percent.
48 months	100 percent (less present-law retainage amounts (not exceeding 5 percent) which must be spent within 60 months).

Effective date.—The provision applies to bonds issued after December 31, 2000.

Issuance of tax-exempt private activity bonds for certain public school facilities

The private activities for which tax-exempt bonds may be issued are expanded to include elementary and secondary public school facilities which are owned by private, for-profit corporations pursuant to public-private partnership agreements with a State or local educational agency. The term school facility includes school buildings and functionally related and subordinate land (including stadiums or other athletic facilities primarily used for school events) and depreciable personal property used in the school facility. The school facilities for which these bonds are issued must be operated by a public educational agency as part of a system of public schools.

A public-private partnership agreement is defined as an arrangement pursuant to which the for-profit corporate party constructs, rehabilitates, refurbishes or equips a school facility. The agreement must provide that, at the end of the contract term, ownership of the bond-financed property is transferred to the public school agency party to the agreement for no additional consideration.

Issuance of these bonds is subject to a separate annual per-State volume limit equal to the greater of $10 per resident ($5 million, if greater) in lieu of the present-law State private activity bond volume limits. As with the present-law State private activity bond volume limits, States decide how to allocate the bond authority to State and local government agencies. Bond authority that is unused in the year in which it arises may be carried forward for up to three years for public school projects under rules similar to the carryforward rules of the present-law private activity bond volume limits.

Effective date.—These provisions are effective for bonds issued after December 31, 2000.

TITLE VI. COMMUNITY RENEWAL PROVISIONS

A. Renewal Community Provisions (secs. 601–602 of the bill and secs. 51, 469, and new secs. 1400E–J of the Code)

PRESENT LAW

In recent years, provisions have been added to the Internal Revenue Code that target specific geographic areas for special Federal income tax treatment. For example, empowerment zones and enterprise communities generally provide tax incentives for businesses that locate within certain geographic areas designated by the Secretaries of Housing and Urban Development ("HUD") and Agriculture.

HOUSE BILL

No provision. However, H.R. 4923, as passed by the House, authorizes the designation of 40 "renewal communities" within which special tax incentives will be available. The following is a descrip-

tion of the designation process and the tax incentives that would be available within the renewal communities.

Designation process

Designation of 40 renewal communities.—The Secretary of HUD,[2] is authorized to designate up to 40 "renewal communities" from areas nominated by States and local governments. At least eight of the designated communities must be in rural areas. The Secretary of HUD is required to publish (within four months after enactment) regulations describing the nomination and selection process. Designations of renewal communities are to be made within 24 months after the regulations are published. The designation of an area as a renewal community generally will be effective on July 1, 2001, and will terminate after December 31, 2009.

Eligibility criteria.—To be designated as a renewal community, a nominated area must meet the following criteria: (1) each census tract must have a poverty rate of at least 20 percent;[3] (2) in the case of an urban area, at least 70 percent of the households have incomes below 80 percent of the median income of households within the local government jurisdiction; (3) the unemployment rate is at least 1.5 times the national unemployment rate; and (4) the area is one of pervasive poverty, unemployment, and general distress. Those areas with the highest average ranking of eligibility factors (1), (2), and (3) above would be designated as renewal communities. A nominated area within the District of Columbia becomes a renewal community (without regard to its ranking of eligibility factors) provided that it satisfies the area and eligibility requirements and the required State and local commitments described below.[4] The Secretary of HUD shall take into account in selecting areas for designation the extent to which such areas have a high incidence of crime, as well as whether the area has census tracts identified in the May 12, 1998, report of the General Accounting Office regarding the identification of economically distressed areas.

There are no geographic size limitations placed on renewal communities. Instead, the boundary of a renewal community must be continuous. In addition, the renewal community must have a minimum population of 4,000 if the community is located within a metropolitan statistical area (at least 1,000 in all other cases), and a maximum population of not more than 200,000. The population limitations do not apply to any renewal community that is entirely within an Indian reservation.

Required State and local commitments.—In order for an area to be designated as a renewal community, State and local governments are required to submit a written course of action in which the State and local governments promise to take at least four of the following governmental actions within the nominated area: (1) a reduction of tax rates or fees; (2) an increase in the level of efficiency

[2] In making the designations, the Secretary of HUD must consult with the Secretaries of Agriculture, Commerce, Labor, Treasury, the Director of the Office of Management and Budget; and the Administrator of the Small Business Administration (and the Secretary of the Interior in the case of an area on an Indian reservation).

[3] Determined using 1990 census data.

[4] The designation of a nominated area within the District of Columbia as a renewal community becomes effective on January 1, 2003 (upon the expiration of the designation of the District of Columbia Enterprise Zone).

of local services; (3) crime reduction strategies; (4) actions to remove or streamline governmental requirements; (5) involvement by private entities and community groups, such as to provide jobs and job training and financial assistance; and (6) the gift (or sale at below fair market value) of surplus realty by the State or local government to community organizations or private companies.

In addition, the nominating State and local governments must promise to promote economic growth in the nominated area by repealing or not enforcing four of the following: (1) licensing requirements for occupations that do not ordinarily require a professional degree; (2) zoning restrictions on home-based businesses that do not create a public nuisance; (3) permit requirements for street vendors who do not create a public nuisance; (4) zoning or other restrictions that impede the formation of schools or child care centers; and (5) franchises or other restrictions on competition for businesses providing public services, including but not limited to taxicabs, jitneys, cable television, or trash hauling, unless such regulations are necessary for and well-tailored to the protection of health and safety.

Empowerment zones and enterprise communities seeking designation as renewal communities.—An empowerment zone or enterprise community can apply for designation as a renewal community. If a renewal community designation is granted, then an area's designation as an empowerment zone or enterprise community ceases as of the date the area's designation as a renewal community takes effect.

Tax incentives for renewal communities

Under H.R. 4923, the following tax incentives are available during the period beginning July 1, 2001, and ending December 31, 2009.

Zero-percent capital gain rate.—H.R. 4923 provides a zero-percent capital gains rate for gain from the sale of a qualified community asset acquired after June 30, 2001, and before January 1, 2010, and held for more than five years. A "qualified community asset" includes: (1) qualified community stock (meaning original-issue stock purchased for cash in a renewal community business); (2) a qualified community partnership interest (meaning a partnership interest acquired for cash in a renewal community business); and (3) qualified community business property (meaning tangible property originally used in a renewal community business by the taxpayer) that is purchased or substantially improved after June 30, 2001.

A "renewal community business" is similar to the present-law definition of an enterprise zone business.[5] Property will continue to be a qualified community asset if sold (or otherwise transferred) to a subsequent purchaser, provided that the property continues to represent an interest in (or tangible property used in) a renewal community business. The termination of an area's status as a renewal community will not affect whether property is a qualified community asset, but any gain attributable to the period before

[5] An "enterprise zone business" is defined in section 1397B and is described in connection with the expansion of the empowerment zone benefits.

July 1, 2001, or after December 31, 2014, will not be eligible for the exclusion.

Renewal community employment credit.—Under H.R. 4923, a 15-percent wage credit is available to employers for the first $10,000 of qualified wages paid to each employee who (1) is a resident of the renewal community, and (2) performs substantially all employment services within the renewal community in a trade or business of the employer. The wage credit rate applies to qualifying wages paid after June 30, 2001, and before January 1, 2010.

Wages that qualify for the credit are wages that are considered "qualified zone wages" for purposes of the empowerment zone wage credit (including coordination with the Work Opportunity Tax Credit). In general, any taxable business carrying out activities in the renewal community may claim the wage credit.

Commercial revitalization deduction.—H.R. 4923 allows each State to allocate up to $12 million of "commercial revitalization expenditures" to each renewal community located within the State for each calendar year after 2001 and before 2010 ($6 million for the period of July 1, 2001 through December 31, 2001). The appropriate State agency will make the allocations pursuant to a qualified allocation plan.

A "commercial revitalization expenditure" means the cost of a new building or the cost of substantially rehabilitating an existing building. The building must be used for commercial purposes and be located in a renewal community. In the case of the rehabilitation of an existing building, the cost of acquiring the building will be treated as qualifying expenditures only to the extent that such costs do not exceed 30 percent of the other rehabilitation expenditures. The qualifying expenditures for any building cannot exceed $10 million.

A taxpayer can elect either to (a) deduct one-half of the commercial revitalization expenditures for the taxable year the building is placed in service or (b) amortize all the expenditures ratably over the 120-month period beginning with the month the building is placed in service. No depreciation is allowed for amounts deducted under this provision. The adjusted basis is reduced by the amount of the commercial revitalization deduction, and the deduction is treated as a depreciation deduction in applying the depreciation recapture rules (e.g., sec. 1250).

The commercial revitalization deduction is treated in the same manner as the low-income housing credit in applying the passive loss rules (sec. 469). Thus, up to $25,000 of deductions (together with the other deductions and credits not subject to the passive loss limitation by reason of section 469(i)) are allowed to an individual taxpayer regardless of the taxpayer's adjusted gross income. The commercial revitalization deduction is allowed in computing a taxpayer's alternative minimum taxable income.

Additional section 179 expensing.—Under H.R. 4923, a renewal community business is allowed an additional $35,000 of section 179 expensing for qualified renewal property placed in service after June 30, 2001, and before January 1, 2010. The section 179 expensing allowed to a taxpayer is phased out by the amount by which 50 percent of the cost of qualified renewal property placed in service during the year by the taxpayer exceeds $200,000. The term

"qualified renewal property" is similar to the definition of "qualified zone property" used in connection with empowerment zones.

Expensing of environmental remediation costs ("brownfields").—Under H.R. 4923, a renewal community is treated as a "targeted area" under section 198 (which permits the expensing of environmental remediation costs). Thus, taxpayers can elect to treat certain environmental remediation expenditures that otherwise would be capitalized as deductible in the year paid or incurred. This provision applies to expenditures incurred after June 30, 2001, and before January 1, 2010.

Extension of work opportunity tax credit ("WOTC").—H.R. 4923 expands the high-risk youth and qualified summer youth categories in the WOTC to include qualified individuals who live in a renewal community.

Effective date.—Renewal communities must be designated within 24 months after publication of regulations by HUD. The tax benefits available in renewal communities are effective for the period beginning July 1, 2001, and ending December 31, 2009.

SENATE AMENDMENT

No provision. However, S. 3152 authorizes the Secretaries of HUD and Agriculture to designate up to 30 renewal zones from areas nominated by States and local governments. At least six of the designated renewal zones must be in rural areas. The Secretary of HUD is required to publish (within four months after enactment) regulations describing the nomination and selection process. Designations of renewal zones must be made before January 1, 2002, and the designations are effective for the period beginning on January 1, 2002 through December 31, 2009.

The eligibility criteria (as well as the population and geographic limitations) are similar to those for renewal communities in the House bill, except that S. 3152 provides that any State without any empowerment zone would be given priority in the designation process. Also, the designations of renewal zones must result in (after taking into account existing empowerment zones) each State having at least one zone designation (empowerment or renewal zone). In addition, S. 3152 provides that, in lieu of the poverty, income, and unemployment criteria, outmigration may be taken into account in the designation of one rural renewal zone. Under a separate provision in S. 3152, the designation of the District of Columbia Enterprise Zone would be extended through December 31, 2006.

In order for an area to be designated as a renewal zone, State and local governments are required to submit a written course of action in which the State and local governments promise to take at least four of the governmental actions described in H.R. 4923. However, S. 3152 does not contain any of the economic growth provision requirements described in connection with renewal communities.

Tax incentives for renewal zones.—Under S. 3152, businesses in renewal zones would be eligible for the following tax incentives during the period beginning January 1, 2002 and ending December 31, 2009: (1) a zero-percent capital gains rate for qualifying assets limited to an aggregate amount not to exceed $25 million of gain

per taxpayer;[6] (2) a 15-percent wage credit for the first $15,000 of qualifying wages; (3) $35,000 in additional 179 expensing for qualifying property; (4) and the enhanced tax-exempt bond rules that currently apply to businesses in the Round II empowerment zones.

GAO report.—The General Accounting Office will audit and report to Congress every three years (beginning on January 31, 2004) on the renewal zone program and its effect on poverty, unemployment, and economic growth within the designated renewal zones.

Effective date.—The 30 new renewal zones must be designated by January 1, 2002, and the resulting tax benefits are available for the period beginning January 1, 2002, and ending December 31, 2009.

CONFERENCE AGREEMENT

The conference agreement follows the provisions of H.R. 4923 with certain modifications to the designation process for renewal communities. The conference agreement authorizes the designation of 40 renewal communities, of which at least 12 must be in rural areas. Of the 12 rural renewal communities, one shall be an area within Mississippi, designated by the State of Mississippi, that includes at least one census tract within Madison County, Mississippi.

The tax incentives are the same as those described in H.R. 4923—i.e., (1) a zero-percent capital gains rate for capital gain from the sale of qualifying assets held for more than five years; (2) a 15 percent wage credit to employers for the first $10,000 of qualified wages paid to qualifying employees; (3) a commercial revitalization expenditure; (4) an additional $35,000 of section 179 expensing for qualified renewal property; and (5) an expansion of the Work Opportunity Tax Credit with respect to qualified individuals who live in a renewal community.[7] The 40 renewal communities must be designated by January 1, 2002, and the resulting tax benefits are available for the period beginning January 1, 2002, and ending December 31, 2009.[8]

The conference agreement provides that, with respect to the first 20 designations of nominated areas as renewal communities, preference will be given to nominated areas that are enterprise communities and empowerment zones under present law that otherwise meet the requirements for designation as a renewal community.

The conference agreement includes the priority designation with respect to the District of Columbia Enterprise Zone (as contained in H.R. 4923). The conference agreement also includes the provision from S. 3152 that, in lieu of the poverty, income, and unemployment criteria, outmigration may be taken into account in the designation of one rural renewal community.

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[6] Any gain attributable to the period before January 1, 2002, or after December 31, 2014, would not be eligible for the zero-percent capital gains rate.

[7] Under the conference agreement, renewal communities are not "targeted areas" for purposes of permitting expensing of certain environmental remediation costs. Another provision described below extends the brownfields provision for two years and eliminates the targeted area requirement.

[8] If a renewal community designation is terminated prior to December 31, 2009, the tax incentives would cease to be available as of the termination date.

The General Accounting Office will audit and report to Congress on January 31, 2004, and again in 2007 and 2010, on the renewal community program and its effect on poverty, unemployment, and economic growth within the designated renewal communities.

Effective date.—The 40 renewal communities must be designated by January 1, 2002, and the resulting tax benefits will be available for the period beginning January 1, 2002, and ending December 31, 2009.

B. Empowerment Zone Tax Incentives

1. Extension and expansion of empowerment zones (secs. 611–615 of the bill and secs. 1391, 1394, 1396, and 1397A of the Code)

PRESENT LAW

Round I empowerment zones

The Omnibus Budget Reconciliation Act of 1993 ("OBRA 1993") authorized the designation of nine empowerment zones ("Round I empowerment zones") to provide tax incentives for businesses to locate within targeted areas designated by the Secretaries of HUD and Agriculture. The Taxpayer Relief Act of 1997 ("1997 Act") authorized the designation of two additional Round I urban empowerment zones.

Businesses in the 11 Round I empowerment zones qualify for the following tax incentives: (1) a 20-percent wage credit for the first $15,000 of wages paid to a zone resident who works in the empowerment zone,[9] (2) an additional $20,000 of section 179 expensing for qualifying zone property, and (3) tax-exempt financing for certain qualifying zone facilities.[10] The tax incentives with respect to the empowerment zones designated by OBRA 1993 generally are available during the 10-year period of 1995 through 2004. The tax incentives with respect to the two additional Round I empowerment zones generally are available during the 10-year period of 2000 through 2009.[11]

Round II empowerment zones

The 1997 Act also authorized the designation of 20 additional empowerment zones ("Round II empowerment zones"), of which 15 are located in urban areas and five are located in rural areas. Businesses in the Round II empowerment zones are not eligible for the wage credit, but are eligible to receive up to $20,000 of additional section 179 expensing. Businesses in the Round II empowerment zones also are eligible for more generous tax-exempt financing benefits than those available in the Round I empowerment zones. Spe-

[9] For wages paid in calendar years during the period 1994 through 2001, the credit rate is 20 percent. The credit rate is reduced to 15 percent for calendar year 2002, 10 percent for calendar year 2003, and 5 percent for calendar year 2004. No wage credit is available after 2004 in the original nine empowerment zones.

[10] For purposes of these tax incentives, a qualifying business does not include a trade or business consisting predominantly of the development or holding of intangibles for sale or license (sec. 1397B(d)(4)). While the provision does not modify the definition of a qualifying business, the sponsors of the legislation intend to review this issue.

[11] Except for the wage credit, which is reduced to 15 percent for calendar year 2005, and then reduced by five percentage points in each year in 2006 and 2007, with no wage credit available after 2007.

cifically, the tax-exempt financing benefits for the Round II empowerment zones are not subject to the State private activity bond volume caps (but are subject to separate per-zone volume limitations), and the per-business size limitations that apply to the Round I empowerment zones and enterprise communities (i.e., $3 million for each qualified enterprise zone business with a maximum of $20 million for each principal user for all zones and communities) do not apply to qualifying bonds issued for Round II empowerment zones. The tax incentives with respect to the Round II empowerment zones generally are available during the 10-year period of 1999 through 2008.

HOUSE BILL

No provision. However, as described in greater detail below, H.R. 4923 conforms and enhances the tax incentives for the Round I and Round II empowerment zones and extends their designations through December 31, 2009. H.R. 4923 also authorizes the designation of nine new empowerment zones ("Round III empowerment zones").

Extension of tax incentives for Round I and Round II empowerment zones

The designation of empowerment zone status for Round I and II empowerment zones (other than the District of Columbia Enterprise Zone)[12] is extended through December 31, 2009. In addition, the 20-percent wage credit is made available in all Round I and II empowerment zones for qualifying wages paid or incurred after December 31, 2001. The credit rate remains at 20 percent (rather than being phased down) through December 31, 2009, in Round I and Round II empowerment zones.

In addition, $35,000 (rather than $20,000) of additional section 179 expensing is available for qualified zone property placed in service in taxable years beginning after December 31, 2001, by a qualified business in any of the empowerment zones.[13] Businesses in the D.C. Enterprise Zone are entitled to the additional section 179 expensing until the termination of the D.C. zone designation.[14] The bill also extends an empowerment zone's status as a "targeted area" under section 198 (thus permitting expensing of environmental remediation costs). The bill applies to expenses incurred after December 31, 2001, and before January 1, 2010.

Businesses located in Round I empowerment zones (other than the D.C. Enterprise Zone)[15] also are eligible for the more generous tax-exempt bond rules that apply under present law to businesses in the Round II empowerment zones (sec. 1394(f)). The bill applies to tax-exempt bonds issued after December 31, 2001. Bonds that have been issued by businesses in Round I zones before January 1, 2002, are not taken into account in applying the limitations on

[12] As previously discussed, under H.R. 4923, the District of Columbia Enterprise Zone is given a priority designation as a renewal community effective January 1, 2003.

[13] The additional $35,000 of section 179 expensing is available throughout all areas that are part of a designated empowerment zone, including the non-contiguous "developable sites" that were allowed to be part of the designated Round II empowerment zones under the 1997 Act.

[14] The D.C. Enterprise Zone is scheduled to terminate on December 31, 2002.

[15] The present-law rules of sections 1394 and 1400A continue to apply with respect to the D.C. Enterprise Zone through its scheduled expiration of December 31, 2002.

the amount of new empowerment zone facility bonds that can be issued under the bill.

Nine new empowerment zones

The Secretaries of HUD and Agriculture are authorized to designate nine additional empowerment zones ("Round III empowerment zones"). Seven of the Round III empowerment zones will be located in urban areas, and two will be located in rural areas.

The eligibility and selection criteria for the Round III empowerment zones are the same as the criteria that applied to the Round II empowerment zones. The Round III empowerment zones must be designated by January 1, 2002, and the tax incentives with respect to the Round III empowerment zones generally are available during the period beginning on January 1, 2002, and ending on December 31, 2009.

Businesses in the Round III empowerment zones are eligible for the same tax incentives that, under the bill, are available to Round I and Round II empowerment zones (i.e., a 20-percent wage credit, an additional $35,000 of section 179 expensing, and the enhanced tax-exempt financing benefits presently available to Round II empowerment zones). The Round III empowerment zones also are considered "targeted areas" for purposes of permitting expensing of certain environmental remediation costs under section 198.

Effective date

The extension of the existing empowerment zone designations is effective after the date of enactment. The extension of the tax benefits to existing empowerment zones (i.e., the expanded wage credit, the additional section 179 expensing, the brownfields designation, and the more generous tax-exempt bond rules) generally is effective after December 31, 2001.

The new Round III empowerment zones must be designated by January 1, 2002, and the tax incentives with respect to the Round III empowerment zones generally are available during the period beginning on January 1, 2002, and ending on December 31, 2009.

SENATE AMENDMENT

No provision. However, S. 3152 contains a provision that conforms and enhances incentives for existing empowerment zones. Specifically, the provision extends the designation of empowerment zone status for Round I and II empowerment zones through December 31, 2009. In addition, a 15-percent wage credit is made available in all Round I and II empowerment zones, effective in 2002 (except in the case of the two additional Round I empowerment zones added by the 1997 Act, for which the 15-percent wage credit takes effect in 2005 as scheduled under present law). For all the empowerment zones, the 15-percent wage credit expires on December 31, 2009.

In addition, $35,000 (rather than $20,000) of additional section 179 expensing is available for qualified zone property placed in

service in taxable years beginning after December 31, 2001, by a qualified business in any of the empowerment zones.[16]

Under S. 3152, businesses located in Round I empowerment zones are eligible for the more generous tax-exempt bond rules that apply under present law to businesses in the Round II empowerment zones (sec. 1394(f)). The proposal applies to tax-exempt bonds issued after December 31, 2001. Bonds that have been issued by businesses in Round I zones before January 1, 2002, are not taken into account in applying the limitations on the amount of new empowerment zone facility bonds that can be issued under the provision.

Businesses located in any empowerment zone also qualify for a zero-percent capital gains rate for gain from the sale of a qualifying zone assets acquired after date of enactment and before January 1, 2010, and held for more than five years. Assets that qualify for this incentive are similar to the types of assets that qualify for the present-law zero percent capital gains rate for qualifying D.C. Zone assets. The zero-percent capital gains rate is limited to an aggregate amount not to exceed $25 million of gain per taxpayer. Gain attributable to the period before the date of enactment or after December 31, 2014, is not eligible for the zero-percent rate.

Effective date.—The extension of the existing empowerment zone designations is effective after the date of enactment. The additional section 179 expensing and the more generous tax-exempt bond rules for the existing empowerment zones is effective after December 31, 2001. The zero-percent capital gains rate applies to qualifying property purchased after the date of enactment. The 15-percent wage credit generally is effective for qualifying wages paid after December 31, 2001. With respect to the two additional Round I empowerment zones, however, the wage credit is effective for qualifying wages paid after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the provisions in H.R. 4923 with the following modifications. The conference agreement does not extend the empowerment zones' status as a "targeted area" for purposes of permitting expensing of certain environmental remediation costs under section 198.[17] In addition, the conference agreement provides that the General Accounting Office will audit and report to Congress on January 31, 2004, and again in 2007 and 2010, on the empowerment zone and enterprise community program and its effect on poverty, unemployment, and economic growth within the designated areas.

[16] The additional $35,000 of section 179 expensing is available throughout all areas that are part of a designated empowerment zone, including the non-contiguous "developable sites" that were allowed to be part of the designated Round II empowerment zones under the 1997 Act.

[17] Another provision described below extends the brownfields provision for two years and eliminates the targeted area requirement.

2. Rollover of gain from the sale of qualified empowerment zone investments (sec. 616 of the bill and new sec. 1397B of the Code)

PRESENT LAW

In general, gain or loss is recognized on any sale, exchange, or other disposition of property. A taxpayer (other than a corporation) may elect to roll over without payment of tax any capital gain realized upon the sale of qualified small business stock held for more than six months where the taxpayer uses the proceeds to purchase other qualified small business stock within 60 days of the sale of the original stock.

HOUSE BILL

No provision. However, under H.R. 4923, a taxpayer can elect to roll over capital gain from the sale or exchange of any qualified empowerment zone asset purchased after the date of enactment and held for more than one year ("original zone asset") where the taxpayer uses the proceeds to purchase other qualifying empowerment zone assets in the same zone ("replacement zone asset") within 60 days of the sale of the original zone asset. The holding period of the replacement zone asset includes the holding period of the original zone asset, except that the replacement asset must actually be held for more than one year to qualify for another tax-free rollover. The basis of the replacement zone asset is reduced by the gain not recognized on the rollover. However, if the replacement zone asset is qualified small business stock (as defined in sec. 1202), the exclusion under section 1202 would not apply to gain accrued on the original zone asset.[18] A "qualified empowerment zone asset" means an asset that would be a qualified community asset if the empowerment zone were a renewal community (and the asset is acquired after the date of enactment of the bill). Assets in the D.C. Enterprise Zone are not eligible for the tax-free rollover treatment.[19]

Effective date.—The provision is effective for qualifying assets purchased after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision in H.R. 4923.

3. Increased exclusion of gain from the sale of qualifying empowerment zone stock (sec. 617 of the bill and sec. 1202 of the Code)

PRESENT LAW

Under present law, an individual, subject to limitations, may exclude 50 percent of the gain[20] from the sale of qualifying small business stock held more than five years (sec. 1202).

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[18] See section 1045 for rollover of qualified small business stock to other small business stock.

[19] However, a qualifying D.C. Zone asset held for more than five years is eligible for a 100–percent capital gains exclusion (sec. 1400B).

[20] The portion of the capital gain included in income is subject to a maximum regular tax rate of 28 percent, and 42 percent of the excluded gain is a minimum tax preference.

HOUSE BILL

No provision. However, H.R. 4923 includes a provision that would increase the exclusion for small business stock to 60 percent for stock purchased after the date of enactment in a corporation that is a qualified business entity and that is held for more than five years. A "qualified business entity" means a corporation that satisfies the requirements of a qualifying business under the empowerment zone rules during substantially all the taxpayer's holding period.

Effective date.—The provision is effective for qualified stock purchased after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision in H.R. 4923.

C. New Markets Tax Credit (sec. 621 of the bill and new sec. 45D of the Code)

PRESENT LAW

Some tax incentives are available to taxpayers making investments and loans in low-income communities. For example, tax incentives are available to taxpayers that invest in specialized small business investment companies licensed by the Small Business Administration to make loans to, or equity investments in, small businesses owned by persons who are socially or economically disadvantaged.

HOUSE BILL

No provision. However, H.R. 4923 includes a provision that creates a new tax credit for qualified equity investments made to acquire stock in a selected community development entity ("CDE"). The maximum annual amount of qualifying equity investments is capped as follows:

Calendar year	Maximum qualifying equity investment
2001	$1.0 billion.
2002–2003	1.5 billion per year.
2004–2005	2.0 billion per year.
2006–2007	3.5 billion per year.

The amount of the new tax credit to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and the first two anniversary dates after the interest is purchased from the CDE, and (2) a six percent credit on each anniversary date thereafter for the following four years.[21] The taxpayer's basis in the investment is reduced by the amount of the credit (other than for purposes of calculating the capital gain exclu-

[21] Thus, a credit would be available on the date on which the investment is made and for each of the six anniversary dates thereafter.

sion under sections 1202, 1400B, and 1400F). The credit is subject to the general business credit rules.

A CDE is any domestic corporation or partnership (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons, (2) that maintains accountability to residents of low-income communities through representation on governing or advisory boards, or otherwise and (3) is certified by the Treasury Department as an eligible CDE.[22] No later than 60 days after enactment, the Treasury Department shall issue regulations that specify objective criteria to be used by the Treasury to allocate the credits among eligible CDEs. In allocating the credits, the Treasury Department will give priority to entities with records of having successfully provided capital or technical assistance to disadvantaged businesses or communities.

If a CDE fails to sell equity interests to investors up to the amount authorized within five years of the authorization, then the remaining authorization is canceled. The Treasury Department can authorize another CDE to issue equity interests for the unused portion. No authorization can be made after 2014.

A "qualified equity investment" is defined as stock or a similar equity interest acquired directly from a CDE in exchange for cash. Substantially all of the investment proceeds must be used by the CDE to make "qualified low-income community investments," meaning equity investments in, or loans to, qualified active businesses located in low-income communities, certain financial counseling and other services specified in regulations to businesses and residents in low-income communities.[23]

The stock or equity interest cannot be redeemed (or otherwise cashed out) by the CDE for at least seven years. If an entity fails to be a CDE during the seven-year period following the taxpayer's investment, or if the equity interest is redeemed by the issuing CDE during that seven-year period, then any credits claimed with respect to the equity interest are recaptured (with interest) and no further credits are allowed.

A "low-income community" is defined as census tracts with either (1) poverty rates of at least 20 percent (based on the most recent census data), or (2) median family income which does not exceed 80 percent of the greater of metropolitan area income or statewide median family income (for a non-metropolitan census tract, 80 percent of non-metropolitan statewide median family income).

A "qualified active business" is defined as a business which satisfies the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in low-income communities; (2) a substantial portion of the use of the tangible property of such business is used within low-income communities; (3) a substantial portion of the services performed for such business by its employees is performed in low-income communities; and (4) less than 5 percent of the average aggregate of unadjusted bases of the prop-

[22] A specialized small business investment company and a community development financial institution are treated as satisfying the requirements for a CDE.

[23] If at least 85 percent of the aggregate gross assets of the CDE are invested (directly or indirectly) in equity interests in, or loans to, qualified active businesses located in low-income communities, then there would be no need to trace the use of the proceeds from the particular stock (or other equity ownership) issuance with respect to which the credit is claimed.

erty of such business is attributable to certain financial property or to collectibles (other than collectibles held for sale to customers). There is no requirement that employees of the business be residents of the low-income community.

Rental of improved commercial real estate located in a low-income community is a qualified active business, regardless of the characteristics of the commercial tenants of the property. The purchase and holding of unimproved real estate is not a qualified active business. In addition, a qualified active business does not include (a) any business consisting predominantly of the development or holding of intangibles for sale or license; (b) operation of any facility described in sec. 144(c)(6)(B); or (c) any business if a significant equity interest in such business is held by a person who also holds a significant equity interest in the CDE. A qualified active business can include an organization that is organized on a nonprofit basis.

Effective date.—The provision is effective for qualified investments made after December 31, 2000.

SENATE AMENDMENT

No provision. However, S. 3152 includes a provision that creates a new markets tax credit that is similar to the provision in H.R. 4923. Under S. 3152, the maximum annual amount of qualifying equity investments is capped as follows:

Calendar year	Maximum qualifying equity investment
2002	$1.0 billion.
2003–2006	$1.5 billion per year.

S. 3152 defines a CDE in the same manner as in H.R. 4923, except that the accountability requirement is clarified to provide that the CDE must maintain accountability to residents of low-income communities through the representation of the residents on governing or advisory boards of the CDE. No later than 120 days after enactment, the Treasury Department will issue guidance that specifies objective criteria to be used by the Treasury to allocate the credits among eligible CDEs. In allocating the credits, the Treasury Department will give priority to entities with records of having successfully provided capital or technical assistance to disadvantaged businesses or communities,[24] as well as to entities that intend to invest substantially all of the proceeds they receive from their investors in businesses in which persons unrelated to the CDE hold the majority equity interest.

Under S. 3152, if a CDE fails to sell equity interests to investors up to the amount authorized within five years of the authorization, then the remaining authorization is canceled. The Treasury Department can authorize another CDE to issue equity interests for the unused portion. No authorization can be made after 2013.

Substantially all of the investment proceeds must be used by the CDE to make "qualified low-income community investments."

[24] A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities could be demonstrated by the past actions of the CDE itself or an affiliate (e.g., in the case where a new CDE is established by a nonprofit organization with a history of providing assistance to disadvantaged communities).

Qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active businesses located in low-income communities,[25] (2) certain financial counseling and other services specified in regulations to businesses and residents in low-income communities, (3) the purchase from another CDE of any loan made by such entity that is a qualified low income community investment, or (4) an equity investment in, or loans to, another CDE.[26] Treasury Department regulations will provide guidance with respect to the "substantially all" standard.

The definition of a "low-income community" is the same as in H.R. 4923, except that under S. 3152, the Secretary may designate any area within any census tract as a "low income community" provided that (1) the boundary of the area is continuous,[27] (2) the area (if it were a census tract) would satisfy the poverty rate or median income requirements set forth above[28] within the targeted area, and (3) an inadequate access to investment capital exists in the area.

The definition of a "qualified active business" is the same as in H.R. 4923, except that S. 3152 clarifies that a qualified active business can include an organization that is organized on a nonprofit basis.

The General Accounting Office will audit and report to Congress by January 31, 2004 (and again by January 31, 2007) on the new markets tax credit program, including on all qualified community development entities that receive an allocation under the new markets tax credit.

Effective date.—The provision is effective for qualified investments made after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement follows H.R. 4923 with some modifications.

The definition of a CDE includes the clarification in S. 3152 regarding the accountability requirement, as well as the priority allocation to CDEs with records of having successfully provided capital or technical assistance to disadvantaged businesses or communities,[29] as well as to entities that intend to invest substantially all

[25] Thus, a qualified low-income community investment may include an investment in a qualifying business in which the CDE (or a related party) holds a significant interest. However, as previously mentioned, in allocating the credits among eligible CDEs, the Treasury Department will give priority to CDEs that intend to invest substantially all of the proceeds they receive from their investors in businesses in which persons unrelated to the CDE hold the majority of the equity interest. For purposes of this provision, persons are related to each other if they are described in sections 267(b) or 707(b)(1).

[26] If at least 85 percent of the aggregate gross assets of the CDE are invested (directly or indirectly) in equity interests in, or loans to, qualified active businesses located in low-income communities, then there would be no need to trace the use of the proceeds from the particular stock (or other equity ownership) issuance with respect to which the credit is claimed.

[27] It is intended that the continuous boundary that delineates the portion of the census tract as a "low-income community" should be a pre-existing boundary (such as an established neighborhood, political, or geographic boundary).

[28] A low-income community is defined as census tracts with either (1) poverty rates of at least 20 percent (based on the most recent census data), or (2) median family income which does not exceed 80 percent of the greater of metropolitan area income or statewide median family income (for a non-metropolitan census tract, 80 percent of non-metropolitan statewide median family income).

[29] A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities could be demonstrated by the past actions of the CDE itself or an affiliate (e.g., in the case where a new CDE is established by a nonprofit organization with a history of providing assistance to disadvantaged communities).

of their investment proceeds in businesses in which persons unrelated to the CDE hold the majority equity interest.

The conference agreement adopts S. 3152's definitions of "qualified low-income community investment" (which permits investments in related businesses) and "low-income community" (which provides discretion to designate targeted population areas). In addition, the definition of a "qualified active business" includes an organization that is organized on a non-profit basis.

Under the conference agreement, the General Accounting Office will audit and report to Congress by January 31, 2004, and again in 2007 and 2010, on the new markets tax credit program, including on all qualified community development entities that receive an allocation under the new markets tax credit program.

D. Increase the Low-Income Housing Tax Credit Cap and Make Other Modifications (secs. 631–637 of the bill and sec. 42 of the Code)

PRESENT LAW

In general

The low-income housing tax credit may be claimed over a 10-year period for the cost of rental housing occupied by tenants having incomes below specified levels. The credit percentage for newly constructed or substantially rehabilitated housing that is not Federally subsidized is adjusted monthly by the Internal Revenue Service so that the 10 annual installments have a present value of 70 percent of the total qualified expenditures. The credit percentage for new substantially rehabilitated housing that is Federally subsidized and for existing housing that is substantially rehabilitated is calculated to have a present value of 30 percent qualified expenditures.

Credit cap

The aggregate credit authority provided annually to each State is $1.25 per resident, except in the case of projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit and certain carry-over amounts,

Expenditure test

Generally, the building must be placed in service in the year in which it receives an allocation to qualify for the credit. An exception is provided in the case where the taxpayer has expended an amount equal to 10-percent or more of the taxpayer's reasonably expected basis in the building by the end of the calendar year in which the allocation is received and certain other requirements are met.

Basis of building eligible for the credit

Buildings receiving assistance under the HOME investment partnerships act ("HOME") are not eligible for the enhanced credit for buildings located in high cost areas (i.e., qualified census tracts and difficult development areas). Under the enhanced credit, the 70-percent and 30-percent credit are increased to a 91-percent and 39-percent credit, respectfully.

Eligible basis is generally limited to the portion of the building used by qualified low-income tenants for residential living and some common areas.

State allocation plans

Each State must develop a plan for allocating credits and such plan must include certain allocation criteria including: (1) project location; (2) housing needs characteristics; (3) project characteristics; (4) sponsor characteristics; (5) participation of local tax-exempts; (6) tenant populations with special needs; and (7) public housing waiting lists. The State allocation plan must also give preference to housing projects: (1) that serve the lowest income tenants; and (2) that are obligated to serve qualified tenants for the longest periods.

Credit administration

There are no explicit requirements that housing credit agencies perform a comprehensive market study of the housing needs of the low-income individuals in the area to be served by the project, nor that such agency conduct site visits to monitor for compliance with habitability standards.

Stacking rule

Authority to allocate credits remains at the State (as opposed to local) government level unless State law provides otherwise.[30] Generally, credits may be allocated only from volume authority arising during the calendar year in which the building is placed in service, except in the case of: (1) credits claimed on additions to qualified basis; (2) credits allocated in a later year pursuant to an earlier binding commitment made no later than the year in which the building is placed in service; and (3) carryover allocations.

Each State annually receives low-income housing credit authority equal to $1.25 per State resident for allocation to qualified low-income projects.[31] In addition to this $1.25 per resident amount, each State's "housing credit ceiling" includes the following amounts: (1) the unused State housing credit ceiling (if any) of such State for the preceding calendar year;[32] (2) the amount of the State housing credit ceiling (if any) returned in the calendar year;[33] and (3) the amount of the national pool (if any) allocated to such State by the Treasury Department.

The national pool consists of States' unused housing credit carryovers. For each State, the unused housing credit carryover for a calendar year consists of the excess (if any) of the unused State housing credit ceiling for such year over the excess (if any) of the

[30] For example, constitutional home rule cities in Illinois are guaranteed their proportionate share of the $1.25 amount, based on their population relative to that of the State as a whole.

[31] A State's population, for these purposes, is the most recent estimate of the State's population released by the Bureau of the Census before the beginning of the year to which the limitation applies. Also, for these purposes, the District of Columbia and the U.S. possessions (i.e., Puerto Rico, the Virgin Islands, Guam, the Northern Marianas and American Samoa) are treated as States.

[32] The unused State housing credit ceiling is the amount (if positive) of the previous year's annual credit limitation plus credit returns less the credit actually allocated in that year.

[33] Credit returns are the sum of any amounts allocated to projects within a State which fail to become a qualified low-income housing project within the allowable time period plus any amounts allocated to a project within a State under an allocation which is canceled by mutual consent of the housing credit agency and the allocation recipient.

aggregate housing credit dollar amount allocated for such year over the sum of $1.25 per resident and the credit returns for such year. The amounts in the national pool are allocated only to a State which allocated its entire housing credit ceiling for the preceding calendar year, and requested a share in the national pool not later than May 1 of the calendar year. The national pool allocation to qualified States is made on a pro rata basis equivalent to the fraction that a State's population enjoys relative to the total population of all qualified States for that year.

The present-law stacking rule provides that a State is treated as using its annual allocation of credit authority ($1.25 per State resident) and any returns during the calendar year followed by any unused credits carried forward from the preceding year's credit ceiling and finally any applicable allocations from the National pool.

HOUSE BILL

Credit cap

No provision. However, H.R. 4923 increases the $1.25 per capita cap to $1.75 per capita. This increase is phased-in over six years. Also, beginning in 2001 the per capita cap for each State is modified so that small population State are given a minimum of $2 million of annual credit cap. Therefore the credit cap would be the greater of: $1.35 per capita or $2 million in calendar year 2001; $1.45 per capita or $2 million in calendar 2002; $1.55 per capita or $2 million in calendar year 2003; $1.65 per capita or $2 million in calendar year 2004; $1.70 per capita or $2 million in calendar year 2005; and $1.75 per capita or $2 million in calendar year 2006. The $1.75 per capita credit cap and $2 million amount are indexed for inflation beginning in 2007.

Expenditure test

The provisions of H.R. 4923 allow a building which receives an allocation in the second half of a calendar to qualify under the 10-percent test if the taxpayer expends an amount equal to 10-percent or more of the taxpayer's reasonably expected basis in the building within six months of receiving the allocation regardless of whether the 10-percent test is met by the end of the calendar year.

Basis of building eligible for the credit

The provisions of H.R. 4923 make three changes to the basis rules of the credit. First, the definition of qualified census tracts for purposes of the enhanced credit is expanded to include any census tracts with a poverty rate of 25 percent or more. Second, H.R. 4923 extends the credit to a portion of the building used as a community service facility not in excess of 10 percent of the total eligible basis in the building. A community service facility is defined as any facility designed to serve primarily individuals whose income is 60 percent or less of area median income. Third, H.R. 4923 provides that assistance received under the Native American Housing Assistance and Self-Determination Act of 1996 is not taken into account in determining whether a building is Federally subsidized for purposes of the credit. This allows such buildings to qualify for something

other than the 30-percent credit generally applicable to Federally subsidized buildings.

State allocation plans

The provisions of H.R. 4923 strikes the plan criteria relating to participation of local tax-exempts, replacing it with two other criteria: tenant populations of individuals with children and projects intended for eventual tenant ownership. It also provides that the present-law criteria relating to sponsor characteristics include whether the project involves the use of existing housing as part of a community revitalization plan. Also, H.R. 4923 adds a third category of housing projects to the preferential list. That third category is for projects located in qualified census tracts which contribute to a concerted community revitalization plan.

Credit administration

The provisions of H.R. 4923 require a comprehensive market study of the housing needs of the low-income individuals in the area to be served by the project and a written explanation available to the general public for any allocation not made in accordance with the established priorities and selection criteria of the housing credit agency. They also require site inspections by the housing credit agency to monitor compliance with habitability standards applicable to the project.

Stacking rule

The provisions of H.R. 4923 modify the stacking rule so that each State would be treated as using its allocation of the unused State housing credit ceiling (if any) from the preceding calendar before the current year's allocation of credit (including any credits returned to the State) and then finally any National pool allocations.

Effective date

In general, H.R. 4923 is effective for calendar years beginning after December 31, 2000, and buildings placed-in-service after such date in the case of projects that also receive financing with proceeds of tax-exempt bonds subject to the private activity bond volume limit which are issued after such date. The increase and indexing of the credit cap is effective for calendar years after December 31, 2000.

SENATE AMENDMENT

Credit cap

No provision. However, S. 3152 increases the annual State credit caps from $1.25 to $1.75 per resident beginning in 2001. Also, beginning in 2001 the per capita cap for each State is modified so that small population State are given a minimum of $2 million of annual credit cap. The $1.75 per capita cap and the $2 million amount are indexed for inflation beginning in calendar 2002.

Expenditure test

No provision.

Basis of building eligible for the credit

The provision in S. 3152 relating to the treatment of buildings receiving assistance under the Native American Housing Assistance and Self-Determination Act of 1996 is the same as one of the provisions in H.R. 4923. The other provisions in H.R. 4923 relating to the basis of building eligible for the credit are not part of S. 3152.

State allocation plans

No provision.

Credit administration

No provision.

Stacking rule

The provision of H.R. 4923 is included in S. 3152.

Effective date

The provisions are effective for calendar years beginning after December 31, 2000 and buildings placed-in-service after such date in the case of projects that also receive financing with proceeds of tax-exempt bonds which are issued after such date subject to the private activity bond volume limit.

CONFERENCE AGREEMENT

Credit cap

The conference agreement follows the provisions of H.R. 4923 and S. 3152 with a modification increasing the per-capita low-income housing credit cap from $1.25 per capita to $1.50 per capita in calendar year 2001 and to $1.75 per capita in calendar year 2002. Beginning in calendar year 2003, the per-capita portion of the credit cap will be adjusted annually for inflation. For small States, a minimum annual cap of $2 million is provided for calendar years 2001 and 2002. Beginning in calendar year 2003, the small State minimum is adjusted for inflation.

Expenditure test

The conference agreement follows the provision of H.R. 4923.

Basis of building eligible for the credit

The conference agreement includes all three of the changes to the credit basis rules included in H.R. 4923.

State allocation plans

The conference agreement includes the provision of H.R. 4923.

Credit administration

The conference agreement includes the provision of H.R. 4923.

Stacking rule

The conference agreement follows the provisions of H.R. 4923 and the S. 3152.

Effective date

The provision is generally effective for calendar years beginning after December 31, 2000, and buildings placed-in-service after such date in the case of projects that also receive financing with proceeds of tax-exempt bonds subject to the private activity bond volume limit which are issued after such date.

E. Accelerate Scheduled Increase in State Volume Limits on Tax-Exempt Private Activity Bonds (sec. 651 of the bill and sec. 146 of the Code)

PRESENT LAW

Interest on bonds issued by States and local governments is excluded from income if the proceeds of the bonds are used to finance activities conducted and paid for by the governmental units (sec. 103). Interest on bonds issued by these governmental units to finance activities carried out and paid for by private persons ("private activity bonds") is taxable unless the activities are specified in the Internal Revenue Code. Private activity bonds on which interest may be tax-exempt include bonds for privately operated transportation facilities (airports, docks and wharves, mass transit, and high speed rail facilities), privately owned and/or provided municipal services (water, sewer, solid waste disposal, and certain electric and heating facilities), economic development (small manufacturing facilities and redevelopment in economically depressed areas), and certain social programs (low-income rental housing, qualified mortgage bonds, student loan bonds, and exempt activities of charitable organizations described in sec. 501(c)(3)).

The volume of tax-exempt private activity bonds that States and local governments may issue for most of these purposes in each calendar year is limited by State-wide volume limits. The current annual volume limits are $50 per resident of the State or $150 million if greater. The volume limits do not apply to private activity bonds to finance airports, docks and wharves, certain governmentally owned, but privately operated solid waste disposal facilities, certain high speed rail facilities, and to certain types of private activity tax-exempt bonds that are subject to other limits on their volume (qualified veterans' mortgage bonds and certain "new" empowerment zone and enterprise community bonds).

The current annual volume limits that apply to private activity tax-exempt bonds increase to $75 per resident of each State or $225 million, if greater, beginning in calendar year 2007. The increase is, ratably phased in, beginning with $55 per capita or $165 million, if greater, in calendar year 2003.

HOUSE BILL

No provision. However, H.R. 4923 accelerates the scheduled increase in the present-law annual State private activity bond volume limits to $75 per resident of each State, or $225 million (if greater) beginning in calendar year 2007. The increase is phased in as follows, beginning in calendar year 2001:

Calendar year	Volume limit
2001	$55 per resident ($165 million if greater).

Calendar year	Volume limit
2002	$60 per resident ($180 million if greater).
2003	$65 per resident ($195 million if greater).
2004, 2005, and 2006	$70 per resident ($210 million if greater).
2007 and thereafter	$75 per resident ($225 million if greater).

Effective date.—The provision is effective beginning in calendar year 2001 and is fully effective in calendar year 2007 and thereafter.

SENATE AMENDMENT

No provision. However, S. 3152 increases the present-law annual State private activity bond volume limits to $75 per resident of each State or $225 million (if greater) beginning in calendar year 2001. In addition, the $75 per resident and the $225 million State limit will be indexed for inflation beginning in calendar year 2002.

Effective date.—The provisions are effective in calender years beginning after December 31, 2000.

CONFERENCE AGREEMENT

The conference agreement follows the provisions of H.R. 4923 and S. 3152 with a modification increasing the State volume limits from the greater of $50 per resident or $150 million to the greater of $62.50 per resident or $187.5 million in calendar year 2001. The volume limit will increase further, to the greater of $75 per resident or $225 million in calendar year 2002. Beginning in calendar year 2003, the volume limit will be adjusted annually for inflation.

F. EXTENSION AND MODIFICATION TO EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS (sec. 652 of the bill and sec. 198 of the Code)

PRESENT LAW

Taxpayers can elect to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred (sec. 198). The deduction applies for both regular and alternative minimum tax purposes. The expenditure must be incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

A "qualified contaminated site" generally is any property that (1) is held for use in a trade or business, for the production of income, or as inventory; (2) is certified by the appropriate State environmental agency to be located within a targeted area; and (3) contains (or potentially contains) a hazardous substance (so-called "brownfields"). Targeted areas are defined as: (1) empowerment zones and enterprise communities as designated under present law; (2) sites announced before February 1997, as being subject to one of the 76 Environmental Protection Agency ("EPA") Brownfields Pilots; (3) any population census tract with a poverty rate of 20 percent or more; and (4) certain industrial and commercial areas that are adjacent to tracts described in (3) above. However, sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 cannot qualify as targeted areas.

Eligible expenditures are those paid or incurred before January 1, 2002.

HOUSE BILL

No provision. However, H.R. 4923 as passed by the House extends an empowerment zone's status as a "targeted area" under section 198. In addition, H.R. 4923 provides that renewal communities (as defined in H.R. 4923) also constitute a "targeted area" under section 198.[34]

Effective date.—The provision is effective for expenditures incurred after June 30, 2001, and before January 1, 2010.

SENATE AMENDMENT

No provision. However, S. 3152 extends the expiration date for eligible expenditures to include those paid or incurred before January 1, 2004.

In addition, S. 3152 eliminates the targeted area requirement, thereby, expanding eligible sites to include any site containing (or potentially containing) a hazardous substance that is certified by the appropriate State environmental agency. However, expenditures undertaken at sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 would continue to not qualify as eligible expenditures.

Effective date.—The provision to extend the expiration date is effective upon the date of enactment. The provision to expand the class of eligible sites is effective for expenditures paid or incurred after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows S. 3152. By extending and expanding section 198, the conferees do not intend to displace the general tax law principle regarding expensing versus capitalization of expenditures which continues to apply to environmental remediation efforts not specifically covered under section 198.

G. Extension of District of Columbia Homebuyer Tax Credit (sec. 653 of the bill and sec. 1400C of the Code)

PRESENT LAW

First-time homebuyers of a principal residence in the District of Columbia are eligible for a nonrefundable tax credit of up to $5,000 of the amount of the purchase price. The $5,000 maximum credit applies both to individuals and married couples. Married individuals filing separately can claim a maximum credit of $2,500 each. The credit phases out for individual taxpayers with adjusted gross income between $70,000 and $90,000 ($110,000–$130,000 for joint filers). For purposes of eligibility, "first-time homebuyer" means any individual if such individual did not have a present ownership interest in a principal residence in the District of Columbia in the one year period ending on the date of the purchase

[34] Also see provisions above relating to empowerment zones and renewal communities.

of the residence to which the credit applies. The credit is scheduled to expire for residences purchased after December 31, 2001.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision. However, S. 3152 includes a provision that extends the first-time homebuyer credit for two years, through December 31, 2003. The provision also extends the phase-out range for married individuals filing a joint return so that it is twice that of individuals. Thus, under the provision, the District of Columbia homebuyer credit is phased out for joint filers with adjusted gross income between $140,000 and $180,000.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

CONFERENCE AGREEMENT

The conference agreement follows the provision in S. 3152 with respect to the extension of the first-time homebuyer credit for two years (through December 31, 2003). The conference agreement does not include the provision regarding the phase-out range.

TITLE VII. ADMINISTRATIVE, MISCELLANEOUS, AND TECHNICAL CORRECTIONS PROVISIONS

Subtitle A. Administrative Provisions

A. Exempt Certain Reports From Elimination Under the Federal Reports Elimination and Sunset Act of 1995 (sec. 701 of the bill)

PRESENT LAW

Section 303 of the Federal Reports Elimination and Sunset Act of 1995 eliminates many periodic Federal reporting requirements, effective May 15, 2000.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement exempts certain reports from elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act of 1995.

B. Extension of Deadlines for IRS Compliance With Certain Notice Requirements (sec. 702 of the bill, secs. 6631 and 6751(a) of the Code)

PRESENT LAW

The Internal Revenue Service Restructuring and Reform Act of 1998 ("IRS Restructuring Act of 1998") imposed several notice requirements relating to penalties, interest and installment agreements. Section 6715 of the Code, added by section 3306 of the IRS Restructuring Act of 1998, requires that each notice imposing a penalty include the name of the penalty, the Code section under which the penalty is imposed, and a computation of the penalty.[35] This requirement applies to notices issued, and penalties assessed, after December 31, 2000.[36]

Section 6631 of the Code, added by section 3308 of the IRS Restructuring Act of 1998, requires that every IRS notice sent to an individual taxpayer that includes an amount of interest required to be paid by the taxpayer also include a detailed computation of the interest charged and a citation to the Code section under which such interest is imposed. The provision is effective for notices issued after December 31, 2000.

Section 3506 of the IRS Restructuring Act of 1998 requires the IRS to send every taxpayer in an installment agreement an annual statement of the initial balance owed, the payments made during the year, and the remaining balance. The provision became effective on July 1, 2000.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

It is the understanding of the conferees that due to the need for substantial systems modifications, and Year 2000 programming priorities, the IRS will be unable to fully comply with certain notice requirements in accordance with deadlines imposed by the IRS Restructuring Act of 1998. The conference agreement extends the deadlines for complying with the penalty, interest, and installment agreement notice requirements. Specifically, the annual installment agreement notice requirement is extended from July 1, 2000, to September 1, 2001. The deadlines for complying with the notice requirements relating to the computation of penalties and interest[37] are both extended to June 30, 2001. In addition, for penalty notices issued after June 30, 2001, and before July 1, 2003, the notice requirements will be treated as met if the notice contains a telephone number at which the taxpayer can request a copy of the taxpayer's assessment and payment history with respect to such penalty. Similarly, for interest notices issued after June 30, 2001,

[35] Sec. 6715(a).
[36] P.L. 105–206, sec. 3306.
[37] Secs. 6715(a) and 6631.

and before July 1, 2003, the notice requirements will be treated as met if such notice contains a telephone number at which the taxpayer can request a copy of the taxpayer's payment history relating to interest amounts included in such notice.

Effective date.—The provision is effective on the date of enactment.

C. Extension of Authority for Undercover Operations (sec. 703 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 must 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. In the Taxpayer Bill of Rights II (Public Law 104–168), the authority to churn funds from undercover operations was extended for five years, through 2000.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement extends the authority of the IRS to "churn" the income earned from undercover operations for an additional five years, through 2005.

Effective date.—The provision is effective on the date of enactment.

D. Competent Authority and Pre-Filing Agreements (sec. 704 of the bill and secs. 6103, 6110, and new sec. 6105 of the Code)

PRESENT LAW

Section 6103

Section 6103 of the Code sets forth the general rule that returns and return information are confidential. A return is any tax return, information return, declaration of estimated tax, or claim for refund filed under the Code on behalf of or with respect to any person. The term return also includes any amendment or supplement, including supporting schedules or attachments or lists, which

are supplemental to or are part of a filed return. Return information is defined broadly. It includes the following information:

A taxpayer's identity, the nature, source or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments;

Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing;

Any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense;[38]

Any part of any written determination or any background file document relating to such written determination which is not open to public inspection under section 6110;[39] and

Any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to the agreement or any application for an advance pricing agreement.

The term "return information" does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

Secrecy of information exchanged under tax treaties

U.S. tax treaties typically contain articles governing the exchange of information. These articles generally provide for the exchange of information between the tax authorities of the two countries when such information is necessary for carrying out provisions of the treaty or of the countries' domestic tax laws. Individuals referred to as "competent authorities" are designated by each country to make written requests for information and to receive information.[40]

The exchange of information articles typically cover information relating to taxes to which the treaty applies, but can also apply to other taxes (e.g., excise taxes) not covered by the treaty. Many of the treaties permit the exchange of information even if the taxpayer involved is not a resident of one of the treaty countries. The exchange of information articles may be similar to, or represent a variation on, Article 26 of the 1996 U.S. model income tax treaty.

Information that is received under the exchange of information articles is subject to secrecy clauses contained in the treaties. In this regard, the country requesting information under the treaties typically is required to treat any information received as secret in the same manner as information obtained under its domestic laws. In general, disclosure is not permitted other than to persons or authorities involved in the administration, assessment, collection or

[38] Sec. 6103(b)(2)(A).

[39] Sec. 6103(b)(2)(B).

[40] The U.S. competent authority is the Secretary of the Treasury or his delegate. The U.S. competent authority function has been delegated to the Commissioner of Internal Revenue, who has redelegated the authority to the Director, International. On interpretive issues, the latter acts with the concurrence of the Associate Chief Counsel (International) of the IRS.

enforcement of taxes to which the treaty applies. For example, disclosure generally can be made to legislative bodies, such as the tax-writing committees of the Congress, and the General Accounting Office for purposes of overseeing the administration of U.S. tax laws.

In addition to the exchange of information articles in U.S. tax treaties, exchange of information provisions are contained in tax information exchange agreements entered into between the United States and another country.[41] In addition, information may be exchanged pursuant to the Convention on Mutual Administrative Assistance in Tax Matters developed by the Council of Europe and the Organization for Economic Cooperation and Development (the "Multilateral Mutual Assistance Convention"), which limits the use of exchanged information and permits disclosure of such information only with the prior authorization of the competent authority of the country providing the information.[42] The United States has also entered into a number of implementation and coordination agreements with possessions that provide for the exchange of tax information. Moreover, the United States has entered into various mutual legal assistance treaties with other countries, some of which can be used to obtain tax information in criminal investigations.

Both the confidentiality provisions of section 6103, as well as treaty secrecy provisions can cover return information.

Section 6110 and section 7121

Section 6110 of the Code provides for disclosure of written determinations. With certain exceptions, section 6110 makes the text of any written determination the Internal Revenue Service ("IRS") issues available for public inspection. A written determination is any ruling, determination letter, technical advice memorandum, or Chief Counsel advice. The IRS is required to redact certain material before making these documents publicly available.[43] Among the

[41] Sections 274(h)(6)(C) and 927(e)(3) specifically provide the Secretary of the Treasury the authority to enter into tax information exchange agreements. This eliminates the need for Senate ratification, which is required for a tax treaty. In addition, all tax information exchange agreements are required to include specific non-disclosure provisions which provide that "information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States, or the beneficiary country and will be used by such persons or authorities only for such purposes."

Sec. 274(h)(6)(C)(i).

[42] The U.S. Senate ratified the Multilateral Mutual Assistance Convention, subject to certain reservations, in September 1990. The Multilateral Mutual Assistance Convention entered into force on April 1, 1995, and has been signed by the following countries: Denmark, Finland, Iceland, the Netherlands, Norway, Sweden, and the United States.

[43] For rulings, determination letters and technical advice memoranda, section 6110(c) provides the following exemptions from disclosure:

(1) The names, addresses, and other identifying details of the person to whom the written determination pertains and of any other person, other than a person with respect to whom a notation is made under subsection (d)(1) (relating to third party contacts), identified in the written determination or any background file document;

(2) Information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and which is in fact properly classified pursuant to such Executive order;

(3) Information specifically exempted from disclosure by any statute (other than [Title 26]) which is applicable to the Internal Revenue Service;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

Continued

information to be redacted is information specifically exempted from disclosure by any statute (other than Title 26) that is applicable to the IRS. Once the IRS makes the written determination publicly available, the background file documents associated with such written determination are available for public inspection upon written request. Section 6110 defines "background file documents" as any written material submitted by the taxpayer or other requester in support of the request. Background file documents also include any communications between the IRS and persons outside the IRS concerning such written determination that occur before the IRS issues the determination.

Section 6110 was added to the Code in 1976. The legislative history provided that a written determination would not be considered a ruling, technical advice memorandum, or determination letter, unless the document satisfies three criteria:

(1) The document recites the relevant facts;

(2) The document explains the applicable provisions of law; and

(3) The document shows the application of law to the facts.[44]

The legislative history further provided that section 6110 "does not require public disclosure of a closing agreement entered into between the IRS and a taxpayer which finally determines the taxpayer's tax liability with respect to a taxable year * * * Your committee understands that a closing agreement is generally the result of a negotiated settlement and, as such, does not necessarily represent the IRS view of the law. Your committee intends, however, that the closing agreement exception is not to be used as a means of avoiding public disclosure of determinations which, under present practice, would be issued in a form which would be open to public inspection [under the bill]."[45]

Closing agreements are entered into under the authority of section 7121. Closing agreements finally and conclusively settle a tax issue between the IRS and a taxpayer. Closing agreements may: (1) determine a taxpayer's entire tax liability for a previous tax period; or (2) fix the tax treatment of one or more specific items affecting tax liability for any tax period. Thus, closing agreements may settle the treatment of a specific item for periods ending after the execution of the agreement. A single closing agreement may cover both the determination of a taxpayer's entire tax liability for a previous tax period and fix the tax treatment of specific items for any tax period.

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(5) Information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Information contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for use of an agency responsible for the regulation or supervision of financial institutions; and

(7) Geological and geophysical information and data, including maps, concerning wells.

For Chief Counsel Advice, paragraphs 2 through 7 do not apply, however, material may be deleted in accordance with subsections (b) and (c) of the FOIA (except that in applying Exemption 3 of the FOIA, no statutory provision of the Code is to be taken into account.) See sec. 6110(i)(3).

[44] H.R. Rep. 94–658, at 315 (1976).

[45] *Id.* at 316.

Freedom of Information Act

The Freedom of Information Act ("FOIA"), enacted in 1966, established a statutory right to access government information. While the purpose of section 6103 is to restrict access to returns and return information, the basic purpose of the FOIA is to ensure that the public has access to government documents. In general, the FOIA provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Exemption 3 of the FOIA allows the withholding of information prohibited from disclosure by another statute if certain requirements are met.[46] The right of access is enforceable in court.

Pending FOIA requests and litigation involving IRS records

Records covered by treaty secrecy clauses

A publisher of tax related material and commentary has made a FOIA request for the disclosure of competent authority agreements. The request has been pending since March 14, 2000.[47] The IRS has not denied the request, nor has it produced any documents responsive to the request. At this time, no suit has been filed to compel disclosure of these documents, although such a suit may be brought in the future.

In connection with a separate request, the IRS was sued under the FOIA to compel disclosure of Field Service Advice memoranda ("FSAs").[48] FSAs are prepared by attorneys in the IRS National Office of the Office of Chief Counsel. They are prepared in response to requests from IRS field personnel for legal guidance, usually with respect to issues relating to a particular taxpayer. FSAs usually contain a statement of issues, facts, legal analysis and conclusions. The primary purpose of FSAs is to ensure that IRS field personnel apply the law correctly and uniformly. The D.C. Circuit determined that FSAs are subject to disclosure. However, the court remanded the case to district court to address assertions of privilege, including those based on treaty secrecy. A decision on this issue by the district court is still pending.[49]

Pre-filing agreements

On February 11, 2000, the IRS issued Notice 2000–12, in which the IRS established a pilot program for "Pre-filing Agreements." Under this program, large businesses may request a review and resolution of specific issues relating to tax returns they expect to file between September and December of 2000. The purpose of the program is to enable taxpayers and the IRS to resolve issues that are likely to be disputed in post-filing audits. Examples of such issues include: (1) asset valuation and the allocation of a

[46] 5 U.S.C. sec. 552(b)(3).

[47] The initial FOIA request of March 14, 2000, covered all competent authority agreements executed for the United States from January 1, 1990, to date. In response to a request from the Department of Treasury, by letter dated April 17, 2000, the FOIA request was narrowed to cover competent authority agreements executed between 1997 and 1999. The right to pursue the 1990 through 1996 agreements, however, was reserved.

[48] *Tax Analysts* v. *IRS,* 117 F.3d 607 (D.C. Cir. 1997).

[49] *Tax Analysts* v. *IRS,* No. 94–CV–923 (GK) (D.D.C.).

business's purchase or sale price among the assets acquired or sold; (2) the identification and documentation of hedging transactions; and (3) the determination of "market" for taxpayers using the lower of cost or market method of inventory valuation in situations involving inactive markets. The program is intended to address issues for which the law is settled.

In Notice 2000–12, the IRS stated that pre-filing agreements are closing agreements entered into pursuant to section 7121. As such, the notice provides that the information generated or received by the IRS during the pre-filing agreement process constitutes return information. The notice further provides that pre-filing agreements are not written determinations as defined in section 6110, nor are they subject to disclosure under the FOIA.

Several pre-filing agreements have been completed. A FOIA request for these agreements has not been made.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The provision affirms that closing and similar agreements, and information exchanged and agreements reached pursuant to a tax treaty, are confidential. Further, the provision clarifies that such protected documents are not to be disclosed under the FOIA or section 6110.

Clarification that return information includes closing agreements and similar dispute resolution agreements

Protection for closing agreements, pre-filing agreements and similar agreements not containing an exposition of the tax law

The bill provides that agreements entered into under section 7121 or similar agreements are confidential return information. Similar agreements are intended to include negotiated agreements that (1) are the result of an alternative dispute resolution or dispute avoidance process relating to liability of any person under the Code for any tax, penalty, interest, fine or forfeiture or other imposition or offense and (2) do not establish, set forth, or resolve the government's interpretation of the relevant tax law. This is not meant to preclude citation, or repetition of, the Code, Treasury regulations, or other published rules.

It is intended that pre-filing agreements be covered by this provision. It is the understanding of the conferees that pre-filing agreements do not explain the applicable provisions of law or otherwise contain any exposition of the tax law or the position of the IRS. In addition, it is not intended that the closing and similar agreement exception be used as a means of avoiding public disclosure of determinations that, under present law, would be issued in a form that would be open to public inspection. Thus, technical advice memoranda, chief counsel advice or other material clearly

available to the public under present law section 6110, would not be exempt from disclosure by virtue of the fact that such material is contained in a background file for a closing agreement. For example, if a revenue agent seeks technical advice in connection with a pre-filing agreement, such technical advice would remain subject to the requirements of section 6110. Since the pre-filing agreement program involves only settled issues of law, it is the understanding of the conferees that documents of this nature generally would not be generated in the pre-filing agreement process.

The provision is not intended to foreclose the disclosure of tax-exempt organization closing agreements to the extent such disclosure is authorized under section 6104.[50] Since section 6103 permits the disclosure of return information as authorized by Title 26, a disclosure authorized by section 6104 is permissible, notwithstanding the fact that a closing agreement is return information.

Report on pre-filing agreement program

It is intended that the Secretary make publicly available an annual report relating to the pre-filing agreement program operations for the preceding calendar year. The annual reporting requirement is for five years, or the duration of the program, whichever is shorter. The report is to include (1) the number of pre-filing agreements completed, (2) the number of applications received, (3) the number of applications withdrawn, (4) the types of issues which are resolved by completed agreements, (5) whether the program is being utilized by taxpayers who were previously subject to audit by the IRS, (6) the average length of time required to complete an agreement, (7) the number, if any, and subject of technical advice and chief counsel advice memoranda issued to address issues arising in connection with any pre-filing agreement, (8) any model agreements,[51] and (9) any other information the Secretary deems appropriate. The first report, covering the calendar year 2000, is to be issued no later than March 30, 2001. The information required for the annual report is subject to the restrictions of section 6103. Therefore, the Secretary will disclose information only in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. The Joint Committee on Taxation periodically may review pre-filing agreements to determine whether they contain legal interpretations that should be disclosed to the public.

Clarification that information protected by treaty is confidential

Protection for agreements and information exchanged pursuant to tax treaty

The provision adds a new Code section 6105, which provides that tax convention information, with limited exceptions, cannot be disclosed. Thus, the provision confirms that agreements concluded

[50] The D.C. Circuit recently remanded to the district court for factual development the issue of whether the closing agreement in that case was submitted in support of an exemption application, and therefore, subject to disclosure under section 6104. *Tax Analysts* v. *IRS*, 214 F.3d 179 (D.C. Cir 2000), vacating and remanding 99–2 U.S.T.C. (CCH) 794 (D.D.C. 1999).

[51] See e.g., Appendix A of Rev. Proc. 2000–38 which is a model "Closing Agreement on Final Determination Covering Specific Matters" regarding method of accounting for distributor commissions. Rev. Proc. 2000–38, 2000–40 I.R.B. 314–315 (October 2, 2000). That model agreement does not identify any particular taxpayer but sets forth the substance of the agreement.

under, and information received pursuant to, a tax convention are confidential and can only be disclosed as provided in such tax convention.

Under the provision, a tax convention is defined to include any income tax or gift and estate tax convention, or any other convention or bilateral agreement (including multilateral conventions and agreements and any agreement with a possession of the United States) providing for the avoidance of double taxation, the prevention of fiscal evasion, nondiscrimination with respect to taxes, the exchange of tax relevant information with the United States, or mutual assistance in tax matters.

It is the understanding of the conferees that competent authority agreements (also referred to as mutual agreements) generally do not contain an explanation of the law or application of law to facts. Instead, such agreements are negotiated arrangements to resolve issues of double taxation. Thus, the term tax convention information for purposes of the provision includes: (1) any agreement entered into with the competent authority of one or more foreign governments pursuant to a tax convention; (2) an application for relief under a tax convention (sought by either a taxpayer or another competent authority); (3) any background information related to such agreement or application; (4) documents implementing such agreement; and (5) any other information exchanged pursuant to a tax convention that is treated as confidential or secret under such tax convention. The conferees intend that tax convention information would include documents and any other information that reflects tax convention information, including the association of a particular treaty partner with a specific issue or matter.

The general rule that tax convention information cannot be disclosed does not apply to the disclosure of tax convention information to persons or authorities (including courts and administrative bodies) that are entitled to disclosure under the tax convention. It also does not apply to any generally applicable procedural rules regarding applications for relief under a tax convention. This exception is intended to ensure that there is no restriction on the release by the Secretary of publicly available procedural rules concerning matters such as how or when to make a request for competent authority assistance. Thus, certain material generated by IRS, i.e., its Competent Authority procedures (primarily reflected in Rev. Proc. 96–13), or similar material produced by a treaty partner (for example, an Information Circular produced and published by the Canadian tax authority) may be made available to the public. The general rule does not apply to the disclosure of information not relating to a particular taxpayer if, after consultation with the parties to a tax convention, the Secretary determines that such disclosure would not impair tax administration. This is consistent with current practice. An example of a general agreement that could be disclosed under this provision is the agreement between the competent authorities of Mexico and the United States regarding the maquiladora industry. That agreement, which was not taxpayer specific, was publicized by press release IR–INT–1999–13. The conferees intend that the "impairment of tax administration" for purposes of this provision include, but not be limited to, the release of documents that would adversely affect the working relationship

of the treaty partners. Under the provision, except as otherwise provided, taxpayer-specific tax convention information could not be publicly disclosed, even if it would not impair tax administration.

A taxpayer-specific competent authority agreement that relates to the existence or possible existence of liability (or amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense under the Code is return information under section 6103. It is also an agreement pursuant to a tax convention under section 6105. Return information, including taxpayer-specific competent authority agreements, remains subject to the confidentiality provisions of section 6103. Thus, civil and criminal penalties for the unauthorized disclosure of returns and return information continue to apply to return information that is also covered by section 6105. However, tax convention information that is return information may only be disclosed to the extent provided in, and subject to the terms and conditions of, the relevant tax convention.

Interaction with FOIA and section 6110

Under the provision, closing agreements and similar agreements would not be considered written determinations for purposes of section 6110 and, thus, would not be subject to public disclosure. Such agreements would be defined as return information under section 6103 and, therefore, such documents would be protected from disclosure pursuant to Exemption 3 of the FOIA in conjunction with section 6103.

In addition, under the provision, section 6110 would not apply to material covered by section 6105. In the litigation over FSAs, there has been some dispute as to whether treaties qualify as statutes for purposes of withholding information pursuant to Exemption 3 of the FOIA. The conferees believe that treaties are the equivalent of statutes for purposes of Exemption 3 of the FOIA. Section 6105 satisfies Exemption 3 of the FOIA. Taxpayer-specific tax convention information concerning a taxpayer's tax liability, such as taxpayer-specific competent authority agreements, would be exempt from the FOIA as both return information under section 6103 and information protected from disclosure by tax convention under section 6105. Agreements not relating to a particular taxpayer, and other tax convention information related to such agreements, could be disclosed under FOIA if it is determined that the disclosure would not impair tax administration.

EFFECTIVE DATE

The provision applies to disclosures on, or after, the date of enactment, and thus, applies to all documents in existence on, or created after, the date of enactment.

E. Increase Joint Committee on Taxation Refund Review Threshold to $2 Million (sec. 705 of the bill and sec. 6405 of the Code)

PRESENT LAW

No refund or credit in excess of $1,000,000 of any income tax, estate or gift tax, or certain other specified taxes, may be made until 30 days after the date a report on the refund is provided to

the Joint Committee on Taxation (sec. 6405). A report is also required in the case of certain tentative refunds. Additionally, the staff of the Joint Committee on Taxation conducts post-audit reviews of large deficiency cases and other select issues.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement increases the threshold above which refunds must be submitted to the Joint Committee on Taxation for review from $1,000,000 to $2,000,000. The staff of the Joint Committee on Taxation would continue to exercise its existing statutory authority to conduct a program of expanded post-audit reviews of large deficiency cases and other select issues, and the IRS is expected to cooperate fully in this expanded program.

Effective date.—The provision is effective on the date of enactment, except that the higher threshold does not apply to a refund or credit with respect to which a report was made before the date of enactment.

F. CLARIFYING THE ALLOWANCE OF CERTAIN TAX BENEFITS WITH RESPECT TO KIDNAPPED CHILDREN (sec. 706 of the bill and secs. 2, 24, 32, and 151 of the Code)

PRESENT LAW

The Code generally requires that a taxpayer provide over one-half of the support for each individual claimed as that taxpayer's dependent. Similarly, the child credit, the surviving spouse filing status, and the head of household filing status require that a taxpayer satisfy certain requirements with regard to individuals that qualify as the taxpayer's dependent(s). Finally, the earned income credit for taxpayers with qualifying children generally is available only if the taxpayer has the same principal place of abode for more than one-half the taxable year with an otherwise qualifying child.

Recently published IRS guidance first denied a dependency exemption to certain taxpayers with kidnapped children (TAM 200034029), then allowed such tax benefits to such taxpayers (TAM 200038059).

HOUSE BILL

No provision. However, H.R. 5117 clarifies that the dependency exemption, the child credit, the surviving spouse filing status, the head of household filing status, and the earned income credit are available to an otherwise qualifying taxpayer with respect to a child who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer. Generally, this treatment continues for all taxable years ending during the period that the child is kidnapped. However, this treatment ends for the taxable year ending after the

calender year in which it is determined that the child is dead (or, if earlier, in which the child would have attained age 18).

Effective date.—The provision is effective for taxable years ending after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision of H.R. 5117.

G. CONFORMING CHANGES TO ACCOMMODATE REDUCED ISSUANCES OF CERTAIN TREASURY SECURITIES (sec. 707 of the bill and sec. 995(f)(4) of the Code)

PRESENT LAW

Code section 995(f)(4) dealing with the interest charge on the deferred tax liability of the shareholders of a domestic international sales corporation provides that the interest rate be determined by reference to the average investment yield on United States Treasury bills with maturities of 52 weeks. In addition, provisions of Federal law relating to interest on monetary judgments in civil cases recovered in Federal district court and on a judgment against the United States affirmed by the Supreme Court (Title 28), interest on certain unpaid criminal fines and penalties (Title 18), and interest on compensation for certain takings of property (Title 40) determine the applicable interest rate by reference to 52-week Treasury bills.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conferees understand that, as a result of prior Congressional efforts at budgetary control, current and projected Federal budget surpluses are reducing the need of the Treasury Department to issue certain securities. The Treasury Department has informed the Congress that on grounds of efficient debt management, and predictability and liquidity for the financial markets, the Treasury Department has announced it is likely to cease issuing 52-week Treasury bills. The conference agreement modifies the Code (sec. 995(f)(4)) and certain other parts of Federal law relating to interest on monetary judgments in civil cases recovered in Federal district court and on a judgment against the United States affirmed by the Supreme Court (Title 28), interest on certain unpaid criminal fines and penalties (Title 18), and interest on compensation for certain takings of property (Title 40) that make specific reference to yields on 52-week Treasury bills. The conference agreement generally replaces the reference to 52-week Treasury bills with a reference to the weekly average one-year constant maturity

Treasury yield, as published by the Board of Governors of the Federal Reserve System.

Effective date.—The provision is effective upon the date of enactment.

H. Authorization of Agencies to Use Corrected Consumer Price Index (sec. 708 of the bill)

PRESENT LAW

Code section 1(f) provides for adjustments in the tax tables so that inflation will not result in tax increases. Numerous other provisions of the Code are indexed as well. Section 1(f) provides that inflation is measured by changes in the consumer price index ("CPI") for the preceding year as published by the Department of Labor compared to the CPI for the calendar year 1992. Section 1(f) directs the Secretary to publish tables with applicable tax rates based upon calculated inflation adjustments by December 15 of the year before the year to which the tables are to apply.

In addition, payments made under Social Security, certain Federal employee retirement programs, and certain payments to individuals under various welfare and income support programs are adjusted annually by changes in the CPI.

On September 28, 2000, the Bureau of Labor Statistics ("BLS") announced that the agency had discovered a computational error in quality adjustments of air conditioning as a part of the cost of housing resulting in errors in the reported CPI between January 1999 and August 2000. The BLS reported that the CPI levels starting in January 1999 have been either 0.0, 0.1, or 0.2 index points lower than the levels that would have been published without the error. Consistent with agency guidelines and past practice, the BLS announced that it is revising the reported CPI back to January 2000 to the fully correct levels. The BLS will make no change to reported levels for January through December 1999. However, the BLS will make the corrected levels of the CPI for 1999 available upon request.

HOUSE BILL

No provision.

SENATE BILL

No provision.

CONFERENCE AGREEMENT

The conference agreement authorizes the Secretary of the Treasury to use the corrected levels of the CPI for 1999 and 2000 for all purposes of the Code to which they might apply. The conference agreement directs the Secretary to prescribe new tables reflecting the correct levels of the 1999 CPI for the 2000 tax year.

In addition, the conference agreement provides that the Director of the Office of Management and Budget ("OMB") shall assess Federal benefit programs to ascertain the extent to which the CPI error has or will result in a shortfall in program payments to individuals for 2000 and future years. The conference agreement di-

rects the Director to issue guidelines to agency administrators to determine the extent, if any, of such shortfalls in payments to individuals. The agency administrators are to report their findings to the Director and to Congress within 30 days. The conference agreement provides that, within 60 days of the date of enactment, the Director instruct the head of any Federal agency which administers an affected program to make a payment or payments to compensate for the shortfall and that such payments are targeted to the amount of the shortfall experienced by individual beneficiaries. Applicable Federal benefit programs include the old-age and survivors insurance program, the disability insurance program and the supplemental security income program under the Social Security Act and other programs as determined by the Director. The conference agreement directs the Director to report to the Congress on the activities performed pursuant to this provision by April 1, 2001.

The conferees recognize that the error in the CPI was computational in nature. The conferees support the BLS's policy to incorporate methodological changes only on a prospective basis. The conferees also understand that BLS policy provides that published indices generally not be revised except for those found to be in error for the year in which the error was discovered or within the past twelve months. The conferees recognize that the errors in the CPI date to as long as 20 months prior to the announcement of the error. The conferees recognize that the BLS's policy of not publishing corrected index numbers, beyond those provided as described above, has been applied in those rare cases where an error has been discovered in the past. However, the conferees understand that in the past 25 years the few errors that have been discovered have involved sub-indices and have not affected the level of the CPI itself. The last time the U.S. City Average All Items CPI was revised was in December 1974, when the values for the months of April through October 1974 were recalculated and released with issuance of the November CPI. Therefore, past precedent does not strictly apply to the present situation.

The conferees believe that integrity of official government data is vital to policymakers and private individuals and businesses throughout the country. The conferees emphasize that the CPI plays an important role in economic planning. For this reason the conferees are concerned that, while the BLS has published corrected CPI numbers for 2000, the BLS does not intend to publish corrected CPI numbers for 1999 as part of the official CPI series. To its credit, the BLS announced the error publicly. The national press reported the error.[52] In the absence of a correction to the official CPI series, the Federal government will be left in the position of maintaining, as an official data series, index numbers that the Federal government has admitted are incorrect. The conferees be-

[52] For example, John M. Berry, "Inflation Higher Than Reported," The Washington Post, September 27, 2000, p. E–1, John M. Berry, "Rent Error Leads to Revision Of the CPI," The Washington Post, September 29, 2000, p. E–3, Nicholas Kulish, "Major Price Index Is Revised Upward As Result of Error," The Wall Street Journal, September 28, 2000, p. A2, and Nicholas Kulish, "Second-Period GDP Rose at 5.6% Annual Rate," The Wall Street Journal, September 29, 2000, p. A2. The conferees observe that these press reports highlight the potential confusion for the public regarding these data. The Washington Post reported that "the CPI figures for 1999 were not revised" (September 29, 2000 story) while The Wall Street Journal reported that "[t]he BLS said a complete revision of all the data sets would be released" (September 28, 2000 story) and "it [BLS] announced that it would revise the index" (September 29, 2000 story).

lieve that the public's trust in the integrity of official government data is a paramount goal and the conferees strongly encourage the Commissioner of the Bureau of Labor Statistics to review carefully the agency's current policy with respect to publishing as part of an official series corrections to data found to be in error for reasons of computational error. The conferees believe such a review should be made both with respect to the error announced on September 28, 2000, and as a matter for the future for those rare circumstances where such a similar computational error might once again arise.

Effective date.—The provision is effective on the date of enactment.

I. Prevent Duplication or Acceleration of Loss Through Assumption of Certain Liabilities (sec. 709 of the bill and sec. 358 of the Code)

PRESENT LAW

Generally, no gain or loss is recognized when one or more persons transfer property to a corporation in exchange for stock and immediately after the exchange such person or persons control the corporation. However, a transferor recognizes gain to the extent it receives money or other property ("boot") as part of the exchange (sec. 351).

The assumption of liabilities by the controlled corporation generally is not treated as boot received by the transferor,[53] except that the transferor recognizes gain to the extent that the liabilities assumed exceed the total of the adjusted basis of the property transferred to the controlled corporation pursuant to the exchange (sec. 357(c)).

The assumption of liabilities by the controlled corporation generally reduces the transferor's basis in the stock of the controlled corporation that assumed the liabilities. The transferor's basis in the stock of the controlled corporation is the same as the basis of the property contributed to the controlled corporation, increased by the amount of any gain (or dividend) recognized by the transferor on the exchange, and reduced by the amount of any money or property received, and by the amount of any loss recognized by the transferor (sec. 358). For this purpose, the assumption of a liability is treated as money received by the transferor.

An exception to the general treatment of assumptions of liabilities applies to assumptions of liabilities that would give rise to a deduction, provided the incurrence of such liabilities did not result in the creation or increase of basis of any property. The assumption of such liabilities is not treated as money received by the transferor in determining whether the transferor has gain on the exchange. Similarly, the transferor's basis in the stock of the controlled corporation is not reduced by the assumption of such liabilities. The Internal Revenue Service has ruled that the assumption by an ac-

[53] The assumption of liabilities is treated as boot if it can be shown that "the principal purpose" of the assumption is tax avoidance on the exchange, or is a non-bona fide business purpose (sec. 357(b)).

crual basis corporation of certain contingent liabilities for soil and groundwater remediation would be covered by this exception.[54]

HOUSE BILL

No provision. However, the conference agreement to the Taxpayer Refund and Relief Act of 1999 (H.R. 2488) included an earlier version of the legislation, effective for assumptions of liabilities after July 14, 1999.

SENATE AMENDMENT

No provision. However, the conference agreement to the Taxpayer Refund and Relief Act of 1999 (H.R. 2488) included an earlier version of the legislation, effective for assumptions of liabilities after July 14, 1999. In addition, on October 20, 1999, the Senate Finance Committee reported a bill (S. 1792) that contains a provision that limits the acceleration or duplication of losses through assumptions of liabilities. On April 4, 2000, Senators Roth and Moynihan introduced a bill that contains the same provision (S. 2354).

Effective date.—The provision in S. 2354 is effective for assumptions of liabilities on or after October 19, 1999. Except as provided by the Secretary, the rules addressing transactions involving partnerships are effective with the same effective date. Any rules addressing transactions involving S corporations may likewise be effective for assumptions of liabilities on or after October 19, 1999 or such later date as may be prescribed in such rules.

CONFERENCE AGREEMENT

The conference agreement adopts the provision in S. 2354.

Under the conference agreement, if the basis of stock (determined without regard to this provision) received by a transferor as part of a tax-free exchange with a controlled corporation exceeds the fair market value of the stock, then the basis of the stock received is reduced (but not below the fair market value) by the amount (determined as of the date of the exchange) of any liability that (1) is assumed in exchange for such stock, and (2) did not otherwise reduce the transferor's basis of the stock by reason of the assumption. Except as provided by the Secretary of the Treasury, this provision does not apply where the trade or business with which the liability is associated is transferred to the corporation as part of the exchange, or where substantially all the assets with which the liability is associated are transferred to the corporation as part of the exchange.

The exceptions for transfers of a trade or business, or of substantially all the assets, with which a liability is associated, are intended to obviate the need for valuation or basis reduction in such cases. The exceptions are not intended to apply to situations involv-

[54] Rev. Rul. 95–74, 1995–2 C.B. 36. The ruling addressed a parent corporation's transfer to a subsidiary of substantially all the assets of a manufacturing business, in exchange for stock and the assumption of liabilities associated with the business, including certain contingent environmental remediation liabilities. These liabilities arose due to contamination of land during the parent corporation's operation of the manufacturing business. The transferor had no plan or intention to dispose of (or to have the subsidiary issue) any subsidiary stock. The IRS ruled that the contingent liabilities would not reduce the transferor's basis in the stock of the subsidiary because the liabilities had not been taken into account by the transferor prior to the transfer and had not given rise to deductions or basis for the transferor.

ing the selective transfer of assets that may bear some relationship to the liability, but that do not represent the full scope of the trade or business, (or substantially all the assets) with which the liability is associated.

For purposes of the provision, the term "liability" includes any fixed or contingent obligation to make payment, without regard to whether such obligation or potential obligation is otherwise taken into account under the Code. The determination whether a liability (as more broadly defined for purposes of this provision) has been assumed is made in accordance with the provisions of section 357(d)(1) of the Code. Under the standard of 357(d)(1), a recourse liability is treated as assumed if, based on all the facts and circumstances, the transferee has agreed to and is expected to satisfy such liability (or portion thereof), whether or not the transferor has been relieved of the liability. For example, if a transferee corporation does not formally assume a recourse obligation or potential obligation of the transferor, but instead agrees and is expected to indemnify the transferor with respect to all or a portion of a such an obligation, then the amount that is agreed to be indemnified is treated as assumed for purposes of the provision, whether or not the transferor has been relieved of such liability. Similarly, a nonrecourse liability is treated as assumed by the transferee of any asset subject to such liability.[55]

The application of the provision is illustrated in the following example: Assume a taxpayer transfers assets with an adjusted basis and fair market value of $100 to its wholly-owned corporation and the corporation assumes $40 of liabilities (the payment of which would give rise to a deduction). Thus, the value of the stock received by the transferor is $60. Under present law, the basis of the stock would be $100. The provision requires that the basis of the stock be reduced to $60 (i.e., a reduction of $40). Except as provided by the Secretary, no basis reduction is required if the transferred assets consisted of the trade or business, or substantially all the assets, with which the liability is associated.

The provision does not change the tax treatment with respect to the transferee corporation.

The Secretary of the Treasury is directed to prescribe rules providing appropriate adjustments to prevent the acceleration or duplication of losses through the assumption of liabilities (as defined in the provision) in transactions involving partnerships. The Secretary may also provide appropriate adjustments in the case of transactions involving S corporations. In the case of S corporations, such rules may be applied instead of the otherwise applicable basis reduction rules.

Effective date.—The provision is effective for assumptions of liabilities on or after October 19, 1999. Except as provided by the Secretary, the rules addressing transactions involving partnerships are effective with the same effective date any rules addressing transactions involving S corporations may likewise be effective for assumptions of liabilities on or after October 19, 1999, or such later date as may be prescribed in such rules.

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[55] Section 357(d)(2) contains a limitation in the case of certain nonrecourse liabilities. Also, under section 357, regulations, if issued, may provide for different results.

Subtitle B. Miscellaneous Provisions

A. Repeal Certain Excise Taxes on Rail Diesel Fuel and Inland Waterway Barge Fuels (sec. 710 of the bill and secs. 4041 and 4042 of the Code)

PRESENT LAW

Under present law, diesel fuel used in trains is subject to a 4.3-cents-per gallon General Fund excise tax. Similarly, fuels used in barges operating on the designated inland waterways system is subject to a 4.3-cents-per-gallon General Fund excise tax. In both cases, the 4.3-cents- per-gallon excise tax rates are permanent.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The 4.3-cents-per-gallon General Fund excise tax rates on diesel fuel used in trains and fuels used in barges operating on the designated inland waterways system is repealed.

Effective date.—The provision takes effect on January 1, 2001.

B. Repeal of Reduction of Deductions for Mutual Life Insurance Companies and of Policyholder Surplus Accounts of Life Insurance Companies (secs. 711–712 of the bill and secs. 809 and 815 of the Code)

PRIOR AND PRESENT LAW

Reduction in deductions for policyholder dividends and reserves of mutual life insurance companies (sec. 809)

In general, a corporation may not deduct amounts distributed to shareholders with respect to the corporation's stock. The Deficit Reduction Act of 1984 added a provision to the rules governing insurance companies that was intended to remedy the failure of prior law to distinguish between amounts returned by mutual life insurance companies to policyholders as customers, and amounts distributed to them as owners of the mutual company.

Under the provision, section 809, a mutual life insurance company is required to reduce its deduction for policyholder dividends by the company's differential earnings amount. If the company's differential earnings amount exceeds the amount of its deductible policyholder dividends, the company is required to reduce its deduction for changes in its reserves by the excess of its differential earnings amount over the amount of its deductible policyholder dividends. The differential earnings amount is the product of the differential earnings rate and the average equity base of a mutual life insurance company.

The differential earnings rate is based on the difference between the average earnings rate of the 50 largest stock life insurance companies and the earnings rate of all mutual life insurance

companies. The mutual earnings rate applied under the provision is the rate for the second calendar year preceding the calendar year in which the taxable year begins. Under present law, the differential earnings rate cannot be a negative number.

A company's equity base equals the sum of: (1) its surplus and capital increased by 50 percent of the amount of any provision for policyholder dividends payable in the following taxable year; (2) the amount of its nonadmitted financial assets; (3) the excess of its statutory reserves over its tax reserves; and (4) the amount of any mandatory security valuation reserves, deficiency reserves, and voluntary reserves. A company's average equity base is the average of the company's equity base at the end of the taxable year and its equity base at the end of the preceding taxable year.

A recomputation or "true-up" in a subsequent year is required if the differential earnings amount for the taxable year either exceeds, or is less than, the recomputed differential earnings amount. The recomputed differential earnings amount is calculated taking into account the average mutual earnings rate for the calendar year (rather than the second preceding calendar year, as above). The amount of the true-up for any taxable year is added to, or deducted from, the mutual company's income for the succeeding taxable year.

Distributions to shareholders from policyholders surplus account (sec. 815)

Under the law in effect from 1959 through 1983, a life insurance company was subject to a three-phase taxable income computation under Federal tax law. Under the three-phase system, a company was taxed on the lesser of its gain from operations or its taxable investment income (Phase I) and, if its gain from operations exceeded its taxable investment income, 50 percent of such excess (Phase II). Federal income tax on the other 50 percent of the gain from operations [56] was deferred, and was accounted for as part of a policyholder's surplus account and, subject to certain limitations, taxed only when distributed to stockholders or upon corporate dissolution (Phase III). To determine whether amounts had been distributed, a company maintained a shareholders surplus account, which generally included the company's previously taxed in-

[56] The legislative history to the Life Insurance Company Tax Act of 1959 states that "[t]his 50 percent reduction in underwriting gains is made because of the claim that it is difficult to establish with certainty the actual annual income of life insurance companies. It has been pointed out that because of the long-term nature of their contracts, amounts, which may appear as income in the current year and as proper additions to surplus, may, as a result of subsequent events, be needed to fulfill life insurance contracts. Because of this difficulty in arriving at true underwriting gains on an annual basis, the bill provides for the taxation of only 50 percent of this gain on a current basis." Report of the Committee on Ways and Means to accompany H.R. 4245, H. Rep. No. 34, 86th Cong., 1st Sess. at 13 (1959). Similarly, the Senate report provides, "Although it is believed desirable to subject this underwriting income to tax, it is stated that because of the long-term nature of insurance contracts it is difficult, if not impossible, to determine the true income of life insurance companies otherwise than by ascertaining over a long period of time the income derived from a contract or block of contracts. Because of this, the bill as amended by your committee, like the bill as passed by the House, does not attempt to tax on an annual basis all of what might appear to be income. In both the House and your committee's bill, half of the underwriting income is taxed as it accrues each year. The other half of the underwriting income is taxed when it is paid out in a distribution to shareholders after the taxed income has been distributed, or when it is voluntarily segregated and held for the benefit of the shareholders. This other half of the underwriting income also is taxed if the cumulative amount exceeds certain prescribed limits or if for a specified period of time the company ceases to be a life insurance company." Report of the Committee on Finance to accompany H.R. 4245, S. Rep. No. 291, 86th Cong., 1st Sess. at 7 (1959).

come that would be available for distribution to shareholders.[57] Distributions to shareholders were treated as being first out of the shareholders surplus account, then out of the policyholders surplus account, and finally out of other accounts.

The Deficit Reduction Act of 1984 included provisions that, for 1984 and later years, eliminated further deferral of tax on amounts (described above) that previously would have been deferred under the three-phase system. Although for taxable years after 1983, life insurance companies may not enlarge their policyholders surplus account, the companies are not taxed on previously deferred amounts unless the amounts are treated as distributed to shareholders or subtracted from the policyholders surplus account (sec. 815).

Under present law, any direct or indirect distribution to shareholders from an existing policyholders surplus account of a stock life insurance company is subject to tax at the corporate rate in the taxable year of the distribution.[58] Present law (like prior law) provides that any distribution to shareholders is treated as made (1) first out of the shareholders surplus account, to the extent thereof, (2) then out of the policyholders surplus account, to the extent thereof, and (3) finally, out of other accounts.[59]

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Reduction in deductions for policyholder dividends and reserves of mutual life insurance companies (sec. 809)

The conference agreement repeals the rules requiring reduction in certain deductions of mutual life insurance companies (sec. 809) for taxable years beginning after December 31, 2000.

Effective date.—The repeal is effective for taxable years beginning after December 31, 2000.

Distributions to shareholders from policyholders surplus account (sec. 815)

The conference agreement repeals the rules relating to distributions to shareholders from the policyholders surplus account of a life insurance company (sec. 815) for taxable years beginning after December 31, 2000.

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[57] Other events are treated as a subtraction from the policyholders surplus account. If for any taxable year the taxpayer is not an insurance company, or for any 2 taxable years the company is not a life insurance company, then the balance in the policyholder surplus account at the close of the preceding taxable year is taken into income (former sec. 815(d)(2) as in effect prior to the 1984 Act, which is referred to in present-law sec. 815(f)). Further, the policyholder surplus account is reduced by the excess of the account over the greatest of 3 amounts related to reserves: (1) 15 percent of life insurance reserves at the end of the taxable year; (2) 25 percent of the amount by which the life insurance reserves at the end of the taxable year exceed the life insurance reserve at the end of 1958; or (3) 50 percent of the net amount of the premiums and other consideration taken into account for the taxable year (former sec. 815(d)(4)(A)–(C), as in effect prior to the 1984 Act, which is referred to in present-law sec. 815(f)).

[58] Section 815.

[59] Section 815(b).

Effective date.—The repeal is effective for taxable years beginning after December 31, 2000.

C. TAX-CREDIT BONDS FOR THE NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK") AND THE ALASKA RAILROAD (sec. 713 of the bill and new sec. 54 of the Code)

PRESENT LAW

Present law does not authorize the issuance by any private, for-profit corporation of bonds the interest on which is tax-exempt or eligible for an income tax credit. Tax-exempt bonds may be issued by States or local governments to finance their governmental activities or to finance certain capital expenditures of private businesses or loans to individuals. Additionally, States or local governments may issue tax-credit bonds to finance the operation of "qualified zone academies."

Tax-exempt bonds

Interest on bonds issued by States or local governments to finance direct activities of those governmental units is excluded from tax (sec. 103). In addition, interest on certain bonds ("private activity bonds") issued by States or local governments acting as conduits to provide financing for private businesses or individuals is excluded from income if the purpose of the borrowing is specifically approved in the Code (sec. 141). Examples of approved private activities for which States or local governments may provide tax-exempt financing include transportation facilities (airports, ports, mass commuting facilities, and certain high speed intercity rail facilities); public works facilities such as water, sewer, and solid waste disposal; and certain social welfare programs such as low-income rental housing, student loans, and mortgage loans to certain first-time homebuyers. High speed intercity rail facilities eligible for tax-exempt financing include land, rail, and stations (but not rolling stock) for fixed guideway rail transportation of passengers and their baggage using vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour between scheduled stops.

Issuance of most private activity bonds is subject to annual State volume limits of $50 per resident ($150 million if greater). These volume limits are scheduled to increase to $75 per resident ($225 million if greater) over the period 2003 through 2007.

Investment earnings on all tax-exempt bonds, including earnings on invested sinking funds associated with such bonds is restricted by the Code to prevent the issuance of bonds earlier or in a greater amount than necessary for the purpose of the borrowing. In general, all profits on investment of such proceeds must be rebated to the Federal Government. Interest on bonds associated with invested sinking funds is taxable.

Tax-credit bonds for qualified zone academies

As an alternative to traditional tax-exempt bonds, certain States or local governments are given authority to issue "qualified zone academy bonds." A total of $400 million of qualified zone academy bonds is authorized to be issued in each year of 1998

through 2001. The $400 million is allocated to States according to their respective populations of individuals below the poverty line.

Qualified zone academy bonds are taxable bonds with respect to which the investor receives an income tax credit equal to an assumed interest rate set by the Treasury Department to allow issuance of the bonds without discount and without interest cost to the issuer. The bonds may be used for renovating, providing equipment to, developing course materials for, or training teachers in eligible schools. Eligible schools are elementary and secondary schools with respect to which private entities make contributions equaling at least 10 percent of the bond proceeds.

Only financial institutions are eligible to claim the credits on qualified zone academy bonds. The amount of the credit is taken into income. The credit may be claimed against both regular income tax and AMT liability.

There are no arbitrage restrictions applicable to investment earnings on qualified zone academy bond proceeds.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision, but S. 3152, authorizes the National Railroad Passenger Corporation ("Amtrak") and the Alaska Railroad to issue an aggregate amount of $10 billion of tax-credit bonds to finance its capital projects. Annual issuance of the bonds may not exceed $1 billion per year (plus any authorized amount that was not issued in previous years) during the ten Fiscal Year period, 2001–2010. Unused bond authority could be carried forward to succeeding years until used, subject to a limitation that no tax-credit bonds could be issued after fiscal year 2015.

Projects eligible for tax-credit bond financing are defined as the acquisition, construction of equipment, rolling stock, and other capital improvements for (1) the northeast rail corridor between Washington, D.C. and Boston, Massachusetts;[60] (2) high-speed rail corridors designated under section 104(d)(2) of Title 23 of the United States Code; and (3) other intercity passenger rail corridors, including station rehabilitation or construction, track or signal improvements, or grade crossing elimination. Item 3 is limited to a maximum of 10 percent of the proceeds of any bond issue. At least 70 percent of the authorized tax-credit bonds must be issued for projects described in (2) and (3). No more than $3 billion of the bonds may be designated for any one high-speed rail corridor.

As with qualified zone academy bonds, the interest rate on Amtrak/Alaska Railroad tax-credit bonds will be set to allow issuance of the bonds at par, i.e., without any interest cost to Amtrak or the Alaska Railroad. In general, proceeds of Amtrak/Alaska Railroad tax-credit bonds would have to be spent within 36 months

[60] $92 million of Amtrak's tax-credit bond authority for Northeast Corridor projects is set aside for the acquisition and installation of platform facilities, performance of railroad force account work necessary to complete improvements below grade, and any other necessary improvements related to construction at the new railroad station at the James A. Farley Post Office Building in New York City. Projects finance with this $92 million of tax-credit bonds are not subject to the Senate contribution requirement, described below.

after the bonds are issued. As of the date the bonds were issued, Amtrak or the Alaska Railroad must certify that it reasonably expects—

(1) to incur a binding obligation with a third party to spend at least 10 percent of the bond proceeds within six months (or in the case of self-constructed property, to have commenced construction or preliminary engineering studies within six months);

(2) to spend the bond proceeds with due diligence; and

(3) to spend at least 95 percent of the proceeds for qualifying capital costs within three years.

Amtrak/Alaska Railroad tax-credit bonds may only be issued for projects that are approved by the Department of Transportation and, in the case of Amtrak, with respect to which there are binding commitments from one or more States to make matching contributions of at least 20 percent of the project cost. Projects having State matching contributions in excess of 20 percent are given a preference. The State matching contributions, along with earnings on investment of the tax-credit bond proceeds must be invested in a trust account (i.e., a sinking fund) and used along with earnings on the trust account for repayment of the principal amount of the bonds.

Amtrak/Alaska Railroad tax-credit bonds can be owned (and income tax credits claimed) by any taxpayer. The amount of the credit will be included in the bondholder's income. Additionally, provisions are included in the proposal to allow the credits to be stripped and sold to different investors than the investors in the bond principal.

The required State matching contribution may not be derived from Federal monies. Any Federal Highway Trust Fund monies transferred to the States are treated as Federal monies for this purpose. During the period when tax-credit bonds are authorized, Amtrak and the Alaska Railroad are not allowed to receive any Highway Trust Fund monies other than those authorized on the date of the provision's enactment.

Amtrak is required annually to submit a five-year capital plan to Congress, and to satisfy independent oversight requirements with respect to the management of tax-credit-bond-financed projects. Finally, the Treasury Department is required to certify annually that funds deposited in the escrow accounts for repayment of tax-credit bonds issued by Amtrak (with actual and projected earnings thereon) are sufficient to ensure full repayment of the bond principal.

Effective date.—The provision is effective for tax credit bonds issued by Amtrak or the Alaska Railroad after September 30, 2000.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with several modifications and clarifications.

First, the expenditure requirements applicable to these tax credit bonds are modified to add an actual expenditure requirement to the Senate amendment's reasonable expectations test. Under the actual expenditure requirement, unless at least 95 percent of the bond proceeds is spent within 3 years after the bonds are issued, unspent proceeds must be used to redeem bonds within 90 days

after the end of the period. An exception allows the expenditure period to be extended to four years if (1) at least 75 percent of the proceeds are spent within the initial three year period, (2) the issuer has proceeded with due diligence to spend the proceeds within the initial three-year period, and (3) the issuer pays to the Federal Government all earnings on unspent proceeds that accrue after the end of the initial three-year period. If the issuer qualifies for the exception, but fails to satisfy its spending requirements, unspent proceeds must be used to redeem bonds within 90 days after the end of the four-year period.

Second, the definition of qualified expenditures is modified to preclude the use of bond proceeds to refinance outstanding debt except for "bridge" and similar financing incurred for a qualified project pending issuance of tax-credit bonds. Qualified bridge financing is defined as financing that (1) is issued after the date of enactment of the provision, (2) has a term of not more than three years, (3) is used to finance or acquire capital improvements that qualify for tax-credit bond financing, and (4) is issued in anticipation of being refinanced with proceeds of tax-credit bonds.

Third, provisions are added requiring that tax-credit-bond-financed property be continuously used for a qualified purpose throughout the term of the bonds.

Fourth, clarification is provided that the use of tax-credit bond proceeds to redeem bonds (except as required above and except with regard to not more than five percent of the bond proceeds) is not a qualified expenditure. A further modification allows Amtrak to treat as a qualified project expenditure, expenditure of not more than 0.5 percent of bond proceeds for costs of complying with the oversight requirements imposed on that railroad by the conference agreement.

Fifth, clarification is provided that the tax credit rate is determined on the date the bonds are sold (rather than the actual issuance date, if different).

Sixth, the Senate amendment is modified to require actual deposit in to the Trust Account securing repayment of the bonds of the required State contributions before any tax-credit bonds are issued.

Seventh, for bonds issued by Amtrak, the Senate amendment is modified to require (in addition to approval by the Secretary of Transportation) a finding by the Inspector General of the Department of Transportation that there is "a reasonable likelihood" that the proposed projects will result "in a positive incremental financial contribution" to Amtrak and to specify criteria to be used in making this determination.

Return on investment.—The measurements used to evaluate the amount of return on investment shall include (1) the positive incremental financial contribution to Amtrak, including all system-wide impacts and (2) the value of the net cash flow to Amtrak produced over the life of the program, discounted to current dollars. Such net cash flow should take into consideration operating efficiencies produced as a result of the total capital investment as well as incremental passenger related, mail and express, State and other revenue as a result of the total capital investment.

Leveraging of funds.—The measurements used to evaluate the leveraging of funds shall include (1) the amount of public and private match provided for the program, (2) the percentage of public and private match provided for the program relative to Amtrak's contribution and (3) the stability or reliability of state and local capital and operating support.

Cost effectiveness.—The measurement used to evaluate cost effectiveness is the incremental cost to Amtrak per incremental passenger or the incremental cost to Amtrak per incremental revenue generated as a result of the capital investment.

Safety improvement.—The measurements used to evaluate safety improvement shall include (1) the prevention or reduction of customer or third party injuries and (2) the prevention or reduction of employee injuries.

Mobility improvement.—The measurements used to evaluate the level of mobility improvement shall include (1) travel time savings and (2) low income households served.

Feasibility.—The measurements used to evaluate feasibility shall include (1) timing of program implementation, (2) technical feasibility and (3) likelihood of public and private participation.

Eighth, clarification is provided that the tax-credit bonds are the obligation of the issuing railroad notwithstanding the existence of the Trust Account securing their repayment. As in the case of other tax-preferred debt, no implied Federal Guarantee arises by virtue of the availability of tax credits on these bonds.

Ninth, the Senate amendment is modified to provide that funds in the Trust Account that are not required to redeem bonds may be used for additional qualified projects.

D. FARM, FISH, AND RANCH RISK MANAGEMENT ACCOUNTS ("FFARRM ACCOUNTS") (sec. 714 of the bill and new sec. 468C of the Code)

PRESENT LAW

There is no provision in present law allowing the elective deferral of farm or fishing income.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision. However, S. 3152 allows taxpayers engaged in an eligible business to establish FFARRM accounts. An eligible business is any trade or business of farming in which the taxpayer actively participates, including the operation of a nursery or sod farm or the raising or harvesting of crop-bearing or ornamental trees. An eligible business also is the trade or business of commercial fishing as that term is defined under section (3) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) and includes the trade or business of catching, taking or harvesting fish that are intended to enter commerce through sale, barter or trade.

Contributions to a FFARRM account are deductible and are limited to 20 percent of the taxable income that is attributable to the eligible business. The deduction is taken into account in deter-

mining adjusted gross income and reduces the income attributable to the eligible business for all income tax purposes other than the determination of the 20 percent of eligible income limitation on contributions to a FFARRM account. Contributions to a FFARRM account do not reduce earnings from self-employment. Accordingly, distributions are not included in self-employment income.

A FFARRM account is taxed as a grantor trust and any earnings are required to be distributed currently. Thus, any income earned in the FFARRM account is taxed currently to the farmer or fisherman who established the account. Amounts can remain on deposit in a FFARRM account for up to five years. Any amount that has not been distributed by the close of the fourth year following the year of deposit is deemed to be distributed and includible in the gross income of the account owner.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

CONFERENCE AGREEMENT

The conference agreement follows the provision of S. 3152.

E. EXTENSION AND MODIFICATION OF ENHANCED DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY (sec. 715 of the bill and sec. 170 (e)(6) of the Code)

PRESENT LAW

The maximum charitable contribution deduction that may be claimed by a corporation for any one taxable year is limited to 10 percent of the corporation's taxable income for that year (disregarding charitable contributions and with certain other modifications) (sec. 170(b)(2)). Corporations also are subject to certain limitations based on the type of property contributed. In the case of a charitable contribution of short-term gain property, inventory, or other ordinary income property, the amount of the deduction generally is limited to the taxpayer's basis (generally, cost) in the property. However, special rules in the Code provide an augmented deduction for certain corporate contributions. Under these special rules, the amount of the augmented deduction is equal to the lesser of (1) the basis of the donated property plus one-half of the amount of ordinary income that would have been realized if the property had been sold, or (2) twice the basis of the donated property.

Section 170(e)(6) allows corporate taxpayers an augmented deduction for qualified contributions of computer technology and equipment (i.e., computer software, computer or peripheral equipment, and fiber optic cable related to computer use) to be used within the United States for educational purposes in grades K–12. Eligible donees are: (1) any educational organization that normally maintains a regular faculty and curriculum and has a regularly enrolled body of pupils in attendance at the place where its educational activities are regularly carried on; and (2) tax-exempt charitable organizations that are organized primarily for purposes of supporting elementary and secondary education. A private foundation also is an eligible donee, provided that, within 30 days after receipt of the contribution, the private foundation contributes the property to an eligible donee described above.

Qualified contributions are limited to gifts made no later than two years after the date the taxpayer acquired or substantially completed the construction of the donated property. In addition, the original use of the donated property must commence with the donor or the donee. Accordingly, qualified contributions generally are limited to property that is no more than two years old. Such donated property could be computer technology or equipment that is inventory or depreciable trade or business property in the hands of the donor.

Donee organizations are not permitted to transfer the donated property for money or services (e.g., a donee organization cannot sell the computers). However, a donee organization may transfer the donated property in furtherance of its exempt purposes and be reimbursed for shipping, installation, and transfer costs. For example, if a corporation contributes computers to a charity that subsequently distributes the computers to several elementary schools in a given area, the charity could be reimbursed by the elementary schools for shipping, transfer, and installation costs.

The special treatment applies only to donations made by C corporations. S corporations, personal holding companies, and service organizations are not eligible donors.

The provision is scheduled to expire for contributions made in taxable years beginning after December 31, 2000.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision. However, S. 3152 includes a provision that extends the current enhanced deduction for donations of computer technology and equipment through December 31, 2003. In addition, S. 3152 expands the enhanced deduction to include donations to public libraries.

Effective date.—The provision is effective upon the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows S. 3152 with a modification that qualified contributions include gifts made no later than three years after the date the taxpayer acquired or substantially completed the construction of the donated property.

Effective date.—The provision is effective for contributions made after December 31, 2000.

F. Settlement of Certain Discrimination Claims Brought by Farmers Against the Department of Agriculture (sec. 716 of the bill)

PRESENT LAW

Income tax

Gross income means "income from whatever source derived" except for certain items specifically excluded by statute.[61] Sources of income include compensation for services, interest, dividends, capital gains, rents, royalties, gross profits from a trade or business, income from the discharge of indebtedness, and income from S corporations, partnerships, trusts, and estates. In determining taxable income, a taxpayer's gross income is reduced by exemptions and deductions. Absent any applicable exemption or exclusion, an amount received by an individual in the settlement of a lawsuit generally is includible in gross income.

HOUSE BILL

No provision. However, H.R. 2233 excludes from gross income any cash received or cancellation of indebtedness income as a result of the settlement of certain claims brought by certain farmers against the Department of Agriculture for discrimination in farm credit and benefit programs. The bill further provides that such amounts are not included in the gross estate of any qualified person for estate tax purposes. Finally, the bill provides that these amounts are not to be (1) considered income or resources in determining eligibility for, (2) used to deny or reduce funds under, or (3) used as a basis for determining the amount of assistance under, any program funded in whole or in part with Federal funds. The bill is limited to certified members of the plaintiff class in the settlement of two consolidated class action suits. The two suits are *Pigford, et al.* v. *Glickman* No. 97–1978 (D.D.C.)(PLF) and *Brewington, et al.* v. *Glickman* No. 98–1693 (D.D.C.)(PLF).

Effective date.—The provision is effective after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision of H.R. 2233, with modifications. The conference agreement provision provides an exclusion of certain amounts from gross income for purposes of Subtitle A of the Internal Revenue Code. This exclusion applies to any (1) cash payment received before, on, or after the date of enactment by or made on behalf of, a person under the settlement of these two claims or (2) cancellation of indebtedness income pursuant to the settlement of these two claims. The conference agreement does not include the provision of H.R. 2233 that provides an exclusion of amounts from the gross estate of any qualified person, for estate tax purposes. Further, the conference agreement does not

[61] Section 61.

include the provision of H.R. 2233 providing that amounts are not to be (1) considered income or resources in determining eligibility for, (2) used to deny or reduce funds under, or (3) used as a basis for determining the amount of assistance under, any program funded in whole or in part with Federal funds.

G. Extension of the Adoption Tax Credit (sec. 717 of the bill and sec. 23 of the Code)

PRESENT LAW

Taxpayers are entitled to a maximum nonrefundable credit against income tax liability of $5,000 per child for qualified adoption expenses paid or incurred by the taxpayer (sec. 23). In the case of a special needs adoption, the maximum credit amount is $6,000. A special needs child is a child who is a citizen or resident of the United States and who the State has determined: (1) cannot or should not be returned to the home of the birth parents, and (2) has a specific factor or condition because of which the child cannot be placed with adoptive parents without adoption assistance. The adoption of a child who is not a citizen or a resident of the United States is a foreign adoption.

Qualified adoption expenses are reasonable and necessary adoption fees, court costs, attorneys' fees, and other expenses that are directly related to the legal adoption of an eligible child. All reasonable and necessary expenses required by a State as a condition of adoption are qualified adoption expenses. Otherwise qualified adoption expenses paid or incurred in one taxable year are not taken into account for purposes of the credit until the next taxable year unless the expenses are paid or incurred in the year the adoption becomes final.

An eligible child is an individual (1) who has not attained age 18 or (2) who is physically or mentally incapable of caring for himself or herself. After December 31, 2001, the credit will be available only for special needs adoptions.

No credit is allowed for expenses incurred (1) in violation of State or Federal law, (2) in carrying out any surrogate parenting arrangement, (3) in connection with the adoption of a child of the taxpayer's spouse, (4) that are reimbursed under an employer adoption assistance program or otherwise, or (5) for a foreign adoption that is not finalized.

The credit is phased out ratably for taxpayers with modified AGI above $75,000, and is fully phased out at $115,000 of modified AGI. For these purposes modified AGI is computed by increasing the taxpayer's AGI by the amount otherwise excluded from gross income under Code sections 911, 931, or 933.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision. However, S. 3152 extends the adoption credit for the adoption of nonspecial needs children for two years through December 31, 2003.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement extends the credit for nonspecial needs adoptions to include qualified adoption expenses paid or incurred prior to December 31, 2005, and increases the maximum credit by $1,000 per year beginning for taxable years beginning after December 31, 2000 and until the maximum credit reaches $10,000 per year for taxable years beginning after December 31, 2004. In the case of special needs adoptions, the maximum credit is increased by $2,000 per year for taxable years beginning after December 31, 2000 until the maximum credit reaches $12,000 per year for taxable years beginning after December 31, 2002.

Additionally, for taxable years beginning after December 31, 2000, the income limitation for the credit is increased to $150,000 of modified AGI, and is phased out ratably for taxpayers with modified AGI between $150,000 and $190,000.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

H. Study of Tax Treatment With Respect to Certain Offshore Insurance Companies (sec. 718 of the bill)

PRESENT LAW

Under present law, under the rules of subchapter L of the Code, a life insurance company is subject to tax on its life insurance company taxable income. Similarly, a property and casualty insurance company is subject to tax on its taxable income, which is calculated by taking into account the company's underwriting income and investment income, as well as gains and other income items. An insurance company may enter into a reinsurance contract or agreement with another insurer, whereby risks, or portions of risks, are transferred from one insurer to another or are shared or allocated among insurers.

Present law provides rules governing allocation in the case of reinsurance agreements that involve tax avoidance or evasion. Under this rule, in the case of two or more related persons that are parties to a reinsurance agreement (or an agent of a party to a reinsurance agreement), the Treasury Secretary may allocate between or among such persons income (whether investment income, premium or otherwise), deductions, assets, reserves, credits, and other items related to the agreement. The Treasury Secretary may also recharacterize any such items or make any other adjustment. The Secretary may make the allocation, recharacterization or adjustment if he determines that it is necessary to reflect the proper source and character of the taxable income (or other item) of each related person or agent.[62]

[62] H.R. 4192 (106th Cong., 2d. Sess.,) introduced April 5, 2000, would modify these rules relating to reinsurance transactions. That bill would provide that if a domestic person directly or indirectly reinsurances a U.S. risk with a related foreign reinsurer, then the investment income of the domestic person would be increased by the product of (1) the reserves or liabilities related to the U.S. risk ceded to the foreign reinsurer, and (2) the average applicable Federal mid-term rate.

Other rules also provide for the allocation of income and deductions among taxpayers. In any case of two or more organizations owned or controlled directly or indirectly by the same interests, the Treasury Secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among the organizations, if he determines that it is necessary in order to prevent evasion of taxes or clearly to reflect the income of the organizations.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that the Secretary of the Treasury is to conduct a study on the extent to which U.S. tax on investment income of U.S. insurance companies is being avoided through the use of affiliated corporations in Bermuda or other offshore locations. In conducting the study, the Treasury Secretary is to address issues concerning the application of current U.S. tax law in preventing such avoidance, changes to U.S. tax law that may be needed to prevent such avoidance, and is to make appropriate recommendations. The Treasury Secretary is to submit the study and recommendations to the House Committee on Ways and Means and the Senate Committee on Finance no later than December 31, 2001.

I. Treatment of Indian Tribes as Non-Profit Organizations and State or Local Governments for Purposes of the Federal Unemployment Tax ("FUTA") (sec. 719 of the bill and sec. 3306 of the Code)

PRESENT LAW

Present law imposes a net tax on employers equal to 0.8 percent of the first $7,000 paid annually to each employee. The current gross FUTA tax is 6.2 percent, but employers in States meeting certain requirements and having no delinquent loans are eligible for a 5.4 percent credit making the net Federal tax rate 0.8 percent. Both non-profit organizations and State and local governments are not required to pay FUTA taxes. Instead they may elect to reimburse the unemployment compensation system for unemployment compensation benefits actually paid to their former employees. Generally, Indian tribes are not eligible for the reimbursement treatment allowable to non-profit organizations and State and local governments.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision. However, S. 3152 provides that an Indian tribe (including any subdivision, subsidiary, or business enterprise chartered and wholly owned by an Indian tribe) is treated like a nonprofit organization or State or local government for FUTA purposes (i.e., given an election to choose the reimbursement treatment).

Effective date.—The provision generally is effective with respect to service performed beginning on or after the date of enactment. Under a transition rule, service performed in the employ of an Indian tribe is not treated as employment for FUTA purposes if: (1) it is service which is performed before the date of enactment and with respect to which FUTA tax has not been paid; and (2) such Indian tribe reimburses a State unemployment fund for unemployment benefits paid for service attributable to such tribe for such period.

CONFERENCE AGREEMENT

The conference agreement follows the provision of S. 3152.

Subtitle C. Tax Technical Corrections

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes tax technical corrections.[63] Except as otherwise provided, the technical corrections contained in the bill generally are effective as if included in the originally enacted related legislation. The provisions under the IRS Restructuring Act of 1998 relating to innocent spouse and to procedural and administrative issues (other than the provision relating to clarification of Tax Court authority to issue appealable decisions) are effective upon the date of enactment of the bill.

Amendments relating to the Ticket to Work and Work Incentives Improvement Act of 1999 (sec. 721 of the bill)

Research credit.—The provision clarifies the anti-double dip rule coordinating the research credit (sec. 41) and the Puerto Rico economic activity credit (sec. 30A). It is arguable that the present-law provisions could be construed so that the amount of wages on

[63] In addition to other tax technical corrections, the bill contains the technical corrections contained in H.R. 2488, the Financial Freedom Act of 1999 (106th Cong., 1st Sess., reported by the House Committee on Ways and Means, H. Rept. 106–238, July 16, 1999, 393–397), as passed by the House, and S. 1429, the Taxpayer Refund Act of 1999 (reported by the Senate Committee on Finance, S. Rept. 106–120, July 23, 1999, 221–225), as passed by the Senate. (The technical corrections were not included in the conference agreement to H.R. 2488, the Taxpayer Refund and Relief Act of 1999 (106th Cong., 1st Sess., H. Rept. 106–289, Aug. 4, 1999, 542–543). The Taxpayer Refund and Relief Act of 1999 was vetoed by President Clinton.) However, the bill does not include the following provisions enacted in other legislation: sections 1601(b)(2) and (c) of H.R. 2488 (and section 504(c) of S. 1429), relating to the Vaccine Trust Fund, which were enacted in the "Ticket to Work and Work Incentives Improvement Act of 1999" (P.L. 106–170, sec. 523(b)).

which a taxpayer could claim the section 30A credit is reduced only by the amount of credit claimed under section 41, rather than by the amount of wages upon which the section 41 credit is based. This result is inconsistent with the legislative history of the original provisions. The provision deletes the words "or credit" after "deduction" in section 280C(c)(1), and adds a new subsection in section 30A specifying that wages or other expenses taken into account for section 30A may not be taken into account for section 41.

Taxable REIT subsidiaries.—The provision clarifies that a REIT's redetermined rents (described in sec. 857(b)(7)(B)) that are subject to tax under section 857(b)(7)(A) do not include amounts received from a taxable REIT subsidiary that would be excluded from unrelated business taxable income (under sec. 512(b)(3), relating to certain rents, if received by certain types of organizations described in sec. 511(a)(2)).

Partnership basis adjustments.—The provision provides that the rule in the consolidated return regulations (Treas. Reg. sec. 1.1502–34) aggregating stock ownership for purposes of section 332 (relating to complete liquidation of a subsidiary that is a controlled corporation) also applies for purposes of section 732(f) (relating to basis adjustments to assets of a controlled corporation received in a partnership distribution).

Amendments related to the Tax and Trade Relief Extension Act of 1998 (sec. 722 of the bill)

Exempt organizations.—The provision clarifies that nonexempt charitable trusts and nonexempt private foundations are subject to the public disclosure requirements of section 6104(d).

Capital gains.—The provision clarifies that if (1) a charitable remainder trust sold section 1250 property after July 28, 1997, and before January 1, 1998, (2) the property was held more than one year but not more than 18 months, and (3) the capital gain is distributed after December 31, 1997, then any capital gain attributable to depreciation will be taxed at 25 percent (rather than 28 percent). Treasury has published a notice (Notice 99–17, 1999–14 I.R.B., April 5, 1999) providing that the gain is taxed at 25 percent.

Amendments related to the Internal Revenue Service Restructuring and Reform Act of 1998 (sec. 723 of the bill)

Innocent spouse

Timing of request for relief.—Confusion currently exists as to the appropriate point at which a request for innocent spouse relief should be made by the taxpayer and considered by the IRS. Some have read the statute to prohibit consideration by the IRS of requests for relief until after an assessment has been made, i.e., after the examination has been concluded, and if challenged, judicially determined. Others have read the statute to permit claims for relief from deficiencies to be made upon the filing of the return before any preliminary determination as to whether a deficiency exists or whether the return will be examined. The consideration of innocent spouse relief requires that the IRS focus on the particular items causing a deficiency; until such items are identified, the IRS cannot consider these claims. Congress did not intend that taxpayers be

prohibited from seeking innocent spouse relief until after an assessment has been made; Congress intended the proper time to raise and have the IRS consider a claim to be at the same point where a deficiency is being considered and asserted by the IRS. This is the least disruptive for both the taxpayer and the IRS since it allows both to focus on the innocent spouse issue while also focusing on the items that might cause a deficiency. It also permits every issue, including the innocent spouse issue, to be resolved in single administrative and judicial process. The bill clarifies the intended time by permitting the election under (b) and (c) to be made at any point after a deficiency has been asserted by the IRS. A deficiency is considered to have been asserted by the IRS at the time the IRS states that additional taxes may be owed. Most commonly, this occurs during the Examination process. It does not require an assessment to have been made, nor does it require the exhaustion of administrative remedies in order for a taxpayer to be permitted to request innocent spouse relief.

Allowance of refunds.—The current placement in the statute of the provision for allowance of refunds may inappropriately suggest that the provision applies only to the United States Tax Court, whereas it was intended to apply administratively and in all courts. The bill clarifies this by moving the provision to its own subsection.

Non-exclusivity of judicial remedy.—Some have suggested that the IRS Restructuring Act administrative and judicial process for innocent spouse relief was intended to be the exclusive avenue by which relief could be sought. The bill clarifies Congressional intent that the procedures of section 6015(e) were intended to be additional, non-exclusive avenues by which innocent spouse relief could be considered.

Time for filing a petition with the Tax Court.—As enacted, the time period for seeking a redetermination in the Tax Court of innocent spouse relief begins on the date of the determination as opposed to the day after the determination. This period is one day shorter than that generally applicable to petition the Tax Court with respect to a deficiency notice (sec. 6213) and the period during which collection activities are prohibited and the limitations period is suspended. The bill clarifies the computation of this period and conforms it to the generally applicable 90–day period for petitioning the Tax Court. Conforming amendments are made as to the period for which collection activities are prohibited and collection limitations suspended.

Waiver of final determination upon agreement as to relief.—Congress intended in enacting section 6015 to provide a simple and efficient procedure by which the IRS could consider relief, and if relief was denied (in whole or in part) and the spouse requesting such relief did not agree with such denial, such issue could be considered by the Tax Court. Congress did not intend to require a rigid formal process when the IRS and the spouse requesting relief agreed on the extent of relief to be granted. However, the provisions of section 6015(e) have been interpreted as requiring the issuance in all circumstances of a formal "Notice of Determination," which contains a statement of the time period within which a petition may be filed with the Tax Court and which delays final resolu-

tion of the request for relief until the expiration of the period for filing a petition with the Tax Court. The issuance of the Notice of Determination is confusing to the taxpayer when the requested relief was fully granted or when the IRS and the taxpayer otherwise agreed on the application of the innocent spouse provisions to the taxpayer's case. It also may cause unnecessary filings with the Tax Court and delay the closing of the case until the time for filing with the Tax Court expires.

Congress has addressed the analogous situation in the deficiency context in section 6213(d). In such situations, upon written agreement, the IRS may adjust the taxpayer's liability as agreed, and no additional formal notice is necessary. The bill reflects that an analogous waiver was intended to apply in the innocent spouse context. The bill consequently permits taxpayers and the IRS to enter into a similar written agreement in innocent spouse cases, which allows for the taxpayer's liability to be immediately adjusted as agreed, and makes unnecessary a formal Notice of Determination or Tax Court review. This written agreement is to specify the details of the agreement between the IRS and the taxpayer as to the nature and extent of innocent spouse relief that will be provided. Conforming amendments are made as to the period for which collection activities are prohibited and collection limitations suspended.

Procedural and administrative issues

Disputes involving $50,000 or less.—The provision clarifies that the small case procedures of the Tax Court are available with respect to innocent spouse disputes and disputes continuing from the pre-levy administrative due process hearing. The small case procedures provide an accessible forum for taxpayers who have small claims with less formal rules of evidence and procedure. Use of the procedure is optional to the taxpayer, with the concurrence of the Tax Court. In view of the recent enactment of the innocent spouse and pre-levy administrative due process hearing provisions, it is anticipated that the Tax Court will give careful consideration to (1) a motion by the Commissioner of Internal Revenue to remove the small case designation (as authorized by Rules 172 and 173 of the Tax Court Rules) when the orderly conduct of the work of the Court or the administration of the tax laws would be better served by a regular trial of the case, as well as (2) the financial impact upon the taxpayer, including additional legal fees and costs, of not utilizing small case treatment. For example, removing the small case designation may be appropriate when a decision in the case will provide a precedent for the disposition of a substantial number of other cases. It is anticipated that motions by the Commissioner to remove the small case designation will be made infrequently.

Authority to enjoin collection actions.—While a dispute is pending under the pre-levy administrative due process hearing procedures, levy action is statutorily suspended for that period. The Tax Court and district courts are expressly granted authority to enjoin improper levy action in general, but that authority does not explicitly extend to improper levy action that occurs during the period when levy action is statutorily suspended under the administrative due process provisions. The provision clarifies the ability of the

courts (including the Tax Court) to enjoin levy during the period that levy is required to be suspended with respect to a dispute under the pre-levy administrative due process hearing procedures.

Clarification of permissible extension of limitations period for installment agreements.—Uncertainty exists as to whether the permissible extension of the period of limitations in the context of installment agreements is governed by reference to an agreement of the parties pursuant to section 6502 or by reference to the period of time during which the installment agreement is in effect pursuant to sections 6331(k)(3) and (i)(5). The provision clarifies that the permissible extension of the period of limitations in the context of installment agreements is governed by the pertinent provisions of section 6502.

Clarification of Tax Court authority to issue appealable decisions.—The statutory provision for judicial review of a dispute concerning the pre-levy administrative due process hearing may be unclear as to whether a determination of the Tax Court is an appealable decision. The provision clarifies that the determination of the Tax Court (other than under the small case procedures) in a dispute concerning the pre-levy administrative due process hearing is a decision of the Tax Court and would be reviewable as such.

Other issues

IRS restructuring.—When the Office of the Chief Inspector was replaced by the Treasury Inspector General for Tax Administration (TIGTA) under the IRS Restructuring and Reform Act of 1998, Inspection's responsibilities were assigned to the TIGTA. TIGTA personnel are Treasury, rather than IRS, personnel. TIGTA personnel still need to make investigative disclosures to carry out the duties they took over from Inspection and their additional tax administration responsibilities. However, section 6103(k)(6) refers only to "internal revenue" personnel. The provision clarifies that section 6103(k)(6) permits TIGTA personnel to make investigative disclosures.

Compliance.—Section 3509 of the IRS Restructuring and Reform Act of 1998 expanded the disclosure rules of section 6110 to also cover Chief Counsel advice (sec. 6110(i)). This is a conforming change related to ongoing investigations. The provision adds to section 6110(g)(5)(A), after the words technical advice memorandum, "or Chief Counsel advice."

Amendments related to the Taxpayer Relief Act of 1997 (sec. 724 of the bill)

Deficiency created by overstatement of refundable child credit.—The provision treats the refundable portion of the child credit under section 24(d) as part of a "deficiency." Thus, the usual assessment procedures applicable to income taxes will apply to both the nonrefundable and the refundable portions of the child credit. (This will reverse the conclusion reached by Internal Revenue Service Chief Counsel Memorandum 199948027 interpreting present law.)

Roth IRAs.—Code section 3405 provides for withholding with respect to designated distributions from certain tax-favored arrangements, including IRAs. In general, section 3405(e)(1)(B)(ii) ex-

cludes from the definition of a designated distribution the portion of any distribution which it is reasonable to believe is excludable from gross income. However, all distributions from IRAs are treated as includible in income. The exception was consistent with prior law when all IRA distributions were taxable, but does not account for the tax-free nature of certain Roth IRA distributions. The provision extends the exception to Roth IRAs.

Capital gain election.—The provision provides that an election to recognize gain or loss made pursuant to section 311(e) of the Taxpayer Relief Act of 1997 does not apply to assets disposed of in a recognition transaction within one year of the date the election would otherwise have been effective. Thus, for example, if an asset is sold in 2001, no election may be made with respect to that asset. In addition, it is clarified that the deemed sale and repurchase by reason of the election is not taken into account in applying the wash sale rules of section 1091.

Straight-line depreciation under AMT.—The provision clarifies that the Taxpayer Relief Act of 1997 did not change the requirement that the straight-line method of depreciation be used in computing the alternative minimum tax ("AMT") depreciation allowance for section 1250 property. It is arguable that the changes made by that Act could be read as inadvertently allowing accelerated depreciation under the AMT for section 1250 property which is allowed accelerated depreciation under the regular tax.

Transportation benefits.—Under present law, salary reduction amounts are generally treated as compensation for purposes of the limits on contributions and benefits under qualified plans. In addition, an employer can elect whether or not to include such amounts for nondiscrimination testing purposes. The IRS Reform Act permitted employers to offer a cash option in lieu of qualified transportation benefits. The provision treats salary reduction amounts used for qualified transportation benefits the same as other salary reduction amounts for purposes of defining compensation under the qualified plan rules.

Tax Court jurisdiction.—The Tax Court recently held that its jurisdiction pursuant to section 7436 extends only to employment status, not to the amount of employment tax in dispute (*Henry Randolph Consulting* v. *Comm'r*, 112 T.C. #1, Jan. 6, 1999). The provision provides that the Tax Court also has jurisdiction over the amount.

Amendments related to the Balanced Budget Act of 1997 (sec. 725 of the bill)

Tobacco floor stocks tax.—The provision clarifies that the floor stocks taxes imposed on January 1, 2000, and January 1, 2002, apply only to cigarettes rather than to all tobacco products. As enacted, the law could be construed as ambiguous, referring to imposition on all tobacco products but imposing liability only with respect to cigarettes.

Tobacco excise tax.—Conforming amendments are provided to two provisions to reflect the fact that the tax on cigarette papers is not imposed on "books" of papers since January 1, 2000.

Coordination of trade rules and tobacco excise tax.—Clarification is provided that the penalty on reimporting cigarettes other

than for return to a manufacturer (effective January 1, 2000) does not apply to cigarettes re-imported by individuals to the extent those cigarettes can be entered into the U.S. without duty or tax under the Harmonized Tariff Schedule.

Amendment related to the Small Business Job Protection Act of 1996 (sec. 726 of the bill)

Work opportunity tax credit.—Section 51(d)(2) refers to eligibility for the work opportunity tax credit with respect to certain welfare recipients without taking into account the enactment of the temporary assistance for needy families ("TANF") program. The provisions conform references in the work opportunity tax credit to the operation of TANF.

Electing small business trusts holding S corporation stock.—The provision allows an electing small business trust (sec. 1361(e)) to have an organization described in section 170(c)(1) (relating to State and local governments) as a beneficiary if the organization holds a contingent interest and is not a potential current beneficiary.

Definition of lump-sum distribution.—Section 1401(b) of the Small Business Job Protection Act of 1996 Act repealed 5-year averaging for lump-sum distributions. The definition of lump-sum distribution was preserved for other provisions, primarily those relating to NUA in employer securities. The definition was moved from section 402(d)(4)(A) to section 402(e)(4)(D)(i). This definition included the following sentence: "A distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution." The provision adds this language back into the definition of lump-sum distribution. The sentence is relevant to section 401(k)(10)(B), which permits certain distributions if made as a "lump-sum distribution."

IRAs for nonworking spouses.—Section 1427 of the Small Business Job Protection Act of 1996 expanded the IRA deduction for nonworking spouses. The maximum permitted IRA contributions is generally limited by the individual's earned income. However, under present law, it is possible for a nonworking (or lesser earning) spouse to make IRA contributions in excess of the couple's combined earned income. The following example illustrates present law.

> *Example:* Suppose H and W retire in the middle of January, 1999. In that year, H earns $1,000 and W earns $500. Both are active participants in an employer-sponsored retirement plan. Their modified AGI is $60,000. They make no Roth IRA contributions. Before application of the income phase-out rules, the maximum deductible IRA contribution that H can make is $1,000 (sec. 219(b)(1)). After application of the income phase-out rule in section 219(g), H's maximum contribution is $200, and H contributes that amount to an IRA. Under 408(o)(2)(B), H can make nondeductible contributions of $800 ($1,000 – $200).
>
> W's maximum permitted deductible contribution under section 219(c)(1)(B), before the income phase-out, is $1,300 (the sum of H and W's earned income ($1,500), less H's deductible

IRA contribution ($200)). Under the income phase-out, W's deductible contribution is limited to $200, and she can make a nondeductible contribution of $1,000 ($1,300 – $200).

The total permitted contributions for H and W are $2,300 ($1,000 for H plus $1,300 for W). The combined contribution should be limited to $1,500, their combined earned income.

The provision provides that the contributions for the spouse with the lesser income cannot exceed the combined earned income of the spouses.

Amendment related to the Revenue Reconciliation Act of 1990 (sec. 727 of the bill)

Qualified tertiary injectant expenses.—The provision clarifies that the enhanced oil recovery credit (sec. 43) applies with respect to qualified tertiary injectant expenses described in section 193(b) that are paid or incurred in connection with a qualified enhanced oil recovery project, and that are deductible for the taxable year (regardless of the provision allowing the deduction). Purchased and self-produced injectants are treated the same for purposes of the section 43 credit.

Amendments to other acts (sec. 728 of the bill)

Insurance.—The legislative history of section 7702A(a) (enacted in the Technical and Miscellaneous Revenue Act of 1988) indicated that if a life insurance contract became a modified endowment contract ("MEC"), then the MEC status could not be eliminated by exchanging the MEC for another contract. Section 7702A(a)((2), however, arguably might be read to allow a policyholder to exchange a MEC for a contract that does not fail the 7-pay test of section 7702A(b), then exchange the second contract for a third contract, which would not literally have been received in exchange for a contract that failed to meet the 7-pay test. The provision clarifies section 7702A(a)(2) to correspond to the legislative history, effective as if enacted with the Technical and Miscellaneous Revenue Act of 1988 (generally, for contracts entered into on or after June 21, 1988).

Insurance.—Under section 7702A, if a life insurance contract that is not a modified endowment contract is actually or deemed exchanged for a new life insurance contract, then the 7-pay limit under the new contract is first be computed without reference to the premium paid using the cash surrender value of the old contract, and then would be reduced by 1/7 of the premium paid taking into account the cash surrender value of the old contract. For example, if the old contract had a cash surrender value of $14,000 and the 7-pay premium on the new contract would equal $10,000 per year but for the fact that there was an exchange, the 7-pay premium on the new contract would equal $8,000 ($10,000–$14,000/7). However, section 7702A(c)(3)(A) arguably might be read to suggest that if the cash surrender value on the new contract was $0 in the first two years (due to surrender charges), then the 7-pay premium might be $10,000 in this example, unintentionally permitting policyholders to engage in a series of "material changes" to circumvent the premium limitations in section 7702A. The provision clarifies section 7702A(c)(3)(A) to refer to the cash surrender value of the

old contract, effective as if enacted with the Technical and Miscellaneous Revenue Act of 1988 (generally, for contracts entered into on or after June 21, 1988).

Worthless securities.—Section 165(g)(3) provides a special rule for worthless securities of an affiliated corporation. The test for affiliation in section 165(g)(3)(A) is the 80-percent vote test for affiliated groups under section 1504(a) that was in effect prior to 1984. When section 1504(a) was amended in the Deficit Reduction Act of 1984 to adopt the vote and value test of present law, no corresponding change was made to section 165(g)(3)(A), even though the tests had been identical until then. The provision conforms the affiliation test of section 165(g)(3)(A) to the test in section 1504(a)(2), effective for taxable years beginning after December 31, 1984.

Exception for certain annuities under OID rules.—The Deficit Reduction Act of 1984 expanded the prior-law rules for inclusion in income of original issue discount ("OID") on debt instruments. That Act provided an exception from the definition of a debt instrument for certain annuity contracts, including any annuity contract to which section 72 applies and that is issued by an insurance company subject to tax under subchapter L of the Code (and meets certain other requirements) (sec. 1275(a)(1)(B)(ii)). The provision clarifies that an annuity contract otherwise meeting the applicable requirements also comes within the exception of section 1275(a)(1)(B)(ii) if it is issued by an entity described in section 501(c) and exempt from tax under section 501(a), that would be subject to tax as an insurance company under subchapter L if it were not exempt under section 501(a). For example, the provision clarifies that an annuity contract otherwise meeting the requirements that is issued by a fraternal beneficiary society which is exempt from Federal income tax under section 501(a), and which is described in section 501(c)(8), comes within the exception under section 1275(a)(1)(B)(ii). However, an annuity contract issued by a foreign insurer that is not subject to tax in the U.S. as an insurance company under subchapter L with respect to the contract does not come within the exception under section 1275(a)(1)(B)(ii). It is understood that charitable gift annuities (as defined in sec. 501(m)) depend (in whole or in substantial part) on the life expectancy of one or more individuals, and thus come within the exception under section 1275(a)(1)(B)(i). The provision is effective as if included with section 41 of the Deficit Reduction Act of 1984 (i.e., for taxable years ending after July 18, 1984).

Losses from section 1256 contracts.—Section 6411 allows tentative refunds for NOL carrybacks, business credit carrybacks and, for corporations only, capital loss carrybacks. Individuals normally cannot carry back a capital loss. However, section 1212(c) does allow a carryback of section 1256 losses, if elected by the taxpayer. The provision amends section 6411(a) by including a reference to section 1212(c), effective as if included with section 504 of the Economic Recovery Tax Act of 1981.

Highway Trust Fund.—The provision modifies administrative procedures of the Highway Trust Fund to conform to the 1993 repeal of the special tax rate applicable to ethanol prior to 1994. The provision is effective for taxes received after the date of enactment.

This ensures that retroactive adjustments, if any, are not made to the Highway Trust Fund.

Conforming amendment for expenditures from Vaccine Injury Compensation Trust Fund.—The provision makes a conforming amendment to the expenditure purposes of the Vaccine Injury Compensation Trust Fund to enable certain payments to be made from the Trust Fund.

Clerical changes (sec. 729 of the bill)

The bill makes a number of clerical and typographical amendments to the Code.

EXCLUSION FROM PAYGO SCORECARD

PRESENT LAW

Under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, tax reduction legislation is subject to a "pay-as-you-go" (PAYGO) requirement. The PAYGO system tracks legislation that may increase budget deficits using a "scorecard" (estimated by the Office of Management and Budget). Any revenue loss would have to be offset by other revenue increases, reductions in direct spending or a combination of the two.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that, upon enactment of the Act, the Director of the Office of Management and Budget shall not make any estimate of the changes in direct spending outlays and receipts under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 resulting from the enactment of the Act.

TAX COMPLEXITY ANALYSIS

The following tax complexity analysis is provided pursuant to section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998, which requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service ("IRS") and the Treasury Department) to provide a complexity analysis of tax legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or a Conference Report containing tax provisions. The complexity analysis is required to report on the complexity and administrative issues raised by provisions that directly or indirectly amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided, along with an estimate of the number of affected taxpayers, and a discussion regarding the relevant com-

plexity and administrative issues. Time constraints prevented the staff of the Joint Committee on Taxation from consulting with the IRS regarding the provisions in the conference agreement that have widespread applicability.

1. Increase deduction for business meals (sec. 204 of the conference agreement)

Summary description of provision

The provision increases the deductible percentage of business meal (food and beverage) expenses to 70 percent, effective for taxable years beginning after December 31, 2000.

Number of affected taxpayers

It is estimated that almost all small businesses will be affected by the provision.

Discussion

Because the provision increases the percentage deduction only with respect to meals and not entertainment, small businesses may have to keep additional records to distinguish between the two types of expenditures. The provision may lead to additional disputes between small businesses and the IRS regarding the nature of an expenditure, particularly in business situations where the meal and entertainment is provided as a package for a single price. No new regulatory changes would be needed to implement the provision (although a conforming change to regulations to reflect the increasing percentage would be appropriate).

2. Accelerate 100-percent self-employed health insurance deduction (sec. 301 of the conference agreement)

Summary description of provision

The provision accelerates the increase in the deduction for health insurance expenses of self-employed individuals so that the deduction is 100 percent in years beginning after December 31, 2000.

Number of affected taxpayers

It is estimated that the provision will affect three million small businesses.

Discussion

It is not anticipated that individuals or small businesses will need to keep additional records due to the provision. It is not anticipated that the provision will result in an increase in disputes with the IRS, or increase tax return preparation costs. It is not anticipated that regulatory guidance will be needed to implement the provision. Accelerating the 100-percent deduction may simplify the preparation of tax returns for self-employed individuals, because they will no longer need to keep track of the percent of health insurance expenses that are deductible, and will need to perform one less calculation.

ESTIMATED REVENUE EFFECTS OF THE "TAXPAYER RELIEF ACT OF 2000"

Fiscal Years 2001 - 2010

[Millions of Dollars]

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
Extraterritorial Income Exclusion; FSC Repeal (H.R. 4986)	**generally Ta 9/30/00**	**-153**	**-315**	**-348**	**-384**	**-423**	**-466**	**-514**	**-566**	**-623**	**-687**	**-1,623**	**-4,479**
Small Business Tax Relief Provisions													
A. Extend the Work Opportunity Tax Credit Through 6/30/04 [1]	wpoifibwa 12/31/01	---	-119	-317	-379	-267	-126	-45	-12	-2	---	-1,081	-1,267
B. Increase Maximum Reforestation Expenses Qualifying for Amortization and Credit from $10,000 to $25,000; Remove Cap on Amortization of Reforestation Costs in 2001 Through 2003; Clarify Capital Gains Treatment of Sales of Timber	tyba 12/31/00 & sa DOE	-5	-15	-22	-27	-29	-32	-34	-33	-29	-25	-98	-250
C. Increase Section 179 Expensing to $35,000	tyba 12/31/00	-558	-866	-561	-473	-405	-354	-347	-362	-369	-372	-2,863	-4,667
D. Increase Business Meals Deduction (Excluding Entertainment Expenses) to 70% in 2001 and Thereafter	tyba 12/31/00	-1,129	-2,207	-2,304	-2,404	-2,508	-2,620	-2,736	-2,858	-2,987	-3,124	-10,553	-24,876
E. 80% Business Meals Deduction for Workers Subject to DOT Hours of Service Limitation	tyba 12/31/00	-39	-70	-64	-55	-47	-37	-26	-13	---	---	-276	-351
F. Permit Installment Method for Accrual Basis Taxpayers	iso/a 12/17/99	-1,120	-394	-249	-70	-8	-20	-34	-47	-60	-76	-1,841	-2,078
G. Coordinate Farmer Income Averaging and the AMT and Provide the Same Income Averaging Relief to Commercial Fishermen	tyba 12/31/00	-1	-2	-2	-2	-3	-3	-4	-5	-6	-7	-9	-33
H. Repeal the Occupational Taxes Relating to Distilled Spirits, Wine, and Beer	7/1/01	-64	-75	-75	-75	-75	-75	-75	-75	-75	-75	-364	-739
I. Exclusion from Gross Income for Certain Forgiven Mortgage Obligations	doia 12/31/00	-2	-6	-6	-6	-7	-7	-7	-7	-8	-8	-27	-64
J. Clarification of Cash Accounting Rules for Small Businesses	tyba DOE	-61	-212	-224	-289	-238	-223	-127	-79	-58	-44	-1,024	-1,555
K. Authorize Payment of Interest on Business Checking Accounts	DOE & 2ya DOE	*Negligible Effect*											
Total of Small Business Tax Relief Provisions		**-2,979**	**-3,966**	**-3,824**	**-3,780**	**-3,587**	**-3,497**	**-3,435**	**-3,491**	**-3,594**	**-3,731**	**-18,136**	**-35,880**
Health Insurance and Long-Term Care Provisions													
A. Accelerate 100% Self-Employed Health Insurance Deduction and Extend Eligibility to Those Who Choose Not to Participate in Employer-Subsidized Health Plans	tyba 12/31/00	-274	-1,053	-697	[2]	[2]	[2]	[2]	[2]	[2]	[2]	-2,024	-2,024

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
B. Provide an Above-the-Line Deduction for Health Insurance Expenses for Which the Taxpayer Pays At Least 50%, Phased in as Follows: 25% in 2001 through 2003, 35% in 2004, 65% in 2005, and 100% thereafter	tyba 12/31/00	-456	-1,555	-1,667	-2,000	-3,410	-6,418	-9,209	-9,743	-10,303	-10,920	-9,088	-55,682
C. Provide an Above-the-Line Deduction for Long-Term Care Insurance Expenses for Which the Taxpayer Pays At Least 50%, Phased in as Follows: 25% in 2001 through 2003, 35% in 2004, 65% in 2005, and 100% thereafter	tyba 12/31/00	-41	-280	-333	-394	-641	-1,250	-1,934	-2,055	-2,174	-2,295	-1,688	-11,396
D. Two-Year Extension of Medical Savings Accounts	DOE	[2]	-3	-4	-4	-4	-4	-4	-3	-3	-3	-16	-33
E. Additional Consumer Protections for Long-Term Care Insurance	pimt 1ya DOE	*Negligible Revenue Effect*											
F. Provide an Additional Personal Deduction to Caretakers of Family Members - $3,000 in 2001 increasing by $1,000 per year to a maximum of $10,000 in 2008	tyba 12/31/00	-447	-899	-1,208	-1,492	-1,813	-2,127	-2,456	-2,769	-2,909	-3,033	-5,859	-19,152
Total of Health Insurance and Long-Term Care Provisions		**-1,218**	**-3,790**	**-3,909**	**-3,890**	**-5,868**	**-9,799**	**-13,603**	**-14,570**	**-15,389**	**-16,251**	**-18,675**	**-88,287**
Pensions and Individual Retirement Arrangement Provisions													
A. Individual Retirement Arrangement Provisions													
1. Modification of IRA Contribution Limits - increase the maximum contribution limit for traditional and Roth IRAs to: $3,000 in 2001, $4,000 in 2002, $5,000 in 2003, and index for inflation thereafter	tyba 12/31/00	-395	-1,194	-2,013	-2,726	-3,404	-3,983	-4,389	-4,815	-5,289	-5,827	-9,733	-34,037
2. IRA Catch-Up Contributions - increase maximum contribution limits for traditional and Roth IRAs for individuals age 50 and above; the catch-up amount is $500 in 2001, $1,000 in 2002, and $1,500 in 2003, with indexing thereafter in $500 increments	tyba 12/31/00	-71	-154	-163	-155	-147	-151	-172	-183	-189	-209	-690	-1,595
3. Increase AGI limits for deductible IRA contributions, including for married filing separately	tyba 12/31/00	-103	-357	-475	-411	-276	-160	-124	-103	-106	-109	-1,621	-2,222
4. Increase income limits for contributions to Roth IRAs for joint filers to twice the limits for single filers	tyba 12/31/00	-9	-54	-128	-216	-316	-425	-540	-657	-779	-910	-723	-4,033
5. Increase the income limit for conversions of an IRA to a Roth IRA to $200,000 for joint filers	tyba 12/31/00	400	1,046	719	166	-724	-1,317	-1,060	-614	-142	-150	1,607	-1,676
6. Deemed IRAs under employer plans	tyba 12/31/01	*Negligible Revenue Effect*											
7. Allow tax-free withdrawals from IRAs for charitable purposes; the exclusion is available only with respect to distributions made to an organization to which deductible contributions can be made	tyba 12/31/00	-133	-267	-270	-273	-276	-279	-282	-285	-288	-291	-1,217	-2,641
Total of Individual Retirement Arrangement Provisions		-311	-980	-2,330	-3,615	-5,143	-6,315	-6,567	-6,657	-6,793	-7,496	-12,377	-46,204

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
B. Provisions for Expanding Coverage													
1. Increase contribution and benefit limits:													
a. Increase limitation on exclusion for elective deferrals to: $11,000 in 2001, $12,000 in 2002, $13,000 in 2003, $14,000 in 2004, and $15,000 in 2005; index thereafter [3] [4]	yba 12/31/00	-130	-310	-452	-557	-640	-698	-747	-796	-846	-895	-2,089	-6,070
b. Increase limitation on SIMPLE elective contributions to: $7,000 in 2001, $8,000 in 2002, $9,000 in 2003, and $10,000 in 2004; index thereafter [3] [4]	yba 12/31/00	-4	-14	-21	-26	-28	-28	-29	-31	-32	-34	-93	-246
c. Increase defined benefit dollar limit to $160,000	yba 12/31/00	-18	-31	-40	-45	-48	-50	-53	-55	-57	-59	-182	-454
d. Lower early retirement age to 62; lower normal retirement age to 65	yba 12/31/00	-3	-4	-4	-4	-5	-5	-5	-5	-5	-5	-21	-45
e. Increase limitation for defined contribution plans to $40,000 with indexing in $1,000 increments [3]	yba 12/31/00	-6	-12	-14	-15	-16	-17	-19	-20	-21	-23	-63	-163
f. Increase qualified plan compensation limit to $200,000 [3]	yba 12/31/00	-43	-74	-84	-91	-99	-107	-115	-122	-131	-139	-391	-1,004
g. Increase limits on deferrals under deferred compensation plans of State and local governments and tax-exempt organizations to: $11,000 in 2001, $12,000 in 2002, $13,000 in 2003, $14,000 in 2004, and $15,000 in 2005; index thereafter [3] [4]	yba 12/31/00	-52	-91	-104	-114	-125	-134	-142	-151	-159	-167	-486	-1,238
2. Plan loans for S corporation owners, partners, and sole proprietors	yba 12/31/00	-18	-30	-33	-35	-37	-39	-42	-44	-47	-49	-153	-374
3. Modification of top-heavy rules; compensation limit for officers is $115,000 (indexed)	yba 12/31/00	-3	-7	-9	-10	-11	-12	-14	-15	-17	-18	-40	-116
4. Elective deferrals not taken into account for purposes of deduction limits	yba 12/31/00	-40	-75	-87	-94	-101	-108	-115	-122	-129	-135	-396	-1,004
5. Repeal of coordination requirements for deferred compensation plans of State and local governments and tax-exempt organizations	yba 12/31/00	-16	-22	-22	-22	-22	-23	-24	-25	-26	-27	-104	-228
6. Elimination of user fee for certain requests regarding small employer pension plans; waiver applies only for request made during first 5 plan years or the remedial amendment period beginning within the first 5 plan years [5]	rma 12/31/00	-7	-8	-9	---	---	---	---	---	---	---	-24	-24
7. Definition of compensation for purposes of deduction limits [3]	yba 12/31/00	-1	-2	-3	-3	-3	-3	-3	-3	-3	-3	-12	-28
8. Option to treat elective deferrals as after-tax contributions	tyba 12/31/00	50	100	131	144	89	-2	-104	-218	-345	-485	514	-640
9. Increase stock bonus and profit sharing plan deduction limit from 15% to 25%	tyba 12/31/00	-6	-12	-14	-15	-16	-18	-19	-20	-22	-23	-63	-165
Total of Provisions for Expanding Coverage		-297	-592	-765	-887	-1,062	-1,244	-1,431	-1,627	-1,840	-2,062	-3,603	-11,799

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
C. Provisions for Enhancing Fairness for Women													
1. Additional catch-up contributions for individuals age 50 and above - increase the otherwise applicable contribution limit phased in by $1,000 a year until it is $5,000 in 2005, with indexing thereafter in $500 increments; nondiscrimination rules apply	tyba 12/31/00	-13	-32	-45	-53	-57	-59	-61	-63	-67	-70	-200	-521
2. Equitable treatment for contributions of employees to defined contribution plans [3]	yba 12/31/00	-51	-78	-84	-91	-97	-104	-111	-118	-124	-131	-401	-989
3. Faster vesting of certain employer matching contributions	ci pyba 12/31/00	*Negligible Revenue Effect*											
4. Simplify and update the minimum distribution rules - modify post-death distribution rules, reduce the excise tax on failures to make minimum distributions to 10%, and direct the Treasury to simplify and finalize regulations relating to the minimum distribution rules	yba 12/31/00	-118	-212	-239	-268	-297	-330	-366	-402	-441	-484	-1,135	-3,157
5. Clarification of tax treatment of division of section 457 plan benefits upon divorce	tdapma 12/31/00	*Negligible Revenue Effect*											
6. Modification of safe harbor relief for hardship withdrawals from 401(k) plans; modify definition of hardship for rollover purposes	yba 12/31/00	*Negligible Revenue Effect*											
7. Eliminate the excise tax on employers who make nondeductible contributions to all types of plans on behalf of domestic and similar workers	tyba 12/31/00	[2]	[2]	-1	-3	-4	-6	-8	-10	-12	-14	-8	-57
Total of Provisions for Enhancing Fairness for Women		-182	-322	-369	-415	-455	-499	-546	-593	-644	-699	-1,744	-4,724
D. Provisions for Increasing Portability for Participants													
1. Rollovers allowed among governmental section 457 plans, section 403(b) plans, and qualified plans	dma 12/31/00	26	-5	-5	-5	-5	-5	-5	-6	-6	-6	6	-22
2. Rollovers of IRAs to workplace retirement plans	dma 12/31/00	*Negligible Revenue Effect*											
3. Rollovers of after-tax retirement plan contributions	dma 12/31/01	*Negligible Revenue Effect*											
4. Waiver of 60-day rule	dma 12/31/00	*Negligible Revenue Effect*											
5. Treatment of forms of qualified plan distributions	yba 12/31/00	*Negligible Revenue Effect*											
6. Rationalization of restrictions on distributions	da 12/31/00	*Negligible Revenue Effect*											
7. Purchase of service credit in governmental defined benefit plans	ta 12/31/00	*Negligible Revenue Effect*											
8. Employers may disregard rollovers for cash-out amounts	da 12/31/00	*Negligible Revenue Effect*											
9. Minimum distribution and inclusion requirements for section 457 plans	da 12/31/00	*Considered in Other Provisions*											
Total of Provisions for Increasing Portability for Participants		26	-5	-5	-5	-5	-5	-5	-6	-6	-6	6	-22
E. Provisions for Strengthening Pension Security and Enforcement													
1. Phase in repeal of 155% of current liability funding limit; extend maximum deduction rule	pyba 12/31/00	---	-14	-20	-36	-36	-38	-38	-39	-41	-42	-106	-304
2. Excise tax relief for sound pension funding	yba 12/31/00	-2	-3	-3	-3	-3	-3	-3	-3	-3	-3	-14	-29
3. Notice of significant reduction in plan benefit accruals; notice is required with respect to the elimination or reduction of early retirement benefit or retirement-type subsidy	pateo/a DOE	*Negligible Revenue Effect*											

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
4. Repeal 100% of compensation limit for multiemployer plans	yba 12/31/00	-2	-4	-4	-4	-4	-4	-5	-5	-5	-5	-19	-42
5. Modification of section 415 aggregation rules for multiemployer plans	yba 12/31/00	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-8
6. Prohibited allocations of stock in an ESOP of an S corporation	[6]	1	4	5	6	8	8	9	10	10	10	24	72
7. Investment of employee contributions in 401(k) plans	aiii TRA'97	*Negligible Revenue Effect*											
8. Periodic pension benefit statements	pyba 12/31/00	*No Revenue Effect*											
Total of Provisions for Strengthening Pension Security and Enforcement		-4	-18	-23	-38	-36	-38	-38	-38	-40	-41	-119	-311
F. Provisions for Reducing Regulatory Burdens													
1. Modification of timing of plan valuations	pyba 12/31/00	*Negligible Revenue Effect*											
2. ESOP dividends may be reinvested without loss of dividend deduction; modify present-law antiabuse rule to permit the Secretary to disallow the deduction in the case of any dividend that constitutes the avoidance or evasion of taxation	tyba 12/31/00	-19	-44	-56	-61	-63	-66	-69	-71	-74	-77	-243	-600
3. Repeal transition rule relating to certain highly compensated employees	pyba 12/31/00	-2	-3	-3	-3	-3	-3	-4	-4	-4	-4	-13	-32
4. Employees of tax-exempt entities	DOE	*Negligible Revenue Effect*											
5. Treatment of employer-provided retirement advice	tyba 12/31/00	*Negligible Revenue Effect*											
6. Pension plan reporting simplification [7]	1/1/01	*Negligible Revenue Effect*											
7. Improvement to Employee Plans Compliance Resolution System [7]	DOE	*Negligible Revenue Effect*											
8. Repeal of the multiple use test	yba 12/31/00	*Considered in Other Provisions*											
9. Flexibility in nondiscrimination, coverage, and line of business rules [7]	DOE	*Negligible Revenue Effect*											
10. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local government plans	yba 12/31/00	*Negligible Revenue Effect*											
11. Notice and consent period regarding distributions; and notice regarding optional forms of benefit	yba 12/31/00	*No Revenue Effect*											
12. Annual report dissemination	yba 12/31/99	*No Revenue Effect*											
13. Amendments to the SAVER Act	DOE	*No Revenue Effect*											
14. Require Secretary of Treasury to study and report on the effect of the bill on pension coverage	DOE	*No Revenue Effect*											
Total of Provisions for Reducing Regulatory Burdens		-21	-47	-59	-64	-66	-69	-73	-75	-78	-81	-256	-632
G. ERISA Provisions													
1. Extension of PBGC missing plan participants program [5]	[8]	---	[9]	[9]	[9]	[9]	[9]	[9]	[9]	[9]	[9]	[2]	-1
2. Reduce PBGC premium for new plans of small employers [5]	pea 12/31/00	---	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	-2	-4
3. Phase-in additional PBGC premium for new plans; include additional variable premium relief for small employers [5]	ya 12/31/00	---	-3	-3	-3	-3	-3	-3	-4	-4	-4	-13	-30
4. Authorization for PBGC to pay interest on premium overpayment refunds [5]	iafpbo/a DOE	---	-3	-3	-3	-3	-3	-3	-3	-3	-3	-12	-27

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
5. Rules for substantial owner benefits in terminated plans [5]	noitta 12/31/00	---	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	-2	-5
6. Increase in multiemployer plan benefits guarantee [5]	bpa DOE	---	---	---	[2]	[2]	[2]	[2]	[2]	[2]	[2]	-1	-2
7. Civil penalties for breach of fiduciary duty [10]	[11]	No Revenue Effect											
8. Benefit suspension notice	pyba 12/31/00	No Revenue Effect											
Total of ERISA Provisions		---	-7	-7	-7	-7	-7	-7	-8	-8	-8	-30	-68
H. Provisions Relating to Plan Amendments	DOE	No Revenue Effect											
Total of Pensions and Individual Retirement Arrangement Provisions		**-789**	**-1,971**	**-3,558**	**-5,031**	**-6,774**	**-8,177**	**-8,667**	**-9,004**	**-9,409**	**-10,393**	**-18,123**	**-63,760**
School Construction Provisions													
A. Small Governmental Unit Arbitrage Rebate Exception - increase arbitrage rebate exception for governmental bonds used to finance qualified school construction from $10 million to $15 million	bia 12/31/00	[2]	-3	-5	-6	-11	-14	-15	-16	-17	-18	-24	-104
B. Liberalize Construction Bond Expenditure Rule for Public School Bonds - provide new 4-year expenditure schedule for bonds for public school construction under the arbitrage rebate rules	bia 12/31/00	-16	-139	-262	-296	-312	-328	-331	-326	-320	-312	-1,027	-2,644
C. Modify Special Provision for a Permanent University Fund	1/1/01	[2]	-1	-1	-1	-1	[12]	[2]	-1	-1	[2]	-3	-4
D. Issuance of Private Activity Bonds for Public School Facilities - issuance of tax-exempt private activity bonds for qualified education facilities with annual volume cap the greater of $10 per resident or $5 million	bia 12/31/00	-6	-19	-37	-57	-83	-113	-146	-178	-210	-241	-202	-1,090
E. Tax-Credit Bonds													
1. Extend authority to issue QZABs for an additional 2 years (through 2003) at present-law $400 million per year authorized issuance levels; with certain modifications	bia 12/31/01	---	[2]	-2	-8	-17	-24	-25	-25	-25	-25	-28	-154
2. School Construction QZABs - authorize issuance of a new sub-category of QZABs for construction, renovation, and repair of public schools of $5 billion annually for 2001, 2002, and 2003; private investment not required; modified targeting criteria and administrative rules; unused bond authority from any year to carry forward for up to 2 years, used on a FIFO basis; additional $200 million for construction of tribal schools on Indian reservations	bia 12/31/00	-14	-68	-181	-335	-470	-542	-558	-558	-558	-558	-1,068	-3,843
Total School Construction Provisions		**-36**	**-230**	**-488**	**-703**	**-894**	**-1,021**	**-1,075**	**-1,104**	**-1,131**	**-1,154**	**-2,352**	**-7,839**

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
Community Revitalization Provisions													
A. Tax Incentives for Renewal Communities and Empowerment Zones													
1. Designate 40 renewal communities,12 of which are in rural areas, to receive the following tax benefits: a wage credit of 15% on first $10,000 of qualified wages; an additional $35,000 of section 179 expensing; deduction for qualified revitalization expenditures, capped at $12 million per community; and 0% capital gains tax rate on qualifying assets held more than 5 years	DOE [13]	---	-360	-583	-557	-571	-614	-691	-899	-942	-371	-2,070	-5,588
2. Designate 9 new empowerment zones, extend present-law empowerment zone designations through 12/31/09, expand the 20% wage credit to all empowerment zones, increase the additional section 179 expensing to $35,000 for all empowerment zones including D.C. in 2002, and extend the more favorable round II tax exempt financing rules to all existing and new empowerment zones excluding D.C.	DOE [14]	---	-243	-470	-470	-537	-592	-599	-615	-783	-239	-1,721	-4,548
3. Capital gain rollover of empowerment zone assets and increased exclusion of gain on sale of certain empowerment zone investments	ima DOE	[2]	-3	-15	-32	-52	-71	-93	-118	-152	-202	-102	-738
B. New Markets Tax Credit - provide new markets tax credit with allocation authority of $1.0 billion in 2001, $1.5 billion in 2002 and 2003, $2.0 billion in 2004 and 2005, and $3.5 billion in 2006 and 2007	ima 12/31/00	-2	-18	-115	-246	-365	-531	-725	-813	-828	-747	-747	-4,391
C. Increase the Low-Income Housing Tax Credit and Make Other Modifications - increase per capita credit to $1.50 in 2001, $1.75 in 2002, and indexed for inflation thereafter; $2 million small State minimum in 2001 and 2002 and index for inflation thereafter; modify stacking rules and credit allocation rules; certain Native American housing assistance disregarded in determining whether building is Federally subsidized for purposes of the low-income housing credit	generally cyba 12/31/00	-9	-52	-148	-282	-433	-598	-779	-976	-1188	-1416	-924	-5,880
D. Other Provisions													
1. Private Activity Bond State Volume Limits - increase annual State volume cap to the greater of: $62.50 per resident or $187.5 million in 2001, and $75 per resident or $225 million in 2002; index for inflation thereafter	cyba 12/31/00	-16	-95	-195	-284	-361	-425	-473	-513	-557	-600	-951	-3,519
2. Expensing of Environmental Remediation Expenditures and Expansion of Qualifying Sites - for expenditures incurred before 2004 ("Brownfields")	DOE & epoia DOE	-13	-97	-225	-165	-39	-1	5	17	17	12	-538	-489
3. Extend the D.C. Homebuyer Credit Through 12/31/03	DOE	[12]	-7	-25	-14	[2]	[2]	[2]	[2]	[2]	[2]	-46	-46
Total of Community Revitalization Provisions		**-40**	**-875**	**-1,776**	**-2,050**	**-2,358**	**-2,832**	**-3,355**	**-3,917**	**-4,433**	**-3,563**	**-7,099**	**-25,199**

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
Administrative, Miscellaneous, and Technical Provisions													
A. Administrative Provisions													
1. Exempt Certain Reports From Elimination Under the Federal Reports Elimination And Sunset Act of 1995	DOE	*No Revenue Effect*											
2. Extension of Deadlines for IRS Compliance with Certain Notice Requirements	DOE	*No Revenue Effect*											
3. 5-Year Extension of Authority for IRS Undercover Operations	1/1/01	[15]	[15]	[15]	[15]	[15]	[15]	[15]	[15]	[15]	[15]	[16]	[17]
4. Confidentiality of Certain Documents Relating to Closing and Similar Agreements and to Agreements with Foreign Governments	DOE	*Negligible Revenue Effect*											
5. Increase in Joint Committee on Taxation Refund Review Threshold	DOE	*Negligible Revenue Effect*											
6. Clarify Dependency Deduction for Kidnapped Children	tyea DOE	*Negligible Revenue Effect*											
7. Conforming Changes to Accommodate Reduced Issuances of Certain Treasury Securities	DOE	*Negligible Revenue Effect*											
8. Authorization to Use Corrected Consumer Price Index:													
a. Tax revenues [18]	DOE	-20	-20	---	---	---	---	---	---	---	---	-40	-40
b. Outlays [5] [19] [20]	DOE	-970	-570	-560	-550	-550	-540	-520	-520	-510	-500	-3,200	-5,790
9. Prevent Duplication or Acceleration of Loss Through Assumption of Certain Liabilities	aolo/a 10/19/99	13	15	17	19	21	23	25	27	29	31	85	220
B. Miscellaneous Provisions													
1. Repeal the 4.3-Cents-Per-Gallon Tax on Railroad Diesel Fuel and Inland Waterway Fuel Currently Paid Into the General Fund	1/1/01	-102	-147	-151	-155	-159	-164	-168	-173	-178	-183	-715	-1,580
2. Repeal of Reduction of Deductions for Mutual Life Insurance Companies and of Policyholder Surplus Accounts of Life Insurance Companies	tyba 12/31/00	-88	-93	-80	-63	-51	-64	-56	-47	-49	-55	-375	-645
3. Tax Credit Bonds for the National Railroad Passenger Corporation ("Amtrak") - $1 billion tax credit bonds per year	bia 9/30/00	-13	-82	-156	-221	-290	-360	-429	-499	-569	-639	-762	-3,259
4. Farm, Fishing, and Ranch Risk Management ("FFARRM") Accounts	tyba 12/31/00	-3	-73	-136	-179	-146	-113	-66	-30	-6	-6	-539	-760
5. Extend present-law section 170(e)(6) relating to corporate contributions of computer equipment through 12/31/03; expand list of eligible donees to include public libraries; expand to include 3-year property	cma 12/31/00	-60	-112	-120	-60	-3	---	---	---	---	---	-355	-355
6. Exemption for Settlement of Discrimination Claims Brought by Certain Farmers Against the Department of Agriculture	aoty	-325	-13	---	---	---	---	---	---	---	---	-338	-338

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
7. Adoption Credit - extend through 12/31/05 for non-special needs adoptions, with an increase in the qualified expenses level to $10,000 for non-special needs adoptions and $12,000 for special needs adoption, phased in by $1,000 a year and $2,000 a year, respectively; phaseout starting point increased to $150,000 of AGI, fully phased out at $190,000 of AGI	tyba 12/31/00	-21	-156	-386	-480	-567	-469	-113	-96	-79	-58	-1,610	-2,426
8. Study on Bermuda Insurance Companies	DOE	No Revenue Effect											
9. Treatment of Indian tribes as Non-Profit Organizations and State or Local Governments for Purposes of the Federal Unemployment Tax [5]	[21]	-20	-10	-9	25	2	2	[2]	2	1	[12]	-14	-9
C. Technical Correction Provisions	---	No Revenue Effect											
Total of Administrative, Miscellaneous, and Technical Provisions		**-1,609**	**-1,261**	**-1,581**	**-1,664**	**-1,743**	**-1,685**	**-1,327**	**-1,336**	**-1,361**	**-1,410**	**-7,861**	**-14,977**
NET TOTAL		**-6,824**	**-12,407**	**-15,483**	**-17,501**	**-21,646**	**-27,476**	**-31,975**	**-33,987**	**-35,939**	**-37,188**	**-73,868**	**-240,421**
Repeal the Federal Communications Excise Tax (included in the Treasury Appropriations bill)	**10/1/00**	**-4,328**	**-4,562**	**-4,799**	**-5,043**	**-5,303**	**-5,578**	**-5,868**	**-6,174**	**-6,502**	**-6,852**	**-24,035**	**-55,009**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:

aiii TRA'97 = as if included in the Taxpayer Relief Act of 1997
aolo/a = assumption of liabilities on or after
aoty = all open taxable years
bia = bonds issued after
bpa = benefits payable after
ci = contributions in
cma = contributions made after
cyba = calendar years beginning after
da = distributions after
dma = distributions made after
DOE = date of enactment
doia = discharges of indebtedness after
epoia = expenditures paid or incurred after
ima = investments made after
iafpbo/a = interest accruing for periods beginning on or after
iso/a = installment sales on or after
noitta = notice of intent to terminate after
pateo/a = plan amendments taking effect on or after
pea = plans established after
pimt = policies issued more than
pyba = plan years beginning after
rma = requests made after
sa = sales after
ta = transfers after
Ta = transactions after
tdapma = transfers, distributions, and payments made after
tyba = taxable years beginning after
tyea = taxable years ending after
wpoifibwa = wages paid or incurred for individuals beginning work after
ya = years after
yba = years beginning after
1ya = 1 year after
2ya = 2 years after

[1] Estimate includes interaction with certain Tax Incentives for Renewal Communities and Empowerment Zones provisions.
[2] Loss of less than $500,000.
[3] Estimate includes interaction with other provisions in Provisions for Expanding Coverage.
[4] Estimate includes interaction with the Individual Retirement Arrangement provisions.
[5] Estimate provided by the Congressional Budget Office.
[6] Generally effective with respect to years beginning after December 31, 2001. In the case of an ESOP established after July 11, 2000, or an ESOP established on or before such date if the employer maintaining the plan was not an S corporation on such date, the proposal would be effective with respect to plan years ending after July 11, 2000.

[Footnotes for the Table are continued on the following page]

Footnotes for the Table continued:

[7] Directs the Secretary of the Treasury to modify rules through regulations.
[8] Effective for distributions from terminating plans that occur after the PBGC has adopted final regulations implementing provision.
[9] Loss of less than $100,000.
[10] Department of Labor penalties.
[11] In general, the proposal would apply to any breach of fiduciary responsibility or other violation of part 4 of Subtitle B. of the Title I. and ERISA occurring on or after the date of enactment.
[12] Gain of less than $500,000.
[13] The Secretary of Housing and Urban Development must prescribe regulations for the nomination process no later than 4 months after the date of enactment.
The tax benefits for the designated communities generally are effective beginning on 1/1/02, and terminating on 12/31/09.
[14] Area may be designated as an empowerment zone any time after the date of enactment and before 1/1/02. The tax benefits generally become effective after 12/31/01 and terminate on 12/31/09.
[15] Gain of less than $1 million.
[16] Gain of less than $5 million.
[17] Gain of less than $10 million.
[18] Estimate for fiscal year 2002 includes an increase in EIC outlays of $17 million.
[19] Negative numbers indicate a increase in Federal outlays.
[20] Estimate includes a loss of $4,100 million over the Federal fiscal year period 2001 - 2010 to the Social Security trust fund.
[21] The proposal generally would be effective with respect to service performed beginning on or after the date of enactment. Under a transition rule, service performed in the employ of an Indian tribe would not be treated as employment for FUTA purposes if: (1) it is service which is performed before the date of enactment and with respect to which FUTA tax has not been paid; and (2) such Indian tribe reimburses a State unemployment fund for unemployment benefits paid for service attributable to such tribe for such period.

MEDICARE, MEDICAID, AND SCHIP BENEFITS IMPROVEMENT AND PROTECTION ACT OF 2000

The conference agreement would enact the provisions of H.R. 5543, as introduced on October 25, 2000. The text of that bill follows:

SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECURITY ACT; REFERENCES TO OTHER ACTS; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000".

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

(c) REFERENCES TO OTHER ACTS.—In this Act:

(1) BALANCED BUDGET ACT OF 1997.—The term "BBA" means the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 251).

(2) MEDICARE, MEDICAID, AND SCHIP BALANCED BUDGET REFINEMENT ACT OF 1999.—The term "BBRA" means the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Appendix F, 113 Stat. 1501A–321), as enacted into law by section 1000(a)(6) of Public Law 106–113.

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

Sec. 1. Short title; amendments to Social Security Act; references to other Acts; table of contents.

TITLE I—MEDICARE BENEFICIARY IMPROVEMENTS

Subtitle A—Improved Preventive Benefits

Sec. 101. Coverage of biennial screening pap smear and pelvic exams.
Sec. 102. Coverage of screening for glaucoma.
Sec. 103. Coverage of screening colonoscopy for average risk individuals.
Sec. 104. Modernization of screening mammography benefit.
Sec. 105. Coverage of medical nutrition therapy services for beneficiaries with diabetes or a renal disease.

Subtitle B—Other Beneficiary Improvements

Sec. 111. Acceleration of reduction of beneficiary copayment for hospital outpatient department services.
Sec. 112. Preservation of coverage of drugs and biologicals under part B of the medicare program.
Sec. 113. Elimination of time limitation on medicare benefits for immunosuppressive drugs.
Sec. 114. Imposition of billing limits on prescription drugs.

Subtitle C—Demonstration Projects and Studies

Sec. 121. Demonstration project for disease management for severely chronically ill medicare beneficiaries.
Sec. 122. Cancer prevention and treatment demonstration for ethnic and racial minorities.
Sec. 123. Study on medicare coverage of routine thyroid screening.
Sec. 124. MedPAC study on consumer coalitions.
Sec. 125. Study on limitation on State payment for medicare cost-sharing affecting access to services for qualified medicare beneficiaries.

Sec. 126. Institute of Medicine study on waiver of 24-month waiting period for medicare disability eligibility for amyotrophic lateral sclerosis (ALS) and other devastating diseases.
Sec. 127. Studies on preventive interventions in primary care for older Americans.
Sec. 128. MedPAC study and report on medicare coverage of cardiac and pulmonary rehabilitation therapy services.

TITLE II—RURAL HEALTH CARE IMPROVEMENTS

Subtitle A—Critical Access Hospital Provisions

Sec. 201. Clarification of no beneficiary cost-sharing for clinical diagnostic laboratory tests furnished by critical access hospitals.
Sec. 202. Assistance with fee schedule payment for professional services under all-inclusive rate.
Sec. 203. Exemption of critical access hospital swing beds from SNF PPS.
Sec. 204. Payment in critical access hospitals for emergency room on-call physicians.
Sec. 205. Treatment of ambulance services furnished by certain critical access hospitals.
Sec. 206. GAO study on certain eligibility requirements for critical access hospitals.

Subtitle B—Other Rural Hospitals Provisions

Sec. 211. Equitable treatment for rural disproportionate share hospitals.
Sec. 212. Option to base eligibility for medicare dependent, small rural hospital program on discharges during 2 of the 3 most recently audited cost reporting periods.
Sec. 213. Extension of option to use rebased target amounts to all sole community hospitals.
Sec. 214. MedPAC analysis of impact of volume on per unit cost of rural hospitals with psychiatric units.

Subtitle C—Other Rural Provisions

Sec. 221. Assistance for providers of ambulance services in rural areas.
Sec. 222. Payment for certain physician assistant services.
Sec. 223. Revision of medicare reimbursement for telehealth services.
Sec. 224. Expanding access to rural health clinics.
Sec. 225. MedPAC study on low-volume, isolated rural health care providers.

TITLE III—PROVISIONS RELATING TO PART A

Subtitle A—Inpatient Hospital Services

Sec. 301. Revision of acute care hospital payment update for 2001.
Sec. 302. Additional modification in transition for indirect medical education (IME) percentage adjustment.
Sec. 303. Decrease in reductions for disproportionate share hospital (DSH) payments.
Sec. 304. Wage index improvements.
Sec. 305. Payment for inpatient services of rehabilitation hospitals.
Sec. 306. Payment for inpatient services of psychiatric hospitals.
Sec. 307. Payment for inpatient services of long-term care hospitals.

Subtitle B—Adjustments to PPS Payments for Skilled Nursing Facilities

Sec. 311. Elimination of reduction in skilled nursing facility (SNF) market basket update in 2001.
Sec. 312. Increase in nursing component of PPS Federal rate.
Sec. 313. Application of SNF consolidated billing requirement limited to part A covered stays.
Sec. 314. Adjustment of rehabilitation RUGs to correct anomaly in payment rates.
Sec. 315. Establishment of process for geographic reclassification.

Subtitle C—Hospice Care

Sec. 321. Full market basket increase for 2001.
Sec. 322. Clarification of physician certification.
Sec. 323. MedPAC report on access to, and use of, hospice benefit.

Subtitle D—Other Provisions

Sec. 331. Relief from medicare part A late enrollment penalty for group buy-in for State and local retirees.
Sec. 332. Posting of information on nursing facility staffing.

TITLE IV—PROVISIONS RELATING TO PART B

Subtitle A—Hospital Outpatient Services

Sec. 401. Revision of hospital outpatient PPS payment update.
Sec. 402. Clarifying process and standards for determining eligibility of devices for pass-through payments under hospital outpatient PPS.
Sec. 403. Application of OPD PPS transitional corridor payments to certain hospitals that did not submit a 1996 cost report.
Sec. 404. Application of rules for determining provider-based status for certain entities.
Sec. 405. Treatment of children's hospitals under prospective payment system.
Sec. 406. Inclusion of temperature monitored cryoablation in transitional pass-through for certain medical devices, drugs, and biologicals under OPD PPS.

Subtitle B—Provisions Relating to Physicians' Services

Sec. 411. GAO studies relating to physicians' services.
Sec. 412. Physician group practice demonstration.
Sec. 413. Study on enrollment procedures for groups that retain independent contractor physicians.

Subtitle C—Other Services

Sec. 421. 1-year extension of moratorium on therapy caps; report on standards for supervision of physical therapy assistants.
Sec. 422. Update in renal dialysis composite rate.
Sec. 423. Payment for ambulance services.
Sec. 424. Ambulatory surgical centers.
Sec. 425. Full update for durable medical equipment.
Sec. 426. Full update for orthotics and prosthetics.
Sec. 427. Establishment of special payment provisions and requirements for prosthetics and certain custom fabricated orthotic items.
Sec. 428. Replacement of prosthetic devices and parts.
Sec. 429. Revised part B payment for drugs and biologicals and related services.
Sec. 430. Contrast enhanced diagnostic procedures under hospital prospective payment system.
Sec. 431. Qualifications for community mental health centers.
Sec. 432. Modification of medicare billing requirements for certain Indian providers.
Sec. 433. GAO study on coverage of surgical first assisting services of certified registered nurse first assistants.
Sec. 434. MedPAC study and report on medicare reimbursement for services provided by certain providers.
Sec. 435. MedPAC study and report on medicare coverage of services provided by certain nonphysician providers.
Sec. 436. GAO study and report on the costs of emergency and medical transportation services.
Sec. 437. GAO studies and reports on medicare payments.
Sec. 438. MedPAC study on access to outpatient pain management services.

TITLE V—PROVISIONS RELATING TO PARTS A AND B

Subtitle A—Home Health Services

Sec. 501. 1-year additional delay in application of 15 percent reduction on payment limits for home health services.
Sec. 502. Restoration of full home health market basket update for home health services for fiscal year 2001.
Sec. 503. Temporary two-month extension of periodic interim payments.
Sec. 504. Use of telehealth in delivery of home health services.
Sec. 505. Study on costs to home health agencies of purchasing nonroutine medical supplies.
Sec. 506. Treatment of branch offices; GAO study on supervision of home health care provided in isolated rural areas.

Sec. 507. Clarification of the homebound definition under the medicare home health benefit.

Subtitle B—Direct Graduate Medical Education

Sec. 511. Increase in floor for direct graduate medical education payments.
Sec. 512. Change in distribution formula for Medicare+Choice-related nursing and allied health education costs.

Subtitle C—Changes in Medicare Coverage and Appeals Process

Sec. 521. Revisions to medicare appeals process.
Sec. 522. Revisions to medicare coverage process.

Subtitle D—Improving Access to New Technologies

Sec. 531. Reimbursement improvements for new clinical laboratory tests and durable medical equipment.
Sec. 532. Retention of HCPCS level III codes.
Sec. 533. Recognition of new medical technologies under inpatient hospital PPS.

Subtitle E—Other Provisions

Sec. 541. Increase in reimbursement for bad debt.
Sec. 542. Treatment of certain physician pathology services under medicare.
Sec. 543. Extension of advisory opinion authority.
Sec. 544. Change in annual MedPAC reporting.
Sec. 545. Development of patient assessment instruments.
Sec. 546. GAO report on impact of the Emergency Medical Treatment and Active Labor Act (EMTALA) on hospital emergency departments.

TITLE VI—PROVISIONS RELATING TO PART C (MEDICARE+CHOICE PROGRAM) AND OTHER MEDICARE MANAGED CARE PROVISIONS

Subtitle A—Medicare+Choice Payment Reforms

Sec. 601. Increase in minimum payment amount.
Sec. 602. Increase in minimum percentage increase.
Sec. 603. 10-year phase-in of risk adjustment.
Sec. 604. Transition to revised Medicare+Choice payment rates.
Sec. 605. Revision of payment rates for ESRD patients enrolled in Medicare+Choice plans.
Sec. 606. Permitting premium reductions as additional benefits under Medicare+Choice plans.
Sec. 607. Full implementation of risk adjustment for congestive heart failure enrollees for 2001.
Sec. 608. Expansion of application of Medicare+Choice new entry bonus.
Sec. 609. Report on inclusion of certain costs of the Department of Veterans Affairs and military facility services in calculating Medicare+Choice payment rates.

Subtitle B—Other Medicare+Choice Reforms

Sec. 611. Payment of additional amounts for new benefits covered during a contract term.
Sec. 612. Restriction on implementation of significant new regulatory requirements mid-year.
Sec. 613. Timely approval of marketing material that follows model marketing language.
Sec. 614. Avoiding duplicative regulation.
Sec. 615. Election of uniform local coverage policy for Medicare+Choice plan covering multiple localities.
Sec. 616. Eliminating health disparities in Medicare+Choice program.
Sec. 617. Medicare+Choice program compatibility with employer or union group health plans.
Sec. 618. Special medigap enrollment antidiscrimination provision for certain beneficiaries.
Sec. 619. Restoring effective date of elections and changes of elections of Medicare+Choice plans.
Sec. 620. Permitting ESRD beneficiaries to enroll in another Medicare+Choice plan if the plan in which they are enrolled is terminated.

Sec. 621. Providing choice for skilled nursing facility services under the Medicare+Choice program.
Sec. 622. Providing for accountability of Medicare+Choice plans.

Subtitle C—Other Managed Care Reforms

Sec. 631. 1-year extension of social health maintenance organization (SHMO) demonstration project.
Sec. 632. Revised terms and conditions for extension of medicare community nursing organization (CNO) demonstration project.
Sec. 633. Extension of medicare municipal health services demonstration projects.
Sec. 634. Service area expansion for medicare cost contracts during transition period.

TITLE VII—MEDICAID

Sec. 701. DSH payments.
Sec. 702. New prospective payment system for Federally-qualified health centers and rural health clinics.
Sec. 703. Streamlined approval of continued State-wide section 1115 Medicaid waivers.
Sec. 704. Medicaid county-organized health systems.
Sec. 705. Deadline for issuance of final regulation relating to Medicaid upper payment limits.
Sec. 706. Alaska FMAP.

TITLE VIII—STATE CHILDREN'S HEALTH INSURANCE PROGRAM

Sec. 801. Special rule for redistribution and availability of unused fiscal year 1998 and 1999 SCHIP allotments.
Sec. 802. Authority to pay Medicaid expansion SCHIP costs from title XXI appropriation.

TITLE IX—OTHER PROVISIONS

Subtitle A—PACE Program

Sec. 901. Extension of transition for current waivers.
Sec. 902. Continuing of certain operating arrangements permitted.
Sec. 903. Flexibility in exercising waiver authority.

Subtitle B—Outreach to Eligible Low-Income Medicare Beneficiaries

Sec. 911. Outreach on availability of Medicare cost-sharing assistance to eligible low-income Medicare beneficiaries.

Subtitle C—Maternal and Child Health Block Grant

Sec. 921. Increase in authorization of appropriations for the maternal and child health services block grant.

Subtitle D—Diabetes

Sec. 931. Increase in appropriations for special diabetes programs for type I diabetes and Indians.
Sec. 932. Appropriations for Ricky Ray Hemophilia Relief Fund.

TITLE I—MEDICARE BENEFICIARY IMPROVEMENTS

Subtitle A—Improved Preventive Benefits

SEC. 101. COVERAGE OF BIENNIAL SCREENING PAP SMEAR AND PELVIC EXAMS.

(a) IN GENERAL.—

(1) BIENNIAL SCREENING PAP SMEAR.—Section 1861(nn)(1) (42 U.S.C. 1395x(nn)(1)) is amended by striking "3 years" and inserting "2 years".

(2) BIENNIAL SCREENING PELVIC EXAM.—Section 1861(nn)(2) (42 U.S.C. 1395x(nn)(2)) is amended by striking "3 years" and inserting "2 years".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to items and services furnished on or after July 1, 2001.

SEC. 102. COVERAGE OF SCREENING FOR GLAUCOMA.

(a) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (S);

(2) by inserting "and" at the end of subparagraph (T); and

(3) by adding at the end the following:

"(U) screening for glaucoma (as defined in subsection (uu)) for individuals determined to be at high risk for glaucoma, individuals with a family history of glaucoma and individuals with diabetes;".

(b) SERVICES DESCRIBED.—Section 1861 (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Screening for Glaucoma

"(uu) The term 'screening for glaucoma' means a dilated eye examination with an intraocular pressure measurement, and a direct ophthalmoscopy or a slit-lamp biomicroscopic examination for the early detection of glaucoma which is furnished by or under the direct supervision of an optometrist or ophthalmologist who is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished, as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service, if the individual involved has not had such an examination in the preceding year.".

(c) CONFORMING AMENDMENT.—Section 1862(a)(1)(F) (42 U.S.C. 1395y(a)(1)(F)) is amended—

(1) by striking "and,"; and

(2) by adding at the end the following: "and, in the case of screening for glaucoma, which is performed more frequently than is provided under section 1861(uu),".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2002.

SEC. 103. COVERAGE OF SCREENING COLONOSCOPY FOR AVERAGE RISK INDIVIDUALS.

(a) IN GENERAL.—Section 1861(pp) (42 U.S.C. 1395x(pp)) is amended—

(1) in paragraph (1)(C), by striking "In the case of an individual at high risk for colorectal cancer, screening colonoscopy" and inserting "Screening colonoscopy"; and

(2) in paragraph (2), by striking "In paragraph (1)(C), an" and inserting "An".

(b) FREQUENCY LIMITS FOR SCREENING COLONOSCOPY.—Section 1834(d) (42 U.S.C. 1395m(d)) is amended—

(1) in paragraph (2)(E)(ii), by inserting before the period at the end the following: "or, in the case of an individual who is not at high risk for colorectal cancer, if the procedure is per-

formed within the 119 months after a previous screening colonoscopy";

(2) in paragraph (3)—

(A) in the heading by striking "FOR INDIVIDUALS AT HIGH RISK FOR COLORECTAL CANCER";

(B) in subparagraph (A), by striking "for individuals at high risk for colorectal cancer (as defined in section 1861(pp)(2))";

(C) in subparagraph (E), by inserting before the period at the end the following: "or for other individuals if the procedure is performed within the 119 months after a previous screening colonoscopy or within 47 months after a previous screening flexible sigmoidoscopy".

(c) EFFECTIVE DATE.—The amendments made by this section apply to colorectal cancer screening services provided on or after July 1, 2001.

SEC. 104. MODERNIZATION OF SCREENING MAMMOGRAPHY BENEFIT.

(a) INCLUSION IN PHYSICIAN FEE SCHEDULE.—Section 1848(j)(3) (42 U.S.C. 1395w–4(j)(3)) is amended by inserting "(13)," after "(4),".

(b) CONFORMING AMENDMENT.—Section 1834(c) (42 U.S.C. 1395m(c)) is amended to read as follows:

"(c) PAYMENT AND STANDARDS FOR SCREENING MAMMOGRAPHY.—

"(1) IN GENERAL.—With respect to expenses incurred for screening mammography (as defined in section 1861(jj)), payment may be made only—

"(A) for screening mammography conducted consistent with the frequency permitted under paragraph (2); and

"(B) if the screening mammography is conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act.

"(2) FREQUENCY COVERED.—

"(A) IN GENERAL.—Subject to revision by the Secretary under subparagraph (B)—

"(i) no payment may be made under this part for screening mammography performed on a woman under 35 years of age;

"(ii) payment may be made under this part for only one screening mammography performed on a woman over 34 years of age, but under 40 years of age; and

"(iii) in the case of a woman over 39 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

"(B) REVISION OF FREQUENCY.—

"(i) REVIEW.—The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening mammography, based on age and such other factors as the Secretary believes to be pertinent.

"(ii) REVISION OF FREQUENCY.—The Secretary, taking into consideration the review made under clause

(i), may revise from time to time the frequency with which screening mammography may be paid for under this subsection.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply with respect to screening mammographies furnished on or after January 1, 2002.

(d) PAYMENT FOR NEW TECHNOLOGIES.—

(1) TESTS FURNISHED IN 2001.—

(A) SCREENING.—For a screening mammography (as defined in section 1861(jj) of the Social Security Act (42 U.S.C. 1395(jj))) furnished during the period beginning on April 1, 2001, and ending on December 31, 2001, that uses a new technology, payment for such screening mammography shall be made as follows:

(i) In the case of a technology which directly takes a digital image (without involving film) and subsequently analyzes such resulting image with software to identify possible problem areas, in an amount equal to 150 percent of the amount of payment under section 1848 of such Act (42 U.S.C. 1395w–4) for a bilateral diagnostic mammography (under HCPCS code 76091) for such year.

(ii) In the case of a technology which allows conversion of a standard film mammogram into a digital image and subsequently analyzes such resulting image with software to identify possible problem areas, in an amount equal to the limit that would otherwise be applied under section 1834(c)(3) of such Act (42 U.S.C. 1395m(c)(3)) for 2001, increased by $15.

(B) BILATERAL DIAGNOSTIC MAMMOGRAPHY.—For a bilateral diagnostic mammography (under HCPCS code 76091) furnished during the period beginning on April 1, 2001, and ending on December 31, 2001, that uses a new technology described in subparagraph (A)(i), payment for such mammography shall be the amount of payment provided for under such subparagraph.

The Secretary of Health and Human Services may implement the provisions of this paragraph by program memorandum or otherwise.

(2) CONSIDERATION OF NEW HCPCS CODE FOR NEW TECHNOLOGIES AFTER 2001.—The Secretary shall determine, for such screening mammographies performed after 2001, whether the assignment of a new HCPCS code is appropriate for screening mammography that uses a new technology. If the Secretary determines that a new code is appropriate for such screening mammography, the Secretary shall provide for such new code for such tests furnished after 2001.

(3) NEW TECHNOLOGY DESCRIBED.—For purposes of this subsection, a new technology with respect to a screening mammography is an advance in technology with respect to the test or equipment that results in the following:

(A) A significant increase or decrease in the resources used in the test or in the manufacture of the equipment.

(B) A significant improvement in the performance of the test or equipment.

(C) A significant advance in medical technology that is expected to significantly improve the treatment of medicare beneficiaries.

(4) HCPCS CODE DEFINED.—The term "HCPCS code" means an alphanumeric code under the Health Care Financing Administration Common Procedure Coding System (HCPCS).

SEC. 105. COVERAGE OF MEDICAL NUTRITION THERAPY SERVICES FOR BENEFICIARIES WITH DIABETES OR A RENAL DISEASE.

(a) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)), as amended by section 102(a), is amended—

(1) in subparagraph (T), by striking "and" at the end;

(2) in subparagraph (U), by inserting "and" at the end; and

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

"(V) medical nutrition therapy services (as defined in subsection (vv)(1)) in the case of a beneficiary with diabetes or a renal disease who—

"(i) has not received diabetes outpatient self-management training services within a time period determined by the Secretary; and

"(ii) meets such other criteria determined by the Secretary after consideration of protocols established by dietitian or nutrition professional organizations;".

(b) SERVICES DESCRIBED.—Section 1861 (42 U.S.C. 1395x), as amended by section 102(b), is amended by adding at the end the following:

"Medical Nutrition Therapy Services; Registered Dietitian or Nutrition Professional

"(vv)(1) The term 'medical nutrition therapy services' means nutritional diagnostic, therapy, and counseling services for the purpose of disease management which are furnished by a registered dietitian or nutrition professional (as defined in paragraph (2)) pursuant to a referral by a physician (as defined in subsection (r)(1)).

"(2) Subject to paragraph (3), the term 'registered dietitian or nutrition professional' means an individual who—

"(A) holds a baccalaureate or higher degree granted by a regionally accredited college or university in the United States (or an equivalent foreign degree) with completion of the academic requirements of a program in nutrition or dietetics, as accredited by an appropriate national accreditation organization recognized by the Secretary for this purpose;

"(B) has completed at least 900 hours of supervised dietetics practice under the supervision of a registered dietitian or nutrition professional; and

"(C)(i) is licensed or certified as a dietitian or nutrition professional by the State in which the services are performed; or

"(ii) in the case of an individual in a State that does not provide for such licensure or certification, meets such other criteria as the Secretary establishes.

"(3) Subparagraphs (A) and (B) of paragraph (2) shall not apply in the case of an individual who, as of the date of the enact-

ment of this subsection, is licensed or certified as a dietitian or nutrition professional by the State in which medical nutrition therapy services are performed.".

(c) PAYMENT.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(1) by striking "and" before "(S)"; and

(2) by inserting before the semicolon at the end the following: ", and (T) with respect to medical nutrition therapy services (as defined in section 1861(vv)), the amount paid shall be 80 percent of the lesser of the actual charge for the services or 85 percent of the amount determined under the fee schedule established under section 1848(b) for the same services if furnished by a physician".

(d) APPLICATION OF LIMITS ON BILLING.—Section 1842(b)(18)(C) (42 U.S.C. 1395u(b)(18)(C)) is amended by adding at the end the following new clause:

"(vi) A registered dietitian or nutrition professional.".

(e) EFFECTIVE DATE.—The amendments made by this section apply to services furnished on or after January 1, 2002.

(f) STUDY.—Not later than July 1, 2003, the Secretary of Health and Human Services shall submit to Congress a report that contains recommendations with respect to the expansion to other medicare beneficiary populations of the medical nutrition therapy services benefit (furnished under the amendments made by this section).

Subtitle B—Other Beneficiary Improvements

SEC. 111. ACCELERATION OF REDUCTION OF BENEFICIARY COPAYMENT FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES.

(a) REDUCING THE UPPER LIMIT ON BENEFICIARY COPAYMENT.—

(1) IN GENERAL.—Section 1833(t)(8)(C) (42 U.S.C. 1395l(t)(8)(C)) is amended to read as follows:

"(C) LIMITATION ON COPAYMENT AMOUNT.—

"(i) TO INPATIENT HOSPITAL DEDUCTIBLE AMOUNT.—In no case shall the copayment amount for a procedure performed in a year exceed the amount of the inpatient hospital deductible established under section 1813(b) for that year.

"(ii) TO SPECIFIED PERCENTAGE.—The Secretary shall reduce the national unadjusted copayment amount for a covered OPD service (or group of such services) furnished in a year in a manner so that the effective copayment rate (determined on a national unadjusted basis) for that service in the year does not exceed the following percentage:

"(I) For procedures performed in 2001, 60 percent.

"(II) For procedures performed in 2002 or 2003, 55 percent.

"(III) For procedures performed in 2004, 50 percent.

"(IV) For procedures performed in 2005, 45 percent.

"(V) For procedures performed in 2006 and thereafter, 40 percent.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies with respect to services furnished on or after January 1, 2001.

(b) CONSTRUCTION REGARDING LIMITING INCREASES IN COST-SHARING.—Nothing in this Act or the Social Security Act shall be construed as preventing a hospital from waiving the amount of any coinsurance for outpatient hospital services under the medicare program under title XVIII of the Social Security Act that may have been increased as a result of the implementation of the prospective payment system under section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)).

(c) GAO STUDY OF REDUCTION IN MEDIGAP PREMIUM LEVELS RESULTING FROM REDUCTIONS IN COINSURANCE.—The Comptroller General of the United States shall work, in concert with the National Association of Insurance Commissioners, to evaluate the extent to which the premium levels for medicare supplemental policies reflect the reductions in coinsurance resulting from the amendment made by subsection (a). Not later than April 1, 2004, the Comptroller General shall submit to Congress a report on such evaluation and the extent to which the reductions in beneficiary coinsurance effected by such amendment have resulted in actual savings to medicare beneficiaries.

SEC. 112. PRESERVATION OF COVERAGE OF DRUGS AND BIOLOGICALS UNDER PART B OF THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended, in each of subparagraphs (A) and (B), by striking "(including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered)" and inserting "(including drugs and biologicals which are not usually self-administered by the patient)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to drugs and biologicals administered on or after the date of the enactment of this Act.

SEC. 113. ELIMINATION OF TIME LIMITATION ON MEDICARE BENEFITS FOR IMMUNOSUPPRESSIVE DRUGS.

(a) IN GENERAL.—Section 1861(s)(2)(J) (42 U.S.C. 1395x(s)(2)(J)) is amended by striking ", but only" and all that follows up to the semicolon at the end.

(b) CONFORMING AMENDMENTS.—

(1) EXTENDED COVERAGE.—Section 1832 (42 U.S.C. 1395k) is amended—

(A) by striking subsection (b); and

(B) by redesignating subsection (c) as subsection (b).

(2) PASS-THROUGH; REPORT.—Section 227 of BBRA is amended by striking subsection (d).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to drugs furnished on or after the date of the enactment of this Act.

SEC. 114. IMPOSITION OF BILLING LIMITS ON PRESCRIPTION DRUGS.

(a) IN GENERAL.—Section 1842(o) (42 U.S.C. 1395u(o)) is amended by adding at the end the following new paragraph:

"(3)(A) Payment for a charge for any drug or biological for which payment may be made under this part may be made under this part only on an assignment-related basis.

"(B) The provisions of subsection (b)(18)(B) shall apply to charges for such drugs or biologicals in the same manner as they apply to services furnished by a practitioner described in subsection (b)(18)(C).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items furnished on or after January 1, 2001.

Subtitle C—Demonstration Projects and Studies

SEC. 121. DEMONSTRATION PROJECT FOR DISEASE MANAGEMENT FOR SEVERELY CHRONICALLY ILL MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration project under this section (in this section referred to as the "project") to demonstrate the impact on costs and health outcomes of applying disease management to medicare beneficiaries with diagnosed, advanced-stage congestive heart failure, diabetes, or coronary heart disease. In no case may the number of participants in the project exceed 30,000 at any time.

(b) VOLUNTARY PARTICIPATION.—

(1) ELIGIBILITY.—Medicare beneficiaries are eligible to participate in the project only if—

(A) they meet specific medical criteria demonstrating the appropriate diagnosis and the advanced nature of their disease;

(B) their physicians approve of participation in the project; and

(C) they are not enrolled in a Medicare+Choice plan.

(2) BENEFITS.—A beneficiary who is enrolled in the project shall be eligible—

(A) for disease management services related to their chronic health condition; and

(B) for payment for all costs for prescription drugs without regard to whether or not they relate to the chronic health condition, except that the project may provide for modest cost-sharing with respect to prescription drug coverage.

(c) CONTRACTS WITH DISEASE MANAGEMENT ORGANIZATIONS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall carry out the project through contracts with up to three disease management organizations. The Secretary shall not enter into such a contract with an organization unless the organization demonstrates that it can produce improved health outcomes and reduce aggregate medicare expenditures consistent with paragraph (2).

(2) CONTRACT PROVISIONS.—Under such contracts—

(A) such an organization shall be required to provide for prescription drug coverage described in subsection (b)(2)(B);

(B) such an organization shall be paid a fee negotiated and established by the Secretary in a manner so that (taking into account savings in expenditures under parts A and B of the medicare program under title XVIII of the Social Security Act) there will be a net reduction in expenditures under the medicare program as a result of the project; and

(C) such an organization shall guarantee, through an appropriate arrangement with a reinsurance company or otherwise, the net reduction in expenditures described in subparagraph (B).

(3) PAYMENTS.—Payments to such organizations shall be made in appropriate proportion from the Trust Funds established under title XVIII of the Social Security Act.

(d) APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to paragraph (2), the provisions of section 1882(s)(3) (other than clauses (i) through (iv) of subparagraph (B)) and 1882(s)(4) of the Social Security Act shall apply to enrollment (and termination of enrollment) in the demonstration project under this section, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare+Choice organization in a Medicare+Choice plan.

(2) In applying paragraph (1)—

(A) any reference in clause (v) or (vi) of section 1882(s)(3)(B) of such Act to 12 months is deemed a reference to the period of the demonstration project; and

(B) the notification required under section 1882(s)(3)(D) of such Act shall be provided in a manner specified by the Secretary of Health and Human Services.

(e) DURATION.—The project shall last for not longer than 3 years.

(f) WAIVER.—The Secretary of Health and Human Services shall waive such provisions of title XVIII of the Social Security Act as may be necessary to provide for payment for services under the project in accordance with subsection (c)(3).

(g) REPORT.—The Secretary of Health and Human Services shall submit to Congress an interim report on the project not later than 2 years after the date it is first implemented and a final report on the project not later than 6 months after the date of its completion. Such reports shall include information on the impact of the project on costs and health outcomes and recommendations on the cost-effectiveness of extending or expanding the project.

SEC. 122. CANCER PREVENTION AND TREATMENT DEMONSTRATION FOR ETHNIC AND RACIAL MINORITIES.

(a) DEMONSTRATION.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct demonstration projects (in this section referred to as "demonstration projects") for the purpose of developing models and evaluating methods that—

(A) improve the quality of items and services provided to target individuals in order to facilitate reduced disparities in early detection and treatment of cancer;

(B) improve clinical outcomes, satisfaction, quality of life, and appropriate use of medicare-covered services and referral patterns among those target individuals with cancer;

(C) eliminate disparities in the rate of preventive cancer screening measures, such as pap smears and prostate cancer screenings, among target individuals; and

(D) promote collaboration with community-based organizations to ensure cultural competency of health care professionals and linguistic access for persons with limited English proficiency.

(2) TARGET INDIVIDUAL DEFINED.—In this section, the term "target individual" means an individual of a racial and ethnic minority group, as defined by section 1707 of the Public Health Service Act, who is entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act.

(b) PROGRAM DESIGN.—

(1) INITIAL DESIGN.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall evaluate best practices in the private sector, community programs, and academic research of methods that reduce disparities among individuals of racial and ethnic minority groups in the prevention and treatment of cancer and shall design the demonstration projects based on such evaluation.

(2) NUMBER AND PROJECT AREAS.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall implement at least 9 demonstration projects, including the following:

(A) 2 projects for each of the 4 major racial and ethnic minority groups (American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian Americans and Pacific Islanders; Blacks; and Hispanics. The 2 projects must target different ethnic subpopulations.

(B) 1 project within the Pacific Islands.

(C) At least 1 project each in a rural area and inner-city area.

(3) EXPANSION OF PROJECTS; IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—If the initial report under subsection (c) contains an evaluation that demonstration projects—

(A) reduce expenditures under the medicare program under title XVIII of the Social Security Act; or

(B) do not increase expenditures under the medicare program and reduce racial and ethnic health disparities in the quality of health care services provided to target individuals and increase satisfaction of beneficiaries and health care providers;

the Secretary shall continue the existing demonstration projects and may expand the number of demonstration projects.

(c) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 2 years after the date the Secretary implements the initial demonstration projects, and bi-

annually thereafter, the Secretary shall submit to Congress a report regarding the demonstration projects.

(2) CONTENTS OF REPORT.—Each report under paragraph (1) shall include the following:

(A) A description of the demonstration projects.

(B) An evaluation of—

(i) the cost-effectiveness of the demonstration projects;

(ii) the quality of the health care services provided to target individuals under the demonstration projects; and

(iii) beneficiary and health care provider satisfaction under the demonstration projects.

(C) Any other information regarding the demonstration projects that the Secretary determines to be appropriate.

(d) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

(e) FUNDING.—

(1) DEMONSTRATION PROJECTS.—

(A) STATE PROJECTS.—Except as provided in subparagraph (B), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Insurance Trust Fund under title XVIII of the Social Security Act, in such proportions as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration projects.

(B) TERRITORY PROJECTS.—In the case of a demonstration project described in subsection (b)(2)(B), amounts shall be available only as provided in any Federal law making appropriations for the territories.

(2) LIMITATION.—In conducting demonstration projects, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the sum of the amount which the Secretary would have paid under the program for the prevention and treatment of cancer if the demonstration projects were not implemented, plus $25,000,000.

SEC. 123. STUDY ON MEDICARE COVERAGE OF ROUTINE THYROID SCREENING.

(a) STUDY.—The Secretary of Health and Human Services shall request the National Academy of Sciences, and as appropriate in conjunction with the United States Preventive Services Task Force, to conduct a study on the addition of coverage of routine thyroid screening using a thyroid stimulating hormone test as a preventive benefit provided to medicare beneficiaries under title XVIII of the Social Security Act for some or all medicare beneficiaries. In conducting the study, the Academy shall consider the short-term and long-term benefits, and costs to the medicare program, of such addition.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit a report on the findings of the study conducted under sub-

section (a) to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate.

SEC. 124. MEDPAC STUDY ON CONSUMER COALITIONS.

(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study that examines the use of consumer coalitions in the marketing of Medicare+Choice plans under the medicare program under title XVIII of the Social Security Act. The study shall examine—

(1) the potential for increased efficiency in the medicare program through greater beneficiary knowledge of their health care options, decreased marketing costs of Medicare+Choice organizations, and creation of a group market;

(2) the implications of Medicare+Choice plans and medicare supplemental policies (under section 1882 of the Social Security Act (42 U.S.C. 1395ss)) offering medicare beneficiaries in the same geographic location different benefits and premiums based on their affiliation with a consumer coalition;

(3) how coalitions should be governed, how they should be accountable to the Secretary of Health and Human Services, and how potential conflicts of interest in the activities of consumer coalitions should be avoided; and

(4) how such coalitions should be funded.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under subsection (a). The report shall include a recommendation on whether and how a demonstration project might be conducted for the operation of consumer coalitions under the medicare program.

(c) CONSUMER COALITION DEFINED.—For purposes of this section, the term "consumer coalition" means a nonprofit, community-based group of organizations that—

(1) provides information to medicare beneficiaries about their health care options under the medicare program; and

(2) negotiates benefits and premiums for medicare beneficiaries who are members or otherwise affiliated with the group of organizations with Medicare+Choice organizations offering Medicare+Choice plans, issuers of medicare supplemental policies, issuers of long-term care coverage, and pharmacy benefit managers.

SEC. 125. STUDY ON LIMITATION ON STATE PAYMENT FOR MEDICARE COST-SHARING AFFECTING ACCESS TO SERVICES FOR QUALIFIED MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine if access to certain services (including mental health services) for qualified medicare beneficiaries has been affected by limitations on a State's payment for medicare cost-sharing for such beneficiaries under section 1902(n) of the Social Security Act (42 U.S.C. 1396a(n)). As part of such study, the Secretary shall analyze the effect of such payment limitation on providers who serve a disproportionate share of such beneficiaries.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study under subsection (a). The report shall include rec-

ommendations regarding any changes that should be made to the State payment limits under section 1902(n) for qualified medicare beneficiaries to ensure appropriate access to services.

SEC. 126. INSTITUTE OF MEDICINE STUDY ON WAIVER OF 24-MONTH WAITING PERIOD FOR MEDICARE DISABILITY ELIGIBILITY FOR AMYOTROPHIC LATERAL SCLEROSIS (ALS) AND OTHER DEVASTATING DISEASES.

(a) STUDY.—The Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine to conduct a study that examines the appropriateness of waiving the 24-month waiting period for eligibility for benefits under the medicare program under title XVIII of the Social Security Act applicable under section 226(b) of such Act (42 U.S.C. 426(b)) for individuals with a devastating disease. For purposes of this section, the term "devastating disease" means amyotrophic lateral sclerosis (ALS) and includes any other disease that is as rapidly debilitating as ALS.

(b) REPORT.—The contract shall provide for the submission to Congress and the Secretary of a report on the study conducted under subsection (a) by not later than 18 months after the date of the enactment of this Act.

SEC. 127. STUDIES ON PREVENTIVE INTERVENTIONS IN PRIMARY CARE FOR OLDER AMERICANS.

(a) STUDIES.—The Secretary of Health and Human Services, acting through the United States Preventive Services Task Force, shall conduct a series of studies designed to identify preventive interventions that can be delivered in the primary care setting and that are most valuable to older Americans.

(b) MISSION STATEMENT.—The mission statement of the United States Preventive Services Task Force is amended to include the evaluation of services that are of particular relevance to older Americans.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit to Congress a report on the conclusions of the studies conducted under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

SEC. 128. MEDPAC STUDY AND REPORT ON MEDICARE COVERAGE OF CARDIAC AND PULMONARY REHABILITATION THERAPY SERVICES.

(a) STUDY.—

(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study on coverage of cardiac and pulmonary rehabilitation therapy services under the medicare program under title XVIII of the Social Security Act.

(2) FOCUS.—In conducting the study under paragraph (1), the Commission shall focus on the appropriate—

(A) qualifying diagnoses required for coverage of cardiac and pulmonary rehabilitation therapy services;

(B) level of physician direct involvement and supervision in furnishing such services; and

(C) level of reimbursement for such services.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress a re-

port on the study conducted under subsection (a) together with such recommendations for legislation and administrative action as the Commission determines appropriate.

TITLE II—RURAL HEALTH CARE IMPROVEMENTS

Subtitle A—Critical Access Hospital Provisions

SEC. 201. CLARIFICATION OF NO BENEFICIARY COST-SHARING FOR CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED BY CRITICAL ACCESS HOSPITALS.

(a) PAYMENT CLARIFICATION.—Section 1834(g) (42 U.S.C. 1395m(g)) is amended by adding at the end the following new paragraph:

"(4) NO BENEFICIARY COST-SHARING FOR CLINICAL DIAGNOSTIC LABORATORY SERVICES.—No coinsurance, deductible, copayment, or other cost-sharing otherwise applicable under this part shall apply with respect to clinical diagnostic laboratory services furnished as an outpatient critical access hospital service. Nothing in this title shall be construed as providing for payment for clinical diagnostic laboratory services furnished as part of outpatient critical access hospital services, other than on the basis described in this subsection.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraphs (1)(D)(i) and (2)(D)(i) of section 1833(a) (42 U.S.C. 1395l(a)) are each amended by striking "or which are furnished on an outpatient basis by a critical access hospital".

(2) Section 403(d)(2) of BBRA (113 Stat. 1501A–371) is amended by striking "The amendment made by subsection (a) shall apply" and inserting "Paragraphs (1) through (3) of section 1834(g) of the Social Security Act (as amended by paragraph (1)) apply".

(c) EFFECTIVE DATES.—The amendment made—

(1) by subsection (a) applies to services furnished on or after the date of the enactment of BBRA;

(2) by subsection (b)(1) applies as if included in the enactment of section 403(e)(1) of BBRA (113 Stat. 1501A–371); and

(3) by subsection (b)(2) applies as if included in the enactment of section 403(d)(2) of BBRA (113 Stat. 1501A–371).

SEC. 202. ASSISTANCE WITH FEE SCHEDULE PAYMENT FOR PROFESSIONAL SERVICES UNDER ALL-INCLUSIVE RATE.

(a) IN GENERAL.—Section 1834(g)(2)(B) (42 U.S.C. 1395m(g)(2)(B)) is amended by inserting "115 percent of" before "such amounts".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to items and services furnished on or after April 1, 2001.

SEC. 203. EXEMPTION OF CRITICAL ACCESS HOSPITAL SWING BEDS FROM SNF PPS.

(a) IN GENERAL.—Section 1888(e)(7) (42 U.S.C. 1395yy(e)(7)) is amended—

(1) in the heading, by striking "TRANSITION FOR" and inserting "TREATMENT OF";

(2) in subparagraph (A), by striking "IN GENERAL.—The" and inserting "TRANSITION.—Subject to subparagraph (C), the";

(3) in subparagraph (A), by inserting "(other than critical access hospitals)" after "facilities described in subparagraph (B)";

(4) in subparagraph (B), by striking ", for which payment" and all that follows before the period; and

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

"(C) EXEMPTION FROM PPS OF SWING-BED SERVICES FURNISHED IN CRITICAL ACCESS HOSPITALS.—The prospective payment system established under this subsection shall not apply to services furnished by a critical access hospital pursuant to an agreement under section 1883.".

(b) PAYMENT ON A REASONABLE COST BASIS FOR SWING BED SERVICES FURNISHED BY CRITICAL ACCESS HOSPITALS.—Section 1883(a) (42 U.S.C. 1395tt(a)) is amended—

(1) in paragraph (2)(A), by inserting "(other than a critical access hospital)" after "any hospital"; and

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

"(3) Notwithstanding any other provision of this title, a critical access hospital shall be paid for covered skilled nursing facility services furnished under an agreement entered into under this section on the basis of the reasonable costs of such services (as determined under section 1861(v)).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after the date of the enactment of this Act.

SEC. 204. PAYMENT IN CRITICAL ACCESS HOSPITALS FOR EMERGENCY ROOM ON-CALL PHYSICIANS.

(a) IN GENERAL.—Section 1834(g) (42 U.S.C. 1395m(g)), as amended by section 201(a), is further amended by adding at the end the following new paragraph:

"(5) COVERAGE OF COSTS FOR EMERGENCY ROOM ON-CALL PHYSICIANS.—In determining the reasonable costs of outpatient critical access hospital services under paragraphs (1) and (2)(A), the Secretary shall recognize as allowable costs, amounts (as defined by the Secretary) for reasonable compensation and related costs for emergency room physicians who are on-call (as defined by the Secretary) but who are not present on the premises of the critical access hospital involved, and are not otherwise furnishing physicians' services and are not on-call at any other provider or facility.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to cost reporting periods beginning on or after October 1, 2001.

SEC. 205. TREATMENT OF AMBULANCE SERVICES FURNISHED BY CERTAIN CRITICAL ACCESS HOSPITALS.

(a) IN GENERAL.—Section 1834(l) (42 U.S.C. 1395m(l)) is amended by adding at the end the following new paragraph:

"(8) SERVICES FURNISHED BY CRITICAL ACCESS HOSPITALS.—Notwithstanding any other provision of this subsection, the Secretary shall pay the reasonable costs incurred in furnishing ambulance services if such services are furnished—

"(A) by a critical access hospital (as defined in section 1861(mm)(1)), or

"(B) by an entity that is owned and operated by a critical access hospital,

but only if the critical access hospital or entity is the only provider or supplier of ambulance services that is located within a 35-mile drive of such critical access hospital.".

(b) CONFORMING AMENDMENT.—Section 1833(a)(1)(R) (42 U.S.C. 1395l(a)(1)(R)) is amended—

(1) by striking "ambulance service," and inserting "ambulance services, (i)"; and

(2) by inserting before the comma at the end the following: "and (ii) with respect to ambulance services described in section 1834(l)(8), the amounts paid shall be the amounts determined under section 1834(g) for outpatient critical access hospital services".

(c) EFFECTIVE DATE.—The amendments made by this section apply to services furnished on or after the date of the enactment of this Act.

SEC. 206. GAO STUDY ON CERTAIN ELIGIBILITY REQUIREMENTS FOR CRITICAL ACCESS HOSPITALS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the eligibility requirements for critical access hospitals under section 1820(c) of the Social Security Act (42 U.S.C. 1395i–4(c)) with respect to limitations on average length of stay and number of beds in such a hospital, including an analysis of—

(1) the feasibility of having a distinct part unit as part of a critical access hospital for purposes of the medicare program under title XVIII of such Act, and

(2) the effect of seasonal variations in patient admissions on critical access hospital eligibility requirements with respect to limitations on average annual length of stay and number of beds.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a) together with recommendations regarding—

(1) whether distinct part units should be permitted as part of a critical access hospital under the medicare program;

(2) if so permitted, the payment methodologies that should apply with respect to services provided by such units;

(3) whether, and to what extent, such units should be included in or excluded from the bed limits applicable to critical access hospitals under the medicare program; and

(4) any adjustments to such eligibility requirements to account for seasonal variations in patient admissions.

Subtitle B—Other Rural Hospitals Provisions

SEC. 211. EQUITABLE TREATMENT FOR RURAL DISPROPORTIONATE SHARE HOSPITALS.

(a) APPLICATION OF UNIFORM THRESHOLD.—Section 1886(d)(5)(F)(v) (42 U.S.C. 1395ww(d)(5)(F)(v)) is amended—

(1) in subclause (II), by inserting "(or 15 percent, for discharges occurring on or after April 1, 2001)" after "30 percent";

(2) in subclause (III), by inserting "(or 15 percent, for discharges occurring on or after April 1, 2001)" after "40 percent"; and

(3) in subclause (IV), by inserting "(or 15 percent, for discharges occurring on or after April 1, 2001)" after "45 percent".

(b) ADJUSTMENT OF PAYMENT FORMULAS.—

(1) SOLE COMMUNITY HOSPITALS.—Section 1886(d)(5)(F) (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(A) in clause (iv)(VI), by inserting after "10 percent" the following: "or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (x)"; and

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

"(x) For purposes of clause (iv)(VI) (relating to sole community hospitals), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

"(I) is less than 17.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P–15)(.65) + 2.5;

"(II) is equal to or exceeds 17.3, but is less than 30.0, such adjustment percentage is equal to 4 percent; or

"(III) is equal to or exceeds 40, such adjustment percentage is equal to 5 percent,

where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).".

(2) RURAL REFERRAL CENTERS.—Such section is further amended—

(A) in clause (iv)(V), by inserting after "clause (viii)" the following: "or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xi)"; and

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

"(xi) For purposes of clause (iv)(V) (relating to rural referral centers), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

"(I) is less than 17.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P–15)(.65) + 2.5;

"(II) is equal to or exceeds 17.3, but is less than 30.0, such adjustment percentage is equal to 4 percent; or

"(III) is equal to or exceeds 30, such adjustment percentage is determined in accordance with the following formula: (P–30)(.6) + 4,

where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).".

(3) SMALL RURAL HOSPITALS GENERALLY.—Such section is further amended—

(A) in clause (iv)(III), by inserting after "4 percent" the following: "or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xii)"; and

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

"(xii) For purposes of clause (iv)(III) (relating to small rural hospitals generally), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

"(I) is less than 17.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P–15)(.65) + 2.5;

"(II) is equal to or exceeds 17.3, such adjustment percentage is equal to 4 percent,

where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).".

(4) HOSPITALS THAT ARE BOTH SOLE COMMUNITY HOSPITALS AND RURAL REFERRAL CENTERS.—Such section is further amended, in clause (iv)(IV), by inserting after "clause (viii)" the following: "or, for discharges occurring on or after April 1, 2001, the greater of the percentages determined under clause (x) or (xi)".

(5) URBAN HOSPITALS WITH LESS THAN 100 BEDS.—Such section is further amended—

(A) in clause (iv)(II), by inserting after "5 percent" the following: "or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xiii)"; and

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

"(xiii) For purposes of clause (iv)(II) (relating to urban hospitals with less than 100 beds), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

"(I) is less than 17.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P–15)(.65) + 2.5;

"(II) is equal to or exceeds 17.3, but is less than 40.0, such adjustment percentage is equal to 4 percent; or

"(III) is equal to or exceeds 40, such adjustment percentage is equal to 5 percent,

where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).".

SEC. 212. OPTION TO BASE ELIGIBILITY FOR MEDICARE DEPENDENT, SMALL RURAL HOSPITAL PROGRAM ON DISCHARGES DURING 2 OF THE 3 MOST RECENTLY AUDITED COST REPORTING PERIODS.

(a) IN GENERAL.—Section 1886(d)(5)(G)(iv)(IV) (42 U.S.C. 1395ww(d)(5)(G)(iv)(IV)) is amended by inserting ", or 2 of the 3 most recently audited cost reporting periods for which the Secretary has a settled cost report," after "1987".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cost reporting periods beginning on or after April 1, 2001.

SEC. 213. EXTENSION OF OPTION TO USE REBASED TARGET AMOUNTS TO ALL SOLE COMMUNITY HOSPITALS.

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

(1) in the matter preceding subclause (I), by striking "that for its cost reporting period beginning during 1999" and all that follows through "for such target amount" and inserting "there shall be substituted for the amount otherwise determined under subsection (d)(5)(D)(i), if such substitution results in a greater amount of payment under this section for the hospital";

(2) in subclause (I), by striking "target amount otherwise applicable" and all that follows through "target amount')" and inserting "the amount otherwise applicable to the hospital under subsection (d)(5)(D)(i) (referred to in this clause as the 'subsection (d)(5)(D)(i) amount')"; and

(3) in each of subclauses (II) and (III), by striking "subparagraph (C) target amount" and inserting "subsection (d)(5)(D)(i) amount".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 405 of BBRA (113 Stat. 1501A–372).

SEC. 214. MEDPAC ANALYSIS OF IMPACT OF VOLUME ON PER UNIT COST OF RURAL HOSPITALS WITH PSYCHIATRIC UNITS.

The Medicare Payment Advisory Commission, in its study conducted pursuant to subsection (a) of section 411 of BBRA (113 Stat. 1501A–377), shall include—

(1) in such study an analysis of the impact of volume on the per unit cost of rural hospitals with psychiatric units; and

(2) in its report under subsection (b) of such section a recommendation on whether special treatment for such hospitals may be warranted.

Subtitle C—Other Rural Provisions

SEC. 221. ASSISTANCE FOR PROVIDERS OF AMBULANCE SERVICES IN RURAL AREAS.

(a) TRANSITIONAL ASSISTANCE IN CERTAIN MILEAGE RATES.—Section 1834(l) (42 U.S.C. 1395m(l)) is amended by adding at the end the following new paragraph:

"(8) TRANSITIONAL ASSISTANCE FOR RURAL PROVIDERS.—In the case of ground ambulance services furnished on or after the date on which the Secretary implements the fee schedule under this subsection and before January 1, 2004, for which the trans-

portation originates in a rural area (as defined in section 1886(d)(2)(D)) or in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)), the fee schedule established under this subsection shall provide that, with respect to the payment rate for mileage for a trip above 17 miles, and up to 50 miles, the rate otherwise established shall be increased by not less than ½ of the additional payment per mile established for the first 17 miles of such a trip originating in a rural area.".

(b) GAO STUDIES ON THE COSTS OF AMBULANCE SERVICES FURNISHED IN RURAL AREAS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on each of the matters described in paragraph (2).

(2) MATTERS DESCRIBED.—The matters referred to in paragraph (1) are the following:

(A) The cost of efficiently providing ambulance services for trips originating in rural areas, with special emphasis on collection of cost data from rural providers.

(B) The means by which rural areas with low population densities can be identified for the purpose of designating areas in which the cost of providing ambulance services would be expected to be higher than similar services provided in more heavily populated areas because of low usage. Such study shall also include an analysis of the additional costs of providing ambulance services in areas designated under the previous sentence.

(3) REPORT.—Not later than June 30, 2002, the Comptroller General shall submit to Congress a report on the results of the studies conducted under paragraph (1) and shall include recommendations on steps that should be taken to assure access to ambulance services in rural areas.

(c) ADJUSTMENT IN RURAL RATES.—In providing for adjustments under subparagraph (D) of section 1834(l)(2) of the Social Security Act (42 U.S.C. 1395m(l)(2)) for years beginning with 2004, the Secretary of Health and Human Services shall take into consideration the recommendations contained in the report under subsection (b)(2) and shall adjust the fee schedule payment rates under such section for ambulance services provided in low density rural areas based on the increased cost (if any) of providing such services in such areas.

(d) EFFECTIVE DATE.—The amendment made by subsection (a) applies to services furnished on or after the date the Secretary implements the fee schedule under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)). In applying such amendment to services furnished on or after such date and before January 1, 2002, the amount of the rate increase provided under such amendment shall be equal to $1.25 per mile.

SEC. 222. PAYMENT FOR CERTAIN PHYSICIAN ASSISTANT SERVICES.

(a) PAYMENT FOR CERTAIN PHYSICIAN ASSISTANT SERVICES.—Section 1842(b)(6)(C) (42 U.S.C. 1395u(b)(6)(C)) is amended—

(1) by striking "for such services provided before January 1, 2003,"; and

(2) by striking the semicolon at the end and inserting a comma.

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

SEC. 223. REVISION OF MEDICARE REIMBURSEMENT FOR TELEHEALTH SERVICES.

(a) TIME LIMIT FOR BBA PROVISION.—Section 4206(a) of BBA (42 U.S.C. 1395l note) is amended by striking "Not later than January 1, 1999" and inserting "For services furnished on and after January 1, 1999, and before July 1, 2001".

(b) EXPANSION OF MEDICARE PAYMENT FOR TELEHEALTH SERVICES.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(m) PAYMENT FOR TELEHEALTH SERVICES.—

"(1) IN GENERAL.—The Secretary shall pay for telehealth services that are furnished via a telecommunications system by a physician (as defined in section 1861(r)) or a practitioner (described in section 1842(b)(18)(C)) to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner providing the telehealth service is not at the same location as the beneficiary. For purposes of the preceding sentence, in the case of any Federal telemedicine demonstration program conducted in Alaska or Hawaii, the term 'telecommunications system' includes store-and-forward technologies that provide for the asynchronous transmission of health care information in single or multimedia formats.

"(2) PAYMENT AMOUNT.—

"(A) DISTANT SITE.—The Secretary shall pay to a physician or practitioner located at a distant site that furnishes a telehealth service to an eligible telehealth individual an amount equal to the amount that such physician or practitioner would have been paid under this title had such service been furnished without the use of a telecommunications system.

"(B) FACILITY FEE FOR ORIGINATING SITE.—With respect to a telehealth service, subject to section 1833(a)(1)(U), there shall be paid to the originating site a facility fee equal to—

"(i) for the period beginning on July 1, 2001, and ending on December 31, 2001, and for 2002, $20; and

"(ii) for a subsequent year, the facility fee specified in clause (i) or this clause for the preceding year increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) for such subsequent year.

"(C) TELEPRESENTER NOT REQUIRED.—Nothing in this subsection shall be construed as requiring an eligible telehealth individual to be presented by a physician or practitioner at the originating site for the furnishing of a service via a telecommunications system, unless it is medically necessary (as determined by the physician or practitioner at the distant site).

"(3) LIMITATION ON BENEFICIARY CHARGES.—

"(A) PHYSICIAN AND PRACTITIONER.—The provisions of section 1848(g) and subparagraphs (A) and (B) of section 1842(b)(18) shall apply to a physician or practitioner receiving payment under this subsection in the same manner as they apply to physicians or practitioners under such sections.

"(B) ORIGINATING SITE.—The provisions of section 1842(b)(18) shall apply to originating sites receiving a facility fee in the same manner as they apply to practitioners under such section.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) DISTANT SITE.—The term 'distant site' means the site at which the physician or practitioner is located at the time the service is provided via a telecommunications system.

"(B) ELIGIBLE TELEHEALTH INDIVIDUAL.—The term 'eligible telehealth individual' means an individual enrolled under this part who receives a telehealth service furnished at an originating site.

"(C) ORIGINATING SITE.—

"(i) IN GENERAL.—The term 'originating site' means only those sites described in clause (ii) at which the eligible telehealth individual is located at the time the service is furnished via a telecommunications system and only if such site is located—

"(I) in an area that is designated as a rural health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A));

"(II) in a county that is not included in a Metropolitan Statistical Area; or

"(III) from an entity that participates in a Federal telemedicine demonstration project that has been approved by (or receives funding from) the Secretary of Health and Human Services as of December 31, 2000.

"(ii) SITES DESCRIBED.—The sites referred to in clause (i) are the following sites:

"(I) The office of a physician or practitioner.

"(II) A critical access hospital (as defined in section 1861(mm)(1)).

"(III) A rural health clinic (as defined in section 1861(aa)(s)).

"(IV) A Federally qualified health center (as defined in section 1861(aa)(4)).

"(V) A hospital (as defined in section 1861(e)).

"(D) PHYSICIAN.—The term "physician" has the meaning given that term in section 1861(r).

"(E) PRACTITIONER.—The term 'practitioner' has the meaning given that term in section 1842(b)(18)(C).

"(F) TELEHEALTH SERVICE.—

"(i) IN GENERAL.—The term 'telehealth service' means professional consultations, office visits, and office psychiatry services (identified as of July 1, 2000,

by HCPCS codes 99241–99275, 99201–99215, 90804–90809, and 90862 (and as subsequently modified by the Secretary)), and any additional service specified by the Secretary.

"(ii) YEARLY UPDATE.—The Secretary shall establish a process that provides, on an annual basis, for the addition or deletion of services (and HCPCS codes), as appropriate, to those specified in clause (i) for authorized payment under paragraph (1).".

(c) CONFORMING AMENDMENT.—Section 1833(a)(1) (42 U.S.C. 1395l(1)), as amended by section 105(c), is further amended—

(1) by striking "and (T)" and inserting "(T)"; and

(2) by inserting before the semicolon at the end the following: ", and (U) with respect to facility fees described in section 1834(m)(2)(B), the amounts paid shall be 80 percent of the lesser of the actual charge or the amounts specified in such section".

(d) STUDY AND REPORT ON ADDITIONAL COVERAGE.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to identify—

(A) settings and sites for the provision of telehealth services that are in addition to those permitted under section 1834(m) of the Social Security Act, as added by subsection (b);

(B) practitioners that may be reimbursed under such section for furnishing telehealth services that are in addition to the practitioners that may be reimbursed for such services under such section; and

(C) geographic areas in which telehealth services may be reimbursed that are in addition to the geographic areas where such services may be reimbursed under such section.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation that the Secretary determines are appropriate.

(e) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall be effective for services furnished on or after July 1, 2001.

SEC. 224. EXPANDING ACCESS TO RURAL HEALTH CLINICS.

(a) IN GENERAL.—The matter in section 1833(f) (42 U.S.C. 1395l(f)) preceding paragraph (1) is amended by striking "rural hospitals" and inserting "hospitals".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after July 1, 2001.

SEC. 225. MEDPAC STUDY ON LOW-VOLUME, ISOLATED RURAL HEALTH CARE PROVIDERS.

(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the effect of low patient and procedure volume on the financial status of low-volume, isolated rural health care providers participating in the medicare program under title XVIII of the Social Security Act.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under subsection (a) indicating—

(1) whether low-volume, isolated rural health care providers are having, or may have, significantly decreased medicare margins or other financial difficulties resulting from any of the payment methodologies described in subsection (c);

(2) whether the status as a low-volume, isolated rural health care provider should be designated under the medicare program and any criteria that should be used to qualify for such a status; and

(3) any changes in the payment methodologies described in subsection (c) that are necessary to provide appropriate reimbursement under the medicare program to low-volume, isolated rural health care providers (as designated pursuant to paragraph (2)).

(c) PAYMENT METHODOLOGIES DESCRIBED.—The payment methodologies described in this subsection are the following:

(1) The prospective payment system for hospital outpatient department services under section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)).

(2) The fee schedule for ambulance services under section 1834(l) of such Act (42 U.S.C. 1395m(l)).

(3) The prospective payment system for inpatient hospital services under section 1886 of such Act (42 U.S.C. 1395ww).

(4) The prospective payment system for routine service costs of skilled nursing facilities under section 1888(e) of such Act (42 U.S.C. 1395yy(e)).

(5) The prospective payment system for home health services under section 1895 of such Act (42 U.S.C. 1395fff).

TITLE III—PROVISIONS RELATING TO PART A

Subtitle A—Inpatient Hospital Services

SEC. 301. REVISION OF ACUTE CARE HOSPITAL PAYMENT UPDATE FOR 2001.

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

(1) in subclause (XVI), by striking "minus 1.1 percentage points for hospitals (other than sole community hospitals) in all areas, and the market basket percentage increase for sole community hospitals," and inserting "for hospitals in all areas,";

(2) in subclause (XVII)—

(A) by striking "minus 1.1 percentage points" and inserting "minus 0.55 percentage points; and

(B) by striking "and" at the end;

(3) by redesignating subclause (XVIII) as subclause (XIX);

(4) in subclause (XIX), as so redesignated, by striking "fiscal year 2003" and inserting "fiscal year 2004"; and

(5) by inserting after subclause (XVII) the following new subclause:

"(XVIII) for fiscal year 2003, the market basket percentage increase minus 0.55 percentage points for hospitals in all areas, and".

(b) SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001.—Notwithstanding the amendment made by subsection (a), for purposes of making payments for fiscal year 2001 for inpatient hospital services furnished by subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)), the "applicable percentage increase" referred to in section 1886(b)(3)(B)(i) of such Act (42 U.S.C. 1395ww(b)(3)(B)(i))—

(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be determined in accordance with subclause (XVI) of such section as in effect on the day before the date of the enactment of this Act; and

(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall be equal to—

(A) the market basket percentage increase plus 1.1 percentage points for hospitals (other than sole community hospitals) in all areas; and

(B) the market basket percentage increase for sole community hospitals.

(c) CONSIDERATION OF PRICE OF BLOOD AND BLOOD PRODUCTS IN MARKET BASKET INDEX.—The Secretary of Health and Human Services shall, when next (after the date of the enactment of this Act) rebasing and revising the hospital market basket index (as defined in section 1886(b)(3)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(iii))), consider the prices of blood and blood products purchased by hospitals and determine whether those prices are adequately reflected in such index.

(d) MEDPAC STUDY AND REPORT REGARDING CERTAIN HOSPITAL COSTS.—

(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on—

(A) any increased costs incurred by subsection (d) hospitals (as defined in paragraph (1)(B) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d))) in providing inpatient hospital services to medicare beneficiaries under title XVIII of such Act during the period beginning on October 1, 1983, and ending on September 30, 1999, that were attributable to—

(i) complying with new blood safety measure requirements; and

(ii) providing such services using new technologies;

(B) the extent to which the prospective payment system for such services under such section provides adequate and timely recognition of such increased costs;

(C) the prospects for (and to the extent practicable, the magnitude of) cost increases that hospitals will incur in providing such services that are attributable to complying with new blood safety measure requirements and providing such services using new technologies during the 10 years after the date of the enactment of this Act; and

(D) the feasibility and advisability of establishing mechanisms under such payment system to provide for

more timely and accurate recognition of such cost increases in the future.

(2) CONSULTATION.—In conducting the study under this subsection, the Commission shall consult with representatives of the blood community, including—

(A) hospitals;

(B) organizations involved in the collection, processing, and delivery of blood; and

(C) organizations involved in the development of new blood safety technologies.

(3) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation and administrative action as the Commission determines appropriate.

(e) ADJUSTMENT FOR INPATIENT CASE MIX CHANGES.—

(1) IN GENERAL.—Section 1886(d)(3)(A) (42 U.S.C. 1395ww(d)(3)(A)) is amended by adding at the end the following new clause:

"(vi) Insofar as the Secretary determines that the adjustments under paragraph (4)(C)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of discharges that do not reflect real changes in case mix, the Secretary may adjust the average standardized amounts computed under this paragraph for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies to discharges occurring on or after October 1, 2001.

SEC. 302. ADDITIONAL MODIFICATION IN TRANSITION FOR INDIRECT MEDICAL EDUCATION (IME) PERCENTAGE ADJUSTMENT.

(a) IN GENERAL.—Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(1) in subclause (V) by striking "and" at the end;

(2) by redesignating subclause (VI) as subclause (VII);

(3) in subclause (VII) as so redesignated, by striking "2001" and inserting "2002"; and

(4) by inserting after subclause (V) the following new subclause:

"(VI) during fiscal year 2002, 'c' is equal to 1.57; and".

(b) SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001.—Notwithstanding paragraph (5)(B)(ii)(V) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)(V)), for purposes of making payments for subsection (d) hospitals (as defined in paragraph (1)(B) of such section) with indirect costs of medical education, the indirect teaching adjustment factor referred to in paragraph (5)(B)(ii) of such section shall be determined, for discharges occurring on or after April 1, 2001, and before October 1, 2001, as if "c" in paragraph (5)(B)(ii)(V) of such section equalled 1.66 rather than 1.54.

(c) CONFORMING AMENDMENT RELATING TO DETERMINATION OF STANDARDIZED AMOUNT.—Section 1886(d)(2)(C)(i) (42 U.S.C.

1395ww(d)(2)(C)(i)) is amended by inserting "or of section 302 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000" after "Balanced Budget Refinement Act of 1999".

(d) CLERICAL AMENDMENTS.—Section 1886(d)(5)(B) (42 U.S.C. 1395ww(d)(5)(B)), as amended by subsection (a), is further amended by moving the indentation of each of the following 2 ems to the left:

(1) Clauses (ii), (v), and (vi).

(2) Subclauses (I), (II), (III), (IV), (V), and (VII) of clause (ii).

(3) Subclauses (I) and (II) of clause (vi) and the flush sentence at the end of such clause.

SEC. 303. DECREASE IN REDUCTIONS FOR DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS.

(a) IN GENERAL.—Section 1886(d)(5)(F)(ix) (42 U.S.C. 1395ww(d)(5)(F)(ix)) is amended—

(1) in subclause (III), by striking "each of" and by inserting "and 2 percent, respectively" after "3 percent"; and

(2) in subclause (IV), by striking "4 percent" and inserting "3 percent".

(b) SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001.—Notwithstanding the amendment made by subsection (a)(1), for purposes of making disproportionate share payments for subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) for fiscal year 2001, the additional payment amount otherwise determined under clause (ii) of section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F))—

(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be adjusted as provided by clause (ix)(III) of such section as in effect on the day before the date of the enactment of this Act; and

(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall, instead of being reduced by 3 percent as provided by clause (ix)(III) of such section as in effect after the date of the enactment of this Act, be reduced by 1 percent.

(c) CONFORMING AMENDMENTS RELATING TO DETERMINATION OF STANDARDIZED AMOUNT.—Section 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)), is amended—

(1) by striking "1989 or" and inserting "1989,"; and

(2) by inserting ", or the enactment of section 303 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000" after "Omnibus Budget Reconciliation Act of 1990".

(d) TECHNICAL AMENDMENT.—

(1) IN GENERAL.—Section 1886(d)(5)(F)(i) (42 U.S.C. 1395ww(d)(5)(F)(i)) is amended by striking "and before October 1, 1997,".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) is effective as if included in the enactment of BBA.

(e) REFERENCE TO CHANGES IN DSH FOR RURAL HOSPITALS.—For additional changes in the DSH program for rural hospitals, see section 211.

SEC. 304. WAGE INDEX IMPROVEMENTS.

(a) DURATION OF WAGE INDEX RECLASSIFICATION; USE OF 3-YEAR WAGE DATA.—Section 1886(d)(10)(D) (42 U.S.C. 1395ww(d)(10)(D)) is amended by adding at the end the following new clauses:

"(v) Any decision of the Board to reclassify a subsection (d) hospital for purposes of the adjustment factor described in subparagraph (C)(i)(II) for fiscal year 2001 or any fiscal year thereafter shall be effective for a period of 3 fiscal years, except that the Secretary shall establish procedures under which a subsection (d) hospital may elect to terminate such reclassification before the end of such period.

"(vi) Such guidelines shall provide that, in making decisions on applications for reclassification for the purposes described in clause (v) for fiscal year 2003 and any succeeding fiscal year, the Board shall base any comparison of the average hourly wage for the hospital with the average hourly wage for hospitals in an area on—

"(I) an average of the average hourly wage amount for the hospital from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys; and

"(II) an average of the average hourly wage amount for hospitals in such area from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys.".

(b) PROCESS TO PERMIT STATEWIDE WAGE INDEX CALCULATION AND APPLICATION.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall establish a process (based on the voluntary process utilized by the Secretary of Health and Human Services under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for purposes of computing and applying a statewide geographic wage index) under which an appropriate statewide entity may apply to have all the geographic areas in a State treated as a single geographic area for purposes of computing and applying the area wage index under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)). Such process shall be established by October 1, 2001, for reclassifications beginning in fiscal year 2003.

(2) PROHIBITION ON INDIVIDUAL HOSPITAL RECLASSIFICATION.—Notwithstanding any other provision of law, if the Secretary applies a statewide geographic wage index under paragraph (1) with respect to a State, any application submitted by a hospital in that State under section 1886(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)) for geographic reclassification shall not be considered.

(c) COLLECTION OF INFORMATION ON OCCUPATIONAL MIX.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for the collection of data every 3 years on occupational mix for employees of each subsection (d) hospital (as defined in section 1886(d)(1)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(D))) in the provision of inpatient hos-

pital services, in order to construct an occupational mix adjustment in the hospital area wage index applied under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)).

(2) APPLICATION.—The third sentence of section 1886(d)(3)(E) (42 U.S.C. 1395ww(d)(3)(E)) is amended by striking "To the extent determined feasible by the Secretary, such survey shall measure" and inserting "Not less often than once every 3 years the Secretary (through such survey or otherwise) shall measure".

(3) EFFECTIVE DATE.—By not later than September 30, 2003, for application beginning October 1, 2004, the Secretary shall first complete—

(A) the collection of data under paragraph (1); and

(B) the measurement under the third sentence of section 1886(d)(3)(E), as amended by paragraph (2).

SEC. 305. PAYMENT FOR INPATIENT SERVICES OF REHABILITATION HOSPITALS.

(a) ASSISTANCE WITH ADMINISTRATIVE COSTS ASSOCIATED WITH COMPLETION OF PATIENT ASSESSMENT.—Section 1886(j)(3)(B) (42 U.S.C. 1395ww(j)(3)(B)) is amended by striking "98 percent" and inserting "98 percent for fiscal year 2001 and 100 percent for fiscal year 2002".

(b) ELECTION TO APPLY FULL PROSPECTIVE PAYMENT RATE WITHOUT PHASE-IN.—

(1) IN GENERAL.—Paragraph (1) of section 1886(j) (42 U.S.C. 1395ww(j)) is amended—

(A) in subparagraph (A), by inserting "other than a facility making an election under subparagraph (F)" before "in a cost reporting period";

(B) in subparagraph (B), by inserting "or, in the case of a facility making an election under subparagraph (F), for any cost reporting period described in such subparagraph," after "2002,"; and

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

"(F) ELECTION TO APPLY FULL PROSPECTIVE PAYMENT SYSTEM.—A rehabilitation facility may elect, not later than 30 days before its first cost reporting period for which the payment methodology under this subsection applies to the facility, to have payment made to the facility under this subsection under the provisions of subparagraph (B) (rather than subparagraph (A)) for each cost reporting period to which such payment methodology applies.".

(2) CLARIFICATION.—Paragraph (3)(B) of such section is amended by inserting "but not taking into account any payment adjustment resulting from an election permitted under paragraph (1)(F)" after "paragraphs (4) and (6)".

(c) EFFECTIVE DATE.—The amendments made by this section take effect as if included in the enactment of BBA.

SEC. 306. PAYMENT FOR INPATIENT SERVICES OF PSYCHIATRIC HOSPITALS.

With respect to hospitals described in clause (i) of section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) and psychiatric units described in the matter following clause (v) of

such section, in making incentive payments to such hospitals under section 1886(b)(1)(A) of such Act (42 U.S.C. 1395ww(b)(1)(A)) for cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, the Secretary of Health and Human Services, in clause (ii) of such section, shall substitute "3 percent" for "2 percent".

SEC. 307. PAYMENT FOR INPATIENT SERVICES OF LONG-TERM CARE HOSPITALS.

(a) INCREASED TARGET AMOUNTS AND CAPS FOR LONG-TERM CARE HOSPITALS BEFORE IMPLEMENTATION OF THE PROSPECTIVE PAYMENT SYSTEM.—

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

(A) in subparagraph (H)(ii)(III), by inserting "subject to subparagraph (J)," after "2002,"; and

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

"(J) For cost reporting periods beginning during fiscal year 2001, for a hospital described in subsection (d)(1)(B)(iv)—

"(i) the limiting or cap amount otherwise determined under subparagraph (H) shall be increased by 2 percent; and

"(ii) the target amount otherwise determined under subparagraph (A) shall be increased by 25 percent (subject to the limiting or cap amount determined under subparagraph (H), as increased by clause (i)).".

(2) APPLICATION.—The amendments made by subsection (a) and by section 122 of BBRA (113 Stat. 1501A–331) shall not be taken into account in the development and implementation of the prospective payment system under section 123 of BBRA (113 Stat. 1501A–331).

(b) IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS.—

(1) MODIFICATION OF REQUIREMENT.—In developing the prospective payment system for payment for inpatient hospital services provided in long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv)) under the medicare program under title XVIII of such Act required under section 123 of BBRA, the Secretary of Health and Human Services shall examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data. The Secretary shall examine and may provide for appropriate adjustments to the long-term hospital payment system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment consistent with section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)).

(2) DEFAULT IMPLEMENTATION OF SYSTEM BASED ON EXISTING DRG METHODOLOGY.—If the Secretary is unable to implement the prospective payment system under section 123 of the BBRA by October 1, 2002, the Secretary shall implement a pro-

spective payment system for such hospitals that bases payment under such a system using existing hospital diagnosis-related groups (DRGs), modified where feasible to account for resource use of long-term care hospital patients using the most recently available hospital discharge data for such services furnished on or after that date.

Subtitle B—Adjustments to PPS Payments for Skilled Nursing Facilities

SEC. 311. ELIMINATION OF REDUCTION IN SKILLED NURSING FACILITY (SNF) MARKET BASKET UPDATE IN 2001.

(a) IN GENERAL.—Section 1888(e)(4)(E)(ii) (42 U.S.C. 1395yy(e)(4)(E)(ii)) is amended—

(1) by redesignating subclauses (II) and (III) as subclauses (III) and (IV), respectively;

(2) in subclause (III), as so redesignated—

(A) by striking "each of fiscal years 2001 and 2002" and inserting "each of fiscal years 2002 and 2003"; and

(B) by striking "minus 1 percentage point" and inserting "minus 0.5 percentage points"; and

(3) by inserting after subclause (I) the following new subclause:

"(II) for fiscal year 2001, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year;".

(b) SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001.—Notwithstanding the amendments made by subsection (a), for purposes of making payments for covered skilled nursing facility services under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)) for fiscal year 2001, the Federal per diem rate referred to in paragraph (4)(E)(ii) of such section—

(1) for the period beginning on October 1, 2000, and ending on March 31, 2001, shall be the rate determined in accordance with the law as in effect on the day before the date of the enactment of this Act; and

(2) for the period beginning on April 1, 2001, and ending on September 30, 2001, shall be the rate that would have been determined under such section if "plus 1 percentage point" had been substituted for "minus 1 percentage point" under subclause (II) of such paragraph (as in effect on the day before the date of the enactment of this Act).

(c) RELATION TO TEMPORARY INCREASE IN BBRA.—The increases provided under section 101 of BBRA (113 Stat. 1501A–325) shall be in addition to any increase resulting from the amendments made by subsection (a).

(d) GAO REPORT ON ADEQUACY OF SNF PAYMENT RATES.—Not later than July 1, 2002, the Comptroller General of the United States shall submit to Congress a report on the adequacy of medicare payment rates to skilled nursing facilities and the extent to which medicare contributes to the financial viability of such facilities. Such report shall take into account the role of private payors,

medicaid, and case mix on the financial performance of these facilities, and shall include an analysis (by specific RUG classification) of the number and characteristics of such facilities.

(e) HCFA STUDY OF CLASSIFICATION SYSTEMS FOR SNF RESIDENTS.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the different systems for categorizing patients in medicare skilled nursing facilities in a manner that accounts for the relative resource utilization of different patient types.

(2) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the study conducted under subsection (a). Such report shall include such recommendations regarding changes in law as may be appropriate.

SEC. 312. INCREASE IN NURSING COMPONENT OF PPS FEDERAL RATE.

(a) IN GENERAL.—The Secretary of Health and Human Services shall increase by 16.66 percent the nursing component of the casemix adjusted Federal prospective payment rate specified in Tables 3 and 4 of the final rule published in the Federal Register by the Health Care Financing Administration on July 31, 2000 (65 Fed. Reg. 46770), effective for services furnished on or after April 1, 2001, and before October 1, 2002.

(b) GAO AUDIT OF NURSING STAFF RATIOS.—

(1) AUDIT.—The Comptroller General of the United States shall conduct an audit of nursing staffing ratios in a representative sample of medicare skilled nursing facilities. Such sample shall cover selected States and shall include broad representation with respect to size, ownership, location, and medicare volume. Such audit shall include an examination of payroll records and medicaid cost reports of individual facilities.

(2) REPORT.—Not later than August 1, 2002, the Comptroller General shall submit to Congress a report on the audits conducted under paragraph (1). Such report shall include an assessment of the impact of the increased payments under this subtitle on increased nursing staff ratios and shall make recommendations as to whether increased payments under subsection (a) should be continued.

SEC. 313. APPLICATION OF SNF CONSOLIDATED BILLING REQUIREMENT LIMITED TO PART A COVERED STAYS.

(a) IN GENERAL.—Section 1862(a)(18) (42 U.S.C. 1395y(a)(18)) is amended by striking "or of a part of a facility that includes a skilled nursing facility (as determined under regulations)," and inserting "during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1861(s)(2)(D), which are furnished to such an individual without regard to such period),".

(b) CONFORMING AMENDMENTS.—(1) Section 1842(b)(6)(E) (42 U.S.C. 1395u(b)(6)(E)) is amended—

(A) by inserting "by, or under arrangements made by, a skilled nursing facility" after "furnished";

(B) by striking "or of a part of a facility that includes a skilled nursing facility (as determined under regulations)"; and

(C) by striking "(without regard to whether or not the item or service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise)".

(2) Section 1842(t) (42 U.S.C. 1395u(t)) is amended by striking "by a physician" and "or of a part of a facility that includes a skilled nursing facility (as determined under regulations),".

(3) Section 1866(a)(1)(H)(ii)(I) (42 U.S.C. 1395cc(a)(1)(H)(ii)(I)) is amended by inserting after "who is a resident of the skilled nursing facility" the following: "during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1861(s)(2)(D), that are furnished to such an individual without regard to such period)".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply to services furnished on or after January 1, 2001.

(d) OVERSIGHT.—The Secretary of Health and Human Services, through the Office of the Inspector General in the Department of Health and Human Services or otherwise, shall monitor payments made under part B of the title XVIII of the Social Security Act for items and services furnished to residents of skilled nursing facilities during a time in which the residents are not being provided medicare covered post-hospital extended care services to ensure that there is not duplicate billing for services or excessive services provided.

SEC. 314. ADJUSTMENT OF REHABILITATION RUGS TO CORRECT ANOMALY IN PAYMENT RATES.

(a) ADJUSTMENT FOR REHABILITATION RUGS.—

(1) IN GENERAL.—For purposes of computing payments for covered skilled nursing facility services under paragraph (1) of section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)) for such services furnished on or after April 1, 2001, and before the date described in section 101(c)(2) of BBRA (113 Stat. 1501A–324), the Secretary of Health and Human Services shall increase by 6.7 percent the adjusted Federal per diem rate otherwise determined under paragraph (4) of such section (but for this section) for covered skilled nursing facility services for RUG–III rehabilitation groups described in paragraph (2) furnished to an individual during the period in which such individual is classified in such a RUG–III category.

(2) REHABILITATION GROUPS DESCRIBED.—The RUG–III rehabilitation groups for which the adjustment described in paragraph (1) applies are RUC, RUB, RUA, RVC, RVB, RVA, RHC, RHB, RHA, RMC, RMB, RMA, RLB, and RLA, as specified in Tables 3 and 4 of the final rule published in the Federal Register by the Health Care Financing Administration on July 31, 2000 (65 Fed. Reg. 46770).

(b) CORRECTION WITH RESPECT TO REHABILITATION RUGS.—

(1) IN GENERAL.—Section 101(b) of BBRA (113 Stat. 1501A–324) is amended by striking "CA1, RHC, RMC, and RMB" and inserting "and CA1".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies to services furnished on or after April 1, 2001.

(c) REVIEW BY OFFICE OF INSPECTOR GENERAL.—The Inspector General of the Department of Health and Human Services shall review the medicare payment structure for services classified within

rehabilitation resource utilization groups (RUGs) (as in effect after the date of the enactment of the BBRA) to assess whether payment incentives exist for the delivery of inadequate care. Not later than October 1, 2001, the Inspector General shall submit to Congress a report on such review.

SEC. 315. ESTABLISHMENT OF PROCESS FOR GEOGRAPHIC RECLASSIFICATION.

(a) IN GENERAL.—The Secretary of Health and Human Services may establish a procedure for the geographic reclassification of a skilled nursing facility for purposes of payment for covered skilled nursing facility services under the prospective payment system established under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)). Such procedure may be based upon the method for geographic reclassifications for inpatient hospitals established under section 1886(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)).

(b) REQUIREMENT FOR SKILLED NURSING FACILITY WAGE DATA.—In no case may the Secretary implement the procedure under subsection (a) before such time as the Secretary has collected data necessary to establish an area wage index for skilled nursing facilities based on wage data from such facilities.

Subtitle C—Hospice Care

SEC. 321. FULL MARKET BASKET INCREASE FOR 2001.

(a) IN GENERAL.—Section 1814(i)(1)(C)(ii) (42 U.S.C. 1395f(i)(1)(C)(ii)) is amended—

(1) by redesignating subclause (VII) as subclause (IX);

(2) in subclause (VI)—

(A) by striking "through 2002" and inserting "through 2000"; and

(B) by striking "and" at the end; and

(3) by inserting after subclause (VI) the following new subclauses:

"(VII) for fiscal year 2001, the market basket percentage increase for the fiscal year;

"(VIII) for fiscal year 2002, the market basket percentage increase for the fiscal year minus 0.25 percentage points; and".

(b) TRANSITION DURING FISCAL YEAR 2001.—Notwithstanding the amendments made by subsection (a), for purposes of making payments for hospice care under section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) for fiscal year 2001, the payment rates referred to in paragraph (1)(C) of such section—

(1) for the period beginning on October 1, 2000, and ending on March 31, 2001, shall be the rate determined in accordance with the law as in effect on the day before the date of the enactment of this Act; and

(2) for the period beginning on April 1, 2001, and ending on September 30, 2001, shall be the rate that would have been determined under paragraph (1) if "plus 1.0 percentage points" were substituted for "minus 1.0 percentage points" under paragraph (1)(C)(ii)(VI) of such section for fiscal year 2001.

(c) CONFORMING AMENDMENTS TO BBRA.—

(1) IN GENERAL.—Section 131 of BBRA (113 Stat. 1501A–333) is repealed.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of BBRA.

(d) TECHNICAL AMENDMENT.—Section 1814(a)(7)(A)(ii) (42 U.S.C. 1395f(a)(7)(A)(ii)) is amended by striking the period at the end and inserting a semicolon.

SEC. 322. CLARIFICATION OF PHYSICIAN CERTIFICATION.

(a) CERTIFICATION BASED ON NORMAL COURSE OF ILLNESS.—

(1) IN GENERAL.—Section 1814(a) (42 U.S.C. 1395f(a)) is amended by adding at the end the following new sentence: "The certification regarding terminal illness of an individual under paragraph (7) shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies to certifications made on or after the date of the enactment of this Act.

(b) STUDY AND REPORT ON PHYSICIAN CERTIFICATION REQUIREMENT FOR HOSPICE BENEFITS.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to examine the appropriateness of the certification regarding terminal illness of an individual under section 1814(a)(7) of the Social Security Act (42 U.S.C. 1395f(a)(7)) that is required in order for such individual to receive hospice benefits under the medicare program under title XVIII of such Act. In conducting such study, the Secretary shall take into account the effect of the amendment made by subsection (a).

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1), together with any recommendations for legislation that the Secretary deems appropriate.

SEC. 323. MEDPAC REPORT ON ACCESS TO, AND USE OF, HOSPICE BENEFIT.

(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study to examine the factors affecting the use of hospice benefits under the medicare program under title XVIII of the Social Security Act, including a delay in the time (relative to death) of entry into a hospice program, and differences in such use between urban and rural hospice programs and based upon the presenting condition of the patient.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission deems appropriate.

Subtitle D—Other Provisions

SEC. 331. RELIEF FROM MEDICARE PART A LATE ENROLLMENT PENALTY FOR GROUP BUY-IN FOR STATE AND LOCAL RETIREES.

(a) IN GENERAL.—Section 1818 (42 U.S.C. 1395i–2) is amended—

(1) in subsection (c)(6), by inserting before the semicolon at the end the following: "and shall be subject to reduction in accordance with subsection (d)(6)"; and

(2) by adding at the end of subsection (d) the following new paragraph:

"(6)(A) In the case where a State, a political subdivision of a State, or an agency or instrumentality of a State or political subdivision thereof determines to pay, for the life of each individual, the monthly premiums due under paragraph (1) on behalf of each of the individuals in a qualified State or local government retiree group who meets the conditions of subsection (a), the amount of any increase otherwise applicable under section 1839(b) (as applied and modified by subsection (c)(6) of this section) with respect to the monthly premium for benefits under this part for an individual who is a member of such group shall be reduced by the total amount of taxes paid under section 3101(b) of the Internal Revenue Code of 1986 by such individual and under section 3111(b) by the employers of such individual on behalf of such individual with respect to employment (as defined in section 3121(b) of such Code).

"(B) For purposes of this paragraph, the term 'qualified State or local government retiree group' means all of the individuals who retire prior to a specified date that is before January 1, 2002, from employment in 1 or more occupations or other broad classes of employees of—

"(i) the State;

"(ii) a political subdivision of the State; or

"(iii) an agency or instrumentality of the State or political subdivision of the State.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to premiums for months beginning with July 1, 2001.

SEC. 332. POSTING OF INFORMATION ON NURSING FACILITY STAFFING.

(a) MEDICARE.—Section 1819(b) (42 U.S.C. 1395i–3(b)) is amended by adding at the end the following new paragraph:

"(8) INFORMATION ON NURSE STAFFING.—

"(A) IN GENERAL.—A skilled nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

"(B) PUBLICATION OF DATA.—A skilled nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).".

(b) MEDICAID.—Section 1919(b) (42 U.S.C. 1395r(b)) is amended by adding at the end the following new paragraph:

"(8) INFORMATION ON NURSE STAFFING.—

"(A) IN GENERAL.—A nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

"(B) PUBLICATION OF DATA.—A nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).".

TITLE IV—PROVISIONS RELATING TO PART B

Subtitle A—Hospital Outpatient Services

SEC. 401. REVISION OF HOSPITAL OUTPATIENT PPS PAYMENT UPDATE.

(a) IN GENERAL.—Section 1833(t)(3)(C)(iii) (42 U.S.C. 1395l(t)(3)(C)(iii)) is amended by striking "in each of 2000, 2001, and 2002" and inserting "in each of 2000 and 2002".

(b) ADJUSTMENT FOR CASE MIX CHANGES.—

(1) IN GENERAL.—Section 1833(t)(3)(C) (42 U.S.C. 1395l(t)(3)(C)) is amended—

(A) by redesignating clause (iii) as clause (iv); and

(B) by inserting after clause (ii) the following new clause:

"(iii) ADJUSTMENT FOR SERVICE MIX CHANGES.—Insofar as the Secretary determines that the adjustments for service mix under paragraph (2) for a previous year (or estimates that such adjustments for a future year) did (or are likely to) result in a change in aggregate payments under this subsection during the year that are a result of changes in the coding or classification of covered OPD services that do not reflect real changes in service mix, the Secretary may adjust the conversion factor computed under this subparagraph for subsequent years so as to eliminate the effect of such coding or classification changes.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of BBA.

SEC. 402. CLARIFYING PROCESS AND STANDARDS FOR DETERMINING ELIGIBILITY OF DEVICES FOR PASS-THROUGH PAYMENTS UNDER HOSPITAL OUTPATIENT PPS.

(a) IN GENERAL.—Section 1833(t)(6) (42 U.S.C. 1395l(t)(6)) is amended—

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

(2) by striking subparagraph (B) and inserting the following new subparagraphs:

"(B) USE OF CATEGORIES IN DETERMINING ELIGIBILITY OF A DEVICE FOR PASS-THROUGH PAYMENTS.—The following provisions apply for purposes of determining whether a

medical device qualifies for additional payments under clause (ii) or (iv) of subparagraph (A):

"(i) ESTABLISHMENT OF INITIAL CATEGORIES.—The Secretary shall initially establish under this clause categories of medical devices based on type of device by April 1, 2001. Such categories shall be established in a manner such that each medical device that meets the requirements of clause (ii) or (iv) of subparagraph (A) as of as of January 1, 2001, is included in such a category and no such device is included in more than one category. For purposes of the preceding sentence, whether a medical device meets such requirements as of such date shall be determined on the basis of the program memoranda issued before such date or if the Secretary determines the medical device would have been included in the program memoranda but for the requirement of subparagraph (A)(iv)(I). The categories may be established under this clause by program memorandum or otherwise, after consultation with groups representing hospitals, manufacturers of medical devices, and other affected parties.

"(ii) ESTABLISHING CRITERIA FOR ADDITIONAL CATEGORIES.—

"(I) IN GENERAL.—The Secretary shall establish criteria that will be used for creation of additional categories (other than those established under clause (i)) through rulemaking (which may include use of an interim final rule with comment period).

"(II) STANDARD.—Such categories shall be established under this clause in a manner such that no medical device is described by more than one category. Such criteria shall include a test of whether the average cost of devices that would be included in a category and are in use at the time the category is established is not insignificant, as described in subparagraph (A)(iv)(II).

"(III) DEADLINE.—Criteria shall first be established under this clause by July 1, 2001. The Secretary may establish in compelling circumstances categories under this clause before the date such criteria are established.

"(IV) ADDING CATEGORIES.—The Secretary shall promptly establish a new category of medical devices under this clause for any medical device that meets the requirements of subparagraph (A)(iv) and for which none of the categories in effect (or that were previously in effect) is appropriate.

"(iii) PERIOD FOR WHICH CATEGORY IS IN EFFECT.—A category of medical devices established under clause (i) or clause (ii) shall be in effect for a period of at least 2 years, but not more than 3 years, that begins—

"(I) in the case of a category established under clause (i), on the first date on which payment was made under this paragraph for any device described by such category (including payments made during the period before April 1, 2001); and

"(II) in the case of any other category, on the first date on which payment is made under this paragraph for any medical device that is described by such category.

"(iv) REQUIREMENTS TREATED AS MET.—A medical device shall be treated as meeting the requirements of subparagraph (A)(iv) if—

"(I) the device is described by a category established and in effect under clause (i); or

"(II) the device is described by a category established and in effect under clause (ii) and an application under section 515 of the Federal Food, Drug, and Cosmetic Act has been approved with respect to the device, or the device has been cleared for market under section 510(k) of such Act, or the device is exempt from the requirements of section 510(k) of such Act pursuant to subsection (l) or (m) of section 510 of such Act or section 520(g) of such Act.

Nothing in this clause shall be construed as requiring an application or prior approval (other than that described in subclause (II)) in order for a covered device to qualify for payment under this paragraph.

"(C) LIMITED PERIOD OF PAYMENT.—

"(i) DRUGS AND BIOLOGICALS.—The payment under this paragraph with respect to a drug or biological shall only apply during a period of at least 2 years, but not more than 3 years, that begins—

"(I) on the first date this subsection is implemented in the case of a drug or biological described in clause (i), (ii), or (iii) of subparagraph (A) and in the case of a drug or biological described in subparagraph (A)(iv) and for which payment under this part is made as an outpatient hospital service before such first date; or

"(II) in the case of a drug or biological described in subparagraph (A)(iv) not described in subclause (I), on the first date on which payment is made under this part for the drug or biological as an outpatient hospital service.

"(ii) MEDICAL DEVICES.—Payment shall be made under this paragraph with respect to a medical device only if such device—

"(I) is described by a category of medical devices established and in effect under subparagraph (B); and

"(II) is provided as part of a service (or group of services) paid for under this subsection and pro-

vided during the period for which such category is in effect under such subparagraph.".

(b) CONFORMING AMENDMENTS.—Section 1833(t) (42 U.S.C. 1395l(t)) is further amended—

(1) in paragraph (6)(A)(iv)(II), by striking "the cost of the device, drug, or biological" and inserting "the cost of the drug or biological or the average cost of the category of devices";

(2) in paragraph (6)(D) (as redesignated by subsection (a)(1)), by striking "subparagraph (D)(iii)" in the matter preceding clause (i) and inserting "subparagraph (E)(iii)"; and

(3) in paragraph (12)(E), by striking "additional payments (consistent with paragraph (6)(B))" and inserting "additional payments, the determination and deletion of initial and new categories (consistent with subparagraphs (B) and (C) of paragraph (6))".

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

(d) TRANSITION.—

(1) IN GENERAL.—In the case of a medical device provided as part of a service (or group of services) furnished during the period before initial categories are implemented under subparagraph (B)(i) of section 1833(t)(6) of the Social Security Act (as amended by subsection (a)), payment shall be made for such device under such section in accordance with the provisions in effect before the date of the enactment of this Act, except that, beginning on the date that is 30 days after the date of the enactment of this Act, payment shall also be made for such a device that is not included in a program memorandum described in such subparagraph if the Secretary of Health and Human Services determines that the device is likely to be described by such an initial category or would have been included in such program memoranda but for the requirement of subparagraph (A)(iv)(I) of that section.

(2) APPLICATION OF CURRENT PROCESS.—Notwithstanding any other provision of law, the Secretary shall continue to accept applications with respect to medical devices under the process established pursuant to paragraph (6) of section 1833(t) of the Social Security Act (as in effect on the day before the date of the enactment of this Act) through December 1, 2000, and any device—

(A) with respect to which an application was submitted (pursuant to such process) on or before such date; and

(B) that meets the requirements of clause (ii) or (iv) of subparagraph (A) of such paragraph (as determined pursuant to such process),

shall be treated as a device with respect to which an initial category is required to be established under subparagraph (B)(i) of such paragraph (as amended by subsection (a)(2)).

SEC. 403. APPLICATION OF OPD PPS TRANSITIONAL CORRIDOR PAYMENTS TO CERTAIN HOSPITALS THAT DID NOT SUBMIT A 1996 COST REPORT.

(a) IN GENERAL.—Section 1833(t)(7)(F)(ii)(I) (42 U.S.C. 1395l(t)(7)(F)(ii)(I)) is amended by inserting "(or in the case of a hospital that did not submit a cost report for such period, during

the first subsequent cost reporting period ending before 2001 for which the hospital submitted a cost report)" after "1996".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of BBRA.

SEC. 404. APPLICATION OF RULES FOR DETERMINING PROVIDER-BASED STATUS FOR CERTAIN ENTITIES.

(a) GRANDFATHER.—Notwithstanding any other provision of law, for purposes of making determinations of provider-based status under title XVIII of the Social Security Act on or after October 1, 2000, any facility or organization that is treated as provider-based in relation to a hospital or critical access hospital under such title as of October 1, 2000—

(1) shall continue to be treated as provider-based in relation to such hospital or critical access hospital under such title during the 2-year period beginning on October 1, 2000; and

(2) the requirements, limitations, and exclusions specified in paragraphs (d), (e), (f), and (h) of section 413.65 of title 42, Code of Federal Regulations shall not apply to such facility or organization in relation to such hospital or critical access hospital until after the end of such 2-year period.

(b) TEMPORARY CRITERIA.—For purposes of title XVIII of the Social Security Act—

(1) a facility or organization for which a determination of provider-based status in relation to a hospital or critical access hospital is requested on or after October 1, 2000, and before October 1, 2002, may not be treated as not having provider-based status in relation to such a hospital for any period before a determination is made with respect to such status pursuant to such request; and

(2) in making a determination with respect to such status for any facility or organization in relationship to such a hospital on or after October 1, 2000, the following rules apply:

(A) The facility or organization shall be treated as satisfying any requirements and standards for geographic location in relation to such a hospital if the facility or organization—

(i) satisfies the requirements of section 413.65(d)(7) of title 42, Code of Federal Regulations; or

(ii) is located not more than 35 miles from the main campus of the hospital or critical access hospital.

(B) The facility or organization shall be treated as satisfying any of the requirements and standards for geographic location in relation to such a hospital if the facility or organization is owned and operated by a hospital or critical access hospital that—

(i) is owned or operated by a unit of State or local government, is a public or private nonprofit corporation that is formally granted governmental powers by a unit of State or local government, or is a private hospital that has a contract with a State or local government that includes the operation of clinics located off the main campus of the hospital to assure access in a well-defined service area to health care services for low-income individuals who are not entitled to benefits

under title XVIII (or medical assistance under a State plan under title XIX) of such Act; and

(ii) has a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F))) greater than 11.75 percent or is described in clause (i)(II) of such section.

(c) DEFINITIONS.—For purposes of this section, the terms "hospital" and "critical access hospital" have the meanings given such terms in subsections (e) and (mm)(1), respectively, of section 1861 of the Social Security Act (42 U.S.C. 1395x).

SEC. 405. TREATMENT OF CHILDREN'S HOSPITALS UNDER PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1833(t) (42 U.S.C. 1395l(t)) is amended—

(1) in the heading of paragraph (7)(D)(ii), by inserting "AND CHILDREN'S HOSPITALS" after "CANCER HOSPITALS"; and

(2) in paragraphs (7)(D)(ii) and (11), by striking "section 1886(d)(1)(B)(v)" and inserting "clause (iii) or (v) of section 1886(d)(1)(B)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply as if included in the enactment of section 202 of BBRA (113 Stat. 1501A–342).

SEC. 406. INCLUSION OF TEMPERATURE MONITORED CRYOABLATION IN TRANSITIONAL PASS-THROUGH FOR CERTAIN MEDICAL DEVICES, DRUGS, AND BIOLOGICALS UNDER OPD PPS.

(a) IN GENERAL.—Section 1833(t)(6)(A)(ii) (42 U.S.C. 1395l(t)(6)(A)(ii)) is amended by inserting "or temperature monitored cryoablation" after "device of brachytherapy".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to devices furnished on or after April 1, 2001.

Subtitle B—Provisions Relating to Physicians' Services

SEC. 411. GAO STUDIES RELATING TO PHYSICIANS' SERVICES.

(a) STUDY OF SPECIALIST PHYSICIANS' SERVICES FURNISHED IN PHYSICIANS' OFFICES AND HOSPITAL OUTPATIENT DEPARTMENT SERVICES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study to examine the appropriateness of furnishing in physicians' offices specialist physicians' services (such as gastrointestinal endoscopic physicians' services) which are ordinarily furnished in hospital outpatient departments. In conducting this study, the Comptroller General shall—

(A) review available scientific and clinical evidence about the safety of performing procedures in physicians' offices and hospital outpatient departments;

(B) assess whether resource-based practice expense relative values established by the Secretary of Health and Human Services under the medicare physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for such specialist physicians' services furnished

in physicians' offices and hospital outpatient departments create an incentive to furnish such services in physicians' offices instead of hospital outpatient departments; and

(C) assess the implications for access to care for medicare beneficiaries if the medicare program were not to cover such services in physicians' offices.

(2) REPORT.—Not later than July 1, 2001, the Comptroller General shall submit to Congress a report on such study and include such recommendations as the Comptroller General determines to be appropriate.

(b) STUDY OF THE RESOURCE-BASED PRACTICE EXPENSE SYSTEM.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the refinements to the practice expense relative value units during the transition to a resource-based practice expense system for physician payments under the medicare program under title XVIII of the Social Security Act. Such study shall examine how the Secretary of Health and Human Services has accepted and used the practice expense data submitted under section 212 of BBRA (113 Stat. 1501A–350).

(2) REPORT.—Not later than July 1, 2001, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations regarding—

(A) improvements in the process for acceptance and use of practice expense data under section 212 of BBRA;

(B) any change or adjustment that is appropriate to ensure full access to a spectrum of care for beneficiaries under the medicare program; and

(C) the appropriateness of payments to physicians.

SEC. 412. PHYSICIAN GROUP PRACTICE DEMONSTRATION.

(a) IN GENERAL.—Title XVIII is amended by inserting after section 1866 the following new sections:

"DEMONSTRATION OF APPLICATION OF PHYSICIAN VOLUME INCREASES TO GROUP PRACTICES

"SEC. 1866A. (a) DEMONSTRATION PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary shall conduct demonstration projects to test and, if proven effective, expand the use of incentives to health care groups participating in the program under this title that—

"(A) encourage coordination of the care furnished to individuals under the programs under parts A and B by institutional and other providers, practitioners, and suppliers of health care items and services;

"(B) encourage investment in administrative structures and processes to ensure efficient service delivery; and

"(C) reward physicians for improving health outcomes. Such projects shall focus on the efficiencies of furnishing health care in a group-practice setting as compared to the efficiencies of furnishing health care in other health care delivery systems.

"(2) ADMINISTRATION BY CONTRACT.—Except as otherwise specifically provided, the Secretary may administer the program under this section in accordance with section 1866B.

"(3) DEFINITIONS.—For purposes of this section, terms have the following meanings:

"(A) PHYSICIAN.—Except as the Secretary may otherwise provide, the term 'physician' means any individual who furnishes services which may be paid for as physicians' services under this title.

"(B) HEALTH CARE GROUP.—The term 'health care group' means a group of physicians (as defined in subparagraph (A)) organized at least in part for the purpose of providing physicians' services under this title. As the Secretary finds appropriate, a health care group may include a hospital and any other individual or entity furnishing items or services for which payment may be made under this title that is affiliated with the health care group under an arrangement structured so that such individual or entity participates in a demonstration under this section and will share in any bonus earned under subsection (d).

"(b) ELIGIBILITY CRITERIA.—

"(1) IN GENERAL.—The Secretary is authorized to establish criteria for health care groups eligible to participate in a demonstration under this section, including criteria relating to numbers of health care professionals in, and of patients served by, the group, scope of services provided, and quality of care.

"(2) PAYMENT METHOD.—A health care group participating in the demonstration under this section shall agree with respect to services furnished to beneficiaries within the scope of the demonstration (as determined under subsection (c))—

"(A) to be paid on a fee-for-service basis; and

"(B) that payment with respect to all such services furnished by members of the health care group to such beneficiaries shall (where determined appropriate by the Secretary) be made to a single entity.

"(3) DATA REPORTING.—A health care group participating in a demonstration under this section shall report to the Secretary such data, at such times and in such format as the Secretary requires, for purposes of monitoring and evaluation of the demonstration under this section.

"(c) PATIENTS WITHIN SCOPE OF DEMONSTRATION.—

"(1) IN GENERAL.—The Secretary shall specify, in accordance with this subsection, the criteria for identifying those patients of a health care group who shall be considered within the scope of the demonstration under this section for purposes of application of subsection (d) and for assessment of the effectiveness of the group in achieving the objectives of this section.

"(2) OTHER CRITERIA.—The Secretary may establish additional criteria for inclusion of beneficiaries within a demonstration under this section, which may include frequency of contact with physicians in the group or other factors or criteria that the Secretary finds to be appropriate.

"(3) NOTICE REQUIREMENTS.—In the case of each beneficiary determined to be within the scope of a demonstration

under this section with respect to a specific health care group, the Secretary shall ensure that such beneficiary is notified of the incentives, and of any waivers of coverage or payment rules, applicable to such group under such demonstration.

"(d) INCENTIVES.—

"(1) PERFORMANCE TARGET.—The Secretary shall establish for each health care group participating in a demonstration under this section—

"(A) a base expenditure amount, equal to the average total payments under parts A and B for patients served by the health care group on a fee-for-service basis in a base period determined by the Secretary; and

"(B) an annual per capita expenditure target for patients determined to be within the scope of the demonstration, reflecting the base expenditure amount adjusted for risk and expected growth rates.

"(2) INCENTIVE BONUS.—The Secretary shall pay to each participating health care group (subject to paragraph (4)) a bonus for each year under the demonstration equal to a portion of the medicare savings realized for such year relative to the performance target.

"(3) ADDITIONAL BONUS FOR PROCESS AND OUTCOME IMPROVEMENTS.—At such time as the Secretary has established appropriate criteria based on evidence the Secretary determines to be sufficient, the Secretary shall also pay to a participating health care group (subject to paragraph (4)) an additional bonus for a year, equal to such portion as the Secretary may designate of the saving to the program under this title resulting from process improvements made by and patient outcome improvements attributable to activities of the group.

"(4) LIMITATION.—The Secretary shall limit bonus payments under this section as necessary to ensure that the aggregate expenditures under this title (inclusive of bonus payments) with respect to patients within the scope of the demonstration do not exceed the amount which the Secretary estimates would be expended if the demonstration projects under this section were not implemented.

"PROVISIONS FOR ADMINISTRATION OF DEMONSTRATION PROGRAM

"SEC. 1866B. (a) GENERAL ADMINISTRATIVE AUTHORITY.—

"(1) BENEFICIARY ELIGIBILITY.—Except as otherwise provided by the Secretary, an individual shall only be eligible to receive benefits under the program under section 1866A (in this section referred to as the 'demonstration program') if such individual—

"(A) is enrolled in under the program under part B and entitled to benefits under part A; and

"(B) is not enrolled in a Medicare+Choice plan under part C, an eligible organization under a contract under section 1876 (or a similar organization operating under a demonstration project authority), an organization with an agreement under section 1833(a)(1)(A), or a PACE program under section 1894.

"(2) SECRETARY'S DISCRETION AS TO SCOPE OF PROGRAM.—The Secretary may limit the implementation of the demonstration program to—

"(A) a geographic area (or areas) that the Secretary designates for purposes of the program, based upon such criteria as the Secretary finds appropriate;

"(B) a subgroup (or subgroups) of beneficiaries or individuals and entities furnishing items or services (otherwise eligible to participate in the program), selected on the basis of the number of such participants that the Secretary finds consistent with the effective and efficient implementation of the program;

"(C) an element (or elements) of the program that the Secretary determines to be suitable for implementation; or

"(D) any combination of any of the limits described in subparagraphs (A) through (C).

"(3) VOLUNTARY RECEIPT OF ITEMS AND SERVICES.—Items and services shall be furnished to an individual under the demonstration program only at the individual's election.

"(4) AGREEMENTS.—The Secretary is authorized to enter into agreements with individuals and entities to furnish health care items and services to beneficiaries under the demonstration program.

"(5) PROGRAM STANDARDS AND CRITERIA.—The Secretary shall establish performance standards for the demonstration program including, as applicable, standards for quality of health care items and services, cost-effectiveness, beneficiary satisfaction, and such other factors as the Secretary finds appropriate. The eligibility of individuals or entities for the initial award, continuation, and renewal of agreements to provide health care items and services under the program shall be conditioned, at a minimum, on performance that meets or exceeds such standards.

"(6) ADMINISTRATIVE REVIEW OF DECISIONS AFFECTING INDIVIDUALS AND ENTITIES FURNISHING SERVICES.—An individual or entity furnishing services under the demonstration program shall be entitled to a review by the program administrator (or, if the Secretary has not contracted with a program administrator, by the Secretary) of a decision not to enter into, or to terminate, or not to renew, an agreement with the entity to provide health care items or services under the program.

"(7) SECRETARY'S REVIEW OF MARKETING MATERIALS.—An agreement with an individual or entity furnishing services under the demonstration program shall require the individual or entity to guarantee that it will not distribute materials that market items or services under the program without the Secretary's prior review and approval.

"(8) PAYMENT IN FULL.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an individual or entity receiving payment from the Secretary under a contract or agreement under the demonstration program shall agree to accept such payment as payment in full, and such payment shall be in lieu of any pay-

ments to which the individual or entity would otherwise be entitled under this title.

"(B) COLLECTION OF DEDUCTIBLES AND COINSURANCE.—Such individual or entity may collect any applicable deductible or coinsurance amount from a beneficiary.

"(b) CONTRACTS FOR PROGRAM ADMINISTRATION.—

"(1) IN GENERAL.—The Secretary may administer the demonstration program through a contract with a program administrator in accordance with the provisions of this subsection.

"(2) SCOPE OF PROGRAM ADMINISTRATOR CONTRACTS.—The Secretary may enter into such contracts for a limited geographic area, or on a regional or national basis.

"(3) ELIGIBLE CONTRACTORS.—The Secretary may contract for the administration of the program with—

"(A) an entity that, under a contract under section 1816 or 1842, determines the amount of and makes payments for health care items and services furnished under this title; or

"(B) any other entity with substantial experience in managing the type of program concerned.

"(4) CONTRACT AWARD, DURATION, AND RENEWAL.—

"(A) IN GENERAL.—A contract under this subsection shall be for an initial term of up to three years, renewable for additional terms of up to three years.

"(B) NONCOMPETITIVE AWARD AND RENEWAL FOR ENTITIES ADMINISTERING PART A OR PART B PAYMENTS.—The Secretary may enter or renew a contract under this subsection with an entity described in paragraph (3)(A) without regard to the requirements of section 5 of title 41, United States Code.

"(5) APPLICABILITY OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall apply to program administration contracts under this subsection.

"(6) PERFORMANCE STANDARDS.—The Secretary shall establish performance standards for the program administrator including, as applicable, standards for the quality and cost-effectiveness of the program administered, and such other factors as the Secretary finds appropriate. The eligibility of entities for the initial award, continuation, and renewal of program administration contracts shall be conditioned, at a minimum, on performance that meets or exceeds such standards.

"(7) FUNCTIONS OF PROGRAM ADMINISTRATOR.—A program administrator shall perform any or all of the following functions, as specified by the Secretary:

"(A) AGREEMENTS WITH ENTITIES FURNISHING HEALTH CARE ITEMS AND SERVICES.—Determine the qualifications of entities seeking to enter or renew agreements to provide services under the demonstration program, and as appropriate enter or renew (or refuse to enter or renew) such agreements on behalf of the Secretary.

"(B) ESTABLISHMENT OF PAYMENT RATES.—Negotiate or otherwise establish, subject to the Secretary's approval, payment rates for covered health care items and services.

"(C) PAYMENT OF CLAIMS OR FEES.—Administer payments for health care items or services furnished under the program.

"(D) PAYMENT OF BONUSES.—Using such guidelines as the Secretary shall establish, and subject to the approval of the Secretary, make bonus payments as described in subsection (c)(2)(A)(ii) to entities furnishing items or services for which payment may be made under the program.

"(E) OVERSIGHT.—Monitor the compliance of individuals and entities with agreements under the program with the conditions of participation.

"(F) ADMINISTRATIVE REVIEW.—Conduct reviews of adverse determinations specified in subsection (a)(6).

"(G) REVIEW OF MARKETING MATERIALS.—Conduct a review of marketing materials proposed by an entity furnishing services under the program.

"(H) ADDITIONAL FUNCTIONS.—Perform such other functions as the Secretary may specify.

"(8) LIMITATION OF LIABILITY.—The provisions of section 1157(b) shall apply with respect to activities of contractors and their officers, employees, and agents under a contract under this subsection.

"(9) INFORMATION SHARING.—Notwithstanding section 1106 and section 552a of title 5, United States Code, the Secretary is authorized to disclose to an entity with a program administration contract under this subsection such information (including medical information) on individuals receiving health care items and services under the program as the entity may require to carry out its responsibilities under the contract.

"(c) RULES APPLICABLE TO BOTH PROGRAM AGREEMENTS AND PROGRAM ADMINISTRATION CONTRACTS.—

"(1) RECORDS, REPORTS, AND AUDITS.—The Secretary is authorized to require entities with agreements to provide health care items or services under the demonstration program, and entities with program administration contracts under subsection (b), to maintain adequate records, to afford the Secretary access to such records (including for audit purposes), and to furnish such reports and other materials (including audited financial statements and performance data) as the Secretary may require for purposes of implementation, oversight, and evaluation of the program and of individuals' and entities' effectiveness in performance of such agreements or contracts.

"(2) BONUSES.—Notwithstanding any other provision of law, but subject to subparagraph (B)(ii), the Secretary may make bonus payments under the demonstration program from the Federal Health Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in amounts that do not exceed the amounts authorized under the program in accordance with the following:

"(A) PAYMENTS TO PROGRAM ADMINISTRATORS.—The Secretary may make bonus payments under the program to program administrators.

"(B) PAYMENTS TO ENTITIES FURNISHING SERVICES.—

"(i) IN GENERAL.—Subject to clause (ii), the Secretary may make bonus payments to individuals or entities furnishing items or services for which payment may be made under the demonstration program, or may authorize the program administrator to make such bonus payments in accordance with such guidelines as the Secretary shall establish and subject to the Secretary's approval.

"(ii) LIMITATIONS.—The Secretary may condition such payments on the achievement of such standards related to efficiency, improvement in processes or outcomes of care, or such other factors as the Secretary determines to be appropriate.

"(3) ANTIDISCRIMINATION LIMITATION.—The Secretary shall not enter into an agreement with an entity to provide health care items or services under the demonstration program, or with an entity to administer the program, unless such entity guarantees that it will not deny, limit, or condition the coverage or provision of benefits under the program, for individuals eligible to be enrolled under such program, based on any health status-related factor described in section 2702(a)(1) of the Public Health Service Act.

"(d) LIMITATIONS ON JUDICIAL REVIEW.—The following actions and determinations with respect to the demonstration program shall not be subject to review by a judicial or administrative tribunal:

"(1) Limiting the implementation of the program under subsection (a)(2).

"(2) Establishment of program participation standards under subsection (a)(5) or the denial or termination of, or refusal to renew, an agreement with an entity to provide health care items and services under the program.

"(3) Establishment of program administration contract performance standards under subsection (b)(6), the refusal to renew a program administration contract, or the noncompetitive award or renewal of a program administration contract under subsection (b)(4)(B).

"(5) Establishment of payment rates, through negotiation or otherwise, under a program agreement or a program administration contract.

"(6) A determination with respect to the program (where specifically authorized by the program authority or by subsection (c)(2))—

"(A) as to whether cost savings have been achieved, and the amount of savings; or

"(B) as to whether, to whom, and in what amounts bonuses will be paid.

"(e) APPLICATION LIMITED TO PARTS A AND B.—None of the provisions of this section or of the demonstration program shall apply to the programs under part C.

"(f) REPORTS TO CONGRESS.—Not later than two years after the date of the enactment of this section, and biennially thereafter for six years, the Secretary shall report to Congress on the use of authorities under the demonstration program. Each report shall ad-

dress the impact of the use of those authorities on expenditures, access, and quality under the programs under this title.".

(b) GAO REPORT.—Not later than 2 years after the date on which the demonstration project under section 1866A of the Social Security Act, as added by subsection (a), is implemented, the Comptroller General of the United States shall submit to Congress a report on such demonstration project. The report shall include such recommendations with respect to changes to the demonstration project that the Comptroller General determines appropriate.

SEC. 413. STUDY ON ENROLLMENT PROCEDURES FOR GROUPS THAT RETAIN INDEPENDENT CONTRACTOR PHYSICIANS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the current medicare enrollment process for groups that retain independent contractor physicians with particular emphasis on hospital-based physicians, such as emergency department staffing groups. In conducting the evaluation, the Comptroller General shall consult with groups that retain independent contractor physicians and shall—

(1) review the issuance of individual medicare provider numbers and the possible medicare program integrity vulnerabilities of the current process;

(2) review direct and indirect costs associated with the current process incurred by the medicare program and groups that retain independent contractor physicians;

(3) assess the effect on program integrity by the enrollment of groups that retain independent contractor hospital-based physicians; and

(4) develop suggested procedures for the enrollment of these groups.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a).

Subtitle C—Other Services

SEC. 421. 1-YEAR EXTENSION OF MORATORIUM ON THERAPY CAPS; REPORT ON STANDARDS FOR SUPERVISION OF PHYSICAL THERAPY ASSISTANTS.

(a) IN GENERAL.—Section 1833(g)(4) (42 U.S.C. 1395l(g)(4)) is amended by striking "2000 and 2001." and inserting "2000, 2001, and 2002.".

(b) CONFORMING AMENDMENT TO CONTINUE FOCUSED MEDICAL REVIEWS OF CLAIMS DURING MORATORIUM PERIOD.—Section 221(a)(2) of BBRA (113 Stat. 1501A–351) is amended by striking "(under the amendment made by paragraph (1)(B))".

(c) STUDY ON STANDARDS FOR SUPERVISION OF PHYSICAL THERAPIST ASSISTANTS.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the implications—

(A) of eliminating the "in the room" supervision requirement for medicare payment for services of physical therapy assistants who are supervised by physical therapists; and

(B) of such requirement on the cap imposed under section 1833(g) of the Social Security Act (42 U.S.C. 1395l(g)) on physical therapy services.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under paragraph (1).

SEC. 422. UPDATE IN RENAL DIALYSIS COMPOSITE RATE.

(a) UPDATE.—

(1) IN GENERAL.—The last sentence of section 1881(b)(7) (42 U.S.C. 1395rr(b)(7)) is amended by striking "for such services furnished on or after January 1, 2001, by 1.2 percent" and inserting "for such services furnished on or after January 1, 2001, by 2.4 percent".

(2) PROHIBITION ON EXEMPTIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary of Health and Human Services may not provide for an exception under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) on or after December 31, 2000.

(B) SPECIAL RULES FOR 2000.—

(i) IN GENERAL.—Any exemption rate under such section 1881(b)(7) in effect on December 31, 2000, shall continue in effect so long as such rate is greater than the composite rate as updated by the amendment made by paragraph (1).

(ii) RESUBMISSION OF CERTAIN APPLICATIONS.—In the case of an application for an exemption rate under such section that was filed by a facility during 2000 that was not approved by the Secretary of Health and Human Services, the facility may submit an application for an exemption rate for that year by not later than July 1, 2001.

(b) DEVELOPMENT OF ESRD MARKET BASKET.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall collect data and develop an ESRD market basket whereby the Secretary can estimate, before the beginning of a year, the percentage by which the costs for the year of the mix of labor and nonlabor goods and services included in the ESRD composite rate under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) will exceed the costs of such mix of goods and services for the preceding year. In developing such index, the Secretary may take into account measures of changes in—

(A) technology used in furnishing dialysis services;

(B) the manner or method of furnishing dialysis services; and

(C) the amounts by which the payments under such section for all services billed by a facility for a year exceed the aggregate allowable audited costs of such services for such facility for such year.

(2) REPORT.—The Secretary of Health and Human Services shall submit to Congress a report on the index developed under paragraph (1) no later than July 1, 2002, and shall include in the report recommendations on the appropriateness of an an-

nual or periodic update mechanism for renal dialysis services under the medicare program under title XVIII of the Social Security Act based on such index.

(c) INCLUSION OF ADDITIONAL SERVICES IN COMPOSITE RATE.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a system which includes, to the maximum extent feasible, in the composite rate used for payment under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)), payment for clinical diagnostic laboratory tests and drugs (including drugs paid under section 1881(b)(11)(B) of such Act (42 U.S.C. 1395rr(b)(11)(B)) that are routinely used in furnishing dialysis services to medicare beneficiaries but which are currently separately billable by renal dialysis facilities.

(2) REPORT.—The Secretary shall include, as part of the report submitted under subsection (b)(2), a report on the system developed under paragraph (1) and recommendations on the appropriateness of incorporating the system into medicare payment for renal dialysis services.

(d) GAO STUDY ON ACCESS TO SERVICES.—

(1) STUDY.—The Comptroller General of the United States shall study access of medicare beneficiaries to renal dialysis services. Such study shall include whether there is a sufficient supply of facilities to furnish needed renal dialysis services, whether medicare payment levels are appropriate, taking into account audited costs of facilities for all services furnished, to ensure continued access to such services, and improvements in access (and quality of care) that may result in the increased use of long nightly and short daily hemodialysis modalities.

(2) REPORT.—Not later than January 1, 2003, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).

SEC. 423. PAYMENT FOR AMBULANCE SERVICES.

(a) RESTORATION OF FULL CPI INCREASE FOR 2001.—Section 1834(l)(3) (42 U.S.C. 1395m(l)(3)) is amended by striking "reduced in the case of 2001 and 2002" each place it appears and inserting "reduced in the case of 2002".

(b) MILEAGE PAYMENTS.—Section 1834(l)(2)(E) (42 U.S.C. 1395m(l)(2)(E)) is amended by inserting before the period at the end the following: ", except that, beginning on the date on which the Secretary implements such fee schedule, such phase-in shall provide for full payment of any national mileage rate for ambulance services provided by suppliers that are paid by carriers in any of the 50 States where payment by a carrier for such services for all such suppliers in such State did not, prior to the implementation of the fee schedule, include a separate amount for all mileage within the county from which the beneficiary is transported".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) applies to services furnished on or after the date on which the Secretary of Health and Human Services implements the fee schedule under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)).

SEC. 424. AMBULATORY SURGICAL CENTERS.

(a) DELAY IN IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—The Secretary of Health and Human Services may not implement a revised prospective payment system for services of ambulatory surgical facilities under section 1833(i) of the Social Security Act (42 U.S.C. 1395l(i)) before January 1, 2002.

(b) EXTENDING PHASE-IN TO 4 YEARS.—Section 226 of the BBRA (113 Stat. 1501A–354) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) in the first year of its implementation, only a proportion (specified by the Secretary and not to exceed 1/4) of the payment for such services shall be made in accordance with such system and the remainder shall be made in accordance with current regulations; and

"(2) in each of the following 2 years a proportion (specified by the Secretary and not to exceed 1/2, and 3/4, respectively) of the payment for such services shall be made under such system and the remainder shall be made in accordance with current regulations.".

(c) DEADLINE FOR USE OF 1999 OR LATER COST SURVEYS.—Section 226 of BBRA (113 Stat. 1501A–354) is amended by adding at the end the following:

"By not later than January 1, 2003, the Secretary shall incorporate data from a 1999 medicare cost survey or a subsequent cost survey for purposes of implementing or revising such system.".

SEC. 425. FULL UPDATE FOR DURABLE MEDICAL EQUIPMENT.

(a) IN GENERAL.—Section 1834(a)(14) (42 U.S.C. 1395m(a)(14)) is amended—

(1) by redesignating subparagraph (D) as subparagraph (F);

(2) in subparagraph (C)—

(A) by striking "through 2002" and inserting "through 2000"; and

(B) by striking "and" at the end; and

(3) by inserting after subparagraph (C) the following new subparagraphs:

"(D) for 2001, the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) for the 12-month period ending with June 2000;

"(E) for 2002, 0 percentage points; and".

(b) CONFORMING AMENDMENTS TO BBRA.—Subsection (a) of section 228 of BBRA (113 Stat. 1501A–356) is amended—

(1) in the matter preceding paragraph (1), by striking "for such items";

(2) in paragraph (1), by inserting "oxygen and oxygen equipment for" after "(1)"; and

(3) in paragraph (2), by inserting "all such covered items for" after "(2)".

(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall take effect as if included in the enactment of BBRA.

SEC. 426. FULL UPDATE FOR ORTHOTICS AND PROSTHETICS.

Section 1834(h)(4)(A) (42 U.S.C. 1395m(h)(4)(A)) is amended—

(1) by redesignating clause (vi) as clause (viii);

(2) in clause (v)—

(A) by striking "through 2002" and inserting "through 2000"; and

(B) by striking "and" at the end; and

(3) by inserting after clause (v) the following new clause:

"(vi) for 2001, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 2000;

"(vii) for 2002, 1 percent; and".

SEC. 427. ESTABLISHMENT OF SPECIAL PAYMENT PROVISIONS AND REQUIREMENTS FOR PROSTHETICS AND CERTAIN CUSTOM FABRICATED ORTHOTIC ITEMS.

(a) IN GENERAL.—Section 1834(h)(1) (42 U.S.C. 1395m(h)(1)) is amended by adding at the end the following:

"(F) SPECIAL PAYMENT RULES FOR CERTAIN PROSTHETICS AND CUSTOM FABRICATED ORTHOTICS.—

"(i) IN GENERAL.—No payment shall be made under this subsection for an item of custom fabricated orthotics described in clause (ii) or for an item of prosthetics unless such item is—

"(I) furnished by a qualified practitioner; and

"(II) fabricated by a qualified practitioner or a qualified supplier at a facility that meets such criteria as the Secretary determines appropriate.

"(ii) DESCRIPTION OF CUSTOM FABRICATED ITEM.—

"(I) IN GENERAL.—An item described in this clause is an item of custom fabricated orthotics that requires education, training, and experience to custom fabricate and that is included in a list established by the Secretary in subclause (II). Such an item does not include shoes and shoe inserts.

"(II) LIST OF ITEMS.—The Secretary, in consultation with appropriate experts in orthotics (including national organizations representing manufacturers of orthotics), shall establish and update as appropriate a list of items to which this subparagraph applies. No item may be included in such list unless the item is individually fabricated for the patient over a positive model of the patient.

"(iii) QUALIFIED PRACTITIONER DEFINED.—In this subparagraph, the term 'qualified practitioner' means a physician or other individual who—

"(I) is a qualified physical therapist or a qualified occupational therapist;

"(II) in the case of a State that provides for the licensing of orthotics and prosthetics, is licensed in orthotics or prosthetics by the State in which the item is supplied; or

"(III) in the case of a State that does not provide for the licensing of orthotics and prosthetics, is specifically trained and educated to provide or manage the provision of prosthetics and custom-designed or fabricated orthotics, and is certified by

the American Board for Certification in Orthotics and Prosthetics, Inc. or by the Board for Orthotist/Prosthetist Certification, or is credentialed and approved by a program that the Secretary determines, in consultation with appropriate experts in orthotics and prosthetics, has training and education standards that are necessary to provide such prosthetics and orthotics.

"(iv) QUALIFIED SUPPLIER DEFINED.—In this subparagraph, the term 'qualified supplier' means any entity that is accredited by the American Board for Certification in Orthotics and Prosthetics, Inc. or by the Board for Orthotist/Prosthetist Certification, or accredited and approved by a program that the Secretary determines has accreditation and approval standards that are essentially equivalent to those of such Board.".

(b) EFFECTIVE DATE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate revised regulations to carry out the amendment made by subsection (a) using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code.

(c) GAO STUDY AND REPORT.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on HCFA Ruling 96–1, issued on September 1, 1996, with respect to distinguishing orthotics from durable medical equipment under the medicare program under title XVIII of the Social Security Act. The study shall assess the following matters:

(A) The compliance of the Secretary of Health and Human Services with the Administrative Procedures Act (under chapter 5 of title 5, United States Code) in making such ruling.

(B) The potential impact of such ruling on the health care furnished to medicare beneficiaries under the medicare program, especially those beneficiaries with degenerative musculoskeletal conditions.

(C) The potential for fraud and abuse under the medicare program if payment were provided for orthotics used as a component of durable medical equipment only when made under the special payment provision for certain prosthetics and custom fabricated orthotics under section 1834(h)(1)(F) of the Social Security Act, as added by subsection (a) and furnished by qualified practitioners under that section.

(D) The impact on payments under titles XVIII and XIX of the Social Security Act if such ruling were overturned.

(2) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).

SEC. 428. REPLACEMENT OF PROSTHETIC DEVICES AND PARTS.

(a) IN GENERAL.—Section 1834(h)(1) (42 U.S.C. 1395m(h)(1)), as amended by section 427(a), is further amended by adding at the end the following new subparagraph:

"(G) REPLACEMENT OF PROSTHETIC DEVICES AND PARTS.—

"(i) IN GENERAL.—Payment shall be made for the replacement of prosthetic devices which are artificial limbs, or for the replacement of any part of such devices, without regard to continuous use or useful lifetime restrictions if an ordering physician determines that the provision of a replacement device, or a replacement part of such a device, is necessary because of any of the following:

"(I) A change in the physiological condition of the patient.

"(II) An irreparable change in the condition of the device, or in a part of the device.

"(III) The condition of the device, or the part of the device, requires repairs and the cost of such repairs would be more than 60 percent of the cost of a replacement device, or, as the case may be, of the part being replaced.

"(ii) CONFIRMATION MAY BE REQUIRED IF REPLACEMENT DEVICE OR PART IS LESS THAN 3 YEARS OLD.—If a physician determines that a replacement device, or a replacement part, is necessary pursuant to clause (i)—

"(I) such determination shall be controlling; and

"(II) such replacement device or part shall be deemed to be reasonable and necessary for purposes of section 1862(a)(1)(A);

except that if the device, or part, being replaced is less than 3 years old (calculated from the date on which the beneficiary began to use the device or part), the Secretary may also require confirmation of necessity of the replacement device, or, as the case may be, the replacement part.".

(b) PREEMPTION OF RULE.—The provisions of section 1834(h)(1)(G) as added by subsection (a) shall supersede any rule that as of the date of the enactment of this Act may have applied a 5-year replacement rule with regard to prosthetic devices.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items replaced on or after April 1, 2001.

SEC. 429. REVISED PART B PAYMENT FOR DRUGS AND BIOLOGICALS AND RELATED SERVICES.

(a) RECOMMENDATIONS FOR REVISED PAYMENT METHODOLOGY FOR DRUGS AND BIOLOGICALS.—

(1) STUDY.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the reimbursement for drugs and biologicals under the current medicare payment methodology (provided under section 1842(o) of the Social Security Act (42 U.S.C. 1395u(o)) and for related services under part B of title XVIII of such Act. In the study, the Comptroller General shall—

(i) identify the average prices at which such drugs and biologicals are acquired by physicians and other suppliers;

(ii) quantify the difference between such average prices and the reimbursement amount under such section; and

(iii) determine the extent to which (if any) payment under such part is adequate to compensate physicians, providers of services, or other suppliers of such drugs and biologicals for costs incurred in the administration, handling, or storage of such drugs or biologicals.

(B) CONSULTATION.—In conducting the study under subparagraph (A), the Comptroller General shall consult with physicians, providers of services, and suppliers of drugs and biologicals under the medicare program under title XVIII of such Act, as well as other organizations involved in the distribution of such drugs and biologicals to such physicians, providers of services, and suppliers.

(2) REPORT.—Not later than 9 months after the date of the enactment of this Act, the Comptroller General shall submit to Congress and to the Secretary of Health and Human Services a report on the study conducted under this subsection, and shall include in such report recommendations for revised payment methodologies described in paragraph (3).

(3) RECOMMENDATIONS FOR REVISED PAYMENT METHODOLOGIES.—

(A) IN GENERAL.—The Comptroller General shall provide specific recommendations for revised payment methodologies for reimbursement for drugs and biologicals and for related services under the medicare program. The Comptroller General may include in the recommendations—

(i) proposals to make adjustments under subsection (c) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for the practice expense component of the physician fee schedule under such section for the costs incurred in the administration, handling, or storage of certain categories of such drugs and biologicals, if appropriate; and

(ii) proposals for new payments to providers of services or suppliers for such costs, if appropriate.

(B) ENSURING PATIENT ACCESS TO CARE.—In making recommendations under this paragraph, the Comptroller General shall ensure that any proposed revised payment methodology is designed to ensure that medicare beneficiaries continue to have appropriate access to health care services under the medicare program.

(C) MATTERS CONSIDERED.—In making recommendations under this paragraph, the Comptroller General shall consider—

(i) the method and amount of reimbursement for similar drugs and biologicals made by large group health plans;

(ii) as a result of any revised payment methodology, the potential for patients to receive inpatient or outpatient hospital services in lieu of services in a physician's office; and

(iii) the effect of any revised payment methodology on the delivery of drug therapies by hospital outpatient departments.

(D) COORDINATION WITH BBRA STUDY.—In making recommendations under this paragraph, the Comptroller General shall conclude and take into account the results of the study provided for under section 213(a) of BBRA (113 Stat. 1501A–350).

(b) IMPLEMENTATION OF NEW PAYMENT METHODOLOGY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, based on the recommendations contained in the report under subsection (a), the Secretary of Health and Human Services, subject to paragraph (2), shall revise the payment methodology under section 1842(o) of the Social Security Act (42 U.S.C. 1395u(o)) for drugs and biologicals furnished under part B of the medicare program. To the extent the Secretary determines appropriate, the Secretary may provide for the adjustments to payments amounts referred to in subsection (a)(3)(A)(i) or additional payments referred to in subsection (a)(2)(A)(ii).

(2) LIMITATION.—In revising the payment methodology under paragraph (1), in no case may the estimated aggregate payments for drugs and biologicals under the revised system (including additional payments referred to in subsection (a)(3)(A)(ii)) exceed the aggregate amount of payment for such drugs and biologicals, as projected by the Secretary, that would have been made under the payment methodology in effect under such section 1842(o).

(c) TEMPORARY INJUNCTION AGAINST REDUCTIONS IN PAYMENT RATES.—Notwithstanding any other provision of law, the Administrator of the Health Care Financing Administration may not directly or indirectly increase or decrease the rates of reimbursement (in effect on September 1, 2000) for drugs and biologicals under the current medicare payment methodology (provided under section 1842(o) of such Act (42 U.S.C. 1395u(o)) until such time as the Secretary has reviewed the report submitted under subsection (a)(2).

SEC. 430. CONTRAST ENHANCED DIAGNOSTIC PROCEDURES UNDER HOSPITAL PROSPECTIVE PAYMENT SYSTEM.

(a) SEPARATE CLASSIFICATION.—Section 1833(t)(2) (42 U.S.C. 1395l(t)(2)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) the Secretary shall create additional groups of covered OPD services that classify separately those procedures that utilize contrast media from those that do not.".

(b) CONFORMING AMENDMENT.—Section 1861(t)(1) (42 U.S.C. 1395x(t)(1)) is amended by inserting "(including contrast agents)" after "only such drugs".

(c) EFFECTIVE DATE.—The amendments made by this section apply to items and services furnished on or after January 1, 2001.

SEC. 431. QUALIFICATIONS FOR COMMUNITY MENTAL HEALTH CENTERS.

(a) MEDICARE PROGRAM.—Section 1861(ff)(3)(B) (42 U.S.C. 1395x(ff)(3)(B)) is amended by striking "entity" and all that follows and inserting the following: "entity that—

"(i)(I) provides the mental health services described in section 1913(c)(1) of the Public Health Service Act; or

"(II) in the case of an entity operating in a State that by law precludes the entity from providing itself the service described in subparagraph (E) of such section, provides for such service by contract with an approved organization or entity (as determined by the Secretary);

"(ii) meets applicable licensing or certification requirements for community mental health centers in the State in which it is located; and

"(iii) meets such additional conditions as the Secretary shall specify to ensure (I) the health and safety of individuals being furnished such services, (II) the effective and efficient furnishing of such services, and (III) the compliance of such entity with the criteria described in section 1931(c)(1) of the Public Health Service Act.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to community mental health centers with respect to services furnished on or after the first day of the third month beginning after the date of the enactment of this Act.

SEC. 432. MODIFICATION OF MEDICARE BILLING REQUIREMENTS FOR CERTAIN INDIAN PROVIDERS.

(a) IN GENERAL.—Section 1880(a) (42 U.S.C. 1395qq(a)) is amended by adding at the end the following new sentence: "A hospital or a free-standing ambulatory care clinic (as defined by the Secretary), whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act), shall be eligible for payments for services for which payment is made pursuant to section 1848, notwithstanding sections 1814(c) and 1835(d), if and for so long as it meets all of the requirements which are applicable generally to such payments, services, hospitals, and clinics.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to services furnished on or after January 1, 2001.

SEC. 433. GAO STUDY ON COVERAGE OF SURGICAL FIRST ASSISTING SERVICES OF CERTIFIED REGISTERED NURSE FIRST ASSISTANTS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the effect on the medicare program under title XVIII of the Social Security Act and on medicare beneficiaries of coverage under the program of surgical first assisting services of certified registered nurse first assistants. The Comptroller General shall consider the following when conducting the study:

(1) Any impact on the quality of care furnished to medicare beneficiaries by reason of such coverage.

(2) Appropriate education and training requirements for certified registered nurse first assistants who furnish such first assisting services.

(3) Appropriate rates of payment under the program to such certified registered nurse first assistants for furnishing such services, taking into account the costs of compensation, overhead, and supervision attributable to certified registered nurse first assistants.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a).

SEC. 434. MEDPAC STUDY AND REPORT ON MEDICARE REIMBURSEMENT FOR SERVICES PROVIDED BY CERTAIN PROVIDERS.

(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the appropriateness of the current payment rates under the medicare program under title XVIII of the Social Security Act for services provided by a—

(1) certified nurse-midwife (as defined in subsection (gg)(2) of section 1861 of such Act (42 U.S.C. 1395x);

(2) physician assistant (as defined in subsection (aa)(5)(A) of such section);

(3) nurse practitioner (as defined in such subsection); and

(4) clinical nurse specialist (as defined in subsection (aa)(5)(B) of such section).

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.

SEC. 435. MEDPAC STUDY AND REPORT ON MEDICARE COVERAGE OF SERVICES PROVIDED BY CERTAIN NONPHYSICIAN PROVIDERS.

(a) STUDY.—

(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study to determine the appropriateness of providing coverage under the medicare program under title XVIII of the Social Security Act for services provided by a—

(A) surgical technologist;

(B) marriage counselor;

(C) marriage and family therapist;

(D) pastoral care counselor; and

(E) licensed professional counselor of mental health.

(2) COSTS TO PROGRAM.—The study shall consider the short-term and long-term benefits, and costs to the medicare program, of providing the coverage described in paragraph (1).

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.

SEC. 436. GAO STUDY AND REPORT ON THE COSTS OF EMERGENCY AND MEDICAL TRANSPORTATION SERVICES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the costs of providing emergency and medical

transportation services across the range of acuity levels of conditions for which such transportation services are provided.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for any changes in methodology or payment level necessary to fairly compensate suppliers of emergency and medical transportation services and to ensure the access of beneficiaries under the medicare program under title XVIII of the Social Security Act.

SEC. 437. GAO STUDIES AND REPORTS ON MEDICARE PAYMENTS.

(a) GAO STUDY ON HCFA POST-PAYMENT AUDIT PROCESS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the post-payment audit process under the medicare program under title XVIII of the Social Security Act as such process applies to physicians, including the proper level of resources that the Health Care Financing Administration should devote to educating physicians regarding—

(A) coding and billing;

(B) documentation requirements; and

(C) the calculation of overpayments.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with specific recommendations for changes or improvements in the post-payment audit process described in such paragraph.

(b) GAO STUDY ON ADMINISTRATION AND OVERSIGHT.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the aggregate effects of regulatory, audit, oversight, and paperwork burdens on physicians and other health care providers participating in the medicare program under title XVIII of the Social Security Act.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations regarding any area in which—

(A) a reduction in paperwork, an ease of administration, or an appropriate change in oversight and review may be accomplished; or

(B) additional payments or education are needed to assist physicians and other health care providers in understanding and complying with any legal or regulatory requirements.

SEC. 438. MEDPAC STUDY ON ACCESS TO OUTPATIENT PAIN MANAGEMENT SERVICES.

(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the barriers to coverage and payment for outpatient interventional pain medicine procedures under the medicare program under title XVIII of the Social Security Act. Such study shall examine—

(1) the specific barriers imposed under the medicare program on the provision of pain management procedures in hos-

pital outpatient departments, ambulatory surgery centers, and physicians' offices; and

(2) the consistency of medicare payment policies for pain management procedures in those different settings.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study.

TITLE V—PROVISIONS RELATING TO PARTS A AND B

Subtitle A—Home Health Services

SEC. 501. 1-YEAR ADDITIONAL DELAY IN APPLICATION OF 15 PERCENT REDUCTION ON PAYMENT LIMITS FOR HOME HEALTH SERVICES.

(a) IN GENERAL.—Section 1895(b)(3)(A)(i) (42 U.S.C. 1395fff(b)(3)(A)(i)) is amended—

(1) by redesignating subclause (II) as subclause (III);

(2) in subclause (III), as redesignated, by striking "described in subclause (I)" and inserting "described in subclause (II)"; and

(3) by inserting after subclause (I) the following new subclause:

> *"(II) For the 12-month period beginning after the period described in subclause (I), such amount (or amounts) shall be equal to the amount (or amounts) determined under subclause (I), updated under subparagraph (B).".*

(b) CHANGE IN REPORT.—Section 302(c) of BBRA (113 Stat. 1501A–360) is amended—

(1) by striking "Not later than" and all that follows through "(42 U.S.C. 1395fff)" and inserting "Not later than April 1, 2002"; and

(2) by striking "Secretary" and inserting "Comptroller General of the United States".

(c) CASE MIX ADJUSTMENT CORRECTIONS.—

(1) IN GENERAL.—Section 1895(b)(3)(B) (42 U.S.C. 1395fff(b)(3)(B)) is amended by adding at the end the following new clause:

> *"(iv) ADJUSTMENT FOR CASE MIX CHANGES.—Insofar as the Secretary determines that the adjustments under paragraph (4)(A)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of different units of services that do not reflect real changes in case mix, the Secretary may adjust the standard prospective payment amount (or amounts) under paragraph (3) for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.".*

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies to episodes concluding on or after October 1, 2001.

SEC. 502. RESTORATION OF FULL HOME HEALTH MARKET BASKET UPDATE FOR HOME HEALTH SERVICES FOR FISCAL YEAR 2001.

(a) IN GENERAL.—Section 1861(v)(1)(L)(x) (42 U.S.C. 1395x(v)(1)(L)(x)) is amended—

(1) by striking "2001,"; and

(2) by adding at the end the following: "With respect to cost reporting periods beginning during fiscal year 2001, the update to any limit under this subparagraph shall be the home health market basket index.".

(b) SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001 BASED ON ADJUSTED PROSPECTIVE PAYMENT AMOUNTS.—

(1) IN GENERAL.—Notwithstanding the amendments made by subsection (a), for purposes of making payments under section 1895(b) of the Social Security Act (42 U.S.C. 1395fff(b)) for home health services for fiscal year 2001, the Secretary of Health and Human Services shall—

(A) with respect to episodes and visits ending on or after October 1, 2000, and before April 1, 2001, use the final standardized and budget neutral prospective payment amounts for 60 day episodes and standardized average per visit amounts for fiscal year 2001 as published by the Secretary in the Federal Register of the July 3, 2000 (65 Federal Register 41128–41214); and

(B) with respect to episodes and visits ending on or after April 1, 2001, and before October 1, 2001, use such amounts increased by 2.2 percent.

(2) NO EFFECT ON OTHER PAYMENTS OR DETERMINATIONS.—The Secretary shall not take the provisions of paragraph (1) into account for purposes of payments, determinations, or budget neutrality adjustments under section 1895 of the Social Security Act.

SEC. 503. TEMPORARY TWO-MONTH EXTENSION OF PERIODIC INTERIM PAYMENTS.

(a) TEMPORARY EXTENSION.—Notwithstanding subsection (d) of section 4603 of BBA (42 U.S.C. 1395fff note), as amended by section 5101(c)(2) of the Tax and Trade Relief Extension Act of 1998 (contained in division J of Public Law 105–277)), the amendments made by subsection (b) of such section 4603 shall not take effect until December 1, 2000, in the case of a home health agency that was receiving periodic interim payments under section 1815(e)(2) as of September 30, 2000.

(b) PAYMENT RULE.—The amount of such periodic interim payment made to a home health agency by reason of subsection (a) during each of November and December, 2000, shall be equal to the amount of such payment made to the agency in their last full monthly periodic interim payment. Such amount of payment shall be included in the tentative settlement of the last cost report for the home health agency under the payment system in effect prior to the implementation of the prospective payment system under section 1895(b) of the Social Security Act (42 U.S.C. 1395fff(b)).

SEC. 504. USE OF TELEHEALTH IN DELIVERY OF HOME HEALTH SERVICES.

Section 1895 (42 U.S.C. 1395fff) is amended by adding at the end the following new subsection:

"(e) CONSTRUCTION RELATED TO HOME HEALTH SERVICES.—

"(1) TELECOMMUNICATIONS.—Nothing in this section shall be construed as preventing a home health agency furnishing a home health unit of service for which payment is made under the prospective payment system established by this section for such units of service from furnishing services via a telecommunication system if such services—

"(A) do not substitute for in-person home health services ordered as part of a plan of care certified by a physician pursuant to section 1814(a)(2)(C) or section 1835(a)(2)(A); and

"(B) are not considered a home health visit for purposes of eligibility or payment under this title.

"(2) PHYSICIAN CERTIFICATION.—Nothing in this section shall be construed as waiving the requirement for a physician certification under section 1814(a)(2)(C) or section 1835(a)(2)(A) of such Act (42 U.S.C. 1395f(a)(2)(C), 1395n(a)(2)(A)) for the payment for home health services, whether or not furnished via a telecommunications system.".

SEC. 505. STUDY ON COSTS TO HOME HEALTH AGENCIES OF PURCHASING NONROUTINE MEDICAL SUPPLIES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on variations in prices paid by home health agencies furnishing home health services under the medicare program under title XVIII of the Social Security Act in purchasing nonroutine medical supplies, including ostomy supplies, and volumes if such supplies used, shall determine the effect (if any) of variations on prices and volumes in the provision of such services.

(b) REPORT.—Not later than October 1, 2001, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), and shall include in the report recommendations respecting whether payment for nonroutine medical supplies furnished in connection with home health services should be made separately from the prospective payment system for such services.

SEC. 506. TREATMENT OF BRANCH OFFICES; GAO STUDY ON SUPERVISION OF HOME HEALTH CARE PROVIDED IN ISOLATED RURAL AREAS.

(a) TREATMENT OF BRANCH OFFICES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in determining for purposes of title XVIII of the Social Security Act whether an office of a home health agency constitutes a branch office or a separate home health agency, neither the time nor distance between a parent office of the home health agency and a branch office shall be the sole determinant of a home health agency's branch office status.

(2) CONSIDERATION OF FORMS OF TECHNOLOGY IN DEFINITION OF SUPERVISION.—The Secretary of Health and Human Services may include forms of technology in determining what constitutes "supervision" for purposes of determining a home heath agency's branch office status under paragraph (1).

(b) GAO STUDY.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of the provision of adequate supervision to maintain quality of home health services delivered under the medicare program under title XVIII of the Social Security Act in isolated rural areas. The study shall evaluate the methods that home health agency branches and subunits use to maintain adequate supervision in the delivery of services to clients residing in those areas, how these methods of supervision compare to requirements that subunits independently meet medicare conditions of participation, and the resources utilized by subunits to meet such conditions.

(2) REPORT.—Not later than January 1, 2002, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include recommendations on whether exceptions are needed for subunits and branches of home health agencies under the medicare program to maintain access to the home health benefit or whether alternative policies should be developed to assure adequate supervision and access and recommendations on whether a national standard for supervision is appropriate.

SEC. 507. CLARIFICATION OF THE HOMEBOUND DEFINITION UNDER THE MEDICARE HOME HEALTH BENEFIT.

(a) CLARIFICATION.—

(1) IN GENERAL.—Sections 1814(a) and 1835(a) (42 U.S.C. 1395f(a) and 1395n(a)) are each amended—

(A) in the last sentence, by striking ", and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment"; and

(B) by adding at the end the following new sentences: "Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be 'confined to his home'. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to items and services provided on or after the date of enactment of this Act.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct an evaluation of the effect of the amendment on the cost of and access to home health services under the medicare program under title XVIII of the Social Security Act.

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

Subtitle B—Direct Graduate Medical Education

SEC. 511. INCREASE IN FLOOR FOR DIRECT GRADUATE MEDICAL EDUCATION PAYMENTS.

Section 1886(h)(2)(D)(iii) (42 U.S.C. 1395ww(h)(2)(D)(iii)) is amended—

(1) in the heading, by striking "IN FISCAL YEAR 2001 AT 70 PERCENT OF" and inserting "FOR"; and

(2) by inserting after "70 percent" the following: ", and for the cost reporting period beginning during fiscal year 2002 shall not be less than 85 percent,".

SEC. 512. CHANGE IN DISTRIBUTION FORMULA FOR MEDICARE+CHOICE-RELATED NURSING AND ALLIED HEALTH EDUCATION COSTS.

(a) IN GENERAL.—Section 1886(l)(2)(C) (42 U.S.C. 1395ww(l)(2)(C)) is amended by striking all that follows "multiplied by" and inserting the following: "the ratio of—

"(i) the product of (I) the Secretary's estimate of the ratio of the amount of payments made under section 1861(v) to the hospital for nursing and allied health education activities for the hospital's cost reporting period ending in the second preceding fiscal year, to the hospital's total inpatient days for such period, and (II) the total number of inpatient days (as established by the Secretary) for such period which are attributable to services furnished to individuals who are enrolled under a risk sharing contract with an eligible organization under section 1876 and who are entitled to benefits under part A or who are enrolled with a Medicare+Choice organization under part C; to

"(ii) the sum of the products determined under clause (i) for such cost reporting periods.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to portions of cost reporting periods occurring on or after January 1, 2001.

Subtitle C—Changes in Medicare Coverage and Appeals Process

SEC. 521. REVISIONS TO MEDICARE APPEALS PROCESS.

(a) CONDUCT OF RECONSIDERATIONS OF DETERMINATIONS BY INDEPENDENT CONTRACTORS.—Section 1869 (42 U.S.C. 1395ff) is amended to read as follows:

"DETERMINATIONS; APPEALS

"SEC. 1869. (a) INITIAL DETERMINATIONS.—

"(1) PROMULGATIONS OF REGULATIONS.—The Secretary shall promulgate regulations and make initial determinations with respect to benefits under part A or part B in accordance with those regulations for the following:

"(A) The initial determination of whether an individual is entitled to benefits under such parts.

"(B) The initial determination of the amount of benefits available to the individual under such parts.

"(C) Any other initial determination with respect to a claim for benefits under such parts, including an initial determination by the Secretary that payment may not be made, or may no longer be made, for an item or service under such parts, an initial determination made by a utilization and quality control peer review organization under section 1154(a)(2), and an initial determination made by an entity pursuant to a contract (other than a contract under section 1852) with the Secretary to administer provisions of this title or title XI.

"(2) DEADLINES FOR MAKING INITIAL DETERMINATIONS.—

"(A) IN GENERAL.—Subject to subparagraph (B), in promulgating regulations under paragraph (1), initial determinations shall be concluded by not later than the 45-day period beginning on the date the fiscal intermediary or the carrier, as the case may be, receives a claim for benefits from an individual as described in paragraph (1). Notice of such determination shall be mailed to the individual filing the claim before the conclusion of such 45-day period.

"(B) CLEAN CLAIMS.—Subparagraph (A) shall not apply with respect to any claim that is subject to the requirements of section 1816(c)(2) or section 1842(c)(2).

"(3) REDETERMINATIONS.—

"(A) IN GENERAL.—In promulgating regulations under paragraph (1) with respect to initial determinations, such regulations shall provide for a fiscal intermediary or a carrier to make a redetermination with respect to a claim for benefits that is denied in whole or in part.

"(B) LIMITATIONS.—

"(i) APPEALS RIGHTS.—No initial determination may be reconsidered or appealed under subsection (b) unless the fiscal intermediary or carrier has made a redetermination of that initial determination under this paragraph.

"(ii) DECISION MAKER.—No redetermination may be made by any individual involved in the initial determination.

"(C) DEADLINES.—

"(i) FILING FOR REDETERMINATION.—A redetermination under subparagraph (A) shall be available only if notice is filed with the Secretary to request the redetermination by not later than the end of the 120-day period beginning on the date the individual receives notice of the initial determination under paragraph (2).

"(ii) CONCLUDING REDETERMINATIONS.—Redeterminations shall be concluded by not later than the 30-day period beginning on the date the fiscal intermediary or the carrier, as the case may be, receives a request for a redetermination. Notice of such determination shall be mailed to the individual filing the claim before the conclusion of such 30-day period.

"(D) CONSTRUCTION.—For purposes of the succeeding provisions of this section a redetermination under this paragraph shall be considered to be part of the initial determination.

"(b) APPEAL RIGHTS.—

"(1) IN GENERAL.—

"(A) RECONSIDERATION OF INITIAL DETERMINATION.—Subject to subparagraph (D), any individual dissatisfied with any initial determination under subsection (a)(1) shall be entitled to reconsideration of the determination, and, subject to subparagraphs (D) and (E), a hearing thereon by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). For purposes of the preceding sentence, any reference to the 'Commissioner of Social Security' or the 'Social Security Administration' in subsection (g) or (l) of section 205 shall be considered a reference to the 'Secretary' or the 'Department of Health and Human Services', respectively.

"(B) REPRESENTATION BY PROVIDER OR SUPPLIER.—

"(i) IN GENERAL.—Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this section by a person that furnishes or supplies the individual, directly or indirectly, with services or items, solely on the basis that the person furnishes or supplies the individual with such a service or item.

"(ii) MANDATORY WAIVER OF RIGHT TO PAYMENT FROM BENEFICIARY.—Any person that furnishes services or items to an individual may not represent an individual under this section with respect to the issue described in section 1879(a)(2) unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal.

"(iii) PROHIBITION ON PAYMENT FOR REPRESENTATION.—If a person furnishes services or items to an individual and represents the individual under this section, the person may not impose any financial liability on such individual in connection with such representation.

"(iv) REQUIREMENTS FOR REPRESENTATIVES OF A BENEFICIARY.—The provisions of section 205(j) and section 206 (other than subsection (a)(4) of such section) regarding representation of claimants shall apply to representation of an individual with respect to appeals

under this section in the same manner as they apply to representation of an individual under those sections.

"(C) SUCCESSION OF RIGHTS IN CASES OF ASSIGNMENT.—The right of an individual to an appeal under this section with respect to an item or service may be assigned to the provider of services or supplier of the item or service upon the written consent of such individual using a standard form established by the Secretary for such an assignment.

"(D) TIME LIMITS FOR FILING APPEALS.—

"(i) RECONSIDERATIONS.—Reconsideration under subparagraph (A) shall be available only if the individual described in subparagraph (A) files notice with the Secretary to request reconsideration by not later than the end of the 180-day period beginning on the date the individual receives notice of the redetermination under subsection (a)(3), or within such additional time as the Secretary may allow.

"(ii) HEARINGS CONDUCTED BY THE SECRETARY.—The Secretary shall establish in regulations time limits for the filing of a request for a hearing by the Secretary in accordance with provisions in sections 205 and 206.

"(E) AMOUNTS IN CONTROVERSY.—

"(i) IN GENERAL.—A hearing (by the Secretary) shall not be available to an individual under this section if the amount in controversy is less than $100, and judicial review shall not be available to the individual if the amount in controversy is less than $1,000.

"(ii) AGGREGATION OF CLAIMS.—In determining the amount in controversy, the Secretary, under regulations, shall allow two or more appeals to be aggregated if the appeals involve—

"(I) the delivery of similar or related services to the same individual by one or more providers of services or suppliers, or

"(II) common issues of law and fact arising from services furnished to two or more individuals by one or more providers of services or suppliers.

"(F) EXPEDITED PROCEEDINGS.—

"(i) EXPEDITED DETERMINATION.—In the case of an individual who has received notice by a provider of services that the provider of services plans—

"(I) to terminate services provided to an individual and a physician certifies that failure to continue the provision of such services is likely to place the individual's health at significant risk, or

"(II) to discharge the individual from the provider of services,

the individual may request, in writing or orally, an expedited determination or an expedited reconsideration of an initial determination made under subsection (a)(1), as the case may be, and the Secretary shall provide such expedited determination or expedited reconsideration.

"(ii) EXPEDITED HEARING.—In a hearing by the Secretary under this section, in which the moving party alleges that no material issues of fact are in dispute, the Secretary shall make an expedited determination as to whether any such facts are in dispute and, if not, shall render a decision expeditiously.

"(G) REOPENING AND REVISION OF DETERMINATIONS.—The Secretary may reopen or revise any initial determination or reconsidered determination described in this subsection under guidelines established by the Secretary in regulations.

"(c) CONDUCT OF RECONSIDERATIONS BY INDEPENDENT CONTRACTORS.—

"(1) IN GENERAL.—The Secretary shall enter into contracts with qualified independent contractors to conduct reconsiderations of initial determinations made under subparagraphs (B) and (C) of subsection (a)(1). Contracts shall be for an initial term of three years and shall be renewable on a triennial basis thereafter.

"(2) QUALIFIED INDEPENDENT CONTRACTOR.—For purposes of this subsection, the term 'qualified independent contractor' means an entity or organization that is independent of any organization under contract with the Secretary that makes initial determinations under subsection (a)(1), and that meets the requirements established by the Secretary consistent with paragraph (3).

"(3) REQUIREMENTS.—Any qualified independent contractor entering into a contract with the Secretary under this subsection shall meet the all of the following requirements:

"(A) IN GENERAL.—The qualified independent contractor shall perform such duties and functions and assume such responsibilities as may be required by the Secretary to carry out the provisions of this subsection, and shall have sufficient training and expertise in medical science and legal matters to make reconsiderations under this subsection.

"(B) RECONSIDERATIONS.—

"(i) IN GENERAL.—The qualified independent contractor shall review initial determinations. In the case an initial determination made with respect to whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1862(a)(1)(A)), such review shall include consideration of the facts and circumstances of the initial determination by a panel of physicians or other appropriate health care professionals and any decisions with respect to the reconsideration shall be based on applicable information, including clinical experience and medical, technical, and scientific evidence.

"(ii) EFFECT OF NATIONAL AND LOCAL COVERAGE DETERMINATIONS.—

"(I) NATIONAL COVERAGE DETERMINATIONS.—If the Secretary has made a national coverage determination pursuant to the requirements established

under the third sentence of section 1862(a), such determination shall be binding on the qualified independent contractor in making a decision with respect to a reconsideration under this section.

"(II) LOCAL COVERAGE DETERMINATIONS.—If the Secretary has made a local coverage determination, such determination shall not be binding on the qualified independent contractor in making a decision with respect to a reconsideration under this section. Notwithstanding the previous sentence, the qualified independent contractor shall consider the local coverage determination in making such decision.

"(III) ABSENCE OF NATIONAL OR LOCAL COVERAGE DETERMINATION.—In the absence of such a national coverage determination or local coverage determination, the qualified independent contractor shall make a decision with respect to the reconsideration based on applicable information, including clinical experience and medical, technical, and scientific evidence.

"(C) DEADLINES FOR DECISIONS.—

"(i) RECONSIDERATIONS.—Except as provided in clauses (iii) and (iv), the qualified independent contractor shall conduct and conclude a reconsideration under subparagraph (B), and mail the notice of the decision with respect to the reconsideration by not later than the end of the 30-day period beginning on the date a request for reconsideration has been timely filed.

"(ii) CONSEQUENCES OF FAILURE TO MEET DEADLINE.—In the case of a failure by the qualified independent contractor to mail the notice of the decision by the end of the period described in clause (i) or to provide notice by the end of the period described in clause (iii), as the case may be, the party requesting the reconsideration or appeal may request a hearing before the Secretary, notwithstanding any requirements for a reconsidered determination for purposes of the party's right to such hearing.

"(iii) EXPEDITED RECONSIDERATIONS.—The qualified independent contractor shall perform an expedited reconsideration under subsection (b)(1)(F) as follows:

"(I) DEADLINE FOR DECISION.—Notwithstanding section 216(j) and subject to clause (iv), not later than the end of the 72-hour period beginning on the date the qualified independent contractor has received a request for such reconsideration and has received such medical or other records needed for such reconsideration, the qualified independent contractor shall provide notice (by telephone and in writing) to the individual and the provider of services and attending physician of the individual of the results of the reconsideration. Such reconsideration shall be conducted regardless

of whether the provider of services or supplier will charge the individual for continued services or whether the individual will be liable for payment for such continued services.

"(II) CONSULTATION WITH BENEFICIARY.—In such reconsideration, the qualified independent contractor shall solicit the views of the individual involved.

"(III) SPECIAL RULE FOR HOSPITAL DISCHARGES.—A reconsideration of a discharge from a hospital shall be conducted under this clause in accordance with the provisions of paragraphs (2), (3), and (4) of section 1154(e) as in effect on the date that precedes the date of the enactment of this subparagraph.

"(iv) EXTENSION.—An individual requesting a reconsideration under this subparagraph may be granted such additional time as the individual specifies (not to exceed 14 days) for the qualified independent contractor to conclude the reconsideration. The individual may request such additional time in orally or in writing.

"(D) LIMITATION ON INDIVIDUAL REVIEWING DETERMINATIONS.—

"(i) PHYSICIANS AND HEALTH CARE PROFESSIONAL.—No physician or health care professional under the employ of a qualified independent contractor may review—

"(I) determinations regarding health care services furnished to a patient if the physician or health care professional was directly responsible for furnishing such services; or

"(II) determinations regarding health care services provided in or by an institution, organization, or agency, if the physician or any member of the family of the physician or health care professional has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

"(ii) FAMILY DESCRIBED.—For purposes of this paragraph, the family of a physician or health care professional includes the spouse (other than a spouse who is legally separated from the physician or health care professional under a decree of divorce or separate maintenance), children (including stepchildren and legally adopted children), grandchildren, parents, and grandparents of the physician or health care professional.

"(E) EXPLANATION OF DECISION.—Any decision with respect to a reconsideration of a qualified independent contractor shall be in writing, and shall include a detailed explanation of the decision as well as a discussion of the pertinent facts and applicable regulations applied in making such decision, and in the case of a determination of wheth-

er an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1862(a)(1)(A)) an explanation of the medical and scientific rational for the decision.

"(F) NOTICE REQUIREMENTS.—Whenever a qualified independent contractor makes a decision with respect to a reconsideration under this subsection, the qualified independent contractor shall promptly notify the entity responsible for the payment of claims under part A or part B of such decision.

"(G) DISSEMINATION OF DECISIONS ON RECONSIDERATIONS.—Each qualified independent contractor shall make available all decisions with respect to reconsiderations of such qualified independent contractors to fiscal intermediaries (under section 1816), carriers (under section 1842), peer review organizations (under part B of title XI), Medicare+Choice organizations offering Medicare+Choice plans under part C, other entities under contract with the Secretary to make initial determinations under part A or part B or title XI, and to the public. The Secretary shall establish a methodology under which qualified independent contractors shall carry out this subparagraph.

"(H) ENSURING CONSISTENCY IN DECISIONS.—Each qualified independent contractor shall monitor its decisions with respect to reconsiderations to ensure the consistency of such decisions with respect to requests for reconsideration of similar or related matters.

"(I) DATA COLLECTION.—

"(i) IN GENERAL.—Consistent with the requirements of clause (ii), a qualified independent contractor shall collect such information relevant to its functions, and keep and maintain such records in such form and manner as the Secretary may require to carry out the purposes of this section and shall permit access to and use of any such information and records as the Secretary may require for such purposes.

"(ii) TYPE OF DATA COLLECTED.—Each qualified independent contractor shall keep accurate records of each decision made, consistent with standards established by the Secretary for such purpose. Such records shall be maintained in an electronic database in a manner that provides for identification of the following:

"(I) Specific claims that give rise to appeals.

"(II) Situations suggesting the need for increased education for providers of services, physicians, or suppliers.

"(III) Situations suggesting the need for changes in national or local coverage policy.

"(IV) Situations suggesting the need for changes in local medical review policies.

"(iii) ANNUAL REPORTING.—Each qualified independent contractor shall submit annually to the Secretary (or otherwise as the Secretary may request)

records maintained under this paragraph for the previous year.

"(J) HEARINGS BY THE SECRETARY.—The qualified independent contractor shall (i) prepare such information as is required for an appeal of a decision of the contractor with respect to a reconsideration to the Secretary for a hearing, including as necessary, explanations of issues involved in the decision and relevant policies, and (ii) participate in such hearings as required by the Secretary.

"(4) NUMBER OF QUALIFIED INDEPENDENT CONTRACTORS.—The Secretary shall enter into contracts with not fewer than 12 qualified independent contractors under this subsection.

"(5) LIMITATION ON QUALIFIED INDEPENDENT CONTRACTOR LIABILITY.—No qualified independent contractor having a contract with the Secretary under this subsection and no person who is employed by, or who has a fiduciary relationship with, any such qualified independent contractor or who furnishes professional services to such qualified independent contractor, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this subsection or to a valid contract entered into under this subsection, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

"(d) DEADLINES FOR HEARINGS BY THE SECRETARY.—

"(1) HEARING BY ADMINISTRATIVE LAW JUDGE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an administrative law judge shall conduct and conclude a hearing on a decision of a qualified independent contractor under subsection (c) and render a decision on such hearing by not later than the end of the 90-day period beginning on the date a request for hearing has been timely filed.

"(B) WAIVER OF DEADLINE BY PARTY SEEKING HEARING.—The 90-day period under subparagraph (A) shall not apply in the case of a motion or stipulation by the party requesting the hearing to waive such period.

"(2) DEPARTMENTAL APPEALS BOARD REVIEW.—

"(A) IN GENERAL.—The Departmental Appeals Board of the Department of Health and Human Services shall conduct and conclude a review of the decision on a hearing described in paragraph (1) and make a decision or remand the case to the administrative law judge for reconsideration by not later than the end of the 90-day period beginning on the date a request for review has been timely filed.

"(B) DAB HEARING PROCEDURE.—In reviewing a decision on a hearing under this paragraph, the Departmental Appeals Board shall review the case de novo.

"(3) CONSEQUENCES OF FAILURE TO MEET DEADLINES.—

"(A) HEARING BY ADMINISTRATIVE LAW JUDGE.—In the case of a failure by an administrative law judge to render a decision by the end of the period described in paragraph (1), the party requesting the hearing may request a review

by the Departmental Appeals Board of the Department of Health and Human Services, notwithstanding any requirements for a hearing for purposes of the party's right to such a review.

"(B) DEPARTMENTAL APPEALS BOARD REVIEW.—In the case of a failure by the Departmental Appeals Board to render a decision by the end of the period described in paragraph (2), the party requesting the hearing may seek judicial review, notwithstanding any requirements for a hearing for purposes of the party's right to such judicial review.

"(e) ADMINISTRATIVE PROVISIONS.—

"(1) LIMITATION ON REVIEW OF CERTAIN REGULATIONS.—A regulation or instruction that relates to a method for determining the amount of payment under part B and that was initially issued before January 1, 1981, shall not be subject to judicial review.

"(2) OUTREACH.—The Secretary shall perform such outreach activities as are necessary to inform individuals entitled to benefits under this title and providers of services and suppliers with respect to their rights of, and the process for, appeals made under this section. The Secretary shall use the toll-free telephone number maintained by the Secretary under section 1804(b) to provide information regarding appeal rights and respond to inquiries regarding the status of appeals.

"(3) CONTINUING EDUCATION REQUIREMENT FOR QUALIFIED INDEPENDENT CONTRACTORS AND ADMINISTRATIVE LAW JUDGES.—The Secretary shall provide to each qualified independent contractor, and, in consultation with the Commissioner of Social Security, to administrative law judges that decide appeals of reconsiderations of initial determinations or other decisions or determinations under this section, such continuing education with respect to coverage of items and services under this title or policies of the Secretary with respect to part B of title XI as is necessary for such qualified independent contractors and administrative law judges to make informed decisions with respect to appeals.

"(4) REPORTS.—

"(A) ANNUAL REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report describing the number of appeals for the previous year, identifying issues that require administrative or legislative actions, and including any recommendations of the Secretary with respect to such actions. The Secretary shall include in such report an analysis of determinations by qualified independent contractors with respect to inconsistent decisions and an analysis of the causes of any such inconsistencies.

"(B) SURVEY.—Not less frequently than every 5 years, the Secretary shall conduct a survey of a valid sample of individuals entitled to benefits under this title who have filed appeals of determinations under this section, providers of services, and suppliers to determine the satisfaction of such individuals or entities with the process for appeals of determinations provided for under this section and

education and training provided by the Secretary with respect to that process. The Secretary shall submit to Congress a report describing the results of the survey, and shall include any recommendations for administrative or legislative actions that the Secretary determines appropriate.".

(b) APPLICABILITY OF REQUIREMENTS AND LIMITATIONS ON LIABILITY OF QUALIFIED INDEPENDENT CONTRACTORS TO MEDICARE+CHOICE INDEPENDENT APPEALS CONTRACTORS.—Section 1852(g)(4) (42 U.S.C. 1395w–22(g)(4)) is amended by adding at the end the following: "The provisions of section 1869(c)(5) shall apply to independent outside entities under contract with the Secretary under this paragraph.".

(c) CONFORMING AMENDMENT.—Section 1154(e) (42 U.S.C. 1320c–3(e)) is amended by striking paragraphs (2), (3), and (4).

(d) EFFECTIVE DATE.—The amendments made by this section apply with respect to initial determinations made on or after October 1, 2002.

SEC. 522. REVISIONS TO MEDICARE COVERAGE PROCESS.

(a) REVIEW OF DETERMINATIONS.—Section 1869 (42 U.S.C. 1395ff), as amended by section 521, is further amended by adding at the end the following new subsection:

"(f) REVIEW OF COVERAGE DETERMINATIONS.—

"(1) NATIONAL COVERAGE DETERMINATIONS.—

"(A) IN GENERAL.—Review of any national coverage determination shall be subject to the following limitations:

"(i) Such a determination shall not be reviewed by any administrative law judge.

"(ii) Such a determination shall not be held unlawful or set aside on the ground that a requirement of section 553 of title 5, United States Code, or section 1871(b) of this title, relating to publication in the Federal Register or opportunity for public comment, was not satisfied.

"(iii) Upon the filing of a complaint by an aggrieved party, such a determination shall be reviewed by the Departmental Appeals Board of the Department of Health and Human Services. In conducting such a review, the Departmental Appeals Board shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the Board determines that the record is incomplete or lacks adequate information to support the validity of the determination. In reviewing such a determination, the Departmental Appeals Board shall defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

"(iv) A decision of the Departmental Appeals Board constitutes a final agency action and is subject to judicial review.

"(B) DEFINITION OF NATIONAL COVERAGE DETERMINATION.—For purposes of this section, the term 'national coverage determination' means a determination by the Secretary with respect to whether or not a particular item or

service is covered nationally under this title, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title or a determination with respect to the amount of payment made for a particular item or service so covered.

"(2) LOCAL COVERAGE DETERMINATION.—

"(A) IN GENERAL.—Review of any local coverage determination shall be subject to the following limitations:

"(i) Upon the filing of a complaint by an aggrieved party, such a determination shall be reviewed by an administrative law judge of the Social Security Administration. The administrative law judge shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the administrative law judge determines that the record is incomplete or lacks adequate information to support the validity of the determination. In reviewing such a determination, the administrative law judge shall defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

"(ii) Upon the filing of a complaint by an aggrieved party, a decision of an administrative law judge under clause (i) shall be reviewed by the Departmental Appeals Board of the Department of Health and Human Services.

"(iii) A decision of the Departmental Appeals Board constitutes a final agency action and is subject to judicial review.

"(B) DEFINITION OF LOCAL COVERAGE DETERMINATION.—For purposes of this section, the term 'local coverage determination' means a determination by a fiscal intermediary or a carrier under part A or part B, as applicable, respecting whether or not a particular item or service is covered on an intermediary- or carrier-wide basis under such parts, in accordance with section 1862(a)(1)(A).

"(3) NO MATERIAL ISSUES OF FACT IN DISPUTE.—In the case of a determination that may otherwise be subject to review under paragraph (1)(A)(iii) or paragraph (2)(A)(i), where the moving party alleges that—

"(A) there are no material issues of fact in dispute, and

"(B) the only issue of law is the constitutionality of a provision of this title, or that a regulation, determination, or ruling by the Secretary is invalid,

the moving party may seek review by a court of competent jurisdiction without filing a complaint under such paragraph and without otherwise exhausting other administrative remedies.

"(4) PENDING NATIONAL COVERAGE DETERMINATIONS.—

"(A) IN GENERAL.—In the event the Secretary has not issued a national coverage or noncoverage determination with respect to a particular type or class of items or services, an aggrieved person (as described in paragraph (5)) may submit to the Secretary a request to make such a determination with respect to such items or services. By not

later than the end of the 90-day period beginning on the date the Secretary receives such a request (notwithstanding the receipt by the Secretary of new evidence (if any) during such 90-day period), the Secretary shall take one of the following actions:

"(i) Issue a national coverage determination, with or without limitations.

"(ii) Issue a national noncoverage determination.

"(iii) Issue a determination that no national coverage or noncoverage determination is appropriate as of the end of such 90-day period with respect to national coverage of such items or services.

"(iv) Issue a notice that states that the Secretary has not completed a review of the request for a national coverage determination and that includes an identification of the remaining steps in the Secretary's review process and a deadline by which the Secretary will complete the review and take an action described in subclause (I), (II), or (III).

"(B) In the case of an action described in clause (i)(IV), if the Secretary fails to take an action referred to in such clause by the deadline specified by the Secretary under such clause, then the Secretary is deemed to have taken an action described in clause (i)(III) as of the deadline.

"(C) When issuing a determination under clause (i), the Secretary shall include an explanation of the basis for the determination. An action taken under clause (i) (other than subclause (IV)) is deemed to be a national coverage determination for purposes of review under subparagraph (A).

"(5) STANDING.—An action under this subsection seeking review of a national coverage determination or local coverage determination may be initiated only by individuals entitled to benefits under part A, or enrolled under part B, or both, who are in need of the items or services that are the subject of the coverage determination.

"(6) PUBLICATION ON THE INTERNET OF DECISIONS OF HEARINGS OF THE SECRETARY.—Each decision of a hearing by the Secretary with respect to a national coverage determination shall be made public, and the Secretary shall publish each decision on the Medicare Internet site of the Department of Health and Human Services. The Secretary shall remove from such decision any information that would identify any individual, provider of services, or supplier.

"(7) ANNUAL REPORT ON NATIONAL COVERAGE DETERMINATIONS.—

"(A) IN GENERAL.—Not later than December 1 of each year, beginning in 2001, the Secretary shall submit to Congress a report that sets forth a detailed compilation of the actual time periods that were necessary to complete and fully implement national coverage determinations that were made in the previous fiscal year for items, services, or medical devices not previously covered as a benefit under this title, including, with respect to each new item, service, or medical device, a statement of the time taken by the Sec-

retary to make and implement the necessary coverage, coding, and payment determinations, including the time taken to complete each significant step in the process of making and implementing such determinations.

"(B) PUBLICATION OF REPORTS ON THE INTERNET.—The Secretary shall publish each report submitted under clause (i) on the medicare Internet site of the Department of Health and Human Services.

"(8) CONSTRUCTION.—Nothing in this subsection shall be construed as permitting administrative or judicial review pursuant to this section insofar as such review is explicitly prohibited or restricted under another provision of law.".

(b) ESTABLISHMENT OF A PROCESS FOR COVERAGE DETERMINATIONS.—Section 1862(a) (42 U.S.C. 1395y(a)) is amended by adding at the end the following new sentence: "In making a national coverage determination (as defined in paragraph (1)(B) of section 1869(f)) the Secretary shall ensure that the public is afforded notice and opportunity to comment prior to implementation by the Secretary of the determination; meetings of advisory committees established under section 1114(f) with respect to the determination are made on the record; in making the determination, the Secretary has considered applicable information (including clinical experience and medical, technical, and scientific evidence) with respect to the subject matter of the determination; and in the determination, provide a clear statement of the basis for the determination (including responses to comments received from the public), the assumptions underlying that basis, and make available to the public the data (other than proprietary data) considered in making the determination.".

(c) IMPROVEMENTS TO THE MEDICARE ADVISORY COMMITTEE PROCESS.—Section 1114 (42 U.S.C. 1314) is amended by adding at the end the following new subsection:

"(i)(1) Any advisory committee appointed under subsection (f) to advise the Secretary on matters relating to the interpretation, application, or implementation of section 1862(a)(1) shall assure the full participation of a nonvoting member in the deliberations of the advisory committee, and shall provide such nonvoting member access to all information and data made available to voting members of the advisory committee, other than information that—

"(A) is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of such section (relating to trade secrets); or

"(B) the Secretary determines would present a conflict of interest relating to such nonvoting member.

"(2) If an advisory committee described in paragraph (1) organizes into panels of experts according to types of items or services considered by the advisory committee, any such panel of experts may report any recommendation with respect to such items or services directly to the Secretary without the prior approval of the advisory committee or an executive committee thereof.".

(d) EFFECTIVE DATE.—The amendments made by this section apply with respect to—

(1) a review of any national or local coverage determination filed,

(2) a request to make such a determination made,

(3) a national coverage determination made, on or after October 1, 2001.

Subtitle D—Improving Access to New Technologies

SEC. 531. REIMBURSEMENT IMPROVEMENTS FOR NEW CLINICAL LABORATORY TESTS AND DURABLE MEDICAL EQUIPMENT.

(a) PAYMENT RULE FOR NEW LABORATORY TESTS.—Section 1833(h)(4)(B)(viii) (42 U.S.C. 1395l(h)(4)(B)(viii)) is amended by inserting before the period at the end the following: "(or 100 percent of such median in the case of a clinical diagnostic laboratory test performed on or after January 1, 2001, that the Secretary determines is a new test for which no limitation amount has previously been established under this subparagraph)".

(b) ESTABLISHMENT OF CODING AND PAYMENT PROCEDURES FOR NEW CLINICAL DIAGNOSTIC LABORATORY TESTS AND OTHER ITEMS ON A FEE SCHEDULE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish procedures for coding and payment determinations for the categories of new clinical diagnostic laboratory tests and new durable medical equipment under part B of the title XVIII of the Social Security Act that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for ICD–9–CM.

(c) REPORT ON PROCEDURES USED FOR ADVANCED, IMPROVED TECHNOLOGIES.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report that identifies the specific procedures used by the Secretary under part B of title XVIII of the Social Security Act to adjust payments for clinical diagnostic laboratory tests and durable medical equipment which are classified to existing codes where, because of an advance in technology with respect to the test or equipment, there has been a significant increase or decrease in the resources used in the test or in the manufacture of the equipment, and there has been a significant improvement in the performance of the test or equipment. The report shall include such recommendations for changes in law as may be necessary to assure fair and appropriate payment levels under such part for such improved tests and equipment as reflects increased costs necessary to produce improved results.

SEC. 532. RETENTION OF HCPCS LEVEL III CODES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall maintain and continue the use of level III codes of the HCPCS coding system (as such system was in effect on August 16, 2000) through December 31, 2003, and shall make such codes available to the public.

(b) DEFINITION.—For purposes of this section, the term "HCPCS Level III codes" means the alphanumeric codes for local use under the Health Care Financing Administration Common Procedure Coding System (HCPCS).

SEC. 533. RECOGNITION OF NEW MEDICAL TECHNOLOGIES UNDER INPATIENT HOSPITAL PPS.

(a) EXPEDITING RECOGNITION OF NEW TECHNOLOGIES INTO INPATIENT PPS CODING SYSTEM.—

(1) REPORT.—Not later than April 1, 2001, the Secretary of Health and Human Services shall submit to Congress a report on methods of expeditiously incorporating new medical services and technologies into the clinical coding system used with respect to payment for inpatient hospital services furnished under the medicare program under title XVIII of the Social Security Act, together with a detailed description of the Secretary's preferred methods to achieve this purpose.

(2) IMPLEMENTATION.—Not later than October 1, 2001, the Secretary shall implement the preferred methods described in the report transmitted pursuant to paragraph (1).

(b) ENSURING APPROPRIATE PAYMENTS FOR HOSPITALS INCORPORATING NEW MEDICAL SERVICES AND TECHNOLOGIES.—

(1) ESTABLISHMENT OF MECHANISM.—Section 1886(d)(5) (42 U.S.C. 1395ww(d)(5)) is amended by adding at the end the following new subparagraphs:

"(K)(i) Effective for discharges beginning on or after October 1, 2001, the Secretary shall establish a mechanism to recognize the costs of new medical services and technologies under the payment system established under this subsection. Such mechanism shall be established after notice and opportunity for public comment (in the publications required by subsection (e)(5) for a fiscal year or otherwise).

"(ii) The mechanism established pursuant to clause (i) shall—

"(I) apply to a new medical service or technology if, based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate;

"(II) provide for the collection of data with respect to the costs of a new medical service or technology described in subclause (I) for a period of not less than two years and not more than three years beginning on the date on which an inpatient hospital code is issued with respect to the service or technology;

"(III) subject to paragraph (4)(C)(iii), provide for additional payment to be made under this subsection with respect to discharges involving a new medical service or technology described in subclause (I) that occur during the period described in subclause (II) in an amount that adequately reflects the estimated average cost of such service or technology; and

"(IV) provide that discharges involving such a service or technology that occur after the close of the period described in subclause (II) will be classified within a new or existing diagnosis-related group with a weighting factor under paragraph (4)(B) that is derived from cost data collected with respect to discharges occurring during such period.

"(iii) For purposes of clause (ii)(II), the term 'inpatient hospital code' means any code that is used with respect to inpatient hospital services for which payment may be made under this subsection and includes an alphanumeric code issued under the International Clas-

sification of Diseases, 9th Revision, Clinical Modification ('ICD–9–CM') and its subsequent revisions.

"(iv) For purposes of clause (ii)(III), the term 'additional payment' means, with respect to a discharge for a new medical service or technology described in clause (ii)(I), an amount that exceeds the prospective payment rate otherwise applicable under this subsection to discharges involving such service or technology that would be made but for this subparagraph.

"(v) The requirement under clause (ii)(III) for an additional payment may be satisfied by means of a new-technology group (described in subparagraph (L)), an add-on payment, a payment adjustment, or any other similar mechanism for increasing the amount otherwise payable with respect to a discharge under this subsection. The Secretary may not establish a separate fee schedule for such additional payment for such services and technologies, by utilizing a methodology established under subsection (a) or (h) of section 1834 to determine the amount of such additional payment, or by other similar mechanisms or methodologies.

"(vi) For purposes of this subparagraph and subparagraph (L), a medical service or technology will be considered a 'new medical service or technology' if the service or technology meets criteria established by the Secretary after notice and an opportunity for public comment.

"(L)(i) In establishing the mechanism under subparagraph (K), the Secretary may establish new-technology groups into which a new medical service or technology will be classified if, based on the estimated average costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate.

"(ii) Such groups—

"(I) shall not be based on the costs associated with a specific new medical service or technology; but

"(II) shall, in combination with the applicable standardized amounts and the weighting factors assigned to such groups under paragraph (4)(B), reflect such cost cohorts as the Secretary determines are appropriate for all new medical services and technologies that are likely to be provided as inpatient hospital services in a fiscal year.

"(iii) The methodology for classifying specific hospital discharges within a diagnosis-related group under paragraph (4)(A) or a new-technology group shall provide that a specific hospital discharge may not be classified within both a diagnosis-related group and a new-technology group.".

(2) PRIOR CONSULTATION.—The Secretary of Health and Human Services shall consult with groups representing hospitals, physicians, and manufacturers of new medical technologies before publishing the notice of proposed rulemaking required by section 1886(d)(5)(K)(i) of the Social Security Act (as added by paragraph (1)).

(3) CONFORMING AMENDMENT.—Section 1886(d)(4)(C)(i) (42 U.S.C. 1395ww(d)(4)(C)(i)) is amended by striking "technology," and inserting "technology (including a new medical service or technology under paragraph (5)(K)),".

Subtitle E—Other Provisions

SEC. 541. INCREASE IN REIMBURSEMENT FOR BAD DEBT.

Section 1861(v)(1)(T) (42 U.S.C. 1395x(v)(1)(T)) is amended—

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

(2) in clause (iii)—

(A) by striking "during a subsequent fiscal year" and inserting "during fiscal year 2000"; and

(B) by striking the period at the end and inserting ", and"; and

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

"(iv) for cost reporting periods beginning during a subsequent fiscal year, by 30 percent of such amount otherwise allowable.".

SEC. 542. TREATMENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES UNDER MEDICARE.

(a) IN GENERAL.—When an independent laboratory furnishes the technical component of a physician pathology service to a fee-for-service medicare beneficiary who is an inpatient or outpatient of a covered hospital, the Secretary of Health and Human Services shall treat such component as a service for which payment shall be made to the laboratory under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) and not as an inpatient hospital service for which payment is made to the hospital under section 1886(d) of such Act (42 U.S.C. 1395ww(d)) or as an outpatient hospital service for which payment is made to the hospital under section 1833(t) of such Act (42 U.S.C. 1395l(t)).

(b) DEFINITIONS.—For purposes of this section:

(1) COVERED HOSPITAL.—The term "covered hospital" means, with respect to an inpatient or an outpatient, a hospital that had an arrangement with an independent laboratory that was in effect as of July 22, 1999, under which a laboratory furnished the technical component of physician pathology services to fee-for-service medicare beneficiaries who were hospital inpatients or outpatients, respectively, and submitted claims for payment for such component to a medicare carrier (that has a contract with the Secretary under section 1842 of the Social Security Act, 42 U.S.C. 1395u) and not to such hospital.

(2) FEE-FOR-SERVICE MEDICARE BENEFICIARY.—The term "fee-for-service medicare beneficiary" means an individual who—

(A) is entitled to benefits under part A, or enrolled under part B, or both, of such title; and

(B) is not enrolled in any of the following:

(i) A Medicare+Choice plan under part C of such title.

(ii) A plan offered by an eligible organization under section 1876 of such Act (42 U.S.C. 1395mm).

(iii) A program of all-inclusive care for the elderly (PACE) under section 1894 of such Act (42 U.S.C. 1395eee).

(iv) A social health maintenance organization (SHMO) demonstration project established under sec-

tion 4018(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203).

(c) EFFECTIVE DATE.—This section applies to services furnished during the 2-year period beginning on January 1, 2001.

(d) GAO REPORT.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of the effects of the previous provisions of this section on hospitals and laboratories and access of fee-for-service medicare beneficiaries to the technical component of physician pathology services.

(2) REPORT.—Not later than April 1, 2002, the Comptroller General shall submit to Congress a report on such study. The report shall include recommendations about whether such provisions should be extended after the end of the period specified in subsection (c) for either or both inpatient and outpatient hospital services, and whether the provisions should be extended to other hospitals.

SEC. 543. EXTENSION OF ADVISORY OPINION AUTHORITY.

Section 1128D(b)(6) (42 U.S.C. 1320a–7d(b)(6)) is amended by striking "and before the date which is 4 years after such date of enactment".

SEC. 544. CHANGE IN ANNUAL MEDPAC REPORTING.

(a) REVISION OF DEADLINES FOR SUBMISSION OF REPORTS.—

(1) IN GENERAL.—Section 1805(b)(1)(D) (42 U.S.C. 1395b–6(b)(1)(D)) is amended by striking "June 1 of each year (beginning with 1998)," and inserting "June 15 of each year,".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies beginning with 2001.

(b) REQUIREMENT FOR ON THE RECORD VOTES ON RECOMMENDATIONS.—Section 1805(b) (42 U.S.C. 1395b–6(b)) is amended by adding at the end the following new paragraph:

"(7) VOTING AND REPORTING REQUIREMENTS.—With respect to each recommendation contained in a report submitted under paragraph (1), each member of the Commission shall vote on the recommendation, and the Commission shall include, by member, the results of that vote in the report containing the recommendation.".

SEC. 545. DEVELOPMENT OF PATIENT ASSESSMENT INSTRUMENTS.

(a) DEVELOPMENT.—

(1) IN GENERAL.—Not later than January 1, 2005, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate a report on the development of standard instruments for the assessment of the health and functional status of patients, for whom items and services described in subsection (b) are furnished, and include in the report a recommendation on the use of such standard instruments for payment purposes.

(2) DESIGN FOR COMPARISON OF COMMON ELEMENTS.—The Secretary shall design such standard instruments in a manner such that—

(A) elements that are common to the items and services described in subsection (b) may be readily comparable and are statistically compatible;

(B) only elements necessary to meet program objectives are collected; and

(C) the standard instruments supersede any other assessment instrument used before that date.

(3) CONSULTATION.—In developing an assessment instrument under paragraph (1), the Secretary shall consult with the Medicare Payment Advisory Commission, the Agency for Healthcare Research and Quality, and qualified organizations representing providers of services and suppliers under title XVIII.

(b) DESCRIPTION OF SERVICES.—For purposes of subsection (a), items and services described in this subsection are those items and services furnished to individuals entitled to benefits under part A, or enrolled under part B, or both of title XVIII of the Social Security Act for which payment is made under such title, and include the following:

(1) Inpatient and outpatient hospital services.

(2) Inpatient and outpatient rehabilitation services.

(3) Covered skilled nursing facility services.

(4) Home health services.

(5) Physical or occupational therapy or speech-language pathology services.

(6) Items and services furnished to such individuals determined to have end stage renal disease.

(7) Partial hospitalization services and other mental health services.

(8) Any other service for which payment is made under such title as the Secretary determines to be appropriate.

SEC. 546. GAO REPORT ON IMPACT OF THE EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT (EMTALA) ON HOSPITAL EMERGENCY DEPARTMENTS.

(a) REPORT.—The Comptroller General of the United States shall submit a report to the Committee on Commerce and the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate by May 1, 2001, on the effect of the Emergency Medical Treatment and Active Labor Act on hospitals, emergency physicians, and physicians covering emergency department call throughout the United States.

(b) REPORT REQUIREMENTS.—The report should evaluate—

(1) the extent to which hospitals, emergency physicians, and physicians covering emergency department call provide uncompensated services in relation to the requirements of EMTALA;

(2) the extent to which the regulatory requirements and enforcement of EMTALA have expanded beyond the legislation's original intent;

(3) estimates for the total dollar amount of EMTALA-related care uncompensated costs to emergency physicians, physicians covering emergency department call, hospital emergency departments, and other hospital services;

(4) the extent to which different portions of the United States may be experiencing different levels of uncompensated EMTALA-related care;

(5) the extent to which EMTALA would be classified as an unfunded mandate if it were enacted today;

(6) the extent to which States have programs to provide financial support for such uncompensated care;

(7) possible sources of funds, including medicare hospital bad debt accounts, that are available to hospitals to assist with the cost of such uncompensated care; and

(8) the financial strain that illegal immigration populations, the uninsured, and the underinsured place on hospital emergency departments, other hospital services, emergency physicians, and physicians covering emergency department call.

(c) DEFINITION.—In this section, the terms "Emergency Medical Treatment and Active Labor Act" and "EMTALA" mean section 1867 of the Social Security Act (42 U.S.C. 1395dd).

TITLE VI—PROVISIONS RELATING TO PART C (MEDICARE+CHOICE PROGRAM) AND OTHER MEDICARE MANAGED CARE PROVISIONS

Subtitle A—Medicare+Choice Payment Reforms

SEC. 601. INCREASE IN MINIMUM PAYMENT AMOUNT.

Section 1853(c)(1)(B)(ii) (42 U.S.C. 1395w–23(c)(1)(B)(ii)) is amended—

(1) by striking "(ii) For a succeeding year" and inserting "(ii)(I) Subject to subclauses (II) and (III), for a succeeding year"; and

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

"(II) For 2001, for any area in a Metropolitan Statistical Area within any of the 50 States and the District of Columbia with a population of more than 250,000, $525 (and for any other area within any of the 50 States, $475).

"(III) For 2001, for any area in a Metropolitan Statistical Area outside the 50 States and the District of Columbia with a population of more than 250,000, $525 (and for any other area outside the 50 States and the District of Columbia, $475), but not to exceed 120 percent of the amount determined under this subparagraph for such area for 2000.".

SEC. 602. INCREASE IN MINIMUM PERCENTAGE INCREASE.

Section 1853(c)(1)(C)(ii) (42 U.S.C. 1395w–23(c)(1)(C)(ii)) is amended by inserting "(or 103 percent in the case of 2001)" after "102 percent".

SEC. 603. 10-YEAR PHASE-IN OF RISK ADJUSTMENT.

Section 1853(a)(3)(C)(ii) (42 U.S.C. 1395w–23(a)(3)(C)(ii)) is amended—

(1) in subclause (I), by striking "and 2001" and inserting "and each succeeding year through the first year in which risk adjustment is based on data from inpatient hospital and ambulatory settings"; and

(2) by amending subclause (II) to read as follows:

"(II) beginning after such first year, insofar as such risk adjustment is based on data from inpatient hospital and ambulatory settings, the methodology shall be phased in equal increments over a 10-year period that begins with such first year.".

SEC. 604. TRANSITION TO REVISED MEDICARE+CHOICE PAYMENT RATES.

(a) ANNOUNCEMENT OF REVISED MEDICARE+CHOICE PAYMENT RATES.—Within 2 weeks after the date of the enactment of this Act, the Secretary of Health and Human Services shall determine, and shall announce (in a manner intended to provide notice to interested parties) Medicare+Choice capitation rates under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for 2001, revised in accordance with the provisions of this Act.

(b) REENTRY INTO PROGRAM PERMITTED FOR MEDICARE+CHOICE PROGRAMS IN 2000.—A Medicare+Choice organization that provided notice to the Secretary of Health and Human Services before the date of the enactment of this Act that it was terminating its contract under part C of title XVIII of the Social Security Act or was reducing the service area of a Medicare+Choice plan offered under such part shall be permitted to continue participation under such part, or to maintain the service area of such plan, for 2001 if it provides the Secretary with the information described in section 1854(a)(1) of the Social Security Act (42 U.S.C. 1395w–24(a)(1)) within 2 weeks after the date revised rates are announced by the Secretary under subsection (a).

(c) REVISED SUBMISSION OF PROPOSED PREMIUMS AND RELATED INFORMATION.—If—

(1) a Medicare+Choice organization provided notice to the Secretary of Health and Human Services as of July 3, 2000, that it was renewing its contract under part C of title XVIII of the Social Security Act for all or part of the service area or areas served under its current contract, and

(2) any part of the service area or areas addressed in such notice includes a payment area for which the Medicare+Choice capitation rate under section 1853(c) of such Act (42 U.S.C. 1395w–23(c)) for 2001, as determined under subsection (a), is higher than the rate previously determined for such year,

such organization shall revise its submission of the information described in section 1854(a)(1) of the Social Security Act (42 U.S.C. 1395w–24(a)(1)), and shall submit such revised information to the Secretary, within 2 weeks after the date revised rates are announced by the Secretary under subsection (a). In making such submission, the organization may only reduce premiums, cost-sharing, enhance benefits, or utilize the stabilization fund described in section 1854(f)(2) of such Act (42 U.S.C. 1395w–24(f)(2)).

(d) DISREGARD OF NEW RATE ANNOUNCEMENT IN APPLYING PASS-THROUGH FOR NEW NATIONAL COVERAGE DETERMINATIONS.—For purposes of applying section 1852(a)(5) of the Social Security Act (42 U.S.C. 1395w–22(a)(5)), the announcement of revised rates under subsection (a) shall not be treated as an announcement under section 1853(b) of such Act (42 U.S.C. 1395w–23(b)).

SEC. 605. REVISION OF PAYMENT RATES FOR ESRD PATIENTS ENROLLED IN MEDICARE+CHOICE PLANS.

(a) IN GENERAL.—Section 1853(a)(1)(B) (42 U.S.C. 1395w–23(a)(1)(B)) is amended by adding at the end the following: "In establishing such rates, the Secretary shall provide for appropriate adjustments to increase each rate to reflect the demonstration rate (including the risk adjustment methodology associated with such rate) of the social health maintenance organization end-stage renal disease capitation demonstrations (established by section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993), and shall compute such rates by taking into account such factors as renal treatment modality, age, and the underlying cause of the end-stage renal disease.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments for months beginning with January 2002.

(c) PUBLICATION.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall publish for public comment a description of the appropriate adjustments described in the last sentence of section 1853(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–23(a)(1)(B)), as added by subsection (a). The Secretary shall publish such adjustments in final form by not later than July 1, 2001, so that the amendment made by subsection (a) is implemented on a timely basis consistent with subsection (b).

SEC. 606. PERMITTING PREMIUM REDUCTIONS AS ADDITIONAL BENEFITS UNDER MEDICARE+CHOICE PLANS.

(a) IN GENERAL.—

(1) AUTHORIZATION OF PART B PREMIUM REDUCTIONS.—Section 1854(f)(1) (42 U.S.C. 1395w–24(f)(1)) is amended—

(A) by redesignating subparagraph (E) as subparagraph (F); and

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

"(E) PREMIUM REDUCTIONS.—

"(i) IN GENERAL.—Subject to clause (ii), as part of providing any additional benefits required under subparagraph (A), a Medicare+Choice organization may elect a reduction in its payments under section 1853(a)(1)(A) with respect to a Medicare+Choice plan and the Secretary shall apply such reduction to reduce the premium under section 1839 of each enrollee in such plan as provided in section 1840(i).

"(ii) AMOUNT OF REDUCTION.—The amount of the reduction under clause (i) with respect to any enrollee in a Medicare+Choice plan—

"(I) may not exceed 125 percent of the premium described under section 1839(a)(3); and

"(II) shall apply uniformly to each enrollee of the Medicare+Choice plan to which such reduction applies.".

(2) CONFORMING AMENDMENTS.—

(A) ADJUSTMENT OF PAYMENTS TO MEDICARE+CHOICE ORGANIZATIONS.—Section 1853(a)(1)(A) (42 U.S.C. 1395w–23(a)(1)(A)) is amended by inserting "reduced by the amount of any reduction elected under section 1854(f)(1)(E) and" after "for that area,".

(B) ADJUSTMENT AND PAYMENT OF PART B PREMIUMS.—

(i) ADJUSTMENT OF PREMIUMS.—Section 1839(a)(2) (42 U.S.C. 1395r(a)(2)) is amended by striking "shall" and all that follows and inserting the following: "shall be the amount determined under paragraph (3), adjusted as required in accordance with subsections (b), (c), and (f), and to reflect 80 percent of any reduction elected under section 1854(f)(1)(E).".

(ii) PAYMENT OF PREMIUMS.—Section 1840 (42 U.S.C. 1395s) is amended by adding at the end the following new subsection:

"(i) In the case of an individual enrolled in a Medicare+Choice plan, the Secretary shall provide for necessary adjustments of the monthly beneficiary premium to reflect 80 percent of any reduction elected under section 1854(f)(1)(E). This premium adjustment may be provided directly or as an adjustment to any social security, railroad retirement, and civil service retirement benefits, to the extent which the Secretary determines that such an adjustment is appropriate with the concurrence of the agencies responsible for the administration of such benefits.".

(C) INFORMATION COMPARING PLAN PREMIUMS UNDER PART C.—Section 1851(d)(4)(B) (42 U.S.C. 1395w–21(d)(4)(B)) is amended—

(i) by striking "PREMIUMS.—The" and inserting "PREMIUMS.—

"(i) IN GENERAL.—The"; and

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

"(ii) REDUCTIONS.—The reduction in part B premiums, if any.".

(D) TREATMENT OF REDUCTION FOR PURPOSES OF DETERMINING GOVERNMENT CONTRIBUTION UNDER PART B.—Section 1844 (42 U.S.C. 1395w) is amended by adding at the end the following new subsection:

"(c) The Secretary shall determine the Government contribution under subparagraphs (A) and (B) of subsection (a)(1) without regard to any premium reduction resulting from an election under section 1854(f)(1)(E).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to years beginning with 2002.

SEC. 607. FULL IMPLEMENTATION OF RISK ADJUSTMENT FOR CONGESTIVE HEART FAILURE ENROLLEES FOR 2001.

(a) IN GENERAL.—Section 1853(a)(3)(C) (42 U.S.C. 1395w–23(a)(3)(C)) is amended—

(1) in clause (ii), by striking "Such risk adjustment" and inserting "Except as provided in clause (iii), such risk adjustment"; and

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

"(iii) FULL IMPLEMENTATION OF RISK ADJUSTMENT FOR CONGESTIVE HEART FAILURE ENROLLEES FOR 2001.—

"(I) EXEMPTION FROM PHASE-IN.—Subject to subclause (II), the Secretary shall fully implement the risk adjustment methodology described in clause (i) with respect to each individual who has had a qualifying congestive heart failure inpatient diagnosis (as determined by the Secretary under such risk adjustment methodology) during the period beginning on July 1, 1999, and ending on June 30, 2000, and who is enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001, in the service area of the individual.

"(II) PERIOD OF APPLICATION.—Subclause (I) shall only apply during the 1-year period beginning on January 1, 2001.".

(b) EXCLUSION FROM DETERMINATION OF THE BUDGET NEUTRALITY FACTOR.—Section 1853(c)(5) (42 U.S.C. 1395w–23(c)(5)) is amended by striking "subsection (i)" and inserting "subsections (a)(3)(C)(iii) and (i)".

SEC. 608. EXPANSION OF APPLICATION OF MEDICARE+CHOICE NEW ENTRY BONUS.

(a) IN GENERAL.—Section 1853(i)(1) (42 U.S.C. 1395w–23(i)(1)) is amended in the matter preceding subparagraph (A) by inserting ", or filed notice with the Secretary as of October 3, 2000, that they will not be offering such a plan as of January 1, 2001" after "January 1, 2000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if included in the enactment of BBRA.

SEC. 609. REPORT ON INCLUSION OF CERTAIN COSTS OF THE DEPARTMENT OF VETERANS AFFAIRS AND MILITARY FACILITY SERVICES IN CALCULATING MEDICARE+CHOICE PAYMENT RATES.

The Secretary of Health and Human Services shall report to Congress by not later than January 1, 2003, on a method to phase-in the costs of military facility services furnished by the Department of Veterans Affairs, and the costs of military facility services furnished by the Department of Defense, to medicare-eligible beneficiaries in the calculation of an area's Medicare+Choice capitation payment. Such report shall include on a county-by-county basis—

(1) the actual or estimated cost of such services to medicare-eligible beneficiaries;

(2) the change in Medicare+Choice capitation payment rates if such costs are included in the calculation of payment rates;

(3) one or more proposals for the implementation of payment adjustments to Medicare+Choice plans in counties where the payment rate has been affected due to the failure to cal-

culate the cost of such services to medicare-eligible beneficiaries; and

(4) a system to ensure that when a Medicare+Choice enrollee receives covered services through a facility of the Department of Veterans Affairs or the Department of Defense there is an appropriate payment recovery to the medicare program under title XVIII of the Social Security Act.

Subtitle B—Other Medicare+Choice Reforms

SEC. 611. PAYMENT OF ADDITIONAL AMOUNTS FOR NEW BENEFITS COVERED DURING A CONTRACT TERM.

(a) IN GENERAL.—Section 1853(c)(7) (42 U.S.C. 1395w–23(c)(7)) is amended to read as follows:

"(7) ADJUSTMENT FOR NATIONAL COVERAGE DETERMINATIONS AND LEGISLATIVE CHANGES IN BENEFITS.—If the Secretary makes a determination with respect to coverage under this title or there is a change in benefits required to be provided under this part that the Secretary projects will result in a significant increase in the costs to Medicare+Choice of providing benefits under contracts under this part (for periods after any period described in section 1852(a)(5)), the Secretary shall adjust appropriately the payments to such organizations under this part. Such projection and adjustment shall be based on an analysis by the Chief Actuary of the Health Care Financing Administration of the actuarial costs associated with the new benefits.".

(b) CONFORMING AMENDMENT.—Section 1852(a)(5) (42 U.S.C. 1395w–22(a)(5)) is amended—

(1) in the heading, by inserting "AND LEGISLATIVE CHANGES IN BENEFITS" after "NATIONAL COVERAGE DETERMINATIONS";

(2) by inserting "or legislative change in benefits required to be provided under this part" after "national coverage determination";

(3) in subparagraph (A), by inserting "or legislative change in benefits" after "such determination";

(4) in subparagraph (B), by inserting "or legislative change" after "if such coverage determination"; and

(5) by adding at the end the following:

"The projection under the previous sentence shall be based on an analysis by the Chief Actuary of the Health Care Financing Administration of the actuarial costs associated with the coverage determination or legislative change in benefits.".

(c) EFFECTIVE DATE.—The amendments made by this section are effective on the date of the enactment of this Act and apply to national coverage determinations and legislative changes in benefits occurring on or after such date.

SEC. 612. RESTRICTION ON IMPLEMENTATION OF SIGNIFICANT NEW REGULATORY REQUIREMENTS MIDYEAR.

(a) IN GENERAL.—Section 1856(b) (42 U.S.C. 1395w–26(b)) is amended by adding at the end the following new paragraph:

"(4) PROHIBITION OF MIDYEAR IMPLEMENTATION OF SIGNIFICANT NEW REGULATORY REQUIREMENTS.—The Secretary may

not implement, other than at the beginning of a calendar year, regulations under this section that impose new, significant regulatory requirements on a Medicare+Choice organization or plan.".

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

SEC. 613. TIMELY APPROVAL OF MARKETING MATERIAL THAT FOLLOWS MODEL MARKETING LANGUAGE.

(a) IN GENERAL.—Section 1851(h) (42 U.S.C. 1395w–21(h)) is amended—

(1) in paragraph (1)(A), by inserting "(or 10 days in the case described in paragraph (5))" after "45 days"; and

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

"(5) SPECIAL TREATMENT OF MARKETING MATERIAL FOLLOWING MODEL MARKETING LANGUAGE.—In the case of marketing material of an organization that uses, without modification, proposed model language specified by the Secretary, the period specified in paragraph (1)(A) shall be reduced from 45 days to 10 days.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to marketing material submitted on or after January 1, 2001.

SEC. 614. AVOIDING DUPLICATIVE REGULATION.

(a) IN GENERAL.—Section 1856(b)(3)(B) (42 U.S.C. 1395w–26(b)(3)(B)) is amended—

(1) in clause (i), by inserting "(including cost-sharing requirements)" after "Benefit requirements"; and

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

"(iv) Requirements relating to marketing materials and summaries and schedules of benefits regarding a Medicare+Choice plan.".

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

SEC. 615. ELECTION OF UNIFORM LOCAL COVERAGE POLICY FOR MEDICARE+CHOICE PLAN COVERING MULTIPLE LOCALITIES.

Section 1852(a)(2) (42 U.S.C. 1395w–22(a)(2)) is amended by adding at the end the following new subparagraph:

"(C) ELECTION OF UNIFORM COVERAGE POLICY.—In the case of a Medicare+Choice organization that offers a Medicare+Choice plan in an area in which more than one local coverage policy is applied with respect to different parts of the area, the organization may elect to have the local coverage policy for the part of the area that is most beneficial to Medicare+Choice enrollees (as identified by the Secretary) apply with respect to all Medicare+Choice enrollees enrolled in the plan.".

SEC. 616. ELIMINATING HEALTH DISPARITIES IN MEDICARE+CHOICE PROGRAM.

(a) QUALITY ASSURANCE PROGRAM FOCUS ON RACIAL AND ETHNIC MINORITIES.—Subparagraphs (A) and (B) of section 1852(e)(2) (42 U.S.C. 1395w–22(e)(2)) are each amended by adding at the end the following:

"Such program shall include a separate focus (with respect to all the elements described in this subparagraph) on racial and ethnic minorities.".

(b) REPORT.—Section 1852(e) (42 U.S.C. 1395w–22(e)) is amended by adding at the end the following new paragraph:

"(5) REPORT TO CONGRESS.—

"(A) IN GENERAL.—Not later than 2 years after the date of the enactment of this paragraph, and biennially thereafter, the Secretary shall submit to Congress a report regarding how quality assurance programs conducted under this subsection focus on racial and ethnic minorities.

"(B) CONTENTS OF REPORT.—Each such report shall include the following:

"(i) A description of the means by which such programs focus on such racial and ethnic minorities.

"(ii) An evaluation of the impact of such programs on eliminating health disparities and on improving health outcomes, continuity and coordination of care, management of chronic conditions, and consumer satisfaction.

"(iii) Recommendations on ways to reduce clinical outcome disparities among racial and ethnic minorities.".

SEC. 617. MEDICARE+CHOICE PROGRAM COMPATIBILITY WITH EMPLOYER OR UNION GROUP HEALTH PLANS.

(a) IN GENERAL.—Section 1857 (42 U.S.C. 1395w–27) is amended by adding at the end the following new subsection:

"(i) MEDICARE+CHOICE PROGRAM COMPATIBILITY WITH EMPLOYER OR UNION GROUP HEALTH PLANS.—To facilitate the offering of Medicare+Choice plans under contracts between Medicare+Choice organizations and employers, labor organizations, or the trustees of a fund established by 1 or more employers or labor organizations (or combination thereof) to furnish benefits to the entity's employees, former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations, the Secretary may waive or modify requirements that hinder the design of, the offering of, or the enrollment in such Medicare+Choice plans.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to years beginning with 2001.

SEC. 618. SPECIAL MEDIGAP ENROLLMENT ANTIDISCRIMINATION PROVISION FOR CERTAIN BENEFICIARIES.

(a) DISENROLLMENT WINDOW IN ACCORDANCE WITH BENEFICIARY'S CIRCUMSTANCE.—Section 1882(s)(3) (42 U.S.C. 1395ss(s)(3)) is amended—

(1) in subparagraph (A), in the matter following clause (iii), by striking ", subject to subparagraph (E), seeks to enroll under the policy not later than 63 days after the date of the termination of enrollment described in such subparagraph" and inserting "seeks to enroll under the policy during the period specified in subparagraph (E)"; and

(2) by striking subparagraph (E) and inserting the following new subparagraph:

"(E) For purposes of subparagraph (A), the time period specified in this subparagraph is—

"(i) in the case of an individual described in subparagraph (B)(i), the period beginning on the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if no such notice is received, notice that a claim has been denied because of such a termination or cessation) and ending on the date that is 63 days after the applicable notice;

"(ii) in the case of an individual described in clause (ii), (iii), (v), or (vi) of subparagraph (B) whose enrollment is terminated involuntarily, the period beginning on the date that the individual receives a notice of termination and ending on the date that is 63 days after the date the applicable coverage is terminated;

"(iii) in the case of an individual described in subparagraph (B)(iv)(I), the period beginning on the earlier of (I) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice, if any, and (II) the date that the applicable coverage is terminated, and ending on the date that is 63 days after the date the coverage is terminated;

"(iv) in the case of an individual described in clause (ii), (iii), (iv)(II), (iv)(III), (v), or (vi) of subparagraph (B) who disenrolls voluntarily, the period beginning on the date that is 60 days before the effective date of the disenrollment and ending on the date that is 63 days after such effective date; and

"(v) in the case of an individual described in subparagraph (B) but not described in the preceding provisions of this subparagraph, the period beginning on the effective date of the disenrollment and ending on the date that is 63 days after such effective date.".

(b) EXTENDED MEDIGAP ACCESS FOR INTERRUPTED TRIAL PERIODS.—Section 1882(s)(3) (42 U.S.C. 1395ss(s)(3)), as amended by subsection (a), is further amended by adding at the end the following new subparagraph:

"(F)(i) Subject to clause (ii), for purposes of this paragraph—

"(I) in the case of an individual described in subparagraph (B)(v) (or deemed to be so described, pursuant to this subparagraph) whose enrollment with an organization or provider described in subclause (II) of such subparagraph is involuntarily terminated within the first 12 months of such enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, such subsequent enrollment shall be deemed to be an initial enrollment described in such subparagraph; and

"(II) in the case of an individual described in clause (vi) of subparagraph (B) (or deemed to be so described, pursuant to this subparagraph) whose enrollment with a plan or in a program described in such clause is involuntarily terminated within the first 12 months of such enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, such subsequent enrollment shall be deemed to be an initial enrollment described in such clause.

"(ii) For purposes of clauses (v) and (vi) of subparagraph (B), no enrollment of an individual with an organization or provider described in clause (v)(II), or with a plan or in a program described in clause (vi), may be deemed to be an initial enrollment under this clause after the 2-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.".

SEC. 619. RESTORING EFFECTIVE DATE OF ELECTIONS AND CHANGES OF ELECTIONS OF MEDICARE+CHOICE PLANS.

(a) OPEN ENROLLMENT.—Section 1851(f)(2) (42 U.S.C. 1395w–21(f)(2)) is amended by striking ", except that if such election or change is made after the 10th day of any calendar month, then the election or change shall not take effect until the first day of the second calendar month following the date on which the election or change is made".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to elections and changes of coverage made on or after January 1, 2001.

SEC. 620. PERMITTING ESRD BENEFICIARIES TO ENROLL IN ANOTHER MEDICARE+CHOICE PLAN IF THE PLAN IN WHICH THEY ARE ENROLLED IS TERMINATED.

(a) IN GENERAL.—Section 1851(a)(3)(B) (42 U.S.C. 1395w–21(a)(3)(B)) is amended by striking "except that" and all that follows and inserting the following: "except that—

"(i) an individual who develops end-stage renal disease while enrolled in a Medicare+Choice plan may continue to be enrolled in that plan; and

"(ii) in the case of such an individual who is enrolled in a Medicare+Choice plan under clause (i) (or subsequently under this clause), if the enrollment is discontinued under circumstances described in section 1851(e)(4)(A), then the individual will be treated as a 'Medicare+Choice eligible individual' for purposes of electing to continue enrollment in another Medicare+Choice plan.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to terminations and discontinuations occurring on or after the date of the enactment of this Act.

(2) APPLICATION TO PRIOR PLAN TERMINATIONS.—Clause (ii) of section 1851(a)(3)(B) of the Social Security Act (as inserted by subsection (a)) also shall apply to individuals whose enrollment in a Medicare+Choice plan was terminated or discontinued after December 31, 1998, and before the date of the enactment of this Act. In applying this paragraph, such an individual shall be treated, for purposes of part C of title XVIII of the Social Security Act, as having discontinued enrollment in such a plan as of the date of the enactment of this Act.

SEC. 621. PROVIDING CHOICE FOR SKILLED NURSING FACILITY SERVICES UNDER THE MEDICARE+CHOICE PROGRAM.

(a) IN GENERAL.—Section 1852 (42 U.S.C. 1395w–22) is amended by adding at the end the following new subsection:

"(l) RETURN TO HOME SKILLED NURSING FACILITIES FOR COVERED POST-HOSPITAL EXTENDED CARE SERVICES.—

"(1) ENSURING RETURN TO HOME SNF.—

"(A) IN GENERAL.—In providing coverage of post-hospital extended care services, a Medicare+Choice plan shall provide for such coverage through a home skilled nursing facility if the following conditions are met:

"(i) ENROLLEE ELECTION.—The enrollee elects to receive such coverage through such facility.

"(ii) SNF AGREEMENT.—The facility has a contract with the Medicare+Choice organization for the provision of such services, or the facility agrees to accept substantially similar payment under the same terms and conditions that apply to similarly situated skilled nursing facilities that are under contract with the Medicare+Choice organization for the provision of such services and through which the enrollee would otherwise receive such services.

"(B) MANNER OF PAYMENT TO HOME SNF.—The organization shall provide payment to the home skilled nursing facility consistent with the contract or the agreement described in subparagraph (A)(ii), as the case may be.

"(2) NO LESS FAVORABLE COVERAGE.—The coverage provided under paragraph (1) (including scope of services, cost-sharing, and other criteria of coverage) shall be no less favorable to the enrollee than the coverage that would be provided to the enrollee with respect to a skilled nursing facility the post-hospital extended care services of which are otherwise covered under the Medicare+Choice plan.

"(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to do the following:

"(A) To require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under part A for medicare beneficiaries not enrolled in a Medicare+Choice plan.

"(B) To prevent a skilled nursing facility from refusing to accept, or imposing conditions upon the acceptance of, an enrollee for the receipt of post-hospital extended care services.

"(4) DEFINITIONS.—In this subsection:

"(A) HOME SKILLED NURSING FACILITY.—The term 'home skilled nursing facility' means, with respect to an enrollee who is entitled to receive post-hospital extended care services under a Medicare+Choice plan, any of the following skilled nursing facilities:

"(i) SNF RESIDENCE AT TIME OF ADMISSION.—The skilled nursing facility in which the enrollee resided at the time of admission to the hospital preceding the receipt of such post-hospital extended care services.

"(ii) SNF IN CONTINUING CARE RETIREMENT COMMUNITY.—A skilled nursing facility that is providing such services through a continuing care retirement community (as defined in subparagraph (B)) which provided residence to the enrollee at the time of such admission.

"(iii) SNF RESIDENCE OF SPOUSE AT TIME OF DISCHARGE.—The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from such hospital.

"(B) CONTINUING CARE RETIREMENT COMMUNITY.—The term 'continuing care retirement community' means, with respect to an enrollee in a Medicare+Choice plan, an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or for a specified period.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to contracts entered into or renewed on or after the date of the enactment of this Act.

(c) MEDPAC STUDY.—

(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study analyzing the effects of the amendment made by subsection (a) on Medicare+Choice organizations. In conducting such study, the Commission shall examine the effects (if any) such amendment has had on—

(A) the scope of additional benefits provided under the Medicare+Choice program;

(B) the administrative and other costs incurred by Medicare+Choice organizations;

(C) the contractual relationships between such organizations and skilled nursing facilities.

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

SEC. 622. PROVIDING FOR ACCOUNTABILITY OF MEDICARE+CHOICE PLANS.

(a) MANDATORY REVIEW OF ACR SUBMISSIONS BY THE CHIEF ACTUARY OF THE HEALTH CARE FINANCING ADMINISTRATION.—Section 1854(a)(5)(A) (42 U.S.C. 1395w–24(a)(5)(A)) is amended—

(1) by striking "value" and inserting "values"; and

(2) by adding at the end the following: "The Chief Actuary of the Health Care Financing Administration shall review the actuarial assumptions and data used by the Medicare+Choice organization with respect to such rates, amounts, and values so submitted to determine the appropriateness of such assumptions and data.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to submissions made on or after January 1, 2001.

Subtitle C—Other Managed Care Reforms

SEC. 631. 1-YEAR EXTENSION OF SOCIAL HEALTH MAINTENANCE ORGANIZATION (SHMO) DEMONSTRATION PROJECT.

Section 4018(b)(1) of the Omnibus Budget Reconciliation Act of 1987, as amended by section 531(a)(1) of BBRA (113 Stat. 1501A–388), is amended by striking "18 months" and inserting "30 months".

SEC. 632. REVISED TERMS AND CONDITIONS FOR EXTENSION OF MEDICARE COMMUNITY NURSING ORGANIZATION (CNO) DEMONSTRATION PROJECT.

(a) IN GENERAL.—Section 532 of BBRA (113 Stat. 1501A–388) is amended—

(1) in subsection (a), by striking the second sentence; and

(2) by striking subsection (b) and inserting the following new subsection:

"(b) TERMS AND CONDITIONS.—

"(1) JANUARY THROUGH SEPTEMBER 2000.—For the 9-month period beginning with January 2000, any such demonstration project shall be conducted under the same terms and conditions as applied to such demonstration during 1999.

"(2) OCTOBER 2000 THROUGH DECEMBER 2001.—For the 15-month period beginning with October 2000, any such demonstration project shall be conducted under the same terms and conditions as applied to such demonstration during 1999, except that the following modifications shall apply:

"(A) BASIC CAPITATION RATE.—The basic capitation rate paid for services covered under the project (other than case management services) per enrollee per month and furnished during—

"(i) the period beginning with October 1, 2000, and ending with December 31, 2000, shall be determined by actuarially adjusting the actual capitation rate paid for such services in 1999 for inflation, utilization, and other changes to the CNO service package, and by reducing such adjusted capitation rate by 10 percent in the case of the demonstration sites located in Arizona, Minnesota, and Illinois, and 15 percent for the demonstration site located in New York; and

"(ii) 2001 shall be determined by actuarially adjusting the capitation rate determined under clause (i) for inflation, utilization, and other changes to the CNO service package.

"(B) TARGETED CASE MANAGEMENT FEE.—Effective October 1, 2000—

"(i) the case management fee per enrollee per month for—

"(I) the period described in subparagraph (A)(i) shall be determined by actuarially adjusting the case management fee for 1999 for inflation; and

"(II) 2001 shall be determined by actuarially adjusting the amount determined under subclause (I) for inflation; and

"(ii) such case management fee shall be paid only for enrollees who are classified as moderately frail or frail pursuant to criteria established by the Secretary.

"(C) GREATER UNIFORMITY IN CLINICAL FEATURES AMONG SITES.—Each project shall implement for each site—

"(i) protocols for periodic telephonic contact with enrollees based on—

"(I) the results of such standardized written health assessment; and

"(II) the application of appropriate care planning approaches;

"(ii) disease management programs for targeted diseases (such as congestive heart failure, arthritis, diabetes, and hypertension) that are highly prevalent in the enrolled populations;

"(iii) systems and protocols to track enrollees through hospitalizations, including pre-admission planning, concurrent management during inpatient hospital stays, and post-discharge assessment, planning, and follow-up; and

"(iv) standardized patient educational materials for specified diseases and health conditions.

"(D) QUALITY IMPROVEMENT.—Each project shall implement at each site once during the 15-month period—

"(i) enrollee satisfaction surveys; and

"(ii) reporting on specified quality indicators for the enrolled population.

"(c) EVALUATION.—

"(1) PRELIMINARY REPORT.—Not later than July 1, 2001, the Secretary of Health and Human Services shall submit to the Committees on Ways and Means and Commerce of the House of Representatives and the Committee on Finance of the Senate a preliminary report that—

"(A) evaluates such demonstration projects for the period beginning July 1, 1997, and ending December 31, 1999, on a site-specific basis with respect to the impact on per beneficiary spending, specific health utilization measures, and enrollee satisfaction; and

"(B) includes a similar evaluation of such projects for the portion of the extension period that occurs after September 30, 2000.

"(2) FINAL REPORT.—The Secretary shall submit a final report to such Committees on such demonstration projects not later than July 1, 2002. Such report shall include the same elements as the preliminary report required by paragraph (1), but for the period after December 31, 1999.

"(3) METHODOLOGY FOR SPENDING COMPARISONS.—Any evaluation of the impact of the demonstration projects on per beneficiary spending included in such reports shall include a comparison of—

"(A) data for all individuals who—

"(i) were enrolled in such demonstration projects as of the first day of the period under evaluation; and

"(ii) were enrolled for a minimum of 6 months thereafter; with

"(B) data for a matched sample of individuals who are enrolled under part B of title XVIII of the Social Security Act and are not enrolled in such a project, or in a Medicare+Choice plan under part C of such title, a plan offered by an eligible organization under section 1876 of such

Act, or a health care prepayment plan under section 1833(a)(1)(A) of such Act.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the enactment of section 532 of BBRA (113 Stat. 1501A–388).

SEC. 633. EXTENSION OF MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS.

Section 9215(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (42 U.S.C. 1395b–1 note), as amended by section 6135 of the Omnibus Budget Reconciliation Act of 1989, section 13557 of the Omnibus Budget Reconciliation Act of 1993, section 4017 of BBA, and section 534 of BBRA (113 Stat. 1501A–390), is amended by striking "December 31, 2002" and inserting "December 31, 2004".

SEC. 634. SERVICE AREA EXPANSION FOR MEDICARE COST CONTRACTS DURING TRANSITION PERIOD.

Section 1876(h)(5) (42 U.S.C. 1395mm(h)(5)) is amended—

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

(2) by inserting after subparagraph (A), the following new subparagraph:

"(B) Subject to subparagraph (C), the Secretary shall approve an application for a modification to a reasonable cost contract under this section in order to expand the service area of such contract if—

"(i) such application is submitted to the Secretary on or before September 1, 2003; and

"(ii) the Secretary determines that the organization with the contract continues to meet the requirements applicable to such organizations and contracts under this section.".

TITLE VII—MEDICAID

SEC. 701. DSH PAYMENTS.

(a) MODIFICATIONS TO DSH ALLOTMENTS.—

(1) INCREASED ALLOTMENTS FOR FISCAL YEARS 2001 AND 2002.—

(A) IN GENERAL.—Section 1923(f) (42 U.S.C. 1396r–4(f)) is amended—

(i) in paragraph (2), by striking "The DSH allotment" and inserting "Subject to paragraph (4), the DSH allotment";

(ii) by redesignating paragraph (4) as paragraph (6); and

(iii) by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULE FOR FISCAL YEARS 2001 AND 2002.—

"(A) IN GENERAL.—Notwithstanding paragraph (2), the DSH allotment for any State for—

"(i) fiscal year 2001, shall be the DSH allotment determined under paragraph (2) for fiscal year 2000 increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price

index for all urban consumers (all items; U.S. city average) for fiscal year 2000; and

"(ii) fiscal year 2002, shall be the DSH allotment determined under clause (i) increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2001.

"(B) LIMITATION.—Subparagraph (B) of paragraph (3) shall apply to subparagraph (A) of this paragraph in the same manner as that subparagraph (B) applies to paragraph (3)(A).

"(C) NO APPLICATION TO ALLOTMENTS AFTER FISCAL YEAR 2002.—The DSH allotment for any State for fiscal year 2003 or any succeeding fiscal year shall be determined under paragraph (3) without regard to the DSH allotments determined under subparagraph (A) of this paragraph.".

(2) SPECIAL RULE FOR MEDICAID DSH ALLOTMENT FOR EXTREMELY LOW DSH STATES.—

(A) IN GENERAL.—Section 1923(f) (42 U.S.C. 1396r–4(f)), as amended by paragraph (1), is amended by inserting after paragraph (4) the following new paragraph:

"(5) SPECIAL RULE FOR EXTREMELY LOW DSH STATES.—In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 1999, as reported to the Administrator of the Health Care Financing Administration as of August 31, 2000, is greater than 0 but less than 1 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for fiscal year 2001 shall be increased to 1 percent of the State's total amount of expenditures under such plan for such assistance during such fiscal year. In subsequent fiscal years, such increased allotment is subject to an increase for inflation as provided in paragraph (3)(A).".

(B) CONFORMING AMENDMENT.—Section 1923(f)(3)(A) (42 U.S.C. 1396r–4(f)(3)(A)) is amended by inserting "and paragraph (5)" after "subparagraph (B)".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) take effect on the date the final regulation required under section 705(a) (relating to the application of an aggregate upper payment limit test for State medicaid spending for inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services provided by government facilities that are not State-owned or operated facilities) is published in the Federal Register.

(b) ASSURING IDENTIFICATION OF MEDICAID MANAGED CARE PATIENTS.—

(1) IN GENERAL.—Section 1932 (42 U.S.C. 1396u–2) is amended by adding at the end the following new subsection:

"(g) IDENTIFICATION OF PATIENTS FOR PURPOSES OF MAKING DSH PAYMENTS.—Each contract with a managed care entity under

section 1903(m) or under section 1905(t)(3) shall require the entity either—

"(1) to report to the State information necessary to determine the hospital services provided under the contract (and the identity of hospitals providing such services) for purposes of applying sections 1886(d)(5)(F) and 1923; or

"(2) to include a sponsorship code in the identification card issued to individuals covered under this title in order that a hospital may identify a patient as being entitled to benefits under this title.".

(2) CLARIFICATION OF COUNTING MANAGED CARE MEDICAID PATIENTS.—Section 1923 (42 U.S.C. 1396r–4) is amended—

(A) in subsection (a)(2)(D), by inserting after "the proportion of low-income and medicaid patients" the following: "(including such patients who receive benefits through a managed care entity)";

(B) in subsection (b)(2), by inserting after "a State plan approved under this title in a period" the following: "(regardless of whether such patients receive medical assistance on a fee-for-service basis or through a managed care entity)"; and

(C) in subsection (b)(3)(A)(i), by inserting after "under a State plan under this title" the following: "(regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity)".

(3) EFFECTIVE DATES.—

(A) The amendment made by paragraph (1) applies to contracts as of January 1, 2001.

(B) The amendments made by paragraph (2) apply to payments made on or after January 1, 2001.

(c) APPLICATION OF MEDICAID DSH TRANSITION RULE TO PUBLIC HOSPITALS IN ALL STATES.—

(1) IN GENERAL.—During the period described in paragraph (3), with respect to a State, section 4721(e) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 514), as amended by section 607 of BBRA (113 Stat. 1501A–321) shall be applied as though—

(A) "September 30, 2002" were substituted for "July 1, 1997" each place it appears;

(B) "hospitals owned or operated by a State (as defined for purposes of title XIX of such Act), or by an instrumentality or a unit of government within a State (as so defined)" were substituted for "the State of California";

(C) paragraph (3) were redesignated as paragraph (4);

(D) "and" were omitted from the end of paragraph (2); and

(E) the following new paragraph were inserted after paragraph (2):

"(3) '(as defined in subparagraph (B) but without regard to clause (ii) of that subparagraph and subject to subsection (d))' were substituted for '(as defined in subparagraph (B))' in subparagraph (A) of such section; and".

(2) SPECIAL RULE.—With respect to California, section 4721(e) of the Balanced Budget Act of 1997 (Public Law 105–

33; 111 Stat. 514) shall be applied without regard to paragraph (1).

(3) PERIOD DESCRIBED.—The period described in this paragraph is the period that begins, with respect to a State, on the first day of the first State fiscal year that begins after September 30, 2002, and ends on the last day of the succeeding State fiscal year.

(4) APPLICATION TO WAIVERS.—With respect to a State operating under a waiver of the requirements of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under section 1115 of such Act (42 U.S.C. 1315), the amount by which any payment adjustment made by the State under title XIX of such Act (42 U.S.C. 1396 et seq.), after the application of section 4721(e) of the Balanced Budget Act of 1997 under paragraph (1) to such State, exceeds the costs of furnishing hospital services provided by hospitals described in such section shall be fully reflected as an increase in the baseline expenditure limit for such waiver.

(d) ASSISTANCE FOR CERTAIN PUBLIC HOSPITALS.—

(1) IN GENERAL.—Beginning with fiscal year 2002, notwithstanding section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)) and subject to paragraph (3), with respect to a State, payment adjustments made under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to a hospital described in paragraph (2) shall be made without regard to the DSH allotment limitation for the State determined under section 1923(f) of that Act (42 U.S.C. 1396r–4(f)).

(2) HOSPITAL DESCRIBED.—A hospital is described in this paragraph if the hospital—

(A) is owned or operated by a State (as defined for purposes of title XIX of the Social Security Act), or by an instrumentality or a unit of government within a State (as so defined);

(B) as of October 1, 2000—

(i) is in existence and operating as a hospital described in subparagraph (A); and

(ii) is not receiving disproportionate share hospital payments from the State in which it is located under title XIX of such Act; and

(C) has a low-income utilization rate (as defined in section 1923(b)(3) of the Social Security Act (42 U.S.C. 1396r–4(b)(3))) in excess of 65 percent.

(3) LIMITATION ON EXPENDITURES.—

(A) IN GENERAL.—With respect to any fiscal year, the aggregate amount of Federal financial participation that may be provided for payment adjustments described in paragraph (1) for that fiscal year for all States may not exceed the amount described in subparagraph (B) for the fiscal year.

(B) AMOUNT DESCRIBED.—The amount described in this subparagraph for a fiscal year is as follows:

(i) For fiscal year 2002, $15,000,000.

(ii) For fiscal year 2003, $176,000,000.

(iii) For fiscal year 2004, $269,000,000.

(iv) For fiscal year 2005, $330,000,000.

(v) For fiscal year 2006 and each fiscal year thereafter, $375,000,000.

(e) DSH PAYMENT ACCOUNTABILITY STANDARDS.—Not later than September 30, 2002, the Secretary of Health and Human Services shall implement accountability standards to ensure that Federal funds provided with respect to disproportionate share hospital adjustments made under section 1923 of the Social Security Act (42 U.S.C. 1396r–4) are used to reimburse States and hospitals eligible for such payment adjustments for providing uncompensated health care to low-income patients and are otherwise made in accordance with the requirements of section 1923 of that Act.

SEC. 702. NEW PROSPECTIVE PAYMENT SYSTEM FOR FEDERALLY-QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.

(a) IN GENERAL.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (13)—

(A) in subparagraph (A), by adding "and" at the end;

(B) in subparagraph (B), by striking "and" at the end; and

(C) by striking subparagraph (C); and

(2) by inserting after paragraph (14) the following new paragraph:

"(15) provide for payment for services described in clause (B) or (C) of section 1905(a)(2) under the plan in accordance with subsection (aa);".

(b) NEW PROSPECTIVE PAYMENT SYSTEM.—Section 1902 (42 U.S.C. 1396a) is amended by adding at the end the following:

"(aa) PAYMENT FOR SERVICES PROVIDED BY FEDERALLY-QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.—

"(1) IN GENERAL.—Beginning with fiscal year 2001 and each succeeding fiscal year, the State plan shall provide for payment for services described in section 1905(a)(2)(C) furnished by a Federally-qualified health center and services described in section 1905(a)(2)(B) furnished by a rural health clinic in accordance with the provisions of this subsection.

"(2) FISCAL YEAR 2001.—Subject to paragraph (4), for services furnished during fiscal year 2001, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to 100 percent of the average of the costs of the center or clinic of furnishing such services during fiscal years 1999 and 2000 which are reasonable and related to the cost of furnishing such services, or based on such other tests of reasonableness as the Secretary prescribes in regulations under section 1833(a)(3), or, in the case of services to which such regulations do not apply, the same methodology used under section 1833(a)(3), adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during fiscal year 2001.

"(3) FISCAL YEAR 2002 AND SUCCEEDING FISCAL YEARS.—Subject to paragraph (4), for services furnished during fiscal year 2002 or a succeeding fiscal year, the State plan shall provide for payment for such services in an amount (calculated on

a per visit basis) that is equal to the amount calculated for such services under this subsection for the preceding fiscal year—

"(A) increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) applicable to primary care services (as defined in section 1842(i)(4)) for that fiscal year; and

"(B) adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during that fiscal year.

"(4) ESTABLISHMENT OF INITIAL YEAR PAYMENT AMOUNT FOR NEW CENTERS OR CLINICS.—In any case in which an entity first qualifies as a Federally-qualified health center or rural health clinic after fiscal year 2000, the State plan shall provide for payment for services described in section 1905(a)(2)(C) furnished by the center or services described in section 1905(a)(2)(B) furnished by the clinic in the first fiscal year in which the center or clinic so qualifies in an amount (calculated on a per visit basis) that is equal to 100 percent of the costs of furnishing such services during such fiscal year based on the rates established under this subsection for the fiscal year for other such centers or clinics located in the same or adjacent area with a similar case load or, in the absence of such a center or clinic, in accordance with the regulations and methodology referred to in paragraph (2) or based on such other tests of reasonableness as the Secretary may specify. For each fiscal year following the fiscal year in which the entity first qualifies as a Federally-qualified health center or rural health clinic, the State plan shall provide for the payment amount to be calculated in accordance with paragraph (3).

"(5) ADMINISTRATION IN THE CASE OF MANAGED CARE.—

"(A) IN GENERAL.—In the case of services furnished by a Federally-qualified health center or rural health clinic pursuant to a contract between the center or clinic and a managed care entity (as defined in section 1932(a)(1)(B)), the State plan shall provide for payment to the center or clinic by the State of a supplemental payment equal to the amount (if any) by which the amount determined under paragraphs (2), (3), and (4) of this subsection exceeds the amount of the payments provided under the contract.

"(B) PAYMENT SCHEDULE.—The supplemental payment required under subparagraph (A) shall be made pursuant to a payment schedule agreed to by the State and the Federally-qualified health center or rural health clinic, but in no case less frequently than every 4 months.

"(6) ALTERNATIVE PAYMENT METHODOLOGIES.—Notwithstanding any other provision of this section, the State plan may provide for payment in any fiscal year to a Federally-qualified health center for services described in section 1905(a)(2)(C) or to a rural health clinic for services described in section 1905(a)(2)(B) in an amount which is determined under an alternative payment methodology that—

"(A) is agreed to by the State and the center or clinic; and

"(B) results in payment to the center or clinic of an amount which is at least equal to the amount otherwise required to be paid to the center or clinic under this section.".

(c) CONFORMING AMENDMENTS.—

(1) Section 4712 of the BBA (Public Law 105–33; 111 Stat. 508) is amended by striking subsection (c).

(2) Section 1915(b) (42 U.S.C. 1396n(b)) is amended by striking "1902(a)(13)(C)" and inserting "1902(a)(15), 1902(aa),".

(d) GAO STUDY OF FUTURE REBASING.—The Comptroller General of the United States shall provide for a study on the need for, and how to, rebase or refine costs for making payment under the medicaid program for services provided by Federally-qualified health centers and rural health clinics (as provided under the amendments made by this section). The Comptroller General shall provide for submittal of a report on such study to Congress by not later than 4 years after the date of the enactment of this Act.

(e) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2000, and apply to services furnished on or after such date.

SEC. 703. STREAMLINED APPROVAL OF CONTINUED STATE-WIDE SECTION 1115 MEDICAID WAIVERS.

(a) IN GENERAL.—Section 1115 (42 U.S.C. 1315) is amended by adding at the end the following new subsection:

"(f) An application by the chief executive officer of a State for an extension of a waiver project the State is operating under an extension under subsection (e) (in this subsection referred to as the 'waiver project') shall be submitted and approved or disapproved in accordance with the following:

"(1) The application for an extension of the waiver project shall be submitted to the Secretary at least 120 days prior to the expiration of the current period of the waiver project.

"(2) Not later than 45 days after the date such application is received by the Secretary, the Secretary shall notify the State if the Secretary intends to review the terms and conditions of the waiver project. A failure to provide such notification shall be deemed to be an approval of the application.

"(3) Not later than 45 days after the date a notification is made in accordance with paragraph (2), the Secretary shall inform the State of proposed changes in the terms and conditions of the waiver project. A failure to provide such information shall be deemed to be an approval of the application.

"(4) During the 30-day period that begins on the date information described in paragraph (3) is provided to a State, the Secretary shall negotiate revised terms and conditions of the waiver project with the State.

"(5)(A) Not later than 120 days after the date an application for an extension of the waiver project is submitted to the Secretary (or such later date agreed to by the chief executive officer of the State), the Secretary shall—

"(i) approve the application subject to such modifications in the terms and conditions—

"(I) as have been agreed to by the Secretary and the State; or

"(II) in the absence of such agreement, as are determined by the Secretary to be reasonable, consistent with the overall objectives of the waiver project, and not in violation of applicable law; or

"(ii) disapprove the application.

"(B) A failure by the Secretary to approve or disapprove an application submitted under this subsection in accordance with the requirements of subparagraph (A) shall be deemed to be an approval of the application subject to such modifications in the terms and conditions as have been agreed to (if any) by the Secretary and the State.

"(6) An approval of an application for an extension of a waiver project under this subsection shall be for a period not to exceed 3 years.

"(7) An extension of a waiver project under this subsection shall be subject to the final reporting and evaluation requirements of paragraphs (4) and (5) of subsection (e) (taking into account the extension under this subsection with respect to any timing requirements imposed under those paragraphs).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to requests for extensions of demonstration projects pending or submitted on or after the date of the enactment of this Act.

SEC. 704. MEDICAID COUNTY-ORGANIZED HEALTH SYSTEMS.

(a) IN GENERAL.—Section 9517(c)(3)(C) of the Comprehensive Omnibus Budget Reconciliation Act of 1985 is amended by striking "10 percent" and inserting "14 percent".

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

SEC. 705. DEADLINE FOR ISSUANCE OF FINAL REGULATION RELATING TO MEDICAID UPPER PAYMENT LIMITS.

(a) IN GENERAL.—Not later than December 31, 2000, the Secretary of Health and Human Services (in this section referred to as the "Secretary"), notwithstanding any requirement of the Administrative Procedures Act under chapter 5 of title 5, United States Code, or any other provision of law, shall issue under sections 447.272, 447.304, and 447.321 of title 42, Code of Federal Regulations (and any other section of part 447 of title 42, Code of Federal Regulations that the Secretary determines is appropriate), a final regulation based on the proposed rule announced on October 5, 2000, that—

(1) modifies the upper payment limit test applied to State medicaid spending for inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services by applying an aggregate upper payment limit to payments made to government facilities that are not State-owned or operated facilities; and

(2) provides for a transition period in accordance with subsection (b).

(b) TRANSITION PERIOD.—

(1) IN GENERAL.—The final regulation required under subsection (a) shall provide that, with respect to a State described in paragraph (3), the State shall be considered to be in compli-

ance with the final regulation required under subsection (a) so long as, for each State fiscal year during the period described in paragraph (4), the State reduces payments under a State medicaid plan payment provision or methodology described in paragraph (3), or reduces the actual dollar payment levels described in paragraph (3)(B), so that the amount of the payments that would otherwise have been made under such provision, methodology, or payment levels by the State for any State fiscal year during such period is reduced by 15 percent in the first such State fiscal year, and by an additional 15 percent in each of next 5 State fiscal years.

(2) REQUIREMENT.—Notwithstanding paragraph (1), the final regulation required under subsection (a) shall provide that, for any period (or portion of a period) that occurs on or after October 1, 2008, medicaid payments made by a State described in paragraph (3) shall comply with such final regulation.

(3) STATE DESCRIBED.—A State described in this paragraph is a State with a State medicaid plan payment provision or methodology which—

(A) was approved, deemed to have been approved, or was in effect on or before October 1, 1992 (including any subsequent amendments or successor provisions or methodologies and whether or not a State plan amendment was made to carry out such provision or methodology after such date) or under which claims for Federal financial participation were filed and paid on or before such date; and

(B) provides for payments that are in excess of the upper payment limit test established under the final regulation required under subsection (a) (or which would be noncompliant with such final regulation if the actual dollar payment levels made under the payment provision or methodology in the State fiscal year which begins during 1999 were continued).

(4) PERIOD DESCRIBED.—The period described in this paragraph is the period that begins on the first State fiscal year that begins after September 30, 2002, and ends on September 30, 2008.

SEC. 706. ALASKA FMAP.

Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), only with respect to each of fiscal years 2001 through 2005, for purposes of titles XIX and XXI of the Social Security Act, the State percentage used to determine the Federal medical assistance percentage for Alaska shall be that percentage which bears the same ratio to 45 percent as the square of the adjusted per capita income of Alaska (determined by dividing the State's 3-year average per capita income by 1.05) bears to the square of the per capita income of the 50 States.

TITLE VIII—STATE CHILDREN'S HEALTH INSURANCE PROGRAM

SEC. 801. SPECIAL RULE FOR REDISTRIBUTION AND AVAILABILITY OF UNUSED FISCAL YEAR 1998 AND 1999 SCHIP ALLOTMENTS.

(a) CHANGE IN RULES FOR REDISTRIBUTION AND RETENTION OF UNUSED SCHIP ALLOTMENTS FOR FISCAL YEARS 1998 AND 1999.—Section 2104 (42 U.S.C. 1397dd) is amended by adding at the end the following new subsection:

"(g) RULE FOR REDISTRIBUTION AND EXTENDED AVAILABILITY OF FISCAL YEARS 1998 AND 1999 ALLOTMENTS.—

"(1) AMOUNT REDISTRIBUTED.—

"(A) IN GENERAL.—In the case of a State that expends all of its allotment under subsection (b) or (c) for fiscal year 1998 by the end of fiscal year 2000, or for fiscal year 1999 by the end of fiscal year 2001, the Secretary shall redistribute to the State under subsection (f) (from the fiscal year 1998 or 1999 allotments of other States, respectively, as determined by the application of paragraphs (2) and (3) with respect to the respective fiscal year)) the following amount:

"(i) STATE.—In the case of 1 of the 50 States or the District of Columbia, with respect to—

"(I) the fiscal year 1998 allotment, the amount by which the State's expenditures under this title in fiscal years 1998, 1999, and 2000 exceed the State's allotment for fiscal year 1998 under subsection (b); or

"(II) the fiscal year 1999 allotment, the amount by which the State's expenditures under this title in fiscal years 1999, 2000, and 2001 exceed the State's allotment for fiscal year 1999 under subsection (b).

"(ii) TERRITORY.—In the case of a commonwealth or territory described in subsection (c)(3), an amount that bears the same ratio to 1.05 percent of the total amount described in paragraph (2)(B)(i)(I) as the ratio of the commonwealth's or territory's fiscal year 1998 or 1999 allotment under subsection (c) (as the case may be) bears to the total of all such allotments for such fiscal year under such subsection.

"(B) EXPENDITURE RULES.—An amount redistributed to a State under this paragraph with respect to fiscal year 1998 or 1999—

"(i) shall not be included in the determination of the State's allotment for any fiscal year under this section;

"(ii) notwithstanding subsection (e), shall remain available for expenditure by the State through the end of fiscal year 2002; and

"(iii) shall be counted as being expended with respect to a fiscal year allotment in accordance with applicable regulations of the Secretary.

"(2) EXTENSION OF AVAILABILITY OF PORTION OF UNEXPENDED FISCAL YEARS 1998 AND 1999 ALLOTMENTS.—

"(A) IN GENERAL.—Notwithstanding subsection (e):

"(i) FISCAL YEAR 1998 ALLOTMENT.—Of the amounts allotted to a State pursuant to this section for fiscal year 1998 that were not expended by the State by the end of fiscal year 2000, the amount specified in subparagraph (B) for fiscal year 1998 for such State shall remain available for expenditure by the State through the end of fiscal year 2002.

"(ii) FISCAL YEAR 1999 ALLOTMENT.—Of the amounts allotted to a State pursuant to this subsection for fiscal year 1999 that were not expended by the State by the end of fiscal year 2001, the amount specified in subparagraph (B) for fiscal year 1999 for such State shall remain available for expenditure by the State through the end of fiscal year 2002.

"(B) AMOUNT REMAINING AVAILABLE FOR EXPENDITURE.—The amount specified in this subparagraph for a State for a fiscal year is equal to—

"(i) the amount by which (I) the total amount available for redistribution under subsection (f) from the allotments for that fiscal year, exceeds (II) the total amounts redistributed under paragraph (1) for that fiscal year; multiplied by

"(ii) the ratio of the amount of such State's unexpended allotment for that fiscal year to the total amount described in clause (i)(I) for that fiscal year.

"(C) USE OF UP TO 10 PERCENT OF RETAINED 1998 ALLOTMENTS FOR OUTREACH ACTIVITIES.—Notwithstanding section 2105(c)(2)(A), with respect to any State described in subparagraph (A)(i), the State may use up to 10 percent of the amount specified in subparagraph (B) for fiscal year 1998 for expenditures for outreach activities approved by the Secretary.

"(3) DETERMINATION OF AMOUNTS.—For purposes of calculating the amounts described in paragraphs (1) and (2) relating to the allotment for fiscal year 1998 or fiscal year 1999, the Secretary shall use the amounts reported by the States not later than November 30, 2000, or November 30, 2001, respectively, on HCFA Form 64 or HCFA Form 21, as approved by the Secretary.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 4901 of BBA (111 Stat. 552).

SEC. 802. AUTHORITY TO PAY MEDICAID EXPANSION SCHIP COSTS FROM TITLE XXI APPROPRIATION.

(a) AUTHORITY TO PAY MEDICAID EXPANSION SCHIP COSTS FROM TITLE XXI APPROPRIATION.—Section 2105(a) (42 U.S.C. 1397ee(a)) is amended—

(1) by redesignating subparagraphs (A) through (D) of paragraph (2) as clauses (i) through (iv), respectively, and indenting appropriately;

(2) by redesignating paragraph (1) as subparagraph (C), and indenting appropriately;

(3) by redesignating paragraph (2) as subparagraph (D), and indenting appropriately;

(4) by striking "(a) IN GENERAL.—" and the remainder of the text that precedes subparagraph (C), as so redesignated, and inserting the following:

"(a) PAYMENTS.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary shall pay to each State with a plan approved under this title, from its allotment under section 2104, an amount for each quarter equal to the enhanced FMAP (or, in the case of expenditures described in subparagraph (B), the Federal medical assistance percentage (as defined in the first sentence of section 1905(b))) of expenditures in the quarter—

"(A) for child health assistance under the plan for targeted low-income children in the form of providing medical assistance for which payment is made on the basis of an enhanced FMAP under the fourth sentence of section 1905(b);

"(B) for the provision of medical assistance on behalf of a child during a presumptive eligibility period under section 1920A;"; and

(5) by adding after subparagraph (D), as so redesignated, the following new paragraph:

"(2) ORDER OF PAYMENTS.—Payments under paragraph (1) from a State's allotment shall be made in the following order:

"(A) First, for expenditures for items described in paragraph (1)(A).

"(B) Second, for expenditures for items described in paragraph (1)(B).

"(C) Third, for expenditures for items described in paragraph (1)(C).

"(D) Fourth, for expenditures for items described in paragraph (1)(D).".

(b) ELIMINATION OF REQUIREMENT TO REDUCE TITLE XXI ALLOTMENT BY MEDICAID EXPANSION SCHIP COSTS.—Section 2104 (42 U.S.C. 1397dd) is amended by striking subsection (d).

(c) AUTHORITY TO TRANSFER TITLE XXI APPROPRIATIONS TO TITLE XIX APPROPRIATION ACCOUNT AS REIMBURSEMENT FOR MEDICAID EXPENDITURES FOR MEDICAID EXPANSION SCHIP SERVICES.—Notwithstanding any other provision of law, all amounts appropriated under title XXI and allotted to a State pursuant to subsection (b) or (c) of section 2104 of the Social Security Act (42 U.S.C. 1397dd) for fiscal years 1998 through 2000 (including any amounts that, but for this provision, would be considered to have expired) and not expended in providing child health assistance or related services for which payment may be made pursuant to subparagraph (C) or (D) of section 2105(a)(1) of such Act (42 U.S.C. 1397ee(a)(1)) (as amended by subsection (a)), shall be available to reimburse the Grants to States for Medicaid account in an amount equal to the total payments made to such State under section 1903(a) of such Act (42 U.S.C. 1396b(a)) for expenditures in such years for medical as-

sistance described in subparagraphs (A) and (B) of section 2105(a)(1) of such Act (42 U.S.C. 1397ee(a)(1) (as so amended).

(d) CONFORMING AMENDMENTS.—

(1) Section 1905(b) (42 U.S.C. 1396d(b)) is amended in the fourth sentence by striking "the State's allotment under section 2104 (not taking into account reductions under section 2104(d)(2)) for the fiscal year reduced by the amount of any payments made under section 2105 to the State from such allotment for such fiscal year" and inserting "the State's available allotment under section 2104".

(2) Section 1905(u)(1)(B) (42 U.S.C. 1396d(u)(1)(B)) is amended by striking "and section 2104(d)".

(3) Section 2104 (42 U.S.C. 1397dd), as amended by subsection (b), is further amended—

(A) in subsection (b)(1), by striking "and subsection (d)"; and

(B) in subsection (c)(1), by striking "subject to subsection (d),".

(4) Section 2105(c) (42 U.S.C. 1397ee(c)) is amended—

(A) in paragraph (2)(A), by striking all that follows "Except as provided in this paragraph," and inserting "the amount of payment that may be made under subsection (a) for a fiscal year for expenditures for items described in paragraph (1)(D) of such subsection shall not exceed 10 percent of the total amount of expenditures for which payment is made under subparagraphs (A), (C), and (D) of paragraph (1) of such subsection.";

(B) in paragraph (2)(B), by striking "described in subsection (a)(2)" and inserting "described in subsection (a)(1)(D)"; and

(C) in paragraph (6)(B), by striking "Except as otherwise provided by law," and inserting "Except as provided in subparagraph (A) or (B) of subsection (a)(1) or any other provision of law,".

(5) Section 2110(a) (42 U.S.C. 1397jj(a)) is amended by striking "section 2105(a)(2)(A)" and inserting "section 2105(a)(1)(D)(i)".

(e) TECHNICAL AMENDMENT.—Section 2105(d)(2)(B)(ii) (42 U.S.C. 1397ee(d)(2)(B)(ii)) is amended by striking "enhanced FMAP under section 1905(u)" and inserting "enhanced FMAP under the fourth sentence of section 1905(b)".

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of section 4901 of the BBA (111 Stat. 552).

TITLE IX—OTHER PROVISIONS

Subtitle A—PACE Program

SEC. 901. EXTENSION OF TRANSITION FOR CURRENT WAIVERS.

Section 4803(d)(2) of BBA is amended—

(1) in subparagraph (A), by striking "24 months" and inserting "36 months";

(2) in subparagraph (A), by striking "the initial effective date of regulations described in subsection (a)" and inserting "July 1, 2000"; and

(3) in subparagraph (B), by striking "3 years" and inserting "4 years".

SEC. 902. CONTINUING OF CERTAIN OPERATING ARRANGEMENTS PERMITTED.

(a) IN GENERAL.—Section 1894(f)(2) (42 U.S.C. 1395eee(f)(2)) is amended by adding at the end the following new subparagraph:

"(C) CONTINUATION OF MODIFICATIONS OR WAIVERS OF OPERATIONAL REQUIREMENTS UNDER DEMONSTRATION STATUS.—If a PACE program operating under demonstration authority has contractual or other operating arrangements which are not otherwise recognized in regulation and which were in effect on July 1, 2000, the Secretary (in close consultation with, and with the concurrence of, the State administering agency) shall permit any such program to continue such arrangements so long as such arrangements are found by the Secretary and the State to be reasonably consistent with the objectives of the PACE program.".

(b) CONFORMING AMENDMENT.—Section 1934(f)(2) (42 U.S.C. 1396u–4(f)(2)) is amended by adding at the end the following new subparagraph:

"(C) CONTINUATION OF MODIFICATIONS OR WAIVERS OF OPERATIONAL REQUIREMENTS UNDER DEMONSTRATION STATUS.—If a PACE program operating under demonstration authority has contractual or other operating arrangements which are not otherwise recognized in regulation and which were in effect on July 1 2000, the Secretary (in close consultation with, and with the concurrence of, the State administering agency) shall permit any such program to continue such arrangements so long as such arrangements are found by the Secretary and the State to be reasonably consistent with the objectives of the PACE program.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective as included in the enactment of BBA.

SEC. 903. FLEXIBILITY IN EXERCISING WAIVER AUTHORITY.

In applying sections 1894(f)(2)(B) and 1934(f)(2)(B) of the Social Security Act (42 U.S.C. 1395eee(f)(2)(B), 1396u–4(f)(2)(B)), the Secretary of Health and Human Services—

(1) shall approve or deny a request for a modification or a waiver of provisions of the PACE protocol not later than 90 days after the date the Secretary receives the request; and

(2) may exercise authority to modify or waive such provisions in a manner that responds promptly to the needs of PACE programs relating to areas of employment and the use of community-based primary care physicians.

Subtitle B—Outreach to Eligible Low-Income Medicare Beneficiaries

SEC. 911. OUTREACH ON AVAILABILITY OF MEDICARE COST-SHARING ASSISTANCE TO ELIGIBLE LOW-INCOME MEDICARE BENEFICIARIES.

(a) OUTREACH.—

(1) IN GENERAL.—Title XI (42 U.S.C. 1301 et seq.) is amended by inserting after section 1143 the following new section:

"OUTREACH EFFORTS TO INCREASE AWARENESS OF THE AVAILABILITY OF MEDICARE COST-SHARING

"SEC. 1144. (a) OUTREACH.—

"(1) IN GENERAL.—The Commissioner of Social Security (in this section referred to as the 'Commissioner') shall conduct outreach efforts to—

"(A) identify individuals entitled to benefits under the medicare program under title XVIII who may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1902(a)(10)(E) and 1933; and

"(B) notify such individuals of the availability of such medical assistance under such sections.

"(2) CONTENT OF NOTICE.—Any notice furnished under paragraph (1) shall state that eligibility for medicare cost-sharing assistance under such sections is conditioned upon—

"(A) the individual providing to the State information about income and resources (in the case of an individual residing in a State that imposes an assets test for such eligibility); and

"(B) meeting the applicable eligibility criteria.

"(b) COORDINATION WITH STATES.—

"(1) IN GENERAL.—In conducting the outreach efforts under this section, the Commissioner shall—

"(A) furnish the agency of each State responsible for the administration of the medicaid program and any other appropriate State agency with information consisting of the name and address of individuals residing in the State that the Commissioner determines may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1902(a)(10)(E) and 1933; and

"(B) update any such information not less frequently than once per year.

"(2) INFORMATION IN PERIODIC UPDATES.—The periodic updates described in paragraph (1)(B) shall include information on individuals who are or may be eligible for the medical assistance described in paragraph (1)(A) because such individuals have experienced reductions in benefits under title II.".

(2) AMENDMENT TO TITLE XIX.—Section 1905(p) (42 U.S.C. 1396d(p)) is amended by adding at the end the following new paragraph:

"(5) For provisions relating to outreach efforts to increase awareness of the availability of medicare cost-sharing, see section 1144.".

(b) GAO REPORT.—The Comptroller General of the United States shall conduct a study of the impact of section 1144 of the Social Security Act (as added by subsection (a)(1)) on the enrollment of individuals for medicare cost-sharing under the medicaid program. Not later than 18 months after the date that the Commissioner of Social Security first conducts outreach under section 1144 of such Act, the Comptroller General shall submit to Congress a report on such study. The report shall include such recommendations for legislative changes as the Comptroller General deems appropriate.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) shall take effect one year after the date of the enactment of this Act.

Subtitle C—Maternal and Child Health Block Grant

SEC. 921. INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR THE MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT.

(a) IN GENERAL.—Section 501(a) (42 U.S.C. 701(a)) is amended in the matter preceding paragraph (1) by striking "$705,000,000 for fiscal year 1994" and inserting "$850,000,000 for fiscal year 2001".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2000.

Subtitle D—Diabetes

SEC. 931. INCREASE IN APPROPRIATIONS FOR SPECIAL DIABETES PROGRAMS FOR TYPE I DIABETES AND INDIANS.

(a) SPECIAL DIABETES PROGRAMS FOR TYPE I DIABETES.—Section 330B(b) of the Public Health Service Act (42 U.S.C. 254c–2(b)) is amended—

(1) by striking "Notwithstanding" and inserting the following:

"(1) TRANSFERRED FUNDS.—Notwithstanding"; and

(2) by adding at the end the following:

"(2) APPROPRIATIONS.—For the purpose of making grants under this section, there is appropriated, out of any funds in the Treasury not otherwise appropriated—

"(A) $70,000,000 for each of fiscal years 2001 and 2002 (which shall be combined with amounts transferred under paragraph (1) for each such fiscal years); and

"(B) $100,000,000 for fiscal year 2003.".

(b) SPECIAL DIABETES PROGRAMS FOR INDIANS.—Section 330C(c) of such Act (42 U.S.C. 254c–3(c)) is amended—

(1) by striking "Notwithstanding" and inserting the following:

"(1) TRANSFERRED FUNDS.—Notwithstanding"; and

(2) by adding at the end the following:

"(2) APPROPRIATIONS.—For the purpose of making grants under this section, there is appropriated, out of any money in the Treasury not otherwise appropriated—

"(A) $70,000,000 for each of fiscal years 2001 and 2002 (which shall be combined with amounts transferred under paragraph (1) for each such fiscal years); and

"(B) $100,000,000 for fiscal year 2003.".

(c) EXTENSION OF FINAL REPORT ON GRANT PROGRAMS.—Section 4923(b)(2) of BBA is amended by striking "2002" and inserting "2003".

SEC. 932. APPROPRIATIONS FOR RICKY RAY HEMOPHILIA RELIEF FUND.

Section 101(e) of the Ricky Ray Hemophilia Relief Fund Act of 1998 (42 U.S.C. 300c–22 note) is amended by adding at the end the following: "There is appropriated to the Fund $475,000,000 for fiscal year 2001, to remain available until expended.".

Following is explanatory language for H.R. 5543 as introduced on October 25, 2000.

STATEMENT OF MANAGERS FOR THE MEDICARE, MEDICAID, AND SCHIP BENEFITS IMPROVEMENT AND PROTECTION ACT OF 2000

TITLE I—MEDICARE BENEFICIARY IMPROVEMENTS

Subtilte A—Improved Preventive Benefits

Section 101. Coverage of biennial screening pap smear and pelvic exams

The provision modifies current law to provide Medicare coverage for biennial screening pap smears and pelvic exams, effective July 1, 2001.

Section 102. Coverage of screening for glaucoma

The provision would add Medicare coverage for annual glaucoma screenings, beginning January 1, 2002, for persons determined to be at high risk for glaucoma, individuals with a family history of glaucoma, and individuals with diabetes. The service would have to be furnished by or under the supervision of an optometrist or ophthalmologist who is legally authorized to perform such services in the state where the services are furnished.

Section 103. Coverage of screening colonoscopy for average risk individuals

The provision would authorize coverage for screening colonoscopies, beginning July 1, 2001, for all individuals, not just those at high risk. For persons not at high risk, payments could not be made for such procedures if performed within 10 years of a previous screening colonoscopy or within 4 years of a screening flexible sigmoidoscopy.

Section 104. Modernization of screening mammography benefit

Beginning in 2002, the provision would eliminate the statutorily prescribed payment rate for mammography payments and specify that the services are to be paid under the physician fee schedule. The provision would specify two new payment rates for mammographies that utilize advanced new technology for the period April 1, 2001 to December 21, 2001. Payment for technologies that directly take digital images would equal 150% of what would otherwise be paid for a bilateral diagnostic mammography. For technologies that convert standard film images to digital form, an additional payment of fifteen dollars would be authorized. The Secretary would be required to determine whether a new code is required for tests furnished after 2001.

Section 105. Coverage of medical nutrition therapy services for beneficiaries with diabetes or a renal disease

The provision would establish, effective January 1, 2002, Medicare coverage for medical nutrition therapy services for beneficiaries who have diabetes or a renal disease. Medical nutrition therapy services would be defined as nutritional diagnostic, therapy and counseling services for the purpose of disease management which are furnished by a registered dietician or nutrition professional, pursuant to a referral by a physician. The provision would specify that the amount paid for medical nutrition therapy services would equal the lesser of the actual charge for the service or 85% of the amount that would be paid under the physician fee schedule if such services were provided by a physician. Assignment would be required for all claims. The Secretary would be required to submit a report to Congress that contains an evaluation of the effectiveness of services furnished under this provision.

Subtitle B—Other Beneficiary Improvements

Section 111. Acceleration of reduction of beneficiary copayment for hospital outpatient hospital outpatient department services

Effective January 1, 2001, the provision would modify current law by limiting the amount of a beneficiary's copayment for a procedure in a hospital outpatient department to the hospital inpatient deductible applicable in that year.

In addition, starting in January, 2001, the provision would require the Secretary of HHS to reduce the effective copayment rate for outpatient services to a maximum rate of 60% and then gradually reduce the effective coinsurance rate in 5 percentage point intervals from 2002 through 2006 until the maximum rate is 40% in 2006. As stated in BBA 97, hospitals may waive any increase in coinsurance that may have arisen from the implementation of the outpatient prospective payment system (PPS).

The Comptroller General would be required to work with the National Association of Insurance Commissioners (NAIC) to evaluate the extent to which premiums for supplemental policies reflect the acceleration of the reduction in beneficiary coinsurance for hospital outpatient services and result in savings to beneficiaries and to report to the Congress by April 1, 2004.

Section 112. Preservation of coverage of drugs and biologicals under part B of the medicare program

The provision would clarify policy with regard to coverage of drugs, provided incident to physicians services, that cannot be self-administered. The provision would specify that such drugs are covered when they are not usually self-administered by the patient.

Section 113. Elimination of time limitation on Medicare benefits for immunosuppressive drugs

The provision would eliminate the current time limitations on the coverage of immunosuppressive drugs for beneficiaries who have received a covered organ transplant. The provision would apply to drugs furnished, on or after the date enactment.

Section 114. Imposition of balanced billing limits on prescription drugs

The provision would specify that payment for drugs under Part B must be made on the basis of assignment.

Subtitle C—Demonstration Projects and Studies

Section 121. Demonstration project for disease management for severely chronically ill Medicare beneficiaries

The Secretary would be required to conduct a demonstration project to illustrate the impact on costs and health outcomes of applying disease management to Medicare beneficiaries with diagnosed, advanced-stage congestive heart failure, diabetes, or coronary heart disease. Up to 30,000 beneficiaries would be able to enroll, on a voluntary basis, for disease management services related to their chronic health condition. In addition, contractors providing disease management services would be responsible for providing beneficiaries enrolled in the project with prescription drugs.

Section 122. Cancer prevention and treatment demonstration for ethnic and racial minorities

The provision would require the Secretary to conduct demonstration projects for the purpose of developing models and evaluating methods that improve the quality of cancer prevention services, improve clinical outcomes, eliminate disparities in the rate of preventive screening measures, and promote collaboration with community-based organizations for ethnic and racial minorities.

Section 123. Study on Medicare coverage of routine thyroid screening

The provision would require the Secretary to request the National Academy of Sciences, and as appropriate in conjunction with the United States Preventive Services Task Force, to analyze the addition of routine thyroid screening under Medicare. The analysis would consider the short term and long term benefits, and cost to Medicare, of adding such coverage for some or all beneficiaries.

Section 124. MedPAC study on consumer coalitions

The provision would require MedPAC to conduct a study that examines the use of consumer coalitions in the marketing of Medicare+Choice plans. A consumer coalition would be defined as a non-profit community-based organization that provides information to beneficiaries about their health options under Medicare and negotiates with Medicare+Choice plans on benefits and premiums for beneficiaries who are members of the coalition or otherwise affiliated with it.

Section 125. Study on limitation on state payment for medicare cost-sharing affecting access to services for qualified medicare beneficiaries

The provision would require the Secretary of HHS to conduct a study to determine if access to certain services (including mental health services) has been affected by a specific provision in law. That provision specifies that states are not required to pay Medi-

care cost-sharing charges for QMBs to the extent these payments would result in a total payment in excess of the Medicaid level.

Section 126. Institute of Medicine study on waiver of 24-month waiting period for Medicare disability eligibility for amyotrophic lateral sclerosis (ALS) and other devastating diseases

The provision would provide for an Institute of Medicine study that examines the appropriateness of waiving the 24-month waiting period for Medicare disability eligibility for an individual medically determined to have amyotrophic lateral sclerosis (ALS) or an other disease that is as rapidly debilitating.

Section 127. Studies on preventive interventions in primary care for older Americans

The provision would require the Secretary, acting through the United States Preventive Services Task Force, to conduct a series of studies designed to identify preventive interventions in primary care for older Americans.

Section 128. MedPAC study and report on Medicare coverage of cardiac and pulmonary rehabilitation and therapy services

The provision would require MedPAC to conduct a study on coverage of cardiac and pulmonary rehabilitation therapy services under Medicare.

TITLE II—RURAL HEALTH CARE IMPROVEMENTS

Subtitle A—Critical Access Hospital Provisions

Section 201. Clarification of no beneficiary cost-sharing for clinical diagnostic laboratory tests furnished by critical access hospitals

Effective for services furnished on or after the enactment of BBRA99, Medicare beneficiaries would not be liable for any coinsurance, deductible, copayment, or other cost sharing amount with respect to clinical diagnostic laboratory services furnished as an outpatient critical access hospital (CAH) service. Conforming changes that clarify that CAHs are reimbursed on a reasonable cost basis for outpatient clinical diagnostic laboratory services are also included.

Section 202. Assistance with fee schedule payment for professional services under all-inclusive rate

Effective for items and services furnished on or after April 1, 2001, Medicare would pay a CAH for outpatient services based on reasonable costs or, at the election of an entity, would pay the CAH a facility fee based on reasonable costs plus an amount based on 115% of Medicare's fee schedule for professional services.

Section 203. Exemption of critical access hospital swing beds from SNF PPS

Swing beds in critical access hospitals (CAHs) would be exempt from the SNF prospective payment system. CAHs would be paid for covered SNF services on a reasonable cost basis.

Section 204. Payment in critical access hospitals for emergency room on-call physicians

When determining the allowable, reasonable cost of outpatient CAH services, the Secretary would recognize amounts for the compensation and related costs for on-call emergency room physicians who are not present on the premises, are not otherwise furnishing services, and are not on-call at any other provider or facility. The Secretary would define the reasonable payment amounts and the meaning of the term "on-call." The provision would be effective for cost reporting periods beginning on or after October 1, 2001.

Section 205. Treatment of ambulance services furnished by certain critical access hospitals

Ambulance services provided by a critical access hospital (CAH) or provided by an entity that is owned or operated by a CAH would be paid on a reasonable cost basis if the CAH or entity is the only provider or supplier of ambulance services that is located within a 35-mile drive of the CAH. The provision would be effective for cost reporting periods beginning on or after implementation of the fee schedule.

Section 206. GAO study on certain eligibility requirements for critical access hospitals

Within one year of enactment, GAO would be required to conduct a study on the eligibility requirements for critical access hospitals (CAHs) with respect to limitations on average length of stay and number of beds, including an analysis of the feasibility of having a distinct part unit as part of a CAH and the effect of seasonal variations in CAH eligibility requirements. GAO also would be required to analyze the effect of seasonal variations in patient admissions on critical access hospital eligibility requirements with respect to limits on average annual length of stay and number of beds.

Subtitle B—Other Rural Hospitals Provisions

Section 211. Equitable treatment for rural disproportionate share hospitals

For discharges occurring on or after April 1, 2001, all hospitals would be eligible to receive DSH payments when their DSH percentage (threshold amount) exceeds 15%. The DSH payment formulas for sole community hospitals (SCHs), rural referral centers (RRCs), rural hospitals that are both SCHs and RRCs, small rural hospitals and urban hospitals with less than 100 beds would be modified.

Section 212. Option to base eligibility for Medicare dependent, small rural hospital program on discharges during 2 of the 3 most recent audited cost reporting periods

An otherwise qualifying small rural hospital would be able to be classified as an MDH if at least 60% of its days or discharges were attributable to Medicare Part A beneficiaries in at least two of the three most recent audited cost reporting periods for which the Secretary has a settled cost report.

Section 213. Extension of option to use rebased target amounts to all sole community hospitals

Any SCH would be able to elect payment based on hospital specific, updated FY1996 costs if this target amount resulted in higher Medicare payments. There would be a transition period with Medicare payment based completely on updated FY1996 hospital specific costs for discharges occurring after FY2003.

Section 214. MedPAC analysis of impact of volume on per unit cost of rural hospitals with psychiatric units

MedPAC would be required to report on the impact of volume on the per unit cost of rural hospitals with psychiatric units and include in its report a recommendation on whether special treatment is warranted.

Subtitle C—Other Rural Provisions

Section 221. Assistance for providers of ambulance services in rural areas

The provision would make additional payments to providers of ground ambulance services for trips, originating in rural areas, that are greater than 17 miles and up to 50 miles. The payments would be made for services furnished on or after implementation of the fee schedule and before January 1, 2004. The provision would require the Comptroller General to conduct a study to examine both the costs of efficiently providing ambulance services for trips originating in rural areas and the means by which rural areas with low population densities can be identified for the purpose of designating areas in which the costs of ambulance services would be expected to be higher. The Comptroller General would submit a report to Congress by June 30, 2002 on the results of the study, together with recommendations on steps that should be taken to assure access to ambulance services for trips originating in rural areas. The Secretary would be required to take these findings into account when establishing the fee schedule, beginning with 2004.

Section 222. Payment for certain physician assistant services

This provision would give permanent authority to physician assistants who owned rural health clinics that lost their designation as such to bill Medicare directly.

Section 223. Expansion of Medicare payment for telehealth services

The provision would establish revised payment provisions, effective no later than July 1, 2001, for services that are provided via a telecommunications system by a physician or practitioner to an eligible beneficiary in a rural area. The Secretary would be required to make payments for telehealth services to the physician or practitioner at the distant site in an amount equal to the amount that would have been paid to such physician or practitioner if the service had been furnished to the beneficiary without the use of a telecommunications system. A facility fee would be paid to the originating site. Originating sites would include a physician or practitioner office, a critical access hospital, a rural health clinic, a Federally qualified health center or a hospital. The Sec-

retary would be required to conduct a study, and submit recommendations to Congress, that identify additional settings, sites, practitioners and geographic areas that would be appropriate for telehealth services. Entities participating in Federal demonstration projects approved by, or receiving funding from, the Secretary as of December 31, 2000 would be qualified sites.

Section 224. Expanding Access to rural health clinics

All hospitals of less than 50 beds that own rural health clinics would be exempt from the per visit limit.

Section 225. MedPAC study on low-volume, isolated rural health providers

MedPAC would be required to study the effect of low patient and procedure volume on the financial status and Medicare payment methods for hospital outpatient services, ambulance services, hospital inpatient services, skilled nursing facility services, and home health services in isolated rural health care providers.

TITLE III—PROVISIONS RELATING TO PART A

Subtitle A—Inpatient Hospital Services

Section 301. Revision of acute care hospital payment update for 2001

All hospitals would receive the full market basket index (MBI) as an update for FY2001. In order to implement this increase for hospitals other than sole community hospitals (SCH), those hospitals would receive the MBI minus 1.1 percentage points (the current statutory provision) for discharges occurring on or after October 1, 2000 and before April 1, 2001; these non-SCH hospitals would receive the MBI plus 1.1 percentage points for discharges occurring on or after April 1, 2001 and before October 1, 2001. For FY2002 and FY2003, hospitals would receive the MBI minus .55 percentage points. For FY2004 and subsequently, hospitals would receive the MBI.

The Secretary is directed to consider the prices of blood and blood products purchased by hospitals in the next rebasing and revision of the hospital market basket to determine whether those prices are adequately reflected in the market basket index. MedPAC is directed to conduct a study on increased hospital costs attributable to complying with new blood safety measures and providing such services using new technologies among other issues.

For discharges occurring on or after October 1, 2001, the Secretary would be able to adjust the standardized amount in future fiscal years to correct for changes in the aggregate Medicare payments caused by adjustments to the DRG weighting factors in a previous fiscal year (or estimates that such adjustments for a future fiscal year) that did not take into account coding improvements or changes in discharge classifications and did not accurately represent increases in the resource intensity of patients treated by PPS hospitals.

Section 302. Additional modification in transition for indirect medical education (IME) percentage adjustment

Teaching hospitals would receive 6.25% IME payment adjustment (for each 10% increase in teaching intensity) for discharges occurring on or after October 1, 2000 and before April 1, 2001. The IME adjustment would increase to 6.75% for discharges on or after April 1, 2001 and before October 1, 2001, for an average of 6.5% for FY2001. The IME adjustment would be 6.375% in FY2002 and 5.5% in FY2003 and in subsequent years.

Section 303. Decrease in reductions for disproportionate share hospital (DSH) payments

Reductions in the DSH payment formula amounts would be 2% in FY2001, 3% in FY2002, and 0% in FY2003 and subsequently. To implement the FY2001 provision, DSH amounts for discharges occurring on or after October 1, 2000 and before April 1, 2001, would be reduced by 3% which was the reduction in effect prior to enactment of this provision. DSH amounts for discharges occurring on or after April 1, 2001 and before October 1, 2001 would be reduced by only 1 percentage point.

Section 304. Wage index improvements

For FY2001 or any fiscal year thereafter, a Medicare Geographic Classification Review Board (MGCRB) decision to reclassify a prospective payment system hospital for use of a different area's wage index would be effective for 3 fiscal years. The Secretary would establish procedures whereby a hospital could elect to terminate this reclassification decision before the end of such period. For FY2003 and subsequently, MGCRB would base any comparison of the average hourly wage of the hospital with the average hourly wage for hospitals in the area using data from each of the two immediately preceding surveys as well as data from the most recently published hospital wage survey.

The Secretary would establish a process which would first be available for discharges occurring on or after October 1, 2001 where a single wage index would be computed for all geographic areas in the state. If the Secretary applies a statewide geographic index, an application by an individual hospital would not be considered. The Secretary would also collect occupational data every three years in order to construct an occupational mix adjustment for the hospital area wage index. The first complete data collection effort would occur no later than September 30, 2003 for application beginning October 1, 2004.

Section 305. Payment for inpatient services in rehabilitation hospitals

Total payments for rehabilitation hospitals in FY2002 would equal the amounts of payments that would have been made if the rehabilitation prospective payment system (PPS) had not been enacted. A rehabilitation facility would be able to make a one-time election before the start of the PPS to be paid based on a fully phased-in PPS rate.

Section 306. Payment for inpatient services of psychiatric hospitals

The provision would increase the incentive payments for psychiatric hospitals and distinct part units to 3% for cost reporting periods beginning on or after October 1, 2000.

Section 307. Payment for inpatient services of long-term care hospitals

For cost reporting periods beginning during FY 2001, long term hospitals would have the national cap increased by 2% and the target amount increased by 25%. Neither these payments nor the increased bonus payments provided by BBRA 99 would be factored into the development of the prospective payment system (PPS) for long term hospitals. When developing the PPS for inpatient long term hospitals, the Secretary would be required to examine the feasibility and impact of basing payment on the existing (or refined) acute hospital DRGs and using the most recently available hospital discharge data. If the Secretary is unable to implement a long term hospital PPS by October 1, 2002, the Secretary would be required to implement a PPS for these hospitals using the existing acute hospital DRGs that have been modified where feasible.

Subtitle B—Adjustments to PPS Payments for Skilled Nursing Facilities

Section 311. Elimination of reduction in skilled nursing facility (SNF) market basket update in 2001

The provision would modify the schedule and rates according to which federal per diem payments are updated. In FY 2002 and FY 2003 the updates would be the market basket index increase minus 0.5 percentage point. The update rate for the period October 1, 2000, through March 31, 2001, would be the market basket index increase minus 1 percentage point; the update rate for the period April 1, 2001, through September 30, 2001, would be the market basket index increase plus one percentage point. Temporary increases in the federal per diem rates provided by BBRA 99 would be in addition to the increases in this provision. By July 1, 2002, the Comptroller General would be required to submit a report to Congress on the adequacy of Medicare payments to SNFs, taking into account the role of private payers, medicaid, and case mix on the financial performance of SNFs and including an analysis, by RUG classification, of the number and characteristics of such facilities. By January 1, 2005, the Secretary would be required to submit a report to Congress on alternatives for classification of SNF patients.

Section 312. Increase in nursing component of PPS federal rate

The provision would increase the nursing component of each RUG by 16.66 percent over current law for SNF care furnished after April 1, 2001, and before October 1, 2002.

The Comptroller General would be required to conduct an audit of nurse staffing ratios in a sample of SNFs and to report to Congress by August 1, 2002, on the results of the audit of nurse staffing ratios and recommend whether the additional 16.66 percent payment should be continued.

Section 313. Application of SNF consolidated billing requirement limited to part A covered stays

Effective January 1, 2001, the provision would limit the current law consolidated billing requirement to services and items furnished to SNF residents in a Medicare part A covered stay and to therapy services furnished in part A and part B covered stays.

The Inspector General of HHS would be required to monitor part B payments to SNFs on behalf of residents who are not in a part A covered stay.

Section 314. Adjustment of rehabilitation RUGS to correct anomaly in payment rates

Effective for skilled nursing facility (SNF) services furnished on or after April 1, 2002, the provision would increase by 6.7 percent certain federal per diem payments to ensure that Medicare payments for SNF residents with "ultra high" and "high" rehabilitation therapy needs are appropriate in relation to payments for residents needing "medium" or "low" levels of therapy. The 20 percent additional payment that was provided in BBRA 99 for certain RUGS is removed to make this provision budget neutral.

The Inspector General of HHS would be required to review and report to Congress by October 1, 2001, regarding whether the RUG payment structure as in effect under the BBRA 99 includes incentives for the delivery of inadequate care.

Section 315. Establishment of process for geographic reclassification

The provision would permit the Secretary to establish a process for geographic reclassification of skilled nursing facilities based upon the method used for inpatient hospitals. The Secretary may implement the process upon completion of the data collection necessary to calculate an area wage index for workers in skilled nursing facilities.

Subtitle C—Hospice Care

Section 321. Full market basket increase for 2001

The provision would modify update procedures for Medicare daily payment rates for hospice care. It would provide an increase in FY 2001 equal to the full increase in the market basket index. (The rates would be lower in the period October 1, 2000, through March 21, 2001, and higher in the period April 1, 2001, through September 30, 2001.) For FY 2002, payments would be updated by the market basket index increase minus .25 percentage point. The temporary increase in payment rates provided in BBRA 99 for FY 2001 and FY 2002 (.5 percent and .75 percent, respectively) would be included in the base on which updates are computed.

Section 322. Clarification of physician certification

Effective for certifications of terminal illness made on or after the date of enactment, the provision would modify current law to specify that the physician's or hospice medical director's certification of terminal illness would be based on his/her clinical judgment regarding the normal course of the individual's illness. The Secretary would be required to study and report to Congress within

2 years of enactment on the appropriateness of certification of terminally ill individuals and the effect of this provision on such certification.

Section 323. MedPAC report on access to, and use of, hospice benefit

The provision would require MedPAC to examine the factors affecting the use of Medicare hospice benefits, including delay of entry into the hospice program and urban and rural differences in utilization rates. The provision would require a report on the study to be submitted to Congress 18 months after enactment.

Section 331. Relief From Medicare Part A late enrollment penalty for group buy-in for state and local retirees

The provision would exempt certain state and local retirees, retiring prior to January 1, 2002, from the Part A delayed enrollment penalties. These would be groups of persons for whom the state or local government elected to pay the delayed Part A enrollment penalty for life. The amount of the delayed enrollment penalty which would otherwise be assessed would be reduced by an amount equal to the total amount of Medicare payroll taxes paid by the employee and the employer on behalf of the employee.

Section 332. Posting of information on nursing facility staffing

The provision would require skilled nursing facilities to post nurse staffing information daily for each shift in the facility.

TITLE IV—PROVISIONS RELATING TO PART B

Subtitle A—Hospital Outpatient Services

Section 401. Revision of hospital outpatient PPS payment update

Effective as if enacted with the BBRA 99, the provision would modify the current law update rates applicable to the hospital outpatient PPS by providing in FY 2001 an update equal to the full rate of increase in the market basket index. As under current law, the increase in FY 2002 would be the market basket index increase minus one percentage point.

If the Secretary determines that updates to the adjustment factor used to convert the relative utilization weights under the PPS into payment amounts have, or are likely to, result in hospitals' changing their coding or classification of covered services, thereby changing aggregate payments, the Secretary would be authorized to adjust the conversion factor in later years to eliminate the effect of coding or classification changes.

Section 402. Clarifying process and standards for determining eligibility of devices for pass-through payments under hospital outpatient PPS

The provision would modify the procedures and standards by which certain medical devices are categorized and determined eligible for pass-through payments under the PPS. Through public rulemaking procedures, the Secretary would be required to establish criteria for defining special payment categories under the PPS for new medical devices. The Secretary would be required to promul-

gate, through the use of a program memorandum, initial categories that would encompass each of the individual devices that the Secretary had designated as qualifying for the pass-through payments to date. In addition, similar devices not so designated because they were payable under Medicare prior to December 31, 1996, would also be included in initial categories. The Secretary would be required to create additional new categories in the future to accommodate new technologies meeting the "not insignificant cost" test established in BBRA 99.

Once the categories were established, pass-through payments currently authorized under section 1833(t)(b) of the Social Security Act would proceed on a category-specific, rather than device-specific basis. These payments would be designated as "category-based pass-through payments." These payments would be continued to be made for the 2 to 3 years payment period originally specified in BBRA 99, and, for each given category, would begin when the first such payment is made for any device included in a specified category. At the conclusion of this transitional payment period, categories would sunset and payment for the device would be included in the underlying PPS payment for the related service.

Section 403. Application of OPD PPS transitional corridor payments to certain hospitals that did not submit a 1996 cost report

Effective as if enacted with BBRA 99, the provision would modify current law as enacted in BBA 99 to enable all hospitals, not just those hospitals filing 1996 cost reports, to be eligible for transitional payments under the PPS.

Section 404. Application of rules for determining provider-based status for certain entities

The provision would grandfather existing arrangements whereby certain entities (such as outpatient clinics, skilled nursing facilities, etc.) are considered "provider-based" entities, meaning they are affiliated financially and clinically with a main hospital. Existing provider-based status designations would continue for two years beginning October 1, 2000. If a facility or organization requests approval for provider-based status during the period October 1, 2000, through September 31, 2002, it could not be treated as if it did not have such status during the period of time the determination is pending. In making such a status determination on or after October 1, 2000, HCFA would treat the applicant as satisfying any requirements or standards for geographic location if it satisfied geographic location requirements in regulations or is located not more than 35 miles from the main campus of the hospital.

An applicant facility or organization would be treated as satisfying all requirements for provider-based status if it is owned or operated by a unit of State or local government or is a public or private nonprofit corporation that is formally granted governmental powers by a unit of State or local government, or is a private hospital that, under contract, serves certain low income households or has a certain disproportionate share adjustment.

These provisions are in effect during a two-year period beginning on October 1, 2000.

Section 405. Treatment of children's hospitals under prospective payment system

The BBRA 99 provides special "hold harmless" payments to ensure that cancer hospitals would receive no less under the hospital outpatient PPS than they would have received, in aggregate, under the "pre-BBA" system, that is, the pre-PPS payment system. Effective as if included in the BBRA 99, the provision would extend this hold harmless protection to children's hospitals.

Sec 406. Inclusion of temperature monitored cryoablation

The provision would include temperature monitored cryoablation as part of the transitional pass-through for certain medical devices, drugs, and biologicals under the hospital outpatient prospective payment system, effective April 1, 2001.

Subtitle B—Provisions Relating to Physicians Services

Section 411. GAO studies relating to physicians' services

The provision would require the GAO to conduct a study on the appropriateness of furnishing in physicians offices specialist services (such as gastrointestinal endoscopic physicians services) which are ordinarily furnished in hospital outpatient departments. The GAO would also be required to study the refinements to the practice expense relative value units made during the transition to the resource-based system.

Section 412. Physician group practice demonstration

The provision would require the Secretary to conduct demonstration projects to test, and if proven effective, expand the use of incentives to health care groups participating under Medicare. Such incentives would be designed to encourage coordination of care furnished under Medicare Parts A and B by institutional and other providers and practitioners; to encourage investment in administrative structures and processes to encourage efficient service delivery; and to reward physicians for improving health outcomes. The Secretary would establish for each group participating in a demonstration, a base expenditure amount and an expenditure target (reflecting base expenditures adjusted for risk and expected growth rates). The Secretary would pay each group a bonus for each year equal to a portion of the savings for the year relative to the target. In addition, at such time as the Secretary had developed appropriate criteria, the Secretary would pay an additional bonus related to process and outcome improvements. Total payments under demonstrations could not exceed what the Secretary estimates would be paid in the absence of the demonstration program.

Section 413. Study on enrollment procedures for groups that retain independent contractor physicians

The provision would require the Comptroller General to conduct a study of the current Medicare enrollment process for groups that retain independent contractor physicians; particular emphasis

would be placed on hospital-based physicians, such as emergency department staffing groups.

Subtitle C—Other Services

Section 421. One-year extension of moratorium on therapy caps; report on standards for supervision of physical therapy assistants

The provision would extend the moratorium on the physical therapy and occupational therapy caps for 1 year through 2002; it would also extend the requirement for focused reviews of therapy claims for the same period. The Secretary would be required to conduct a study on the implications of eliminating the "in the room" supervision requirement for Medicare payment for physical therapy assistants who are supervised by physical therapists and the implications of this requirement on the physical therapy cap.

Section 422. Update in renal dialysis composite rate

The provision would specify that the composite rate payment for renal dialysis services would be increased by 2.4% for 2001. The provision would require the Secretary to collect data and develop an end-stage renal disease (ESRD) market basket whereby the Secretary could estimate before the beginning of a year the percentage increase in costs for the mix of labor and non-labor goods and services included in the composite rate. The Secretary would report to Congress on the index together with recommendations on the appropriateness of an annual or periodic update mechanism for dialysis services. The Comptroller General would be required to study the access of beneficiaries to dialysis services. There is a hold harmless provision for facilities who received exemptions for their 2000 rates, and for facilities that had their applications denied in 2000 but resubmit them by July 1, 2001 and are approved.

Section 423. Payment for ambulance services

The provision would provide for the full inflation update in ambulance payments for 2001. It would also specify that any phase-in of the ambulance fee schedule would provide for full payment of national mileage rates in states where separate mileage payments were not made prior to implementation of the fee schedule.

Section 424. Ambulatory surgical centers

The provision would delay implementation of proposed regulatory changes to the ambulatory payment classification system, which are based on 1994 cost data, until January 1, 2002. At that time, such changes would be phased in over 4 years: in the first year the payment amounts would be 25 percent of the revised rates and 75 percent of the prior system rates; in the second year payments would be 50 percent of the revised rates and 50 percent of the prior system rates, etc. The provision also requires that the revised system, based on 1999 (or later) cost data, be implemented January 1, 2003. (The phase-in of the revised system and 1994 data would end when the system with 1999 or later data was implemented.)

Section 425. Full update for durable medical equipment

The provision would modify updates to payments for durable medical equipment. For 2001, the payments for covered DME would be increased by the full increase in the consumer price index for urban consumers during the 12-month period ending June 2000. No increase would be authorized for 2002.

Section 426. Full update for orthotics and prosthetics

The provision would modify updates to payments for orthotics and prosthetics: in 2000 the rates would be increased by one percent; in 2001, the increase would be equal to the percentage increase in the consumer price index for urban consumers during the 12-month period ending with June, 2000; for 2002, payments would be increased by one percent over the prior year's amounts.

Section 427. Establishment of special payment provisions and requirements for prosthetics and certain custom fabricated orthotic items

Under the provision, certain prosthetics or custom fabricated orthotics would be covered by Medicare if furnished by a qualified practitioner and fabricated by a qualified practitioner or qualified supplier. The Secretary would be required to establish a list of such items in consultation with experts. Within one year of enactment, the Secretary would be required to promulgate regulations to provide these items, using negotiated rulemaking procedures.

Not later than 6 months from enactment, the Comptroller General would be required to submit to Congress a report on the Secretary's compliance with the Administrative Procedures Act with regard to HCFA Ruling 96–1; certain impacts of that ruling; the potential for fraud and abuse in provision of prosthetics and orthotics under special payment rules and for custom fabricated items; and the effect on Medicare and Medicaid payments if that ruling were overturned.

Section 428. Replacement of prosthetic devices and parts

The provision would authorize Medicare coverage for replacement of artificial limbs, or replacement parts for such devices, if ordered by a physician for specified reasons. Effective for items furnished on or after enactment, coverage would apply to prosthetic items 3 or more years old, and would supersede any 5-year age rules for such items under current law.

Section 429. Revised part B payment for drugs and biologicals and related services

The provision would require the Comptroller General to study and submit a report to Congress and the Secretary on the reimbursement for drugs and biologicals and for related services under Medicare; the report would include specific recommendations for revised payment methodologies. The Secretary would revise the current payment methodologies for covered drugs and biologicals and related services based on these recommendations; however, total payments under the revised methodologies could not exceed the aggregate payments the Secretary estimates would have been made under the current law. The provision would establish a tem-

porary injunction on changes in payment rates until the Secretary reviewed the GAO report.

Section 430. Contrast enhanced diagnostic procedures under hospital prospective payment system

The provision would require the Secretary to create under that hospital outpatient PPS additional and separate groups of covered services which include procedures that utilize contrast media. The provision would take effect January 1, 2001. and separate groups of covered services which include procedures that utilize contrast media.

Section 431. Qualifications for community mental health centers

The provision would clarify the qualifications for community mental health centers providing partial hospitalization services under Medicare.

Section 432. Modification of medicare billing requirements for certain indian providers

The provision would authorize hospitals and free-standing ambulatory care clinics of the Indian Health Service to bill Medicare for services which are paid for under the physician fee schedule.

Section 433. GAO study on coverage of surgical first assisting services of certified registered nurse first assistants

The provision would require the Comptroller General to conduct a study on the effect on both the program and beneficiaries of covering surgical first assisting services of certified registered nurse first assistants.

Section 434. MedPAC study and report on medicare reimbursement for services provided by certain providers

The provision would require MedPAC to conduct a study on the appropriateness of current payment rates for services provided by a certified nurse midwife, physician assistant, nurse practitioner, and clinical nurse specialist.

Section 435. MedPAC study and report on medicare coverage of services provided by certain non-physician providers

The provision would require MedPAC to conduct a study to determine the appropriateness of Medicare coverage of the services provided by a surgical technologist, marriage counselor, pastoral care counselor, and licensed professional counselor of mental health.

Section 436. GAO study and report on the costs of emergency and medical transportation services

The provision would require the Comptroller General to conduct a study on the costs of providing emergency and medical transportation services across the range of acuity levels of conditions for which such transportation services are provided.

Section 437. GAO studies and reports on medicare payments

The provision would require the Comptroller General to conduct a study on the post-payment audit process for physicians services. The study would include the proper level of resources HCFA should devote to educating physicians regarding coding and billing, documentation requirements, and calculation of overpayments. The Comptroller General would also be required to conduct a study of the aggregate effects of regulatory, audit, oversight and paperwork burdens on physicians and other health care providers participating in Medicare.

Section 439. MedPAC study on access to outpatient pain management services

The provision would require MedPAC to conduct a study on the barriers to coverage and payment for outpatient interventional pain medicine procedures under Medicare.

TITLE V—PROVISION RELATING TO PARTS A AND B

Subtitle A—Home Health Services

Section 501. 1-Year additional delay in application of 15 percent reduction on payment limits fo home health services

The provision would require that the aggregate amount of Medicare payments to home health agencies in the second year of the PPS (FY 2002) shall equal the aggregate payments in the first year of the PPS, updated by the market basket index (MBI) increase minus 1.1 percentage points. The 15 percent reduction to aggregate PPS amounts, which, under current law, would go into effect October 1, 2001, would be delayed until October 1, 2002.

The Comptroller General (rather than the Secretary) would be required to submit, by April 1, 2002, a report analyzing the need for the 15 percent or other reduction.

If the Secretary determines that updates to the PPS system for a previous fiscal year (or estimates of such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments due to changes in coding or classification of beneficiaries' service needs that do not reflect real changes in case mix, effective for home health episodes concluding on or after October 1, 2001, the Secretary may adjust PPS amounts to eliminate the effect of such coding or classification changes.

Section 502. Restoration of full home health market basket update for home health services for fiscal year 2001

The provision would modify the home health PPS updates. During the period October 1, 2000, through March 31, 2001, the rates promulgated in the home health PPS regulations on July 3, 2000, would apply for 60-day episodes of care (or visits) ending in that period. For the period April 1, 2001, through September 31, 2001, those rates would be increased by 2.2 percent for 60-day episodes (or visits) ending in that time period.

Section 503. Temporary two-month extension of periodic interim payments

The provision would extend applicability of periodic interim payments provided under current law. Home health agencies that were receiving such payments as of September 30, 2000, would continue to receive them until December 1, 2000. The payments in each of November and December 2000 would equal the amount those agencies received in October 2000. The amounts would be included in the agency's last settled cost report before implementation of the PPS.

Section 504. Use of telehealth in delivery of home health services

The provision would clarify that the telecommunications provisions should not be construed as preventing a home health agency from providing a service, for which payment is made under the prospective payment system, via a telecommunications system, provided that the services do not substitute for "in-person" home health services ordered by a physician as part of a plan of care or are not considered a home health visit for purposes of eligibility or payment.

Section 505. Study on costs to home health agencies of purchasing nonroutine medical supplies

The provision would require that, not later than October 1, 2001, the Comptroller General shall submit to Congress a report regarding the variation in prices home health agencies pay for nonroutine supplies, the volume of supplies used, and what effect the variations have on the provision of services. The Secretary would be required to make recommendations on whether Medicare payment for those supplies should be made separately from the home health PPS.

Section 506. Treatment of branch offices; GAO study on supervision of home health care provided in isolated rural areas

The provision would clarify that neither time nor distance between a home health agency parent office and a branch office shall be the sole determinant of a home health agency's branch office status. The Secretary would be authorized to include forms of technology in determining "supervision" for purposes of determining a home health agency's branch office status.

Not later than January 1, 2002, the Comptroller General would be required to submit to Congress a report regarding the adequacy of supervision and quality of home health services provided by home health agency branch offices and subunits in isolated rural areas and to make recommendations on whether national standards for supervision would be appropriate in assuring quality.

Section 507. Clarification of the homebound benefit

The provision clarifies that the need for adult day care for patient's plan of treatment does not preclude appropriate coverage for home health care for other medical conditions. The provision also clarifies the ability of homebound beneficiaries to attend religious

services without being disqualified from receiving home health benefits.

Subtitle B—Direct Graduate Medical Education

Section 511. Increase in floor for direct graduate medical education payments

A hospital's approved per resident amount for cost reporting periods beginning during FY2002 would not be less than 85% of the locality adjusted national average per resident amount.

Section 512. Change in distribution formula for Medicare+Choice-related nursing and allied health education costs

A hospital would receive nursing and allied health payments for Medicare managed care enrollees based on its per day cost of allied and nursing health programs and number of days attributed to Medicare enrollees in comparison to that in all other hospitals. The provision would be effective for portions of cost reporting periods occurring on or after January 1, 2001.

Subtitle C—Changes in Medicare Coverage and Appeals Process

Section 521. Revisions to medicare appeals process

The provision would modify the Medicare appeals process. Generally, initial determinations by the Secretary would be concluded no later than 45-days from the date the Secretary received a claim for benefits. Any individual dissatisfied with the initial determination would be entitled to a redetermination by the carrier or fiscal intermediary who made the initial determination. Such redetermination would be required to be completed within 30 days of a beneficiary's request. Beneficiaries could appeal the outcome of a redetermination by seeking a reconsideration. Generally, a request for a reconsideration must be initiated no later than 180 days after the date the individual receives the notice of an adverse redetermination. In addition, if contested amounts are greater than $100, an individual would be able to appeal an adverse reconsideration decision by requesting a hearing by the Secretary (first for a hearing by an administrative law judge, then in certain circumstances, for a hearing before the Department Appeals Board). If the dispute is not satisfactorily resolved through this administrative process, and if contested amounts are greater than $1,000, the individual would be able to request judicial review of the Secretary's final decision. Aggregation of claims to meet these thresholds would be permitted.

An expedited determination would be available for a beneficiary who received notice: 1) that a provider plans to terminate services and a physician certifies that failure to continue the provisions of the services is likely to place the beneficiary's health at risk; or 2) that the provider plans to discharge the beneficiary.

The Secretary would enter into 3-year contracts with at least 12 qualified independent contractors (QICs) to conduct reconsiderations. A QIC would promptly notify beneficiaries and Medicare claims processing contractors of its determinations. A beneficiary could appeal the decision of a QIC to an ALJ. In cases where the

ALJ decision is not rendered within the 90-day deadline, the appealing party would be able to request a DAB hearing.

The Secretary would perform outreach activities to inform beneficiaries, providers, and suppliers of their appeal rights and procedures. The Secretary would submit to Congress an annual report including information on the number of appeals for the previous year, identifying issues that require administrative or legislative actions, and including recommendations for change as necessary. The report would also contain an analysis of the consistency of the QIC determinations as well as the cause for any identified inconsistencies.

Section 522. Revisions to medicare coverage process

The provision would clarify when and under what circumstances Medicare coverage policy could be challenged. An aggrieved party could file a complaint concerning a national coverage decision. Such complaint would be reviewed by the Department Appeals Board (DAB) of HHS. The provision would also permit an aggrieved party to file a complaint concerning a local coverage determination. In this case, the determination would be reviewed by an administrative law judge. If unsatisfied, complainants could subsequently seek review of such a local policy by the DAB. In both cases, a DAB decision would constitute final HHS action, and would be subject to judicial review. The provision would also permit an affected party to submit a request to the Secretary to issue a national coverage or noncoverage determination if one has not been issued. The Secretary would have 90 days to respond. HHS would be required to prepare an annual report on national coverage determinations.

Subtitle D—Improving Access to New Technologies

Section 531. Reimbursement improvements for new clinical laboratory tests and durable medical equipment

The provision would specify that the national limitation amount for a new clinical laboratory test would equal 100% of the national median for such test. The Secretary would be required to establish procedures that permit public consultation for coding and payment determinations for new clinical diagnostic laboratory tests and new durable medical equipment. The Secretary would be required to report to Congress on specific procedures used to adjust payments for advanced technologies; the report would include recommendations for legislative changes needed to assure fair and appropriate payments.

Section 532. Retention of HCPCS level III codes

The provision would extend the time for the use of local codes (known as HCPCS level III codes) through December 31, 2003; the Secretary would be required to make the codes available to the public.

Section 533. Recognition of new medical technologies under medicare inpatient hospital PPS

The Secretary would be required to submit a report to Congress no later than April 1, 2001, on potential methods for more rapidly incorporating new medical services and technologies used in the inpatient setting in the clinical coding system used with respect to payment for inpatient services. The Secretary would be required to identify the preferred methods for expediting these coding modifications in her report, and to implement such method by October 1, 2001. Additional hospital payments could be made by means of a new technology group (DRG), an add-on payment, payment adjustment or other mechanism. However, separate fee schedules for additional new technology payments would not be permitted. The Secretary would implement the new mechanism on a budget neutral basis. The total amount of projected additional payments under the mechanism would be limited to an amount not greater than the Secretary's annual estimation of the costs attributable to the introduction of new technology in the hospital sector as a whole (as estimated for purposes of the annual hospital update calculation).

Subtitle E—Other Provisions

Section 541. Increase in reimbursement for bad debt

Effective beginning with cost reports starting in FY2001, the provision would increase the percentage of the reasonable costs associated with beneficiaries' bad debt in hospitals that Medicare would reimburse to 70%.

Section 542. Treatment of certain physician pathology services under medicare

The provision would permit independent laboratories, under a grandfather arrangement to continue, for a 2-year period (2001–2002), direct billing for the technical component of pathology services provided to hospital inpatients and hospital outpatients. The Comptroller General would be required to conduct a study of the effect of these provisions on hospitals and laboratories and access of fee-for-service beneficiaries to the technical component of physician pathology services. The report would include recommendations on whether the provisions should continue after the 2-year period for either (or both) inpatient and outpatient hospital services and whether the provision should be extended to other hospitals.

Section 543. Extension of advisory opinion authority

The Office of the Inspector General's authority to issue advisory opinions to outside parties who request guidance on the applicability of the anti-kickback statute, safe harbor provisions and other OIG health care fraud and abuse sanctions would be made permanent.

Section 544. Change in annual MedPAC reporting

The provision would delay the reporting date for the MedPAC report on issues affecting the Medicare program by 15 days to June 15. The provision would also require record votes on recommenda-

tions contained both in this report and the March report on payment policies.

Section 545. Development of patient assessment instruments

The provision would require the Secretary to report to the Congress on the development of standard instruments for the assessment of the health and functional status of patients and make recommendations on the use of such standard instruments for payment purposes.

Section 546. GAO report on impact of the emergency medical treatment and Active Labor Act (EMTALA) on hospital emergency departments

GAO would be required to evaluate the impact of the Emergency Medical Treatment and Active Labor Act on hospitals, emergency physicians, and on-call physicians covering emergency departments and to submit a report to Congress by May 1, 2001.

TITLE VI—PROVISIONS RELATING TO PART C (MEDICARE+CHOICE PROGRAM) AND OTHER MEDICARE MANAGED CARE PROVISIONS

Subtitle A—Medicare+Choice Payment Reforms

Section 601. Increase in minimum payment amount

The provision would set the minimum payment amount for aged enrollees within the 50 states and the District of Columbia in a Metropolitan Statistical Area with a population of more than 250,000 at $525 in 2001. For all other areas within the 50 States and the District of Columbia, the minimum would be $475. For any area outside the 50 States and the District of Columbia, the $525 and $475 minimum amounts would also be applied, except that the 2001 minimum payment amount could not exceed 120% of the 2000 minimum payment amount.

Section 602. Increase in minimum percentage increase

This provision would apply a 3% minimum update in 2001 and return to the current law minimum update of 2% thereafter.

Section 603. 10-Year phase in of risk adjustment

Until such time that risk adjustment is based on data from inpatient hospital and ambulatory settings, 10% of payments would be based on risk-adjusted inpatient data built on the 15 principal inpatient diagnostic cost groups (PIP–DCGs) and 90% would be adjusted solely using the older demographic method. Beginning with the first year that risk adjustment is based on data from inpatient hospitals and ambulatory settings, it would be phased in over 10 years, in equal increments. (The Secretary currently plans to implement this new system in 2004.)

Section 604. Transition to revised Medicare+Choice payment rates

Within 2 weeks after the date of enactment of the Act, the Secretary must announce revised M+C capitation rates for 2001, due to changes from this Act. Plans that previously provided notice of their intention to terminate contracts or reduce their service area

for 2001 would have 2 weeks after announcement of the revised rates to rescind their notice and submit ACR information. Further, any M+C organization that would receive higher capitation payments as a result of this Act must submit revised ACR information within 2 weeks after announcement of the revised rates. Plans may only reduce premiums, reduce cost sharing, enhance benefits, or utilize stabilization funds. Notwithstanding the issuance of revised rates, M+C organizations would continue to be paid on a fee-for-service basis for costs associated with new national coverage determinations that are made mid-year.

Section 605. Revision of payment rates for ESRD patients enrolled in Medicare+Choice plans

This provision would require that the Secretary increase the M+C payment rates for enrollees with ESRD. The revised rates would reflect the demonstration rate (including the risk-adjustment methodology) of social health maintenance organizations' ESRD capitation demonstrations. The revised rates would include adjustments for factors such as renal treatment modality, age, and underlying cause of the disease.

Section 606. Permitting premium reductions as additional benefits under Medicare+Choice plans

This provision would permit M+C plans to offer reduced Medicare Part B premiums to their enrollees as part of providing any required additional benefits or reduced cost-sharing. An M+C organization could elect a reduction in its M+C payment up to 125% of the annual Part B premium. However, only 80% of this amount could be used to reduce an enrollee's actual Part B premium. This would have the effect of returning up to 100% of the beneficiary's Part B premium. The reduction would apply uniformly to each enrollee of the M+C plan. Plans would include information about Part B premium reductions as part of the required information that is provided to enrollees for comparing plan options.

Section 607. Full implementation of risk adjustment for congestive heart failure enrollees for 2001

This provision would fully implement risk adjustment based on inpatient hospital diagnoses for an individual who had a qualifying congestive heart failure inpatient diagnosis between July 1, 1999 and June 30, 2000, if that individual was enrolled in a coordinated care plan offered on January 1, 2001. This would apply for only 1 year, beginning on January 1, 2001. This payment amount would be excluded from the determination of the budget neutrality factor.

Section 608. Expansion of application of Medicare+Choice new entry bonus

This provision would expand the application of the new entry bonus for M+C plans to include areas for which notification had been provided, as of October 3, 2000, that no plans would be available January 1, 2001.

Section 609. Report on inclusion of certain costs of the Department of Veterans Affairs and Military Facility Services in calculating Medicare+Choice payment rates

The Secratary shall report to Congress by January 1, 2003, on a method to phase-in the costs of military facility services furnished by the Department of Veterans Affairs or the Department of Defense to Medicare-eligible beneficiaries in the calculation of an area's M+C capitation payment. This report would include, on a county-by-county basis: the actual or estimated costs of such services to Medicare-eligible beneficiaries; the change in M+C capitation payment rates if such costs were included in the calculation of payment rates; one or more proposals for the implementation of payment adjustments to M+C plans in counties where the payment rate has been affected due to failure to account for the cost of such services; and a system to ensure that when a M+C enrollee receives covered services through a facility of these Departments, there is an appropriate payment recovery to the Medicare program.

Subtitle B—Other Medicare+Choice Reforms

Section 611. Payments of additional amounts for new benefits covered during a contract term

The provision would require payment adjustments to M+C plans if a legislative change resulted in significant increased costs, similar to the current law requirements for adjusting payments due to significant increased costs resulting from National Coverage Determination (NCDs). In addition, this provision would require that cost projections and payment adjustments be based on actuarial estimates provided by the Chief Actuary of the Health Care Financing Administration.

Section 612. Restriction on implementation of significant new regulatory requirements mid-year

The provision would preclude the Secretary from implementing, other than at the beginning of a calendar year, regulations that impose new, significant regulatory requirements on M+C organizations and plans.

Section 613. Timely approval of marketing material that follows model marketing language

The provision would require the Secretary to make decisions, within 10 days, approving or modifying marketing material used by M+C organizations, provided that the organization uses model language specified by the Secretary. This provision would apply to marketing material submitted on or after January 1, 2001.

Section 614. Avoiding duplicative regulation

This provision would further stipulate when Medicare law preempts State law or regulation from applying to M+C plans, by specifying that the term benefit requirements includes cost-sharing requirements. Second, the provision would stipulate that State laws and regulations affecting marketing materials, and summaries and schedules of benefits regarding an M+C plan, would also be preempted by Medicare law.

Section 615. election of uniform local coverage policy for Medicare+Choice plan covering multiple localities

An M+C organization offering a plan in an area with more than one local coverage policy would be able to elect to have the local coverage policy for the part of the area that is most beneficial to M+C enrollees (as identified by the Secretary) apply to all M+C enrollees enrolled in the plan.

Section 616. Eliminating health disparities in Medicare+Choice Program

This provision would expand the M+C quality assurance programs for M+C plans to include a separate focus on racial and ethnic minorities. The Secretary would also be required to report to Congress how the quality assurance programs focus on racial and ethnic minorities, within 2 years after enactment and biannually thereafter.

Section 617. Medicare+Choice Program compatibility with employer or union group health plans

In order to make the M+C program compatible with employer or union group health plans, this provision would allow the Secretary to waive or modify requirements that hinder the design of, offering of, or enrollment in certain M+C plans. Plans included in the category are M+C plans under contract between M+C organizations and employers, labor organizations, or trustees of a fund established by employers and/or labor organizations.

Section 618. Special Medigap enrollment anti-discrimination provision for certain beneficiaries

This provision would extend the period for Medigap enrollment for certain M+C enrollees affected by termination of coverage. For individuals enrolled in an M+C plan during a 12-month trial period, their trial period would begin again if they re-enrolled in another M+C plan because of an involuntary termination. During this new trial period, they would retain their rights to enroll in a Medigap policy; however, the total time for a trial period could not exceed 2 years from the time they first enrolled in an M+C plan.

Section 619. Restoring effective date of elections and changes of elections of Medicare+Choice plans

This provision would allow individuals who enroll in an M+C plan after the 10th day of the month to receive coverage beginning on the first day of the next calendar month, effective January 1, 2001.

Section 620. Permitting ESRD beneficiaries to enroll in another Medicare+Choice plan if the plan in which they are enrolled is terminated

This provision would permit ESRD beneficiaries to enroll in another M+C plan if they lost coverage when their plan terminated its contract or reduced its service area. This provision would also be retroactive, to include individuals whose enrollment in an M+C plan was terminated between December 31, 1998 and enactment of this legislation.

Section 621. Providing choice for skilled nursing facility services under the Medicare+Choice program

Effective for M+C contracts entered into or renewed on or after the date of enactment, the provision would require an M+C plan to cover post-hospitalization skilled nursing care through an enrollee's "home skilled nursing facility" if the plan has a contract with the facility or if the home facility agrees to accept substantially similar payment under the same terms and conditions that apply to similarly situated SNFs that are under contract with the plan. A "home skilled nursing facility" is defined as (a) one in which the enrollee resided at the time of the hospital admission that triggered eligibility for SNF care upon discharge, or (b) is the facility that is providing such services through the continuing care retirement community in which the enrollee resided at the time of hospital admission, or (c) is the facility in which the spouse of the enrollee is residing at the time of the enrollee's hospital discharge. The beneficiary would be required to receive coverage for SNF care at the home facility that is no less favorable than he or she would receive otherwise in another SNF that has a contract with the plan.

Home skilled nursing facilities are permitted to refuse to accept Medicare+Choice enrollees or to impose conditions on their acceptance of such an enrollee.

The provision would require the Medicare Payment Advisory Commission (MedPAC) to analyze and, within 2 years of enactment, report to Congress on the effects of this provision on the scope of benefits, administrative and other costs incurred by M+C organizations, and the contractual relationships between those plans and SNFs.

Section 622. Providing for accountability of Medicare+Choice plans

The provision would mandate review of ACR submissions by the HCFA Chief Actuary with respect to submissions for ACRs filed for 2001 and thereafter.

Subtitle C—Other Managed Care Reforms

Section 631. 1-Year extension of Social Health Maintenance Organization (SHMO) demonstration project

The provision would extend SHMO waivers until 30 months after the Secretary submits a report with a plan for integration and transition of SHMOs into an option under the M+C program. This 30-month extension would supersede the 18-month extension in BBRA 99.

Section 632. Revised terms and conditions for extension of Medicare Community Nursing Organization (CNO) demonstration project

Effective as if enacted with BBRA99, the provision would eliminate the requirement that CNO capitated payments be reduced to ensure budget neutrality. Through December 2001, the projects would operate under the same terms and conditions applicable during 1999, but with modification to the capitation rates. From October 1, 2000, through December 31, 2000, the capitation rates would be adjusted for inflation since 1999 and for changes in

service packages, but reduced by 10 percent for in projects in Arizona, Minnesota, and Illinois and by 15 percent in New York. In 2001, the rates would be determined by actuarially adjusting the rates in the prior period for inflation, utilization, and changes to the service package. Adjustments would be made to case management fees for certain frail enrollees, and requirements would be imposed to create greater uniformity in clinical features among participating sites and to improve quality and enrollee satisfaction.

By July 1, 2001, the Secretary would be required to submit to the House Committees on Ways and Means and Commerce and the Senate Committee on Finance a report evaluating the projects for the period July 1997 through December 1999 and for the extension period after September 30, 2000. A final report would be required by July 1, 2002. The provision would require certain methods to be used to compare spending per beneficiary under the projects.

Section 633. Extension of Medicare municipal health services demonstration projects

The provision would extend the Medicare municipal health services demonstration projects for 2 additional years, through December 31, 2004.

Section 634. Service area expansion for Medicare cost contracts during transition period

This provision would allow service area expansion for Medicare cost contracts, if the request was submitted to the Secretary before September 1, 2003.

TITLE VII—MEDICAID

Section 701. DSH payments

(a) Modifications to DSH allotments

For FY2001, the provision would set each state's DSH allotment equal to its allotment for FY2000 increased by the percentage change in the consumer price index for that year, subject to a ceiling that would be equal to 12% of that state's total medical assistance payments in that year.

For FY2002, the provision would set each state's DSH allotment equal to its allotment for 2001 as determined above, increased by the percentage change in the consumer price index for FY2001, subject to a ceiling equal to 12% of that state's total medical assistance payments in that year.

For extremely low DSH states, states whose FY1999 federal and state DSH expenditures (as reported to HCFA on August 31, 2000) are greater than zero but less than one percent of the state's total medical assistance expenditures during that fiscal year, the DSH allotments for FY2001 would be equal to 1 percent of the state's total amount of expenditures under their plan for such assistance during that fiscal year. For subsequent fiscal years, the allotments for extremely low DSH states would be equal to their allotment for the previous year, increased by the percentage change in the consumer price index for the previous year, subject to a ceiling of 12% of that state's total medical assistance payments in that year.

Effective on the date that the final regulation for Medicaid upper payment limits is published in the Federal Register.

(b) Assuring identification of Medicaid managed care patients

Effective for Medicaid managed care contracts in effect on January 1, 2001, the provision would clarify that Medicaid enrollees of managed care organizations and primary care case management organizations are to be included for the purposes of calculating the Medicaid inpatient utilization rate and the low-income utilization rate. Also effective January 1, 2001, states must include in their MCO contracts information that allows the state to determine which hospital services are provided to Medicaid beneficiaries through managed care, and would also require states to include a sponsorship code for the managed care entity on the Medicaid beneficiary's identification card.

(c) Application of Medicaid DSH transition rule to public hospitals in all states

The provision would revise BBA97, as modified by BBRA 99, so that the 175% hospital-specific limit, formerly applied only to certain public hospitals in California, applies to qualifying public hospitals in all states. The higher limit would apply for two state fiscal years beginning on the first day of the state fiscal year that begins after September 30, 2002 and ends on the last day of the succeeding state fiscal year. Hospitals that would qualify for the higher hospital-specific limit would be those owned or operated by a state and meet the minimum federal requirements for disproportionate share hospitals. The permanent ceiling for California would not be affected.

For states operating under waivers approved under section 1115 of the Social Security Act, increased payments for public hospitals under this provision would be included in the baseline expenditure limit for the purposes of determining budget neutrality.

(d) Assistance for certain public hospitals

The provision would provide additional funds for certain public hospitals that are: owned or operated by a state (or by an instrumentality or unit of government within a state); are not receiving DSH payments as of October 1, 2000; and have a low-income utilization rate in excess of 65% as of the same date. Funds are provided in addition to the DSH allotment for any state with eligible hospitals and the total for all states cannot exceed the following amounts: $15 million for FY 2002; $176 million for 2003; $269 million for 2004; $330 million for 2005; and for FY 2006 and each fiscal year thereafter; $375 million.

(e) DSH payment accountability standards

The provision would require the Secretary to implement accountability standards to ensure that DSH payments are used to reimburse States and hospitals that are eligible for such payments and are otherwise in accordance with Medicaid statutory requirements.

Section 702. New prospective payment system for federally-qualified health centers and rural health clinics

The provision would create a new Medicaid prospective payment system for federally qualified health centers (FQHCs) and rural health centers (RHCs) beginning in FY2001. In FY2001 existing FQHCs and RHCs would be paid per visit payments equal to 100% of the average costs incurred during 1999 and 2000 adjusted to take into account any increase or decrease in the scope of services furnished. For entities first qualifying as FQHCs or RHCs after 2000, the per visit payments would begin in the first year that the center or clinic attains qualification and would be based on 100% of the costs incurred during that year based on the rates established for similar centers or clinics with similar caseloads in the same adjacent geographic area. In the absence of such similar centers or clinics, the methodology would be based on that used for developing rates for established FQHCs or RHCs or a methodology or reasonable specifications as established by the Secretary. For each fiscal year thereafter, per visit payments for all FQHCs and RHCs would be equal to amounts for the preceding fiscal year increased by the percentage increase in the Medicare Economic Index applicable to primary care services for that fiscal year, and adjusted for any increase or decrease in the scope of services furnished during that fiscal year. In managed care contracts, States must make supplemental payments to the center or clinic that would be equal to the difference between contracted amounts and the cost-based amounts. Those payments would be paid on a schedule mutually agreed to by the State and the FQHC or RHC. Alternative payment methods would be permitted only when payments are at least equal to amounts otherwise provided.

The provision would also direct the Comptroller General to provide for a study on how to rebase or refine cost payment methods for the services of FQHCs and RHCs. The report would be due to Congress no later than 4 years after the date of enactment.

Section 703. Streamlined approval of continued state-wide 1115 Medicaid waivers

The provision would define the process for submitting requests for and receiving extensions of Medicaid demonstration waivers authorized under Section 1115 of the Social Security Act which have already received initial 3-year extensions. It would require each state requesting such an extension to submit an application at least 120 days prior to the expiration date of the existing waiver. No later than 45 days after the Secretary receives such application, the Secretary would be required to notify the State if she intends to review the existing terms and conditions of the project and would inform the State of proposed changes in the terms and conditions of the waiver. If the Secretary fails to provide such notification, the request would be deemed approved. During the 30-day period beginning after the Secretary provides the proposed terms and conditions to the state, those terms and conditions would be negotiated. No later than 120 days after the date that the request for extension was submitted (or such later date as agreed to by the chief executive officer of the State) the Secretary would be required to approve the application subject to the agreed upon terms and

conditions or, in the absence of an agreement, such terms and conditions that are determined by the Secretary to be reasonably consistent with the overall objective of the waiver, or disapprove the application. If the waiver is not approved or disapproved during this period, the request would be deemed approved in the terms and conditions as have been agreed to (if any) by the Secretary and the State. Approvals would be for periods not to exceed 3 years and would be subject to the final reporting and evaluation requirements in current law.

Section 704. Medicaid county-organized health systems

The provision would allow the current exemption for certain Health Insuring Organizations (HIOs) from certain Medicaid HMO contracting requirements to apply as long as no more than 14% of all Medicaid beneficiaries in the state are enrolled in those HIOs. This provision would be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sec. 705. Deadline for issuance of final regulation relating to Medicaid upper payment limits

The provision would require the Secretary to issue final regulations governing upper payment limits no later than December 31, 2000. It also requires that the final regulation establish a separate UPL for non-state-owned or operated government facilities based on the proposed rule described above.

The provision also requires the final regulation to stipulate a third set of rules governing the transition period for certain states. This additional set of rules would apply to states with payment arrangements approved or in effect on or before October 1, 1992, or under which claims for federal matching were paid on or before that date, and for which such payments exceed the UPLs established under the final regulation. For these states, a 6-year transition period would apply, beginning with the period that begins on the first state fiscal year that starts after September 30, 2002 and ends on September 30, 2008. For each year during the transition period, applicable states must reduce excess payments by 15%. Full compliance with final regulations is required by October 1, 2008.

Section 706. Alaska FMAP

The provision would change the formula for calculating the state percentage and thus the federal matching percentage for Alaska for fiscal years 2001 through 2005. The state percentage for Alaska would be calculated by using an adjusted per capita income instead of the per capita income generally used. The adjusted per capita income for Alaska would be calculated as the three year average per capita income for the state divided by 1.05.

TITLE VIII—STATE CHILDREN'S HEALTH INSURANCE PROGRAM

Section 801. Special rule for redistribution and availability of unused fiscal year 1998 and 1999 SCHIP allotments

The provision would establish a new method for distributing unspent FY1998 and FY1999 allotments. States that use all their SCHIP allotments (for each of those years) would receive an

amount equal to estimated spending in excess of their original exhausted allotment. Each territory that spends its original allotment would receive an amount that bears the same ratio to 1.05% of the total amount available for redistribution as the ratio of its original allotment to the total allotment for all territories.

States that do not use all their SCHIP allotment would receive an amount equal to the total amount of unspent funds, less amounts distributed to states that fully exhausted their original allotments, multiplied by the ratio of a state's unspent original allotment to the total amount of unspent funds. States may use up to 10% of the retained FY1998 funds for outreach activities.

To calculate the amounts available for redistribution in each formula described above, the Secretary would use amounts reported by states not later than November 30 of the relevant fiscal year on HCFA Form 64 or HCFA Form 21, as approved by the Secretary. Redistributed funds would be available through the end of FY2002.

Section 802. Authority to pay Medicaid expansion SCHIP costs from title XXI appropriation

This provision provides a technical accounting clarification requested by the Health Care Financing Administration. It would authorize the payment of the costs of SCHIP Medicaid expansions and costs of benefits provided during periods of presumptive eligibility from the SCHIP appropriation rather than from the Medicaid appropriation, with a subsequent offset. In addition, the provision would codify proposed rules regarding the order of payments for benefits and administrative costs from state-specific SCHIP allotments.

TITLE IX—OTHER PROVISIONS

Subtitle A—PACE Program

Section 901. Extension of transition for current waivers

The provision would permit the Secretary to continue to operate the Program of All-Inclusive Care for the Elderly (PACE) under waivers for a period of 36 months (rather than 24 months), and States may do so for 4 years (rather than 3 years). OBRA 86 required the Secretary to grant waivers of certain Medicare and Medicaid requirements to not more than 10 public or non-profit private community-based organizations to provide health and long-term care services on a capitated basis to frail elderly persons at risk of institutionalization. BBA 97 established PACE as a permanent provider under Medicare and as a special benefit under Medicaid.

Section 902. Continuing of certain operating arrangements permitted

If prior to becoming a permanent component of Medicare, a PACE demonstration project had contractual or other operating arrangements that are not recognized under permanent program regulations, the provision would require the Secretary, in consultation with the state agency, to permit it to continue under such arrange-

ments as long as it is consistent with the objectives of the PACE program.

Section 903. Flexibility in exercising waiver authority

The provision would enable the Secretary to exercise authority to modify or waive Medicare or Medicaid requirements to respond to the needs of PACE programs related to employment and the use of community care physicians. The Secretary must approve requests for such waivers within 90 days of the date the request for waiver is received.

Subtitle B—Outreach to Eligible Low-Income Medicare Beneficiaries

Section 911. Outreach on availability of medicare cost-sharing assistance to eligible low-income Medicare beneficiaries

The provision would require the Commissioner of the Social Security Administration to conduct outreach efforts to identify individuals who may be eligible for Medicaid payment of Medicare cost sharing and to notify these persons of the availability of such assistance. The Commissioner would also be required to furnish, at least annually, a list of such individuals who reside in each state to that state's agency responsible for administering the Medicaid program as well as to any other appropriate state agency. The list should include the name and address, and whether such individuals have experienced reductions in Social Security benefits. The provision would also require the General Accounting Office to conduct a study of the impact of the outreach activities of the Commissioner to submit to Congress no later than 18 months after such outreach begins. The provision would be effective one year after date of enactment.

Subtitle C—Maternal and Child Health Block Grant

Section 921. Increase in authorization of appropriations for the maternal and child health services block grant

The provision would increase the authorization of appropriations for the Maternal and Child Health Services Block Grant under Title V from $705,000,000 to $850,000,000 for fiscal year 2001 and each fiscal year thereafter.

Subtitle D—Diabetes

Section 931. Increase in appropriations for special diabetes programs for type I diabetes and Indians

The provision would extend for 1 year, to FY2003, the authority for grants to be made for both the Special Diabetes Program for Type I Diabetes and for the Special Diabetes Programs for Indians under the Public Health Service Act. The provision would also expand funding available for these programs. For each grant program, the provision would increase total funding to $100 million each for FY2001, FY2002 and FY2003. For FY2001 and FY2002, $30 million of the $100 million for each program would be transferred from SCHIP as set forth in the Balanced Budget Act of 1997; the remaining $70 million would be drawn from the Treasury out

of funds not otherwise appropriated. In FY2003, the entire $100 million would be drawn from the Treasury out of funds not otherwise appropriated. In addition, the provision would extend the due date on final evaluation reports for these two grant programs from January 1, 2002 to January 1, 2003.

Section 932. Appropriations for Ricky Ray Hemophilia Relief Fund

This provision provides for a direct appropriation of $475 million for FY 2001. Funds would be available until expended.

PAIN RELIEF PROMOTION ACT OF 2000

The conference agreement would enact the provisions of H.R. 5544, as introduced on October 25, 2000. The text of that bill follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Pain Relief Promotion Act of 2000."

SECTION 2. FINDINGS.

Congress finds that—

(1) in the first decade of the new millennium there should be a new emphasis on pain management and palliative care;

(2) the use of certain narcotics and other drugs or substances with a potential for abuse is strictly regulated under the Controlled Substances Act;

(3) the dispensing and distribution of certain controlled substances by properly registered practitioners for legitimate medical purposes are permitted under the Controlled Substances Act and implementing regulations;

(4) the dispensing or distribution of certain controlled substances for the purpose of relieving pain and discomfort even if it increases the risk of death is a legitimate medical purpose and is permissible under the Controlled Substances Act;

(5) inadequate treatment of pain, especially for chronic diseases and conditions, irreversible diseases such as cancer, and end-of-life care, is a serious public health problem affecting hundreds of thousands of patients every year; physicians should not hesitate to dispense or distribute controlled substances when medically indicated for these conditions; and

(6) for the reasons set forth in section 101 of the Controlled Substances Act (21 U.S.C. 801), the dispensing and distribution of controlled substances for any purpose affect interstate commerce.

TITLE I—PROMOTING PAIN MANAGEMENT AND PALLIATIVE CARE

SEC. 101. ACTIVITIES OF AGENCY FOR HEALTHCARE RESEARCH AND QUALITY.

Part A of title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended by adding at the end the following:

SEC. 903. PROGRAM FOR PAIN MANAGEMENT AND PALLIATIVE CARE RESEARCH AND QUALITY.

(a) IN GENERAL.—Subject to subsections (e) and (f) of section 902, the Director shall carry out a program to accomplish the following:

(1) Promote and advance scientific understanding of pain management and palliative care.

(2) Collect and disseminate protocols and evidence-based practices regarding, pain management and palliative care, with priority given to pain management for terminally ill patients, and make such information available to public and private health care programs and providers, health professions schools, and hospices, and to the general public.

(b) DEFINITION.—In this section, the term "pain management and palliative care" means—

(1) the active, total care of patients whose disease or medical condition is not responsive to curative treatment or whose prognosis is limited due to progressive, far-advanced disease; and

(2) the evaluation, diagnosis, treatment, and management of primary and secondary pain, whether acute, chronic, persistent, intractable, or associated with the end of life;

the purpose of which is to diagnose and alleviate pain and other distressing signs and symptoms and to enhance the quality of life, not to hasten or postpone death.

SEC. 102. ACTIVITIES OF HEALTH RESOURCES AND SERVICES ADMINISTRATION.

(a) IN GENERAL.—Part D of title VII of the Public Health Service Act (42 U.S.C. 294 et seq.) is amended—

(1) by redesignating sections 754 through 757 as sections 755 through 758, respectively; and

(2) by inserting after section 753 the following:

SEC. 754. PROGRAM FOR EDUCATION AND TRAINING IN PAIN MANAGEMENT AND PALLIATIVE CARE.

(a) IN GENERAL.—The Secretary, in consultation with the Director of the Agency for Healthcare Research and Quality, may award grants, cooperative agreements, and contracts to health professions schools, hospices, and other public and private entities for the development and implementation of programs to provide education and training to health care professionals in pain management and palliative care.

(b) PRIORITY.—In making awards under subsection (a), the Secretary shall give priority to awards for the implementation of programs under such subsection.

(c) CERTAIN TOPICS.—An award may be made under subsection (a) only if the applicant for the award agrees that the program to be carried out with the award will include information and education on—

(1) means for diagnosing and alleviating pain and other distressing signs and symptoms of patients, especially terminally ill patients, including the medically appropriate use of controlled substances;

(2) applicable laws on controlled substances, including laws permitting health care professionals to dispense or admin-

ister controlled substances as needed to relieve pain even in cases where such efforts may unintentionally increase the risk of death; and

(3) recent findings, developments, and improvements in the provision of pain management and palliative care.

(d) PROGRAM SITES.—Education and training under subsection (a) may be provided at or through health professions schools, residency training programs and other graduate programs in the health professions, entities that provide continuing medical education, hospices, and such other programs or sites as the Secretary determines to be appropriate.

(e) EVALUATION OF PROGRAMS.—The Secretary shall (directly or through grants or contracts) provide for the evaluation of programs implemented under subsection (a) in order to determine the effect of such programs on knowledge and practice regarding pain management and palliative care.

(f) PEER REVIEW GROUPS.—In carrying out section 799(f) with respect to this section, the Secretary shall ensure that the membership of each peer review group involved includes individuals with expertise and experience in pain management and palliative care for the population of patients whose needs are to be served by the program.

(g) DEFINITION.—In this section, the term "pain management and palliative care" means—

(1) the active, total care of patients whose disease or medical condition is not responsive to curative treatment or whose prognosis is limited due to progressive, far-advanced disease; and

(2) the evaluation, diagnosis, treatment, and management of primary and secondary pain, whether acute, chronic, persistent, intractable, or associated with the end of life:

the purpose of which is to diagnose and alleviate pain and other distressing signs and symptoms and to enhance the quality of life, not to hasten or postpone death.

(b) AUTHORIZATION OF APPROPRIATIONS; ALLOCATION.—

(1) IN GENERAL.—Section 758 of the Public Health Services Act (as redesignated by subsection (a)(1) of this section) is amended, in subsection (b)(1)(C), by striking "sections 753, 754, and 755" and inserting "sections 753, 754, 755, and 756".

(2) AMOUNT.—With respect to section 758 of the Public Health Service Act (as redesignated by subsection (a)(1) of this section), the dollar amount specified in subsection (b)(1)(C) of such section is deemed to be increased by $5,000,000.

SEC. 103. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date of enactment of this Act.

TITLE II—USE OF CONTROLLED SUBSTANCES CONSISTENT WITH THE CONTROLLED SUBSTANCES ACT

SEC. 201. REINFORCING EXISTING STANDARD FOR LEGITIMATE USE OF CONTROLLED SUBSTANCES.

(a) IN GENERAL.—Section 303 of the Controlled Substances Act (21 U.S.C. 823) is amended by adding at the end the following:

(i)(1) For purposes of this Act and any regulations to implement this Act, alleviating pain or discomfort in the usual course of professional practice is a legitimate medical purpose for the dispensing, distributing, or administering of a controlled substance that is consistent with public health and safety, even if the use of such a substance may increase the risk of death. Nothing in this section authorizes intentionally dispensing, distributing, or administering a controlled substance for the purpose of causing death or assisting another person in causing death.

(2)(A) Notwithstanding any other provision of this Act, in determining whether a registration is consistent with the public interest under this Act, the Attorney General shall give no force and effect to State law authorizing or permitting assisted suicide or euthanasia.

(B) Paragraph (2) applies only to conduct occurring after the date of enactment of this subsection.

(3) Nothing in this subsection shall be construed to alter the roles of the Federal and State governments in regulating the practice of medicine. Regardless of whether the Attorney General determines pursuant to this section that the registration of a practitioner is inconsistent with the public interest, it remains solely within the discretion of State authorities to determine whether action should be taken with respect to the State professional license of the practitioner or State prescribing privileges.

(4) Nothing in the Pain Relief Promotion Act of 2000 (including the amendments made by such Act) shall be construed—

(A) to modify the Federal requirements that a controlled substance be dispensed only for a legitimate medical purpose pursuant to paragraph (1); or

(B) to provide the Attorney General with the authority to issue national standards for pain management and palliative care clinical practice, research, or quality;

except that the Attorney General may take such other actions as may be necessary to enforce this Act.

(b) PAIN RELIEF.—Section 304(c) of the Controlled Substances Act (21 U.S.C. 824(c)) is amended—

(1) by striking "(c) Before" and inserting the following:

(c) PROCEDURES.—

(1) ORDER TO SHOW CAUSE.—Before; and

(2) by adding at the end the following:

(2) BURDEN OF PROOF.—At any proceeding under paragraph (1), where the order to show cause is based on the alleged intentions of the applicant or registrant to cause or assist in causing death, and the practitioner claims a defense under paragraph (1) of section 303(i), the Attorney General shall have the burden of proving, by clear and convincing evidence, that the practitioner's intent was to dispense, distribute, or administer a controlled substance for the purpose of causing death or assisting another person in causing death. In meeting such burden, it shall not be sufficient to prove that the applicant or registrant knew that the use of controlled substance may increase the risk of death.

SEC. 202. EDUCATION AND TRAINING PROGRAMS.

Section 502(a) of the Controlled Substances Act (21 U.S.C. 872(a) is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and" and

(3) by adding at the end the following:

(7) educational and training programs for Federal, State, and local personnel, incorporating recommendations, subject to the provisions of subsection (e) and (f) of section 902 of the Public Health Service Act, by the Secretary of Health and Human Services, on the means by which investigation and enforcement actions by law enforcement personnel may better accommodate the necessary and legitimate use of controlled substances in pain management and palliative care.

Nothing in this subsection shall be construed to alter the roles of the Federal and State governments in regulating the practice of medicine.

SEC. 203. FUNDING AUTHORITY.

Notwithstanding any other provision of law, the operation of the diversion control fee account program of the Drug Enforcement Administration shall be construed to include carrying out section 303(i) of the Controlled Substances Act (21 U.S.C. 823(i)), as added by this Act, and subsections (a)(4) and (c)(2) of section 304 of the Controlled Substances Act (21 U.S.C. 824), as amended by this Act.

SEC. 204. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date of enactment of this Act.

SMALL BUSINESS REAUTHORIZATION ACT OF 2000

The conference agreement would enact the provisions of H.R. 5545, as introduced on October 25, 2000. The text of that bill follows:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Reauthorization Act of 2000".

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

Sec. 1. Short title; table of contents.

TITLE I—SMALL BUSINESS INNOVATION RESEARCH PROGRAM

Sec. 101. Short title.
Sec. 102. Findings.
Sec. 103. Extension of SBIR program.
Sec. 104. Annual report.
Sec. 105. Third phase assistance.
Sec. 106. Report on programs for annual performance plan.
Sec. 107. Output and outcome data.
Sec. 108. National Research Council reports.
Sec. 109. Federal agency expenditures for the SBIR program.
Sec. 110. Policy directive modifications.
Sec. 111. Federal and State technology partnership program.
Sec. 112. Mentoring networks.
Sec. 113. Simplified reporting requirements.
Sec. 114. Rural outreach program extension.

TITLE II—BUSINESS LOAN PROGRAMS

Sec. 201. Short title.
Sec. 202. Levels of participation.
Sec. 203. Loan amounts.
Sec. 204. Interest on defaulted loans.
Sec. 205. Prepayment of loans.
Sec. 206. Guarantee fees.
Sec. 207. Lease terms.
Sec. 208. Appraisals for loans secured by real property.
Sec. 209. Sale of guaranteed loans made for export purposes.
Sec. 210. Microloan program.

TITLE III—CERTIFIED DEVELOPMENT COMPANY PROGRAM

Sec. 301. Short title.
Sec. 302. Women-owned businesses.
Sec. 303. Maximum debenture size.
Sec. 304. Fees.
Sec. 305. Premier certified lenders program.
Sec. 306. Sale of certain defaulted loans.
Sec. 307. Loan liquidation.

TITLE IV—CORRECTIONS TO THE SMALL BUSINESS INVESTMENT ACT OF 1958

Sec. 401. Short title.
Sec. 402. Definitions.
Sec. 403. Investment in small business investment companies.
Sec. 404. Subsidy fees.
Sec. 405. Distributions.
Sec. 406. Conforming amendment.

TITLE V—REAUTHORIZATION OF SMALL BUSINESS PROGRAMS

Sec. 501. Short title.
Sec. 502. Reauthorization of small business programs.
Sec. 503. Additional reauthorizations.
Sec. 504. Cosponsorship.

TITLE VI—HUBZONE PROGRAM

Subtitle A—HUBZones in Native America

Sec. 601. Short title.
Sec. 602. HUBZone small business concern.
Sec. 603. Qualified HUBZone small business concern.
Sec. 604. Other definitions.

Subtitle B—Other HUBZone Provisions

Sec. 611. Definitions.
Sec. 612. Eligible contracts.
Sec. 613. HUBZone redesignated areas.
Sec. 614. Community development.
Sec. 615. Reference corrections.

TITLE VII—NATIONAL WOMEN'S BUSINESS COUNCIL REAUTHORIZATION

Sec. 701. Short title.
Sec. 702. Membership of the Council.
Sec. 703. Repeal of procurement project.
Sec. 704. Studies and other research.
Sec. 705. Authorization of appropriations.

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Loan application processing.
Sec. 802. Application of ownership requirements.
Sec. 803. Subcontracting preference for veterans.
Sec. 804. Small Business Development Center Program funding.
Sec. 805. Surety bonds.
Sec. 806. Size standards.
Sec. 807. Native Hawaiian organizations under section 8(a).

Sec. 808. National Veterans Business Development Corporation correction.
Sec. 809. Private sector resources for SCORE.
Sec. 810. Contract data collection.
Sec. 811. Procurement program for women-owned small business concerns.

TITLE IX—COMMUNITY RENEWAL AND NEW MARKETS INITIATIVES

Sec. 901. New markets venture capital program.
Sec. 902. BusinessLINC grants and cooperative agreements.

TITLE I—SMALL BUSINESS INNOVATION RESEARCH PROGRAM

SECTION 101. SHORT TITLE.

(a) SHORT TITLE.—This title may be cited as the "Small Business Innovation Research Program Reauthorization Act of 2000".

SEC. 102. FINDINGS.

Congress finds that—

(1) the small business innovation research program established under the Small Business Innovation Development Act of 1982, and reauthorized by the Small Business Research and Development Enhancement Act of 1992 (in this title referred to as the "SBIR program") is highly successful in involving small businesses in federally funded research and development;

(2) the SBIR program made the cost-effective and unique research and development capabilities possessed by the small businesses of the Nation available to Federal agencies and departments;

(3) the innovative goods and services developed by small businesses that participated in the SBIR program have produced innovations of critical importance in a wide variety of high-technology fields, including biology, medicine, education, and defense;

(4) the SBIR program is a catalyst in the promotion of research and development, the commercialization of innovative technology, the development of new products and services, and the continued excellence of this Nation's high-technology industries; and

(5) the continuation of the SBIR program will provide expanded opportunities for one of the Nation's vital resources, its small businesses, will foster invention, research, and technology, will create jobs, and will increase this Nation's competitiveness in international markets.

SEC. 103. EXTENSION OF SBIR PROGRAM.

Section 9(m) of the Small Business Act (15 U.S.C. 638(m)) is amended to read as follows:

"(m) TERMINATION.—The authorization to carry out the Small Business Innovation Research Program established under this section shall terminate on September 30, 2008.".

SEC. 104. ANNUAL REPORT.

Section 9(b)(7) of the Small Business Act (15 U.S.C. 638(b)(7)) is amended by striking "and the Committee on Small Business of the House of Representatives" and inserting ", and to the Committee

on Science and the Committee on Small Business of the House of Representatives,".

SEC. 105. THIRD PHASE ASSISTANCE.

Section 9(e)(4)(C)(i) of the Small Business Act (15 U.S.C. 638(e)(4)(C)(i)) is amended by striking "; and" and inserting "; or".

SEC. 106. REPORT ON PROGRAMS FOR ANNUAL PERFORMANCE PLAN.

Section 9(g) of the Small Business Act (15 U.S.C. 638(g)) is amended—

(1) in paragraph (7), by striking "and" at the end;

(2) in paragraph (8), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(9) include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, United States Code, a section on its SBIR program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives; and".

SEC. 107. OUTPUT AND OUTCOME DATA.

(a) COLLECTION.—Section 9(g) of the Small Business Act (15 U.S.C. 638(g)), as amended by section 106 of this Act, is further amended by adding at the end the following:

"(10) collect, and maintain in a common format in accordance with subsection (v), such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k).".

(b) REPORT TO CONGRESS.—Section 9(b)(7) of the Small Business Act (15 U.S.C. 638(b)(7)), as amended by section 104 of this Act, is further amended by inserting before the period at the end ", including the data on output and outcomes collected pursuant to subsections (g)(10) and (o)(9), and a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k)".

(c) DATABASE.—Section 9(k) of the Small Business Act (15 U.S.C. 638(k)) is amended to read as follows:

"(k) DATABASE.—

"(1) PUBLIC DATABASE.—Not later than 180 days after the date of enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Administrator shall develop, maintain, and make available to the public a searchable, up-to-date, electronic database that includes—

"(A) the name, size, location, and an identifying number assigned by the Administrator, of each small business concern that has received a first phase or second phase SBIR award from a Federal agency;

"(B) a description of each first phase or second phase SBIR award received by that small business concern, including—

"(i) an abstract of the project funded by the award, excluding any proprietary information so identified by the small business concern;

"(ii) the Federal agency making the award; and

"(iii) the date and amount of the award;

"(C) an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR award is made; and

"(D) information regarding mentors and Mentoring Networks, as required by section 35(d).

"(2) GOVERNMENT DATABASE.—Not later than 180 days after the date of enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Administrator, in consultation with Federal agencies required to have an SBIR program pursuant to subsection (f)(1), shall develop and maintain a database to be used solely for SBIR program evaluation that—

"(A) contains for each second phase award made by a Federal agency—

"(i) information collected in accordance with paragraph (3) on revenue from the sale of new products or services resulting from the research conducted under the award;

"(ii) information collected in accordance with paragraph (3) on additional investment from any source, other than first phase or second phase SBIR or STTR awards, to further the research and development conducted under the award; and

"(iii) any other information received in connection with the award that the Administrator, in conjunction with the SBIR program managers of Federal agencies, considers relevant and appropriate;

"(B) includes any narrative information that a small business concern receiving a second phase award voluntarily submits to further describe the outputs and outcomes of its awards;

"(C) includes for each applicant for a first phase or second phase award that does not receive such an award—

"(i) the name, size, and location, and an identifying number assigned by the Administration;

"(ii) an abstract of the project; and

"(iii) the Federal agency to which the application was made;

"(D) includes any other data collected by or available to any Federal agency that such agency considers may be useful for SBIR program evaluation; and

"(E) is available for use solely for program evaluation purposes by the Federal Government or, in accordance with policy directives issued by the Administration, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.

"(3) UPDATING INFORMATION FOR DATABASE.—

"(A) IN GENERAL.—A small business concern applying for a second phase award under this section shall be required to update information in the database established under this subsection for any prior second phase award received by that small business concern. In complying with

this paragraph, a small business concern may apportion sales or additional investment information relating to more than one second phase award among those awards, if it notes the apportionment for each award.

"(B) ANNUAL UPDATES UPON TERMINATION.—A small business concern receiving a second phase award under this section shall—

"(i) update information in the database concerning that award at the termination of the award period; and

"(ii) be requested to voluntarily update such information annually thereafter for a period of 5 years.

"(4) PROTECTION OF INFORMATION.—Information provided under paragraph (2) shall be considered privileged and confidential and not subject to disclosure pursuant to section 552 of title 5, United States Code.

"(5) RULE OF CONSTRUCTION.—Inclusion of information in the database under this subsection shall not be considered to be publication for purposes of subsection (a) or (b) of section 102 of title 35, United States Code.".

SEC. 108. NATIONAL RESEARCH COUNCIL REPORTS.

(a) STUDY AND RECOMMENDATIONS.—The head of each agency with a budget of more than $50,000,000 for its SBIR program for fiscal year 1999, in consultation with the Small Business Administration, shall, not later than 6 months after the date of enactment of this Act, cooperatively enter into an agreement with the National Academy of Sciences for the National Research Council to—

(1) conduct a comprehensive study of how the SBIR program has stimulated technological innovation and used small businesses to meet Federal research and development needs, including—

(A) a review of the value to the Federal research agencies of the research projects being conducted under the SBIR program, and of the quality of research being conducted by small businesses participating under the program, including a comparison of the value of projects conducted under the SBIR program to those funded by other Federal research and development expenditures;

(B) to the extent practicable, an evaluation of the economic benefits achieved by the SBIR program, including the economic rate of return, and a comparison of the economic benefits, including the economic rate of return, achieved by the SBIR program with the economic benefits, including the economic rate of return, of other Federal research and development expenditures;

(C) an evaluation of the noneconomic benefits achieved by the SBIR program over the life of the program;

(D) a comparison of the allocation for fiscal year 2000 of Federal research and development funds to small businesses with such allocation for fiscal year 1983, and an analysis of the factors that have contributed to such allocation; and

(E) an analysis of whether Federal agencies, in fulfilling their procurement needs, are making sufficient effort

to use small businesses that have completed a second phase award under the SBIR program; and

(2) make recommendations with respect to—

(A) measures of outcomes for strategic plans submitted under section 306 of title 5, United States Code, and performance plans submitted under section 1115 of title 31, United States Code, of each Federal agency participating in the SBIR program;

(B) whether companies who can demonstrate project feasibility, but who have not received a first phase award, should be eligible for second phase awards, and the potential impact of such awards on the competitive selection process of the program;

(C) whether the Federal Government should be permitted to recoup some or all of its expenses if a controlling interest in a company receiving an SBIR award is sold to a foreign company or to a company that is not a small business concern;

(D) how to increase the use by the Federal Government in its programs and procurements of technology-oriented small businesses; and

(E) improvements to the SBIR program, if any are considered appropriate.

(b) PARTICIPATION BY SMALL BUSINESS.—

(1) IN GENERAL.—In a manner consistent with law and with National Research Council study guidelines and procedures, knowledgeable individuals from the small business community with experience in the SBIR program shall be included—

(A) in any panel established by the National Research Council for the purpose of performing the study conducted under this section; and

(B) among those who are asked by the National Research Council to peer review the study.

(2) CONSULTATION.—To ensure that the concerns of small business are appropriately considered under this subsection, the National Research Council shall consult with and consider the views of the Office of Technology and the Office of Advocacy of the Small Business Administration and other interested parties, including entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns.

(c) PROGRESS REPORTS.—The National Research Council shall provide semiannual progress reports on the study conducted under this section to the Committee on Science and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business of the Senate.

(d) REPORT.—The National Research Council shall transmit to the heads of agencies entering into an agreement under this section and to the Committee on Science and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business of the Senate—

(1) not later than 3 years after the date of enactment of this Act, a report including the results of the study conducted under

subsection (a)(1) and recommendations made under subsection (a)(2); and

(2) not later than 6 years after that date of enactment, an update of such report.

SEC. 109. FEDERAL AGENCY EXPENDITURES FOR THE SBIR PROGRAM.

Section 9(i) of the Small Business Act (15 U.S.C. 638(i)) is amended—

(1) by striking "(i) Each Federal" and inserting the following:

"(i) ANNUAL REPORTING.—

"(1) IN GENERAL.—Each Federal"; and

(2) by adding at the end the following:

"(2) CALCULATION OF EXTRAMURAL BUDGET.—

"(A) METHODOLOGY.—Not later than 4 months after the date of enactment of each appropriations Act for a Federal agency required by this section to have an SBIR program, the Federal agency shall submit to the Administrator a report, which shall include a description of the methodology used for calculating the amount of the extramural budget of that Federal agency.

"(B) ADMINISTRATOR'S ANALYSIS.—The Administrator shall include an analysis of the methodology received from each Federal agency referred to in subparagraph (A) in the report required by subsection (b)(7).".

SEC. 110. POLICY DIRECTIVE MODIFICATIONS.

Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) is amended by adding at the end the following:

"(3) ADDITIONAL MODIFICATIONS.—Not later than 120 days after the date of enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Administrator shall modify the policy directives issued pursuant to this subsection—

"(A) to clarify that the rights provided for under paragraph (2)(A) apply to all Federal funding awards under this section, including the first phase (as described in subsection (e)(4)(A)), the second phase (as described in subsection (e)(4)(B)), and the third phase (as described in subsection (e)(4)(C));

"(B) to provide for the requirement of a succinct commercialization plan with each application for a second phase award that is moving toward commercialization;

"(C) to require agencies to report to the Administration, not less frequently than annually, all instances in which an agency pursued research, development, or production of a technology developed by a small business concern using an award made under the SBIR program of that agency, and determined that it was not practicable to enter into a follow-on non-SBIR program funding agreement with the small business concern, which report shall include, at a minimum—

"(i) the reasons why the follow-on funding agreement with the small business concern was not practicable;

"(ii) the identity of the entity with which the agency contracted to perform the research, development, or production; and

"(iii) a description of the type of funding agreement under which the research, development, or production was obtained; and

"(D) to implement subsection (v), including establishing standardized procedures for the provision of information pursuant to subsection (k)(3).".

SEC. 111. FEDERAL AND STATE TECHNOLOGY PARTNERSHIP PROGRAM.

(a) FINDINGS.—Congress finds that—

(1) programs to foster economic development among small high-technology firms vary widely among the States;

(2) States that do not aggressively support the development of small high-technology firms, including participation by small business concerns in the SBIR program, are at a competitive disadvantage in establishing a business climate that is conducive to technology development; and

(3) building stronger national, State, and local support for science and technology research in these disadvantaged States will expand economic opportunities in the United States, create jobs, and increase the competitiveness of the United States in the world market.

(b) FEDERAL AND STATE TECHNOLOGY PARTNERSHIP PROGRAM.—The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 34 as section 36; and

(2) by inserting after section 33 the following:

"SEC. 34. FEDERAL AND STATE TECHNOLOGY PARTNERSHIP PROGRAM.

"(a) DEFINITIONS.—In this section and section 35, the following definitions apply:

"(1) APPLICANT.—The term 'applicant' means an entity, organization, or individual that submits a proposal for an award or a cooperative agreement under this section.

"(2) BUSINESS ADVICE AND COUNSELING.—The term 'business advice and counseling' means providing advice and assistance on matters described in section 35(c)(2)(B) to small business concerns to guide them through the SBIR and STTR program process, from application to award and successful completion of each phase of the program.

"(3) FAST PROGRAM.—The term 'FAST program' means the Federal and State Technology Partnership Program established under this section.

"(4) MENTOR.—The term 'mentor' means an individual described in section 35(c)(2).

"(5) MENTORING NETWORK.—The term 'Mentoring Network' means an association, organization, coalition, or other entity (including an individual) that meets the requirements of section 35(c).

"(6) RECIPIENT.—The term 'recipient' means a person that receives an award or becomes party to a cooperative agreement under this section.

"(7) SBIR PROGRAM.—The term 'SBIR program' has the same meaning as in section 9(e)(4).

"(8) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

"(9) STTR PROGRAM.—The term 'STTR program' has the same meaning as in section 9(e)(6).

"(b) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to be known as the Federal and State Technology Partnership Program, the purpose of which shall be to strengthen the technological competitiveness of small business concerns in the States.

"(c) GRANTS AND COOPERATIVE AGREEMENTS.—

"(1) JOINT REVIEW.—In carrying out the FAST program under this section, the Administrator and the SBIR program managers at the National Science Foundation and the Department of Defense shall jointly review proposals submitted by applicants and may make awards or enter into cooperative agreements under this section based on the factors for consideration set forth in paragraph (2), in order to enhance or develop in a State—

"(A) technology research and development by small business concerns;

"(B) technology transfer from university research to technology-based small business concerns;

"(C) technology deployment and diffusion benefiting small business concerns;

"(D) the technological capabilities of small business concerns through the establishment or operation of consortia comprised of entities, organizations, or individuals, including—

"(i) State and local development agencies and entities;

"(ii) representatives of technology-based small business concerns;

"(iii) industries and emerging companies;

"(iv) universities; and

"(v) small business development centers; and

"(E) outreach, financial support, and technical assistance to technology-based small business concerns participating in or interested in participating in an SBIR program, including initiatives—

"(i) to make grants or loans to companies to pay a portion or all of the cost of developing SBIR proposals;

"(ii) to establish or operate a Mentoring Network within the FAST program to provide business advice and counseling that will assist small business concerns that have been identified by FAST program participants, program managers of participating SBIR agencies, the Administration, or other entities that are knowledgeable about the SBIR and STTR programs as good candidates for the SBIR and STTR programs, and that would benefit from mentoring, in accordance with section 35;

"(iii) to create or participate in a training program for individuals providing SBIR outreach and assistance at the State and local levels; and

"(iv) to encourage the commercialization of technology developed through SBIR program funding.

"(2) SELECTION CONSIDERATIONS.—In making awards or entering into cooperative agreements under this section, the Administrator and the SBIR program managers referred to in paragraph (1)—

"(A) may only consider proposals by applicants that intend to use a portion of the Federal assistance provided under this section to provide outreach, financial support, or technical assistance to technology-based small business concerns participating in or interested in participating in the SBIR program; and

"(B) shall consider, at a minimum—

"(i) whether the applicant has demonstrated that the assistance to be provided would address unmet needs of small business concerns in the community, and whether it is important to use Federal funding for the proposed activities;

"(ii) whether the applicant has demonstrated that a need exists to increase the number or success of small high-technology businesses in the State, as measured by the number of first phase and second phase SBIR awards that have historically been received by small business concerns in the State;

"(iii) whether the projected costs of the proposed activities are reasonable;

"(iv) whether the proposal integrates and coordinates the proposed activities with other State and local programs assisting small high-technology firms in the State; and

"(v) the manner in which the applicant will measure the results of the activities to be conducted.

"(3) PROPOSAL LIMIT.—Not more than 1 proposal may be submitted for inclusion in the FAST program under this section to provide services in any one State in any 1 fiscal year.

"(4) PROCESS.—Proposals and applications for assistance under this section shall be in such form and subject to such procedures as the Administrator shall establish.

"(d) COOPERATION AND COORDINATION.—In carrying out the FAST program under this section, the Administrator shall cooperate and coordinate with—

"(1) Federal agencies required by section 9 to have an SBIR program; and

"(2) entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns, including—

"(A) State and local development agencies and entities;

"(B) State committees established under the Experimental Program to Stimulate Competitive Research of the National Science Foundation (as established under section

113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g));

"(C) State science and technology councils; and

"(D) representatives of technology-based small business concerns.

"(e) ADMINISTRATIVE REQUIREMENTS.—

"(1) COMPETITIVE BASIS.—Awards and cooperative agreements under this section shall be made or entered into, as applicable, on a competitive basis.

"(2) MATCHING REQUIREMENTS.—

"(A) IN GENERAL.—The non-Federal share of the cost of an activity (other than a planning activity) carried out using an award or under a cooperative agreement under this section shall be—

"(i) 50 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in one of the 18 States receiving the fewest SBIR first phase awards (as described in section 9(e)(4)(A));

"(ii) except as provided in subparagraph (B), 1 dollar for each Federal dollar, in the case of a recipient that will serve small business concerns located in one of the 16 States receiving the greatest number of such SBIR first phase awards; and

"(iii) except as provided in subparagraph (B), 75 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in a State that is not described in clause (i) or (ii) that is receiving such SBIR first phase awards.

"(B) LOW-INCOME AREAS.—The non-Federal share of the cost of the activity carried out using an award or under a cooperative agreement under this section shall be 50 cents for each Federal dollar that will be directly allocated by a recipient described in subparagraph (A) to serve small business concerns located in a qualified census tract, as that term is defined in section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986. Federal dollars not so allocated by that recipient shall be subject to the matching requirements of subparagraph (A).

"(C) TYPES OF FUNDING.—The non-Federal share of the cost of an activity carried out by a recipient shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

"(D) RANKINGS.—For purposes of subparagraph (A), the Administrator shall reevaluate the ranking of a State once every 2 fiscal years, beginning with fiscal year 2001, based on the most recent statistics compiled by the Administrator.

"(3) DURATION.—Awards may be made or cooperative agreements entered into under this section for multiple years, not to exceed 5 years in total.

"(f) REPORTS.—

"(1) INITIAL REPORT.—Not later than 120 days after the date of enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Administrator shall prepare and submit to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives a report, which shall include, with respect to the FAST program, including Mentoring Networks—

"(A) a description of the structure and procedures of the program;

"(B) a management plan for the program; and

"(C) a description of the merit-based review process to be used in the program.

"(2) ANNUAL REPORTS.—The Administrator shall submit an annual report to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives regarding—

"(A) the number and amount of awards provided and cooperative agreements entered into under the FAST program during the preceding year;

"(B) a list of recipients under this section, including their location and the activities being performed with the awards made or under the cooperative agreements entered into; and

"(C) the Mentoring Networks and the mentoring database, as provided for under section 35, including—

"(i) the status of the inclusion of mentoring information in the database required by section 9(k); and

"(ii) the status of the implementation and description of the usage of the Mentoring Networks.

"(g) REVIEWS BY INSPECTOR GENERAL.—

"(1) IN GENERAL.—The Inspector General of the Administration shall conduct a review of—

"(A) the extent to which recipients under the FAST program are measuring the performance of the activities being conducted and the results of such measurements; and

"(B) the overall management and effectiveness of the FAST program.

"(2) REPORT.—During the first quarter of fiscal year 2004, the Inspector General of the Administration shall submit a report to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives on the review conducted under paragraph (1).

"(h) PROGRAM LEVELS.—

"(1) IN GENERAL.—There is authorized to be appropriated to carry out the FAST program, including Mentoring Networks, under this section and section 35, $10,000,000 for each of fiscal years 2001 through 2005.

"(2) MENTORING DATABASE.—Of the total amount made available under paragraph (1) for fiscal years 2001 through 2005, a reasonable amount, not to exceed a total of $500,000, may be used by the Administration to carry out section 35(d).

"(i) TERMINATION.—The authority to carry out the FAST program under this section shall terminate on September 30, 2005.".

(c) COORDINATION OF TECHNOLOGY DEVELOPMENT PROGRAMS.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended by adding at the end the following:

"(u) COORDINATION OF TECHNOLOGY DEVELOPMENT PROGRAMS.—

"(1) DEFINITION OF TECHNOLOGY DEVELOPMENT PROGRAM.—In this subsection, the term 'technology development program' means—

"(A) the Experimental Program to Stimulate Competitive Research of the National Science Foundation, as established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g);

"(B) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

"(C) the Experimental Program to Stimulate Competitive Research of the Department of Energy;

"(D) the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;

"(E) the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;

"(F) the Institutional Development Award Program of the National Institutes of Health; and

"(G) the National Research Initiative Competitive Grants Program of the Department of Agriculture.

"(2) COORDINATION REQUIREMENTS.—Each Federal agency that is subject to subsection (f) and that has established a technology development program may, in each fiscal year, review for funding under that technology development program—

"(A) any proposal to provide outreach and assistance to 1 or more small business concerns interested in participating in the SBIR program, including any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in—

"(i) a State that is eligible to participate in that program; or

"(ii) a State described in paragraph (3); or

"(B) any proposal for the first phase of the SBIR program, if the proposal, though meritorious, is not funded through the SBIR program for that fiscal year due to funding restraints, from a small business concern located in—

"(i) a State that is eligible to participate in a technology development program; or

"(ii) a State described in paragraph (3).

"(3) ADDITIONALLY ELIGIBLE STATE.—A State referred to in subparagraph (A)(ii) or (B)(ii) of paragraph (2) is a State in which the total value of contracts awarded to small business concerns under all SBIR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial

fiscal years, beginning with fiscal year 2000, based on the most recent statistics compiled by the Administrator.".

SEC. 112. MENTORING NETWORKS.

The Small Business Act (15 U.S.C. 631 et seq.) is amended by inserting after section 34, as added by section 111(b)(2) of this Act, the following:

"SEC. 35. MENTORING NETWORKS.

"(a) FINDINGS.—Congress finds that—

"(1) the SBIR and STTR programs create jobs, increase capacity for technological innovation, and boost international competitiveness;

"(2) increasing the quantity of applications from all States to the SBIR and STTR programs would enhance competition for such awards and the quality of the completed projects; and

"(3) mentoring is a natural complement to the FAST program of reaching out to new companies regarding the SBIR and STTR programs as an effective and low-cost way to improve the likelihood that such companies will succeed in such programs in developing and commercializing their research.

"(b) AUTHORIZATION FOR MENTORING NETWORKS.—The recipient of an award or participant in a cooperative agreement under section 34 may use a reasonable amount of such assistance for the establishment of a Mentoring Network under this section.

"(c) CRITERIA FOR MENTORING NETWORKS.—A Mentoring Network established using assistance under section 34 shall—

"(1) provide business advice and counseling to high technology small business concerns located in the State or region served by the Mentoring Network and identified under section 34(c)(1)(E)(ii) as potential candidates for the SBIR or STTR programs;

"(2) identify volunteer mentors who—

"(A) are persons associated with a small business concern that has successfully completed one or more SBIR or STTR funding agreements; and

"(B) have agreed to guide small business concerns through all stages of the SBIR or STTR program process, including providing assistance relating to—

"(i) proposal writing;
"(ii) marketing;
"(iii) Government accounting;
"(iv) Government audits;
"(v) project facilities and equipment;
"(vi) human resources;
"(vii) third phase partners;
"(viii) commercialization;
"(ix) venture capital networking; and
"(x) other matters relevant to the SBIR and STTR programs;

"(3) have experience working with small business concerns participating in the SBIR and STTR programs;

"(4) contribute information to the national database referred to in subsection (d); and

"(5) agree to reimburse volunteer mentors for out-of-pocket expenses related to service as a mentor under this section.

"(d) MENTORING DATABASE.—The Administrator shall—

"(1) include in the database required by section 9(k)(1), in cooperation with the SBIR, STTR, and FAST programs, information on Mentoring Networks and mentors participating under this section, including a description of their areas of expertise;

"(2) work cooperatively with Mentoring Networks to maintain and update the database;

"(3) take such action as may be necessary to aggressively promote Mentoring Networks under this section; and

"(4) fulfill the requirements of this subsection either directly or by contract.".

SEC. 113. SIMPLIFIED REPORTING REQUIREMENTS.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is further amended by adding at the end the following:

"(v) SIMPLIFIED REPORTING REQUIREMENTS.—The Administrator shall work with the Federal agencies required by this section to have an SBIR program to standardize reporting requirements for the collection of data from SBIR applicants and awardees, including data for inclusion in the database under subsection (k), taking into consideration the unique needs of each agency, and to the extent possible, permitting the updating of previously reported information by electronic means. Such requirements shall be designed to minimize the burden on small businesses.".

SEC. 114. RURAL OUTREACH PROGRAM EXTENSION.

(a) EXTENSION OF TERMINATION DATE.—Section 501(b)(2) of the Small Business Reauthorization Act of 1997 (15 U.S.C. 638 note; 111 Stat. 2622) is amended by striking "2001" and inserting "2005".

(b) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—Section 9(s)(2) of the Small Business Act (15 U.S.C. 638(s)(2)) is amended by striking "for fiscal year 1998, 1999, 2000, or 2001" and inserting "for each of the fiscal years 2000 through 2005,".

TITLE II—BUSINESS LOAN PROGRAMS

SEC. 201. SHORT TITLE.

This title may be cited as the "Small Business Loan Improvement Act of 2000".

SEC. 202. LEVELS OF PARTICIPATION.

Section 7(a)(2)(A) of the Small Business Act (15 U.S.C. 636(a)(2)(A)) is amended—

(1) in paragraph (i) by striking "$100,000" and inserting "$150,000"; and

(2) in paragraph (ii)—

(A) by striking "80 percent" and inserting "85 percent"; and

(B) by striking "$100,000" and inserting "$150,000".

SEC. 203. LOAN AMOUNTS.

Section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)) is amended by striking "$750,000," and inserting, "$1,000,000 (or if the gross loan amount would exceed $2,000,000),".

SEC. 204. INTEREST ON DEFAULTED LOANS.

Section 7(a)(4)(B) of the Small Business Act (15 U.S.C. 636(a)(4)(B)) is amended by adding at the end the following:

"(iii) APPLICABILITY.—Clauses (i) and (ii) shall not apply to loans made on or after October 1, 2000.".

SEC. 205. PREPAYMENT OF LOANS.

Section 7(a)(4) of the Small Business Act (15 U.S.C. 636(a)(4)) is further amended—

(1) by striking "(4) INTEREST RATES AND FEES.—" and inserting "(4) INTEREST RATES AND PREPAYMENT CHARGES.—"; and

(2) by adding at the end the following:

"(C) PREPAYMENT CHARGES.—

"(i) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administration a subsidy recoupment fee calculated in accordance with clause (ii) if—

"(I) the loan is for a term of not less than 15 years;

"(II) the prepayment is voluntary;

"(III) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and

"(IV) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

"(ii) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under clause (i) shall be—

"(I) 5 percent of the amount of prepayment, if the borrower prepays during the first year after disbursement;

"(II) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

"(III) 1 percent of the amount of prepayment, if the borrower prepays during the third year after disbursement.".

SEC. 206. GUARANTEE FEES.

Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended to read as follows:

"(18) GUARANTEE FEES.—

"(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

"(i) A guarantee fee equal to 2 percent of the deferred participation share of a total loan amount that is not more than $150,000.

"(ii) A guarantee fee equal to 3 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

"(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.

"(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).".

SEC. 207. LEASE TERMS.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is further amended by adding at the end the following:

"(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administration, a borrower may permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property.".

SEC. 208. APPRAISALS FOR LOANS SECURED BY REAL PROPERTY.

(a) SMALL BUSINESS ACT.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

"(29) REAL ESTATE APPRAISALS.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

"(A) shall be required by the Administration in connection with any such loan for more than $250,000; or

"(B) may be required by the Administration or the lender in connection with any such loan for $250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.".

(b) SMALL BUSINESS INVESTMENT ACT OF 1958.—Section 502(3)(E) of the Small Business Investment Act of 1958 (15 U.S.C. 696(3)(E)) is amended—

(1) by striking "The collateral" and inserting the following:

"(i) IN GENERAL.—The collateral"; and

(2) by adding at the end the following:

"(ii) APPRAISALS.—With respect to commercial real property provided by the small business concern as collateral, an appraisal of the property by a State licensed or certified appraiser—

"(I) shall be required by the Administration before disbursement of the loan if the estimated value of that property is more than $250,000; or

"(II) may be required by the Administration or the lender before disbursement of the loan if the estimated value of that property is $250,000 or less, and such appraisal is necessary for appropriate evaluation of creditworthiness.".

SEC. 209. SALE OF GUARANTEED LOANS MADE FOR EXPORT PURPOSES.

Section 5(f)(1)(C) of the Small Business Act (15 U.S.C. 634(f)(1)(C)) is amended to read as follows:

"(C) each loan, except each loan made under section 7(a)(14), shall have been fully disbursed to the borrower prior to any sale.".

SEC. 210. MICROLOAN PROGRAM.

(a) IN GENERAL.—Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(1) in paragraphs (1)(B)(iii) and (3)(E), by striking "$25,000" each place it appears and inserting "$35,000";

(2) in paragraphs (1)(A)(iii)(I), (3)(A)(ii), and (4)(C)(i)(II), by striking "$7,500" each place it appears and inserting "$10,000";

(3) in paragraph (3)(E), by striking "$15,000" and inserting "$20,000";

(4) in paragraph (5)(A)—

(A) by striking "25 grants" and inserting "55 grants"; and

(B) by striking "$125,000" and inserting "$200,000";

(5) in paragraph (6)(B), by striking "$10,000" and inserting "$15,000"; and

(6) in paragraph (7), by striking subparagraph (A) and inserting the following:

"(A) NUMBER OF PARTICIPANTS.—Under the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 300 intermediaries.".

(b) CONFORMING AMENDMENTS.—Section 7(m)(11)(B) of the Small Business Act (15 U.S.C. 636(m)(11)(B)) is amended by striking "$25,000" and inserting "$35,000".

TITLE III—CERTIFIED DEVELOPMENT COMPANY PROGRAM

SEC. 301. SHORT TITLE.

This title may be cited as the "Certified Development Company Program Improvements Act of 2000".

SEC. 302. WOMEN-OWNED BUSINESSES.

Section 501(d)(3)(C) of the Small Business Investment Act of 1958 (15 U.S.C. 695(d)(3)(C)) is amended by inserting before the comma "or women-owned business development".

SEC. 303. MAXIMUM DEBENTURE SIZE.

Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended to read as follows:

"(2) Loans made by the Administration under this section shall be limited to $1,000,000 for each such identifiable small business concern, except loans meeting the criteria specified in section 501(d)(3), which shall be limited to $1,300,000 for each such identifiable small business concern.".

SEC. 304. FEES.

Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)) is amended to read as follows:

"(f) EFFECTIVE DATE.—The fees authorized by subsections (b) and (d) shall apply to financings approved by the Administration on or after October 1, 1996, but shall not apply to financings approved by the Administration on or after October 1, 2003.".

SEC. 305. PREMIER CERTIFIED LENDERS PROGRAM.

Section 217(b) of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103–403, 15 U.S.C. 697 note) (relating to section 508 of the Small Business Investment Act of 1958) is repealed.

SEC. 306. SALE OF CERTAIN DEFAULTED LOANS.

Section 508 of the Small Business Investment Act of 1958 (15 U.S.C. 697e) is amended—

(1) in subsection (a), by striking "On a pilot program basis, the" and inserting "The";

(2) by redesignating subsections (d) through (i) as subsections (e) through (j), respectively;

(3) in subsection (f) (as redesignated by paragraph (2)), by striking "subsection (f)" and inserting "subsection (g)";

(4) in subsection (h) (as redesignated by paragraph (2)), by striking "subsection (f)" and inserting "subsection (g)"; and

(5) by inserting after subsection (c) the following:

"(d) SALE OF CERTAIN DEFAULTED LOANS.—

"(1) NOTICE.—If, upon default in repayment, the Administration acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any certified development company which has a contingent liability under this section. The notice shall be given to the company as soon as possible after the financing is identified, but not less than 90 days before the date the Administration first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

"(2) LIMITATIONS.—The Administration shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

"(A) provides prospective purchasers with the opportunity to examine the Administration's records with respect to such loan; and

"(B) provides the notice required by paragraph (1).".

SEC. 307. LOAN LIQUIDATION.

(a) LIQUIDATION AND FORECLOSURE.—Title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) is amended by adding at the end the following:

"SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.

"(a) DELEGATION OF AUTHORITY.—In accordance with this section, the Administration shall delegate to any qualified State or local development company (as defined in section 503(e)) that meets the eligibility requirements of subsection (b)(1) the authority to foreclose and liquidate, or to otherwise treat in accordance with this

section, defaulted loans in its portfolio that are funded with the proceeds of debentures guaranteed by the Administration under section 503.

"(b) ELIGIBILITY FOR DELEGATION.—

"(1) REQUIREMENTS.—A qualified State or local development company shall be eligible for a delegation of authority under subsection (a) if—

"(A) the company—

"(i) has participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note), as in effect on the day before promulgation of final regulations by the Administration implementing this section;

"(ii) is participating in the Premier Certified Lenders Program under section 508; or

"(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of debentures guaranteed under section 503; and

"(B) the company—

"(i) has one or more employees—

"(I) with not less than 2 years of substantive, decision-making experience in administering the liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of debentures guaranteed under section 503; and

"(II) who have completed a training program on loan liquidation developed by the Administration in conjunction with qualified State and local development companies that meet the requirements of this paragraph; or

"(ii) submits to the Administration documentation demonstrating that the company has contracted with a qualified third-party to perform any liquidation activities and secures the approval of the contract by the Administration with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

"(2) CONFIRMATION.—On request the Administration shall examine the qualifications of any company described in subsection (a) to determine if such company is eligible for the delegation of authority under this section. If the Administration determines that a company is not eligible, the Administration shall provide the company with the reasons for such ineligibility.

"(c) SCOPE OF DELEGATED AUTHORITY.—

"(1) IN GENERAL.—Each qualified State or local development company to which the Administration delegates authority under section (a) may with respect to any loan described in subsection (a)—

"(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection

of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administration under paragraph (2)(A);

"(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administration may—

"(i) defend or bring any claim if—

"(I) the outcome of the litigation may adversely affect the Administration's management of the loan program established under section 502; or

"(II) the Administration is entitled to legal remedies not available to a qualified State or local development company and such remedies will benefit either the Administration or the qualified State or local development company; or

"(ii) oversee the conduct of any such litigation; and

"(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administration under paragraph (2)(C).

"(2) ADMINISTRATION APPROVAL.—

"(A) LIQUIDATION PLAN.—

"(i) IN GENERAL.—Before carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a proposed liquidation plan.

"(ii) ADMINISTRATION ACTION ON PLAN.—

"(I) TIMING.—Not later than 15 business days after a liquidation plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

"(II) NOTICE OF NO DECISION.—With respect to any plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

"(iii) ROUTINE ACTIONS.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company may undertake routine actions not addressed in a liquidation plan without obtaining additional approval from the Administration.

"(B) PURCHASE OF INDEBTEDNESS.—

"(i) IN GENERAL.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company shall submit to the Administration a request for written approval before committing the Administration to the purchase of any other indebtedness secured by the property securing a defaulted loan.

"(ii) ADMINISTRATION ACTION ON REQUEST.—

"(I) TIMING.—Not later than 15 business days after receiving a request under clause (i), the Administration shall approve or deny the request.

"(II) NOTICE OF NO DECISION.—With respect to any request that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the request.

"(C) WORKOUT PLAN.—

"(i) IN GENERAL.—In carrying out functions described in paragraph (1)(C), a qualified State or local development company shall submit to the Administration a proposed workout plan.

"(ii) ADMINISTRATION ACTION ON PLAN.—

"(I) TIMING.—Not later than 15 business days after a workout plan is received by the Administration under clause (i), the Administration shall approve or reject the plan.

"(II) NOTICE OF NO DECISION.—With respect to any workout plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administration shall within such period provide in accordance with subparagraph (E) notice to the company that submitted the plan.

"(D) COMPROMISE OF INDEBTEDNESS.—In carrying out functions described in paragraph (1)(A), a qualified State or local development company may—

"(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

"(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administration.

"(E) CONTENTS OF NOTICE OF NO DECISION.—Any notice provided by the Administration under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

"(i) shall be in writing;

"(ii) shall state the specific reason for the Administration's inability to act on a plan or request;

"(iii) shall include an estimate of the additional time required by the Administration to act on the plan or request; and

"(iv) if the Administration cannot act because insufficient information or documentation was provided by the company submitting the plan or request, shall specify the nature of such additional information or documentation.

"(3) CONFLICT OF INTEREST.—In carrying out functions described in paragraph (1), a qualified State or local development company shall take no action that would result in an actual or apparent conflict of interest between the company (or any employee of the company) and any third party lender, associate of

a third party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

"(d) SUSPENSION OR REVOCATION OF AUTHORITY.—The Administration may revoke or suspend a delegation of authority under this section to any qualified State or local development company, if the Administration determines that the company—

"(1) does not meet the requirements of subsection (b)(1);

"(2) has violated any applicable rule or regulation of the Administration or any other applicable law; or

"(3) fails to comply with any reporting requirement that may be established by the Administration relating to carrying out of functions described in paragraph (1).

"(e) REPORT.—

"(1) IN GENERAL.—Based on information provided by qualified State and local development companies and the Administration, the Administration shall annually submit to the Committees on Small Business of the House of Representatives and of the Senate a report on the results of delegation of authority under this section.

"(2) CONTENTS.—Each report submitted under paragraph (1) shall include the following information:

"(A) With respect to each loan foreclosed or liquidated by a qualified State or local development company under this section, or for which losses were otherwise mitigated by the company pursuant to a workout plan under this section—

"(i) the total cost of the project financed with the loan;

"(ii) the total original dollar amount guaranteed by the Administration;

"(iii) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;

"(iv) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and

"(v) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed.

"(B) With respect to each qualified State or local development company to which authority is delegated under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

"(C) With respect to all loans subject to foreclosure, liquidation, or mitigation under this section, the totals of each of the amounts described in clauses (i) through (v) of subparagraph (A).

"(D) A comparison between—

"(i) the information provided under subparagraph (C) with respect to the 12-month period preceding the date on which the report is submitted; and

"(ii) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administration during the same period.

"(E) The number of times that the Administration has failed to approve or reject a liquidation plan in accordance with subparagraph (A)(i), a workout plan in accordance with subparagraph (C)(i), or to approve or deny a request for purchase of indebtedness under subparagraph (B)(i), including specific information regarding the reasons for the Administration's failure and any delays that resulted.".

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 150 days after the date of enactment of this Act, the Administrator shall issue such regulations as may be necessary to carry out section 510 of the Small Business Investment Act of 1958, as added by subsection (a) of this section.

(2) TERMINATION OF PILOT PROGRAM.—Beginning on the date on which final regulations are issued under paragraph (1), section 204 of the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note) shall cease to have effect.

TITLE IV—CORRECTIONS TO THE SMALL BUSINESS INVESTMENT ACT OF 1958

SEC. 401. SHORT TITLE.

This title may be cited as the "Small Business Investment Corrections Act of 2000".

SEC. 402. DEFINITIONS.

(a) SMALL BUSINESS CONCERN.—Section 103(5)(A)(i) of the Small Business Investment Act of 1958 (15 U.S.C. 662(5)(A)(i)) is amended by inserting before the semicolon at the end the following: "regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment".

(b) LONG TERM.—Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended—

(1) in paragraph (15), by striking "and" at the end;

(2) in paragraph (16), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(17) the term 'long term', when used in connection with equity capital or loan funds invested in any small business concern or smaller enterprise, means any period of time not less than 1 year.".

SEC. 403. INVESTMENT IN SMALL BUSINESS INVESTMENT COMPANIES.

Section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)) is amended—

(1) by striking "(b) Notwithstanding" and inserting the following:

"(b) FINANCIAL INSTITUTION INVESTMENTS.—

"(1) CERTAIN BANKS.—Notwithstanding"; and

(2) by adding at the end the following:

"(2) CERTAIN SAVINGS ASSOCIATIONS.—Notwithstanding any other provision of law, any Federal savings association may

invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event may the total amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association.".

SEC. 404. SUBSIDY FEES.

(a) DEBENTURES.—Section 303(b) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)) is amended by striking "plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration" and inserting "plus, for debentures obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administration of purchasing and guaranteeing debentures under this Act, which shall be paid to and retained by the Administration".

(b) PARTICIPATING SECURITIES.—Section 303(g)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 683(g)(2)) is amended by striking "plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration" and inserting "plus, for participating securities obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administration of purchasing and guaranteeing participating securities under this Act, which shall be paid to and retained by the Administration".

SEC. 405. DISTRIBUTIONS.

Section 303(g)(8) of the Small Business Investment Act of 1958 (15 U.S.C. 683(g)(8)) is amended—

(1) by striking "subchapter s corporation" and inserting "subchapter S corporation";

(2) by striking "the end of any calendar quarter based on a quarterly" and inserting "any time during any calendar quarter based on an"; and

(3) by striking "quarterly distributions for a calendar year," and inserting "interim distributions for a calendar year,".

SEC. 406. CONFORMING AMENDMENT.

Section 310(c)(4) of the Small Business Investment Act of 1958 (15 U.S.C. 687b(c)(4)) is amended by striking "five years" and inserting "1 year".

TITLE V—REAUTHORIZATION OF SMALL BUSINESS PROGRAMS

SEC. 501. SHORT TITLE.

This title may be cited as the "Small Business Programs Reauthorization Act of 2000".

SEC. 502. REAUTHORIZATION OF SMALL BUSINESS PROGRAMS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding at the end the following:

"(g) FISCAL YEAR 2001.—

"(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2001:

"(A) For the programs authorized by this Act, the Administration is authorized to make—

"(i) $45,000,000 in technical assistance grants as provided in section 7(m); and

"(ii) $60,000,000 in direct loans, as provided in 7(m).

"(B) For the programs authorized by this Act, the Administration is authorized to make $19,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(i) $14,500,000,000 in general business loans as provided in section 7(a);

"(ii) $4,000,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

"(iii) $500,000,000 in loans as provided in section 7(a)(21); and

"(iv) $50,000,000 in loans as provided in section 7(m).

"(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

"(i) $2,500,000,000 in purchases of participating securities; and

"(ii) $1,500,000,000 in guarantees of debentures.

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $4,000,000,000 of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

"(E) The Administration is authorized to make grants or enter cooperative agreements for a total amount of $5,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2001 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out title IV of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(B) Notwithstanding any other provision of this paragraph, for fiscal year 2001—

"(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or

agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

"(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

"(h) FISCAL YEAR 2002.—

"(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2002:

"(A) For the programs authorized by this Act, the Administration is authorized to make—

"(i) $60,000,000 in technical assistance grants as provided in section 7(m); and

"(ii) $80,000,000 in direct loans, as provided in 7(m).

"(B) For the programs authorized by this Act, the Administration is authorized to make $20,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(i) $15,000,000,000 in general business loans as provided in section 7(a);

"(ii) $4,500,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

"(iii) $500,000,000 in loans as provided in section 7(a)(21); and

"(iv) $50,000,000 in loans as provided in section 7(m).

"(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

"(i) $3,500,000,000 in purchases of participating securities; and

"(ii) $2,500,000,000 in guarantees of debentures.

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $5,000,000,000 of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

"(E) The Administration is authorized to make grants or enter cooperative agreements for a total amount of $6,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2002 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section

7(b), and to carry out title IV of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(B) Notwithstanding any other provision of this paragraph, for fiscal year 2002—

"(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

"(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.

"(i) FISCAL YEAR 2003.—

"(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2003:

"(A) For the programs authorized by this Act, the Administration is authorized to make—

"(i) $70,000,000 in technical assistance grants as provided in section 7(m); and

"(ii) $100,000,000 in direct loans, as provided in 7(m).

"(B) For the programs authorized by this Act, the Administration is authorized to make $21,550,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(i) $16,000,000,000 in general business loans as provided in section 7(a);

"(ii) $5,000,000,000 in financings as provided in section 7(a)(13) of this Act and section 504 of the Small Business Investment Act of 1958;

"(iii) $500,000,000 in loans as provided in section 7(a)(21); and

"(iv) $50,000,000 in loans as provided in section 7(m).

"(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

"(i) $4,000,000,000 in purchases of participating securities; and

"(ii) $3,000,000,000 in guarantees of debentures.

"(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $6,000,000,000 of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

"(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of

$7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

"(2) ADDITIONAL AUTHORIZATIONS.—

"(A) There are authorized to be appropriated to the Administration for fiscal year 2003 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out title IV of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(B) Notwithstanding any other provision of this paragraph, for fiscal year 2003—

"(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

"(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $1,250,000.".

SEC. 503. ADDITIONAL REAUTHORIZATIONS.

(a) DRUG-FREE WORKPLACE PROGRAM.—Section 27 of the Small Business Act (15 U.S.C. 654) is amended—

*(1) in the section heading, by striking "**DRUG-FREE WORKPLACE DEMONSTRATION PROGRAM**" and inserting "**PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM**"; and*

(2) in subsection (g)(1), by striking "$10,000,000 for fiscal years 1999 and 2000" and inserting "$5,000,000 for each of fiscal years 2001 through 2003".

(b) HUBZONE PROGRAM.—Section 31 of the Small Business Act (15 U.S.C. 657a) is amended by adding at the end the following:

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program established by this section $10,000,000 for each of fiscal years 2001 through 2003.".

(c) VERY SMALL BUSINESS CONCERNS PROGRAM.—Section 304(i) of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103–403; 15 U.S.C. 644 note) is amended by striking "September 30, 2000" and inserting "September 30, 2003".

(d) SOCIALLY AND ECONOMICALLY DISADVANTAGED BUSINESSES PROGRAM.—Section 7102(c) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 15 U.S.C. 644 note) is amended by striking "September 30, 2000" and inserting "September 30, 2003".

(e) SBDC SERVICES.—Section 21(c)(3)(T) of the Small Business Act (15 U.S.C. 648(c)(3)(T)) is amended by striking "2000" and inserting "2003".

SEC. 504. COSPONSORSHIP.

(a) IN GENERAL.—Section 8(b)(1)(A) of the Small Business Act (15 U.S.C. 637(b)(1)(A)) is amended to read as follows:

"(1)(A) to provide—

"(i) technical, managerial, and informational aids to small business concerns—

"(I) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;

"(II) by cooperating and advising with—

"(aa) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions (except that the Administration shall take such actions as it determines necessary to ensure that such cooperation does not constitute or imply an endorsement by the Administration of the organization or its products or services, and shall ensure that it receives appropriate recognition in all printed materials); and

"(bb) other Federal and State agencies;

"(III) by maintaining a clearinghouse for information on managing, financing, and operating small business enterprises; and

"(IV) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate; and

"(ii) through cooperation with a profit-making concern (referred to in this paragraph as a 'cosponsor'), training, information, and education to small business concerns, except that the Administration shall—

"(I) take such actions as it determines to be appropriate to ensure that—

"(aa) the Administration receives appropriate recognition and publicity;

"(bb) the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor;

"(cc) unnecessary promotion of the products or services of the cosponsor is avoided; and

"(dd) utilization of any 1 cosponsor in a marketing area is minimized; and

"(II) develop an agreement, executed on behalf of the Administration by an employee of the Administration in Washington, the District of Columbia, that provides, at a minimum, that—

"(aa) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity, shall be approved in advance by the Administration;

"(bb) the terms and conditions of the cooperation shall be specified;

"(cc) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;

"(dd) the Administration may provide to the cosponsorship mailing labels, but not lists of names and addresses of small business concerns compiled by the Administration;

"(ee) all printed materials containing the names of both the Administration and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor; and

"(ff) the Administration shall ensure that it receives appropriate recognition in all cosponsorship printed materials.".

(b) EXTENSION OF COSPONSORSHIP AUTHORITY.—Section 401(a)(2) of the Small Business Administration Reauthorization and Amendments Act of 1994 (15 U.S.C. 637 note) is amended by striking "September 30, 2000" and inserting "September 30, 2003".

TITLE VI—HUBZONE PROGRAM

Subtitle A—HUBZones in Native America

SEC. 601. SHORT TITLE.

This subtitle may be cited as the "HUBZones in Native America Act of 2000".

SEC. 602. HUBZONE SMALL BUSINESS CONCERN.

Section 3(p)(3) of the Small Business Act (15 U.S.C. 632(p)(3)) is amended to read as follows:

"(3) HUBZONE SMALL BUSINESS CONCERN.—The term 'HUBZone small business concern' means—

"(A) a small business concern that is owned and controlled by 1 or more persons, each of whom is a United States citizen;

"(B) a small business concern that is—

"(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or

"(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2)) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(2))); or

"(C) a small business concern—

"(i) that is wholly owned by 1 or more Indian tribal governments, or by a corporation that is wholly owned by 1 or more Indian tribal governments; or

"(ii) that is owned in part by 1 or more Indian tribal governments, or by a corporation that is wholly owned by 1 or more Indian tribal governments, if all other owners are either United States citizens or small business concerns.".

SEC. 603. QUALIFIED HUBZONE SMALL BUSINESS CONCERN.

(a) IN GENERAL.—Section 3(p)(5)(A)(i) of the Small Business Act (15 U.S.C. 632(p)(5)(A)(i)) is amended by striking subclauses (I) and (II) and inserting the following:

"(I) it is a HUBZone small business concern—

"(aa) pursuant to subparagraph (A) or (B) of paragraph (3), and that its principal office is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone; or

"(bb) pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 31(b) reside within any Indian reservation governed by 1 or more of the tribal government owners, or reside within any HUBZone adjoining any such Indian reservation;

"(II) the small business concern will attempt to maintain the applicable employment percentage under subclause (I) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 31(b); and".

(b) CLARIFYING AMENDMENT.—Section 3(p)(5)(D)(i) of the Small Business Act (15 U.S.C. 632(p)(5)(D)(i)) is amended by inserting "once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern," before "include".

SEC. 604. OTHER DEFINITIONS.

Section 3(p) of the Small Business Act (15 U.S.C. 632(p)) is amended by adding at the end the following:

"(6) NATIVE AMERICAN SMALL BUSINESS CONCERNS.—

"(A) ALASKA NATIVE CORPORATION.—The term 'Alaska Native Corporation' has the same meaning as the term 'Native Corporation' in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

"(B) ALASKA NATIVE VILLAGE.—The term 'Alaska Native Village' has the same meaning as the term 'Native village' in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

"(C) INDIAN RESERVATION.—The term 'Indian reservation'—

"(i) has the same meaning as the term 'Indian country' in section 1151 of title 18, United States Code, except that such term does not include—

"(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on the date of enactment of this paragraph, unless that tribe is recognized after that date of enactment by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); and

"(II) lands taken into trust or acquired by an Indian tribe after the date of enactment of this paragraph if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of enactment; and

"(ii) in the State of Oklahoma, means lands that—

"(I) are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

"(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on the date of enactment of this paragraph).".

Subtitle B—Other HUBZone Provisions

SEC. 611. DEFINITIONS.

(a) QUALIFIED CENSUS TRACT.—Section 3(p)(4)(A) of the Small Business Act (15 U.S.C. 632(p)(4)(A)) is amended by striking "(I)".

(b) QUALIFIED NONMETROPOLITAN COUNTY.—Section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) is amended by striking subparagraph (B) and inserting the following:

"(B) QUALIFIED NONMETROPOLITAN COUNTY.—The term 'qualified nonmetropolitan county' means any county—

"(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986; and

"(ii) in which—

"(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce; or

"(II) the unemployment rate is not less than 140 percent of the Statewide average unemploy-

ment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.".

SEC. 612. ELIGIBLE CONTRACTS.

(a) COMMODITIES CONTRACTS.—Section 31(b)(3) of the Small Business Act (15 U.S.C. 657a(b)(3)) is amended—

(1) by striking "In any" and inserting the following:

"(A) IN GENERAL.—Subject to subparagraph (B), in any"; and

(2) by adding at the end the following:

"(B) PROCUREMENT OF COMMODITIES.—For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

"(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;

"(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and

"(iii) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

"(C) TREATMENT OF PREFERENCE.—A contract awarded to a HUBZone small business concern under a preference described in subparagraph (B) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.".

(b) DEFINITIONS.—Section 3(p) of the Small Business Act (15 U.S.C. 632(p)), as amended by this Act, is amended—

(1) in paragraph (5)(A)(i)(III)—

(A) in item (aa), by striking "and" at the end; and

(B) by adding at the end the following:

"(cc) in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, none of the commodity being procured will be obtained by the prime contractor through a subcontract for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government; and"; and

(2) by adding at the end the following:

"(7) AGRICULTURAL COMMODITY.—The term 'agricultural commodity' has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).".

SEC. 613. HUBZONE REDESIGNATED AREAS.

Section 3(p) of the Small Business Act (15 U.S.C. 632(p)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking "or" at the end;

(B) in subparagraph (C), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(D) redesignated areas."; and

(2) in paragraph (4), by adding at the end the following:

"(C) REDESIGNATED AREA.—The term 'redesignated area' means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a 'redesignated area' only for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified.".

SEC. 614. COMMUNITY DEVELOPMENT.

Section 3(p) of the Small Business Act (15 U.S.C. 632(p)), as amended by this Act, is amended—

(1) in paragraph (3)—

(A) in subparagraph (B), by striking "or" at the end;

(B) in subparagraph (C), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(D) a small business concern that is—

"(i) wholly owned by a community development corporation that has received financial assistance under Part 1 of Subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

"(ii) owned in part by 1 or more community development corporations, if all other owners are either United States citizens or small business concerns."; and

(2) in paragraph (5)(A)(i)(I)(aa), by striking "subparagraph (A) or (B)" and inserting "subparagraph (A), (B), or (D)".

SEC. 615. REFERENCE CORRECTIONS.

(a) SECTION 3.—Section 3(p)(5)(C) of the Small Business Act (15 U.S.C. 632(p)(5)(C)) is amended by striking "subclause (IV) and (V) of subparagraph (A)(i)" and inserting "items (aa) and (bb) of subparagraph (A)(i)(III)".

(b) SECTION 8.—Section 8(d)(4)(D) of the Small Business Act (15 U.S.C. 637(d)(4)(D)) is amended by inserting "qualified HUBZone small business concerns," after "small business concerns,".

TITLE VII—NATIONAL WOMEN'S BUSINESS COUNCIL REAUTHORIZATION

SEC. 701. SHORT TITLE.

This title may be cited as the "National Women's Business Council Reauthorization Act of 2000".

SEC. 702. MEMBERSHIP OF THE COUNCIL.

Section 407 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) is amended—

(1) in subsection (a), by striking "Not later" and all that follows through "the President" and inserting "The President";

(2) in subsection (b)—

(A) by striking "Not later" and all that follows through "the Administrator" and inserting "The Administrator"; and

(B) by striking "the Assistant Administrator of the Office of Women's Business Ownership and";

(3) in subsection (d), by striking ", except that" and all that follows through the end of the subsection and inserting a period; and

(4) in subsection (h), by striking "Not later" and all that follows through "the Administrator" and inserting "The Administrator".

SEC. 703. REPEAL OF PROCUREMENT PROJECT.

Section 409 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) is repealed.

SEC. 704. STUDIES AND OTHER RESEARCH.

Section 410 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) is amended to read as follows:

"SEC. 409. STUDIES AND OTHER RESEARCH.

"(a) IN GENERAL.—The Council may conduct such studies and other research relating to the award of Federal prime contracts and subcontracts to women-owned businesses, to access to credit and investment capital by women entrepreneurs, or to other issues relating to women-owned businesses, as the Council determines to be appropriate.

"(b) CONTRACT AUTHORITY.—In conducting any study or other research under this section, the Council may contract with 1 or more public or private entities.".

SEC. 705. AUTHORIZATION OF APPROPRIATIONS.

Section 411 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) is amended to read as follows:

"SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $1,000,000, for each of fiscal years 2001 through 2003, of which $550,000 shall be available in each such fiscal year to carry out section 409.

"(b) BUDGET REVIEW.—No amount made available under this section for any fiscal year may be obligated or expended by the Council before the date on which the Council reviews and approves the operating budget of the Council to carry out the responsibilities of the Council for that fiscal year.".

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. LOAN APPLICATION PROCESSING.

(a) STUDY.—The Administrator of the Small Business Administration shall conduct a study to determine the average time that the Administration requires to process an application for each type of

loan or loan guarantee made under the Small Business Act (15 U.S.C. 631 et seq.).

(b) TRANSMITTAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall transmit to Congress the results of the study conducted under subsection (a).

SEC. 802. APPLICATION OF OWNERSHIP REQUIREMENTS.

(a) SMALL BUSINESS ACT.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

"(30) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this Act shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.".

(b) SMALL BUSINESS INVESTMENT ACT OF 1958.—Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended by adding at the end the following:

"(6) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this title shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.".

SEC. 803. SUBCONTRACTING PREFERENCE FOR VETERANS.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) is amended—

(1) in paragraph (1), by inserting "small business concerns owned and controlled by veterans," after "small business concerns," the first place that term appears in each of the first and second sentences;

(2) in paragraph (3)—

(A) in subparagraph (A), by inserting "small business concerns owned and controlled by service-disabled veterans," after "small business concerns owned and controlled by veterans," in each of the first and second sentences; and

(B) in subparagraph (F), by inserting "small business concern owned and controlled by service-disabled veterans," after "small business concern owned and controlled by veterans,"; and

(3) in each of paragraphs (4)(D), (4)(E), (6)(A), (6)(C), (6)(F), and (10)(B), by inserting "small business concerns owned and controlled by service-disabled veterans," after "small business concerns owned and controlled by veterans,".

SEC. 804. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM FUNDING.

(a) AUTHORIZATION.—

(1) IN GENERAL.—Section 20(a)(1) of the Small Business Act (15 U.S.C. 631 note) is amended by striking "For fiscal year 1985" and all that follows through "expended." and inserting the following: "For fiscal year 2000 and each fiscal year there-

after, there are authorized to be appropriated such sums as may be necessary and appropriate, to remain available until expended, and to be available solely—

"(A) to carry out the Small Business Development Center Program under section 21, but not to exceed the annual funding level, as specified in section 21(a);

"(B) to pay the expenses of the National Small Business Development Center Advisory Board, as provided in section 21(i);

"(C) to pay the expenses of the information sharing system, as provided in section 21(c)(8);

"(D) to pay the expenses of the association referred to in section 21(a)(3)(A) for conducting the certification program, as provided in section 21(k)(2); and

"(E) to pay the expenses of the Administration, including salaries of examiners, for conducting examinations as part of the certification program conducted by the association referred to in section 21(a)(3)(A).".

(2) TECHNICAL AMENDMENT.—Section 20(a) of the Small Business Act (15 U.S.C. 631 note) is amended by moving the margins of paragraphs (3) and (4), including subparagraphs (A) and (B) of paragraph (4), 2 ems to the left.

(b) FUNDING FORMULA.—Section 21(a)(4)(C) of the Small Business Act (15 U.S.C. 648(a)(4)(C)) is amended to read as follows:

"(C) FUNDING FORMULA.—

"(i) IN GENERAL.—Subject to clause (iii), the amount of a formula grant received by a State under this subparagraph shall be equal to an amount determined in accordance with the following formula:

"(I) The annual amount made available under section 20(a) for the Small Business Development Center Program, less any reductions made for expenses authorized by clause (v) of this subparagraph, shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

"(II) If the pro rata amount calculated under subclause (I) for any State is less than the minimum funding level under clause (iii), the Administration shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

"(III) The aggregate amount calculated under subclause (II) shall be deducted from the amount calculated under subclause (I) for States eligible to receive more than the minimum funding level. The deductions shall be made on a pro rata basis, based on the population of each such State, as compared to the total population of all such States.

"(IV) The aggregate amount deducted under subclause (III) shall be added to the grants of those States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of a grant to any State shall not be reduced to an amount below the minimum funding level.

"(ii) GRANT DETERMINATION.—The amount of a grant that a State is eligible to apply for under this subparagraph shall be the amount determined under clause (i), subject to any modifications required under clause (iii), and shall be based on the amount available for the fiscal year in which performance of the grant commences, but not including amounts distributed in accordance with clause (iv). The amount of a grant received by a State under any provision of this subparagraph shall not exceed the amount of matching funds from sources other than the Federal Government, as required under subparagraph (A).

"(iii) MINIMUM FUNDING LEVEL.—The amount of the minimum funding level for each State shall be determined for each fiscal year based on the amount made available for that fiscal year to carry out this section, as follows:

"(I) If the amount made available is not less than $81,500,000 and not more than $90,000,000, the minimum funding level shall be $500,000.

"(II) If the amount made available is less than $81,500,000, the minimum funding level shall be the remainder of $500,000 minus a percentage of $500,000 equal to the percentage amount by which the amount made available is less than $81,500,000.

"(III) If the amount made available is more than $90,000,000, the minimum funding level shall be the sum of $500,000 plus a percentage of $500,000 equal to the percentage amount by which the amount made available exceeds $90,000,000.

"(iv) DISTRIBUTIONS.—Subject to clause (iii), if any State does not apply for, or use, its full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as follows:

"(I) If the grant to any State is less than the amount received by that State in fiscal year 2000, the Administration shall distribute such remaining funds, on a pro rata basis, based on the percentage of shortage of each such State, as compared to the total amount of such remaining funds available, to the extent necessary in order to increase the amount of the grant to the amount received by that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

"(II) If any funds remain after the application of subclause (I), the remaining amount may be distributed as supplemental grants to any State, as the Administration determines, in its discretion, to be appropriate, after consultation with the association referred to in subsection (a)(3)(A).

"(v) USE OF AMOUNTS.—

"(I) IN GENERAL.—Of the amounts made available in any fiscal year to carry out this section—

"(aa) not more than $500,000 may be used by the Administration to pay expenses enumerated in

subparagraphs (B) through (D) of section 20(a)(1); and

"(bb) not more than $500,000 may be used by the Administration to pay the examination expenses enumerated in section 20(a)(1)(E).

"(II) LIMITATION.—No funds described in subclause (I) may be used for examination expenses under section 20(a)(1)(E) if the usage would reduce the amount of grants made available under clause (i)(I) of this subparagraph to less than $85,000,000 (after excluding any amounts provided in appropriations Acts for specific institutions or for purposes other than the general small business development center program) or would further reduce the amount of such grants below such amount.

"(vi) EXCLUSIONS.—Grants provided to a State by the Administration or another Federal agency to carry out subsection (a)(6) or (c)(3)(G), or for supplemental grants set forth in clause (iv)(II) of this subparagraph, shall not be included in the calculation of maximum funding for a State under clause (ii) of this subparagraph.

"(vii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subparagraph $125,000,000 for each of fiscal years 2001, 2002, and 2003.

"(viii) STATE DEFINED.—In this subparagraph, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.".

SEC. 805. SURETY BONDS.

(a) CONTRACT AMOUNTS.—Section 411 of the Small Business Investment Act of 1958 (15 U.S.C. 694b) is amended—

(1) in subsection (a)(1), by striking "$1,250,000" and inserting "$2,000,000"; and

(2) in subsection (e)(2), by striking "$1,250,000" and inserting "$2,000,000".

(b) EXTENSION OF CERTAIN AUTHORITY.—Section 207 of the Small Business Administration Reauthorization and Amendment Act of 1988 (15 U.S.C. 694b note) is amended by striking "2000" and inserting "2003".

SEC. 806. SIZE STANDARDS.

(a) INDUSTRY CLASSIFICATIONS.—Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended in the eighth sentence, by striking "four-digit standard" and all that follows through "published" and inserting "definition of a 'United States industry' under the North American Industry Classification System, as established".

(b) ANNUAL RECEIPTS.—Section 3(a)(1) of the Small Business Act (15 U.S.C. 632(a)(1)) is amended by striking "$500,000" and inserting "$750,000".

SEC. 807. NATIVE HAWAIIAN ORGANIZATIONS UNDER SECTION 8(a).

Section 8(a)(15)(A) of the Small Business Act (15 U.S.C. 637(a)(15)(A)) is amended to read as follows:

"(A) is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,".

SEC. 808. NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION CORRECTION.

Section 33(k) of the Small Business Act (15 U.S.C. 657c(k)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated to the Corporation to carry out this section—

"(A) $4,000,000 for fiscal year 2001;

"(B) $4,000,000 for fiscal year 2002;

"(C) $2,000,000 for fiscal year 2003; and

"(D) $2,000,000 for fiscal year 2004.";

(2) in paragraph (2)(A), by striking "2001" each place it appears and inserting "2002"; and

(3) in paragraph (2)(B), by striking "2002 or 2003" and inserting "2003 or 2004".

SEC. 809. PRIVATE SECTOR RESOURCES FOR SCORE.

Section 8(b)(1)(B) of the Small Business Act (15 U.S.C. 637(b)(1)(B)) is amended by adding at the end the following: "Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this Act, and may use payments made by the Administration pursuant to this subparagraph for such solicitation.".

SEC. 810. CONTRACT DATA COLLECTION.

(a) DEFINITION OF BUNDLED CONTRACT.—Section 3(o)(1) of the Small Business Act (15 U.S.C. 632(o)(1)) is amended to read as follows:

"(1) BUNDLED CONTRACT.—The term 'bundled contract' means a contract, or a modification of an existing contract, that is entered into to meet—

"(A) requirements that are consolidated in a bundling of contract requirements regardless of whether the contracting agency has conducted a study of the effects of the solicitation for the contract on civilian or military personnel of the United States; or

"(B) any procurement requirement that permits the consolidation of 2 or more procurement requirements.".

(b) ANALYSIS REQUIRED WITH RESPECT TO BUNDLED CONTRACTS.—Section 15(e)(2)(A) of the Small Business Act (15 U.S.C. 644(e)(2)(A)) is amended—

(1) by striking "(A) IN GENERAL.—" and inserting the following:

"(A) DETERMINATION OF NECESSITY.—

"(i) IN GENERAL.—"; and

(2) by adding at the end the following:

"(ii) IDENTIFICATION OF DISPLACED PRIME CONTRACTORS.—The market research required by clause (i) shall identify each small business concern that will be

displaced as a prime contractor as a result of the award of a contract described in such clause, and the Administrator shall maintain such data for a period of not less than 10 years.

"(iii) BUNDLED CONTRACTS SUBJECT TO RECOMPETITION.—

"(I) IN GENERAL.—Not less than 30 days before issuing a solicitation to recompete a previously bundled contract as a contract that continues to contain the bundling of contract requirements of the original bundled contract, the head of the agency shall notify the Administrator and transmit a report to the Administrator containing the results of the market research required under clause (i).

"(II) REVIEW AND DETERMINATION.—The Administrator shall, not later than 30 days after notification under subclause (I), review and determine—

"(aa) the amount of savings and benefits (in accordance with this subsection) achieved under the bundling of contract requirements; and

"(bb) whether such savings and benefits will continue to be realized if the contract remains bundled and whether such benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

"(II) APPEAL.—

"(aa) IN GENERAL.—If, after conducting a review under subclause (II), the Administrator reaches a conclusion with respect to the savings and benefits of the recompeted bundle different than that reached by the head of the contracting agency as part of the market analysis required under clause (i) and such head proceeds with a solicitation for the contract, the Administrator shall file an appeal with the Administrator of the Office of Federal Procurement Policy.

"(bb) NOTICE.—If the Administrator files an appeal under item (aa), the Administrator shall notify the head of the contracting agency.

"(cc) FILING OF REPORTS.—Not less than 5 calendar days after notice is given under item (bb), the Administrator shall submit a report containing information on the Administrator's conclusions and determinations under subclause (II), and the head of the contracting agency shall submit the report described in subclause (I), to the Administrator of the Office of Federal Procurement Policy.

"(dd) DECISION.—Not later than 7 calendar days after the submission of reports under item (cc), the Administrator of the Office of Federal Procurement Policy shall determine whether the subject contract shall be recompeted as bundled contract.".

(c) ANNUAL REPORT ON CONTRACT BUNDLING.—Section 15 of the Small Business Act (15 U.S.C. 644) is amended by adding at the end the following:

"(p) ANNUAL REPORT ON CONTRACT BUNDLING.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, and annually in March thereafter, the Administration shall transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate.

"(2) CONTENTS.—Each report transmitted under paragraph (1) shall include—

"(A) data on the number, arranged by industrial classification, of small business concerns displaced as prime contractors as a result of the award of bundled contracts by Federal agencies; and

"(B) a description of the activities with respect to previously bundled contracts of each Federal agency during the preceding year, including—

"(i) data on the number and total dollar amount of all contract requirements that were bundled; and

"(ii) with respect to each bundled contract, data or information on—

"(I) the justification for the bundling of contract requirements;

"(II) the cost savings realized by bundling the contract requirements over the life of the contract;

"(III) the extent to which maintaining the bundled status of contract requirements is projected to result in continued cost savings;

"(IV) the extent to which the bundling of contract requirements complied with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and

"(V) the impact of the bundling of contract requirements on small business concerns unable to compete as prime contractors for the consolidated requirements and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.".

(d) REPORTING OF BUNDLED CONTRACT OPPORTUNITIES.—Section 414(a) of the Small Business Reauthorization Act of 1997 (4 U.S.C. 405 note) is amended—

(1) by striking "$5,000,000" and inserting "$25,000"; and

(2) by striking "bundling of contract requirements" and inserting "bundled contract".

(e) PROVISION OF DATA.—Upon the request of the Administrator of the Small Business Administration, the head of any contracting agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this section or the amendments made by this section.

SEC. 811. PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.

Section 8 of the Small Business Act (15 U.S.C. 637) is amended by adding at the end the following:

"(m) PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.—

"(1) DEFINITIONS.—In this subsection, the following definitions apply:

"(A) CONTRACTING OFFICER.—The term 'contracting officer' has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

"(B) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term 'small business concern owned and controlled by women' has the meaning given such term in section 3(n), except that ownership shall be determined without regard to any community property law.

"(2) AUTHORITY TO RESTRICT COMPETITION.—In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

"(A) each of the concerns is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

"(B) the contracting officer has a reasonable expectation that 2 or more small business concerns owned and controlled by women will submit offers for the contract;

"(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

"(D) the anticipated award price of the contract (including options) does not exceed—

"(i) $5,000,000, in the case of a contract assigned an industrial classification code for manufacturing; or

"(ii) $3,000,000, in the case of all other contracts;

"(E) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price; and

"(F) each of the concerns—

"(i) is certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or

"(ii) certifies to the contracting officer that it is a small business concern owned and controlled by

women and provides adequate documentation, in accordance with standards established by the Administration, to support such certification.

"(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

"(4) IDENTIFICATION OF INDUSTRIES.—The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

"(5) ENFORCEMENT; PENALTIES.—

"(A) VERIFICATION OF ELIGIBILITY.—In carrying out this subsection, the Administrator shall establish procedures relating to—

"(i) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph (2)(F)); and

"(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(F).

"(B) EXAMINATIONS.—The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (2)(F).

"(C) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

"(i) section 1001 of title 18, United States Code; and

"(ii) sections 3729 through 3733 of title 31, United States Code.

"(6) PROVISION OF DATA.—Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.".

TITLE IX—COMMUNITY RENEWAL AND NEW MARKETS INITIATIVES

SEC. 901. NEW MARKETS VENTURE CAPITAL PROGRAM.

(a) SHORT TITLE.—This section may be cited as the "New Markets Venture Capital Program Act of 2000".

(b) NEW MARKETS VENTURE CAPITAL PROGRAM.—Title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.) is amended—

(1) in the heading for the title, by striking "SMALL BUSINESS INVESTMENT COMPANIES" and inserting "INVESTMENT DIVISION PROGRAMS";

(2) by inserting before the heading for section 301 the following:

"PART A—SMALL BUSINESS INVESTMENT COMPANIES";

and

(3) by adding at the end the following:

"PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

"SEC. 351. DEFINITIONS.

"In this part, the following definitions apply:

"(1) DEVELOPMENTAL VENTURE CAPITAL.—The term 'developmental venture capital' means capital in the form of equity capital investments in businesses made with a primary objective of fostering economic development in low-income geographic areas. For the purposes of this paragraph, the term 'equity capital' has the same meaning given such term in section 303(g)(4).

"(2) LOW-INCOME INDIVIDUAL.—The term 'low-income individual' means an individual whose income (adjusted for family size) does not exceed—

"(A) for metropolitan areas, 80 percent of the area median income; and

"(B) for nonmetropolitan areas, the greater of—

"(i) 80 percent of the area median income; or

"(ii) 80 percent of the statewide nonmetropolitan area median income.

"(3) LOW-INCOME GEOGRAPHIC AREA.—The term 'low-income geographic area' means—

"(A) any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the Department of Commerce for purposes of defining poverty areas), if—

"(i) the poverty rate for that census tract is not less than 20 percent;

"(ii) in the case of a tract—

"(I) that is located within a metropolitan area, 50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or

"(II) that is not located within a metropolitan area, the median household income for such tract does not exceed 80 percent of the statewide median household income; or

"(iii) as determined by the Administrator based on objective criteria, a substantial population of low-income individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in that census tract; or

"(B) any area located within—

"(i) a HUBZone (as defined in section 3(p) of the Small Business Act and the implementing regulations issued under that section);

"(ii) an urban empowerment zone or urban enterprise community (as designated by the Secretary of Housing and Urban Development); or

"(iii) a rural empowerment zone or rural enterprise community (as designated by the Secretary of Agriculture).

"(4) NEW MARKETS VENTURE CAPITAL COMPANY.—The term 'New Markets Venture Capital company' means a company that—

"(A) has been granted final approval by the Administrator under section 354(e); and

"(B) has entered into a participation agreement with the Administrator.

"(5) OPERATIONAL ASSISTANCE.—The term 'operational assistance' means management, marketing, and other technical assistance that assists a small business concern with business development.

"(6) PARTICIPATION AGREEMENT.—The term 'participation agreement' means an agreement, between the Administrator and a company granted final approval under section 354(e), that—

"(A) details the company's operating plan and investment criteria; and

"(B) requires the company to make investments in smaller enterprises at least 80 percent of which are located in low-income geographic areas.

"(7) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—The term 'specialized small business investment company' means any small business investment company that—

"(A) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

"(B) is organized or chartered under State business or nonprofit corporations statutes, or formed as a limited partnership; and

"(C) was licensed under section 301(d), as in effect before September 30, 1996.

"(8) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto

Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States;

"SEC. 352. PURPOSES.

"The purposes of the New Markets Venture Capital Program established under this part are—

"(1) to promote economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas by encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

"(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises located in low-income geographic areas, to be administered by the Administrator—

"(A) to enter into participation agreements with New Markets Venture Capital companies;

"(B) to guarantee debentures of New Markets Venture Capital companies to enable each such company to make developmental venture capital investments in smaller enterprises in low-income geographic areas; and

"(C) to make grants to New Markets Venture Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

"SEC. 353. ESTABLISHMENT.

"In accordance with this part, the Administrator shall establish a New Markets Venture Capital Program, under which the Administrator may—

"(1) enter into participation agreements with companies granted final approval under section 354(e) for the purposes set forth in section 352;

"(2) guarantee the debentures issued by New Markets Venture Capital companies as provided in section 355; and

"(3) make grants to New Markets Venture Capital companies, and to other entities, under section 358.

"SEC. 354. SELECTION OF NEW MARKETS VENTURE CAPITAL COMPANIES.

"(a) ELIGIBILITY.—A company shall be eligible to apply to participate, as a New Markets Venture Capital company, in the program established under this part if—

"(1) the company is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

"(2) the company has a management team with experience in community development financing or relevant venture capital financing; and

"(3) the company has a primary objective of economic development of low-income geographic areas.

"(b) APPLICATION.—To participate, as a New Markets Venture Capital company, in the program established under this part a company meeting the eligibility requirements set forth in subsection (a) shall submit an application to the Administrator that includes—

"(1) a business plan describing how the company intends to make successful developmental venture capital investments in identified low-income geographic areas;

"(2) information regarding the community development finance or relevant venture capital qualifications and general reputation of the company's management;

"(3) a description of how the company intends to work with community organizations and to seek to address the unmet capital needs of the communities served;

"(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company intends to use licensed professionals, when necessary, on the company's staff or from an outside entity;

"(5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;

"(6) a description of the criteria to be used to evaluate whether and to what extent the company meets the objectives of the program established under this part;

"(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the company's business plan; and

"(8) such other information as the Administrator may require.

"(c) CONDITIONAL APPROVAL.—

"(1) IN GENERAL.—From among companies submitting applications under subsection (b), the Administrator shall, in accordance with this subsection, conditionally approve companies to participate in the New Markets Venture Capital Program.

"(2) SELECTION CRITERIA.—In selecting companies under paragraph (1), the Administrator shall consider the following:

"(A) The likelihood that the company will meet the goals of its business plan.

"(B) The experience and background of the company's management team.

"(C) The need for developmental venture capital investments in the geographic areas in which the company intends to invest.

"(D) The extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest.

"(E) The likelihood that the company will be able to satisfy the conditions under subsection (d).

"(F) The extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest.

"(G) The strength of the company's proposal to provide operational assistance under this part as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly utilize in-kind contributions, including the use of resources for the services of licensed pro-

fessionals, when necessary, whether provided by persons on the company's staff or by persons outside of the company.

"(H) Any other factors deemed appropriate by the Administrator.

"(3) NATIONWIDE DISTRIBUTION.—The Administrator shall select companies under paragraph (1) in such a way that promotes investment nationwide.

"(d) REQUIREMENTS TO BE MET FOR FINAL APPROVAL.—The Administrator shall grant each conditionally approved company a period of time, not to exceed 2 years, to satisfy the following requirements:

"(1) CAPITAL REQUIREMENT.—Each conditionally approved company shall raise not less than $5,000,000 of private capital or binding capital commitments from one or more investors (other than agencies or departments of the Federal Government) who meet criteria established by the Administrator.

"(2) NONADMINISTRATION RESOURCES FOR OPERATIONAL ASSISTANCE.—

"(A) IN GENERAL.—In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company—

"(i) shall have binding commitments (for contribution in cash or in kind)—

"(I) from any sources other than the Small Business Administration that meet criteria established by the Administrator;

"(II) payable or available over a multiyear period acceptable to the Administrator (not to exceed 10 years); and

"(III) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1);

"(ii) shall have purchased an annuity—

"(I) from an insurance company acceptable to the Administrator;

"(II) using funds (other than the funds raised under paragraph (1)) from any source other than the Administrator; and

"(III) that yields cash payments over a multiyear period acceptable to the Administrator (not to exceed 10 years) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1); or

"(iii) shall have binding commitments (for contributions in cash or in kind) of the type described in clause (i) and shall have purchased an annuity of the type described in clause (ii), which in the aggregate make available, over a multiyear period acceptable to the Administrator (not to exceed 10 years), an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1).

"(B) EXCEPTION.—The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an appli-

cant to have satisfied the requirements of subparagraph (A) if the applicant has—

"(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

"(ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph (A).

"(C) LIMITATION.—In order to comply with the requirements of subparagraphs (A) and (B), the total amount of a company's in-kind contributions may not exceed 50 percent of the company's total contributions.

"(e) FINAL APPROVAL; DESIGNATION.—The Administrator shall, with respect to each applicant conditionally approved to operate as a New Markets Venture Capital company under subsection (c), either—

"(1) grant final approval to the applicant to operate as a New Markets Venture Capital company under this part and designate the applicant as such a company, if the applicant—

"(A) satisfies the requirements of subsection (d) on or before the expiration of the time period described in that subsection; and

"(B) enters into a participation agreement with the Administrator; or

"(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in that subsection, revoke the conditional approval granted under that subsection.

"SEC. 355. DEBENTURES.

"(a) IN GENERAL.—The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any New Markets Venture Capital company.

"(b) TERMS AND CONDITIONS.—The Administrator may make guarantees under this section on such terms and conditions as it deems appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

"(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

"(d) MAXIMUM GUARANTEE.—

"(1) IN GENERAL.—Under this section, the Administrator may guarantee the debentures issued by a New Markets Venture Capital company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

"(2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than an agency or department of the Federal Government.

"SEC. 356. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

"(a) ISSUANCE.—The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a New Markets Venture Capital company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

"(b) GUARANTEE.—

"(1) IN GENERAL.—The Administrator may, under such terms and conditions as it deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

"(2) LIMITATION.—Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

"(3) PREPAYMENT OR DEFAULT.—In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

"(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

"(d) FEES.—The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

"(e) SUBROGATION AND OWNERSHIP RIGHTS.—

"(1) SUBROGATION.—In the event the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

"(2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

"(f) MANAGEMENT AND ADMINISTRATION.—

"(1) REGISTRATION.—The Administrator may provide for a central registration of all trust certificates issued under this section.

"(2) CONTRACTING OF FUNCTIONS.—

"(A) IN GENERAL.—The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

"(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank ac-

counts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

"(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

"(B) FIDELITY BOND OR INSURANCE REQUIREMENT.—Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

"(3) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates issued under this section.

"(4) ELECTRONIC REGISTRATION.—Nothing in this subsection may be construed to prohibit the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

"SEC. 357. FEES.

"Except as provided in section 356(d), the Administrator may charge such fees as it deems appropriate with respect to any guarantee or grant issued under this part.

"SEC. 358. OPERATIONAL ASSISTANCE GRANTS.

"(a) IN GENERAL.—

"(1) AUTHORITY.—In accordance with this section, the Administrator may make grants to New Markets Venture Capital companies and to other entities, as authorized by this part, to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

"(2) TERMS.—Grants made under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

"(3) GRANTS TO SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—

"(A) AUTHORITY.—In accordance with this section, the Administrator may make grants to specialized small business investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies after the effective date of the New Markets Venture Capital Program Act of 2000.

"(B) USE OF FUNDS.—The proceeds of a grant made under this paragraph may be used by the company receiving such grant only to provide operational assistance in connection with an equity investment (made with capital raised after the effective date of the New Markets Venture Capital Program Act of 2000) in a business located in a low-income geographic area.

"(C) SUBMISSION OF PLANS.—A specialized small business investment company shall be eligible for a grant under this section only if the company submits to the Administrator, in such form and manner as the Administrator may require, a plan for use of the grant.

"(4) GRANT AMOUNT.—

"(A) NEW MARKETS VENTURE CAPITAL COMPANIES.—The amount of a grant made under this subsection to a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the company under with section 354(d)(2).

"(B) OTHER ENTITIES.—The amount of a grant made under this subsection to any entity other than a New Markets Venture capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to New Markets Venture Capital companies set forth in section 354(d)(2).

"(5) PRO RATA REDUCTIONS.—If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (4), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

"(b) SUPPLEMENTAL GRANTS.—

"(1) IN GENERAL.—The Administrator may make supplemental grants to New Markets Venture Capital companies and to other entities, as authorized by this part, under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

"(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in cash or in kind), other than those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

"(c) LIMITATION.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a New Markets Venture Capital company or a specialized small business investment company.

"SEC. 359. BANK PARTICIPATION.

"(a) IN GENERAL.—Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any New Markets Venture Capital company, or in any entity established to invest solely in New Markets Venture Capital companies.

"(b) LIMITATION.—No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

"SEC. 360. FEDERAL FINANCING BANK.

"Section 318 shall not apply to any debenture issued by a New Markets Venture Capital company under this part.

"SEC. 361. REPORTING REQUIREMENTS.

"Each New Markets Venture Capital company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

"(1) information related to the measurement criteria that the company proposed in its program application; and

"(2) in each case in which the company under this part makes an investment in, or a loan or grant to, a business that is not located in a low-income geographic area, a report on the number and percentage of employees of the business who reside in such areas.

"SEC. 362. EXAMINATIONS.

"(a) IN GENERAL.—Each New Markets Venture Capital company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Small Business Administration in accordance with this section.

"(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

"(c) COSTS.—

"(1) ASSESSMENT.—

"(A) IN GENERAL.—The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

"(B) PAYMENT.—Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

"(2) DEPOSIT OF FUNDS.—Funds collected under this section shall be deposited in the account for salaries and expenses of the Small Business Administration.

"SEC. 363. INJUNCTIONS AND OTHER ORDERS.

"(a) IN GENERAL.—Whenever, in the judgment of the Administrator, a New Markets Venture Capital company or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act, the Administrator may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administrator that such New Markets Venture Capital company or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

"(b) JURISDICTION.—In any proceeding under subsection (a), the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the New Market Venture Capital company and the assets thereof, wherever located, and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

"(c) ADMINISTRATOR AS TRUSTEE OR RECEIVER.—

"(1) AUTHORITY.—The Administrator may act as trustee or receiver of a New Markets Venture Capital company.

"(2) APPOINTMENT.—Upon request of the Administrator, the court may appoint the Administrator to act as a trustee or receiver of a New Markets Venture Capital company unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

"SEC. 364. ADDITIONAL PENALTIES FOR NONCOMPLIANCE.

"(a) IN GENERAL.—With respect to any New Markets Venture Capital company that violates or fails to comply with any of the provisions of this Act, of any regulation issued under this Act, or of any participation agreement entered into under this Act, the Administrator may in accordance with this section—

"(1) void the participation agreement between the Administrator and the company; and

"(2) cause the company to forfeit all of the rights and privileges derived by the company from this Act.

"(b) ADJUDICATION OF NONCOMPLIANCE.—

"(1) IN GENERAL.—Before the Administrator may cause a New Markets Venture Capital company to forfeit rights or privileges under subsection (a), a court of the United States of competent jurisdiction must find that the company committed a violation, or failed to comply, in a cause of action brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of the company is located.

"(2) PARTIES AUTHORIZED TO FILE CAUSES OF ACTION.—Each cause of action brought by the United States under this subsection shall be brought by the Administrator or by the Attorney General.

"SEC. 365. UNLAWFUL ACTS AND OMISSIONS; BREACH OF FIDUCIARY DUTY.

"(a) PARTIES DEEMED TO COMMIT A VIOLATION.—Whenever any New Markets Venture Capital company violates any provision of this Act, of a regulation issued under this Act, or of a participation agreement entered into under this Act, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice that constitutes or will constitute a violation thereof, such violation shall also be deemed to be a violation and an unlawful act committed by any person who, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions that constitute or will constitute, in whole or in part, such violation.

"(b) FIDUCIARY DUTIES.—It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a New Markets Venture Capital company to engage in any act or practice, or to omit any act or practice, in breach of the person's fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the company suffers or is in imminent danger of suffering financial loss or other damage.

"(c) UNLAWFUL ACTS.—Except with the written consent of the Administrator, it shall be unlawful—

"(1) for any person to take office as an officer, director, or employee of any New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of such a company, if the person—

"(A) has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

"(B) has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud, or breach of trust; and

"(2) for any person continue to serve in any of the capacities described in paragraph (1), if—

"(A) the person is convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

"(B) the person is found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

"SEC. 366. REMOVAL OR SUSPENSION OF DIRECTORS OR OFFICERS.

"Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 313 (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any New Markets Venture Capital company.

"SEC. 367. REGULATIONS.

"The Administrator may issue such regulations as it deems necessary to carry out the provisions of this part in accordance with its purposes.

"SEC. 368. AUTHORIZATIONS OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

"(1) Such subsidy budget authority as may be necessary to guarantee $150,000,000 of debentures under this part.

"(2) $30,000,000 to make grants under this part.

"(b) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited under section 362(c)(2) are authorized to be appropriated only for the costs of examinations under section 362 and for the costs of other oversight activities with respect to the program established under this part.".

(c) CONFORMING AMENDMENT.—Section 20(e)(1)(C) of the Small Business Act (15 U.S.C. 631 note) is amended by inserting "part A of" before "title III".

(d) CALCULATION OF MAXIMUM AMOUNT OF SBIC LEVERAGE.—

(1) MAXIMUM LEVERAGE.—Section 303(b)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)(2)) is amended to read as follows:

"(2) MAXIMUM LEVERAGE.—

"(A) IN GENERAL.—After March 31, 1993, the maximum amount of outstanding leverage made available to a company licensed under section 301(c) of this Act shall be

determined by the amount of such company's private capital—

"(i) if the company has private capital of not more than $15,000,000, the total amount of leverage shall not exceed 300 percent of private capital;

"(ii) if the company has private capital of more than $15,000,000 but not more than $30,000,000, the total amount of leverage shall not exceed $45,000,000 plus 200 percent of the amount of private capital over $15,000,000; and

"(iii) if the company has private capital of more than $30,000,000, the total amount of leverage shall not exceed $75,000,000 plus 100 percent of the amount of private capital over $30,000,000 but not to exceed an additional $15,000,000.

"(B) ADJUSTMENTS.—

"(i) IN GENERAL.—The dollar amounts in clauses (i), (ii), and (iii) of subparagraph (A) shall be adjusted annually to reflect increases in the Consumer Price Index established by the Bureau of Labor Statistics of the Department of Labor.

(ii) INITIAL ADJUSTMENTS.—The initial adjustments made under this subparagraph after the date of the enactment of the Small Business Reauthorization Act of 1997 shall reflect only increases from March 31, 1993.

"(C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In calculating the outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 351), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.".

(2) MAXIMUM AGGREGATE LEVERAGE.—Section 303(b)(4) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)(4)) is amended by adding at the end the following new subparagraph:

"(D) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In calculating the aggregate outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 351), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.".

(e) BANKRUPTCY EXEMPTION FOR NEW MARKETS VENTURE CAPITAL COMPANIES.—Section 109(b)(2) of title 11, United States Code, is amended by inserting "a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958," after "homestead association,".

(f) FEDERAL SAVINGS ASSOCIATIONS.—Section 5(c)(4) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)) is amended by adding at the end the following:

"(F) NEW MARKETS VENTURE CAPITAL COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, except that a Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 5 percent of the capital and surplus of such savings association.".

SEC. 902. BUSINESSLINC GRANTS AND COOPERATIVE AGREEMENTS.

Section 8 of the Small Business Act (15 U.S.C. 637) is amended by adding at the end the following:

"(n) BUSINESSLINC GRANTS AND COOPERATIVE AGREEMENTS.—

"(1) IN GENERAL.—In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

"(A) to expand business-to-business relationships between large and small businesses; and

"(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs.

"(2) MATCHING REQUIREMENT.—Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.".

Following is explanatory language for H.R. 5545, as introduced on October 25, 2000. References in the following to the "conference agreement" refer to the text of that bill.

JOINT STATEMENT OF MANAGERS OF H.R. 2614—SMALL BUSINESS REAUTHORIZATION

TITLE I—SMALL BUSINESS INNOVATION RESEARCH PROGRAM

The Small Business Innovation Research Program Reauthorization Act of 2000 (H.R. 2392) was introduced on June 30, 1999, and referred to the House Committees on Small Business and Science. Both Committees held hearings and the House Committee on Small Business reported H.R. 2392 on September 23, 1999 (H. Rept. 106–329). In the interest of moving the bill to the floor of the House of Representatives promptly, the Committee on Science agreed not to exercise its right to report the legislation, provided that the House Committee on Small Business agreed to add the selected portions of the Science Committee version of the legislation, as Sections 8 through 11 of the House floor text of H.R. 2392. H.R. 2392 passed the House without further amendment on September 27. The Science Committee provisions were explained in floor statements by Congressmen Sensenbrenner, Morella, and Mark Udall.

On March 21, 2000, the Senate Committee marked-up H.R. 2392 and on May 10, 2000, reported the bill (S. Rept. 106–289). The Senate Committee struck several of the sections originating from the House Committee on Science and added sections not in the House-passed legislation, including a requirement that Federal agencies with Small Business Innovation Research (SBIR) programs report their methodology for calculating their SBIR budgets to the Small Business Administration (SBA) and a program to assist states in the development of small high-technology businesses. Negotiations then began among the leadership of the Senate and House Committees on Small Business and the House Committee on Science (hereinafter referred to as the three committees). The resultant compromise text contains all major House and Senate provisions, some of which have been amended to reflect a compromise position. A section-by-section explanation of the revised text follows. For purposes of this statement, the bill passed by the House of Representatives is referred to as the "House version" and the bill reported by the Senate Committee on Small Business is referred to as the "Senate version."

Section 101. Short title; table of contents

The compromise text uses the Senate short title: "Small Business Innovation Research Program Reauthorization Act of 2000." The table of contents lists the sections in the compromise text.

Section 102. Findings

The House and Senate versions of the findings are very similar. The compromise text uses the House version of the findings.

Section 103. Extension of the SBIR program

The House version extends the SBIR program for seven years through September 30, 2007. The Senate version extends the program for ten years through September 30, 2010. The compromise text extends the program for eight years through September 30, 2008.

Section 104. Annual report

The House version provides for the annual report on the SBIR program prepared by the SBA to be sent to the Committee on Science, as well as to the House and Senate Committees on Small Business that currently receive it. The Senate version did not include this section. The compromise text adopts the House language.

Section 105. Third phase assistance

The compromise text of this technical amendment is identical to both the House and Senate versions.

Section 106. Report on programs for annual performance plan

This section requires each agency that participates in the SBIR program to submit to Congress a performance plan consistent with the Government Performance and Results Act. The House and Senate versions have the same intent. The compromise text uses the House version.

Section 107. Output and outcome data

Both the House and Senate versions contain sections enabling the collection and maintenance of information from awardees as is necessary to assess the SBIR program. Both the Senate and House versions require the SBA to maintain a public database at SBA containing information on awardees from all SBIR agencies. The Senate version adds paragraphs to the public database section dealing with database identification of businesses or subsidiaries established for the commercial application of SBIR products or services and the inclusion of information regarding mentors and mentoring networks. The House version further requires the SBA to establish and maintain a government database, which is exempt from the Freedom of Information Act and is to be used solely for program evaluation. Outside individuals must sign a non-disclosure agreement before gaining access to the database. The compromise text contains each of these provisions, with certain modifications and clarifications, which are addressed below.

With respect to the public database, the compromise text makes clear that proprietary information, so identified by a small business concern, will not be included in the public database. With respect to the government database, the compromise text clarifies that the inclusion of information in the government database is not to be considered publication for purposes of patent law. The compromise text further permits the SBA to include in the government database any information received in connection with an SBIR award the SBA Administrator, in conjunction with the SBIR agency program managers, consider to be relevant and appropriate or that the Federal agency considers to be useful to SBIR program evaluation.

With respect to small business reporting for the government database, the compromise text directs that when a small business applies for a second phase award it is required to update information in the government database. If an applicant for a second phase award receives the award, it shall update information in the database concerning the award at the termination of the award period and will be requested to voluntarily update the information annually for an additional period of five years. This reporting procedure is similar to current Department of Defense requirements for the reporting of such information. When sales or additional investment information is related to more than one second phase award is involved, the compromise text permits a small business to apportion the information among the awards in any way it chooses, provided the apportionment is noted on all awards so apportioned.

The three committees understand that receiving complete commercialization data on the SBIR program is difficult, regardless of any reasonable time frame that could be established for the reporting of such data. Commercialization may occur many years following the receipt of a research grant and research from an award, while not directly resulting in a marketable product, may set the groundwork for additional research that leads to such a product. Nevertheless, the three committees believe that the government database will provide useful information for program evaluation.

Section 108. National research council reports

The House version requires the four largest SBIR program agencies to enter into an agreement with the National Research Council (NRC) to conduct a comprehensive study of how the SBIR program has stimulated technological innovation and used small businesses to meet Federal research and development needs and to make recommendations on potential improvements to the program. The Senate version contains no similar provision. The study was designed to answer questions remaining from the House Committees' reviews of these programs and to make sure that a current evaluation of the program is available when the program next comes up for reauthorization.

The compromise text makes several changes to the House text. The compromise text adds the National Science Foundation to the agencies entering the agreement with the NRC and requires the agencies to consult with the SBA in entering such agreement. It also expands on the House version, which requires a review of the quality of SBIR research, to require a comparison of the value of projects conducted under SBIR with those funded by other Federal research and development expenditures. The compromise text further broadens the House version's review of the economic rate of return of the SBIR program to require an evaluation of the economic benefits of the SBIR program, including economic rate of return, and a comparison of the economic benefits of the SBIR program with that of other Federal research and development expenditures. The compromise text allows the NRC to choose an appropriate time-frame for such analysis that results in a fair comparison.

The three committees believe that a comprehensive report on the SBIR program and its relation to other Federal research ex-

penditures will be useful in program oversight and will provide Congress with an understanding of the effects of extramural Federal research and development funding provided to large and small businesses and universities. The three committees understand, however, that measuring the direct benefits to the nation's economy from the SBIR program and other Federal research expenditures may be difficult to calculate and may not provide a complete portrayal of the benefits achieved by the SBIR program. Accordingly, the legislation requires the NRC also to review the non-economic benefits of the SBIR program, which may include, among other matters, the increase in scientific knowledge that has resulted from the program. The paragraph in the compromise text calling for recommendations remains the same as the House version, except that the bill now asks the NRC to make recommendations, should there be any.

While the study is to be carried out within National Research Council study guidelines and procedures, the compromise text requires the NRC to take the steps necessary to ensure that individuals from the small business community with expertise in the SBIR program are well-represented in the panel established for performing the study and among the peer reviewers of the study. The NRC is to consult with and consider the views of the SBA's Office of Technology and the SBA's Office of Advocacy and to conduct the study in an open manner that makes sure that the views and experiences of small businesses involved in the program are carefully considered in the design and execution of the study. Extension of the SBIR program for eight years rather than the five being contemplated when the House study provision was initially written has necessitated some adjustments in the study. The report is now required three years rather than four years after the date of enactment of the Act and the NRC is to update the report within six years of enactment. The update is intended to bring current, any information from the study relevant to the reauthorization of the SBIR program. It is not intended to be a second full-fledged study. In addition, semiannual progress reports by NRC to the three committees are required.

Section 109. Federal agency expenditures for the SBIR program

The Senate version requires each Federal agency with an SBIR program to provide the SBA with a report describing its methodology for calculating its extramural budget for purposes of SBIR program set-aside and requires the Administrator of the SBA to include an analysis of the methodology from each agency in its annual report to the Congress. The House version has no similar provision. The compromise text follows the Senate text except that it specifies that each agency, rather than the agency's comptroller, shall submit the agency's report to the Administrator. The three committees intend that each agency's methodology include an itemization of each research program that is excluded from the calculation of its extramural budget for SBIR purposes as well as a brief explanation of why the agency feels each excluded program meets a particular exemption.

Section 110. Policy directive modifications

The House version includes policy directive modifications in Section 9 and the requirement of a second phase commercial plan in Section 10. The Senate version includes policy directive modifications in Section 6. The Senate version and now the compromise text require the Administrator to make modifications to SBA's policy directives 120 days after the date of enactment rather than the 30 days contained in the House version. The compromise text drops the House policy directive dealing with awards exceeding statutory dollar amounts and time limits because this flexibility is already being provided administratively. Addressed below is a description of the policy directive modifications contained in the compromise text that were not included in both the Senate version and the House version.

Section 10 of the House version requires the SBA to modify its policy directives to require that small businesses provide a commercial plan with each application for a second-phase award. The Senate version does not contain a similar provision. The compromise text requires the SBA to modify its policy directives to require that small businesses provide a "succinct commercialization plan for each second phase award moving towards commercialization." The three committees acknowledge that commercialization is a current element of the SBIR program. The statutory definition of SBIR, which is not amended by H.R. 2392, includes "a second phase, to further develop proposals which meet particular program needs, in which awards shall be made based on the scientific and technical merit and feasibility of the proposals, as evidenced by the first phase, considering among other things the proposal's commercial potential . . .", and lists evidence of commercial potential as the small business's commercialization record, private sector funding commitments, SBIR Phase III commitments, and the presence of other indicators of the commercial potential. The three committees do not intend that the addition of a commercialization plan either increase or decrease the emphasis an agency places on the commercialization when reviewing second-phase proposals. Rather, the commercialization plan will give SBIR agencies a means of determining the seriousness with which individual applicants approach commercialization.

The commercialization plan, while concise, should show that the business has thought through both the steps it must take to prepare for the fruits of the SBIR award to enter the commercial marketplace or government procurement and the steps to build business expertise as needed during the SBIR second phase time period. The three committees intend that agencies take into consideration the stage of development of the product or process in deciding whether an appropriate commercialization plan has been submitted. In those instances when at the time of the SBIR Phase II proposal, the grantee cannot identify either a product or process with the potential eventually to enter either the commercial or the government marketplace, no commercialization plan is required.

The compromise text also adds new provisions that were not contained in either the Senate version or the House version. Current law (Section 9(j)(3)(C) of the Small Business Act) requires that the Administrator put in place procedures to ensure, to the extent

practicable, that an agency which intends to pursue research, development or production of a technology developed by a small business concern under an SBIR program enter into follow-on, non-SBIR funding agreements with the small business concern for such research, development, or production.

The three committees are concerned that agencies sometimes provide these follow-on activities to large companies who are in incumbent positions or through contract bundling without written justification or without the statutorily required documentation of the impracticability of using the small business for the work. So that the SBA and the Congress can track the extent of this problem, the compromise text requires agencies to record and report each such occurrence and to describe in writing why it is impractical to provide the research project to the original SBIR company. Additionally, the compromise text directs the SBA to develop policy directives to implement the new subsection (v), Simplified Reporting Requirements. This subsection requires that the directives regarding collection of data be designed to minimize the burden on small businesses; to permit the updating the database by electronic means; and to use standardized procedures for the collection and reporting of data.

Section 103(a)(2) of P.L. 102–564, which reauthorized the SBIR program in 1992, added language to the description of a third phase award which made it clear that the third phase is intended to be a logical conclusion of research projects selected through competitive procedures in phases one and two. The Report of the House Committee on Small Business (H.Rpt. 102–554, Pt. I) provides that the purpose of that clarification was to indicate the Committee's intent that an agency which wishes to fund an SBIR project in phase three (with non-SBIR monies) or enter into a follow-on procurement contract with an SBIR company, need not conduct another competition in order to satisfy the Federal Competition in Contracting Act (CICA). Rather, by phase three the project has survived two competitions and thus has already satisfied the requirements of CICA, set forth in section 2302(2)(E) of that Act, as they apply to the SBIR program. As there has been confusion among SBIR agencies regarding the intent of this change, the three committees reemphasize the intent initially set forth in H.Rpt. 102–554, Pt. 1, including the clarification that follow-on phase III procurement contracts with an SBIR company may include procurement of products, services, research, or any combination intended for use by the Federal government.

Section 111. Federal and state technology partnership program

This section establishes the FAST program from the Senate version, which is a competitive matching grant program to encourage states to assist in the development of high-technology businesses. The House version does not contain a similar provision. The most significant changes from the Senate version in the compromise text are an extension of the maximum duration of awards from three years to five and the lowering of the matching requirement for funds assisting businesses in low income areas to 50 cents per federal dollar, as advocated by Ranking Member Velazquez of the House Small Business Committee. The compromise text com-

bines the definitions found in the Senate version of this section and the mentoring networks section.

Section 112. Mentoring networks

The Senate version sets forth criteria for mentoring networks that organizations are encouraged to establish with matching funds from the FAST program and creates a database of small businesses willing to act as mentors. The compromise text, except for relocating the program definitions to Section 111, is the same as the Senate text. The House version did not contain a similar provision.

Section 113. Simplified reporting requirements

This section is not in either the House or the Senate versions. It requires the SBA Administrator to work with SBIR program agencies on standardizing SBIR reporting requirements with the ultimate goal of making the SBA's SBIR database more user friendly. This provision requires the SBA to consider the needs of each agency when establishing and maintaining the database. Additionally, it requires the SBA to take measures to reduce the administrative burden on SBIR program participants whenever possible including, for example, permitting updating by electronic means.

Section 114. Rural Outreach Program extension

This provision, which was not in either the House or the Senate versions, extends the life and authorization for appropriations for the Rural Outreach Program of the Small Business Administration for four additional years through fiscal year 2005. It is the intent of the three committees that this program be evaluated on the same schedule and in the same manner as the FAST program. Among other things, the evaluation should examine the extent to which the programs complement or duplicate each other. The evaluation should also include recommendations for improvements to the program, if any.

TITLE II—BUSINESS LOAN PROGRAMS

SECTION 7(a) PROGRAM

The Conferees have been concerned that the availability of smaller 7(a) guaranteed business loans has not been keeping pace with the demands of the small business community. In 1994, SBA initiated the LowDoc pilot loan program to make loans of $100,000 and less more readily available. In 1995, the Congress established a guarantee level of 80% for LowDoc loans. As requested in the Administration's 2001 Budget, during consideration of H.R. 2615 in the House of Representatives, the 80% guarantee was extended up to loans of $150,000. The Senate and the House both acted to increase the size of the LowDoc loans. In addition, both Houses agreed to increase the guaranteed percentage from 80% to 85% in anticipation that small business lenders will be more willing to focus on the smaller sized loans.

In 1988, the Congress acted to establish the maximum 7(a) loan guarantee amount at $750,000. In order to keep up with inflation, the Committee bill increases the maximum guaranteed

amount to $1 million. Although a strict inflationary increase in the maximum guaranteed amount would be closer to $1.25 million, the Conferees believe it is prudent to limit the increase to $1 million, which will leave sufficient resources in the program for smaller loans.

The Conference Report also establishes a ceiling on the maximum loan size of $2 million. It has been reported to the Committee that the 7(a) guarantee has been used in conjunction with large loans in excess of $2 million. Under the Federal Credit Reform Act of 1991, appropriated subsidy dollars are used based on the gross amount of the loan. In these cases, the SBA loan guarantee is a relatively small portion of the loan, and the Conferees have questioned whether these loans meet the "credit elsewhere" standard for 7(a) loans and whether this is a good use of appropriated subsidy dollars. Therefore, the Committee agrees with the House of Representatives and has approved a ceiling of $2 million for the gross amount of a 7(a) loan.

In an effort to reduce the size of the credit subsidy rate, in 1997 Congress adopted a provision to reduce SBA's liability for accrued interest on 7(a) loans that are in default. Section 501 deletes this provision since the intended savings from this provision have failed to materialize.

For the past three years, the House and Senate Committees on Small Business have received reports about the increased number of early prepayments of large, long term SBA-guaranteed 7(a) loans. Previously, as the result of an increase in prepayments, the credit subsidy rate was adjusted upwards for Fiscal Year 1998. Subsequently, the number of prepayments continued to climb. In some cases, it has been reported that some small businesses were using the 7(a) program for short term bridge financing, when the program is designed to help small businesses obtain long term credit at a reasonable interest rate. The effect of early prepayments is to reduce the availability of long term 7(a) loans to small businesses that cannot obtain credit elsewhere.

The prepayment penalty approved by the Conferees would assess a fee to the borrower for early prepayment of any 7(a) loan with a term of 15 years or more. A penalty or fee will be assessed against any prepayment in excess of 25% of the outstanding amount of the loan during any of the first three years after disbursement. Five percent will be assessed in the first year, three percent in the second year, and one percent in the third year. If a prepayment in excess of 25% is made, the penalty will be assessed against the entire outstanding balance of the loan.

In 1995, Congress increased the guarantee fees charged to 7(a) borrowers in order to reduce the credit subsidy rate for the 7(a) program. The Senate agrees with provision, suggested by SBA and adopted by the House of Representatives, which simplifies the guarantee fee schedule. For loans totaling $150,000 or less, the guarantee fee would be two percent of the guarantee amount; for loans greater than $150,000 but less than $700,000, the fee would be three percent; and for loans of $700,000 or more, the guarantee fee would be three and ½ percent. In addition, the Conferees approved a new provision designed to be an incentive for lenders to

focus more on smaller loans. This provision allows a lender to retain 25% of the guarantee fee for loans of $150,000 or less.

In 1997, Congress approved a new provision for the 504 Certified Development Company program which allows borrowers to lease out 20% of the property being financed so long as the remaining 80% is occupied by the borrower. The Conferees have approved a similar provision for 7(a) borrowers. This new provision permits the property to be financed with a 7(a) loan 20 percent or less of the business space will be rented to tenants with the borrower occupying 60% of the remaining space.

MICROLOAN PROGRAM

This section makes programmatic and technical changes to the Small Business Administration's microloan program to make it more flexible to meet credit needs, more accessible to micro entrepreneurs across the nation, and more streamlined for lenders to make loans and provide management assistance. The Senate Committee on Small Business worked closely with industry and the SBA to develop these changes.

Congress created the microloan program as a pilot in 1991 (Public Law 102–140) to reach very small businesses that were not being served by traditional lenders or SBA's credit programs. Often minorities, women, and low-income individuals, these microentrepreneurs needed very little money to launch a business, but they could not get loans because they were considered unreliable or risky borrowers by traditional credit markets. Their often weak or non-existent credit histories or limited business experience caused traditional commercial lenders to shy away from making such loans. To fill this credit need, the Microloan program was designed to provide loans to non-profit intermediary lenders, who in turn provide fixed-rate loans of not more than $25,000, and on average, loans less than $10,000, to very small businesses. In addition, lending intermediaries receive an annual grant from the SBA to provide on-going technical assistance to small businesses. The technical assistance is fundamental to this program because it teaches microentrepreneurs how to manage a successful business, and running a successful business is key to loan repayment.

As industry experts and micro borrowers have testified numerous times regarding the link between financing and technical assistance, it is critical to the success of micro enterprise, in general, and the SBA microloan program, in particular. The low default rates of loans are evidence of the tremendous success of this program. Since the first microloan was made in 1992, the Federal government has had only one default in its loans to the intermediary loan providers. Equally impressive, the lending intermediaries have had losses of only three to five percent from small businesses, and the losses are fully covered by the mandatory loss reserve that each intermediary must maintain. Because of this successful track record, in 1997 the Congress voted to transform the Microloan program from a demonstration program to a permanent part of the array of SBA credit assistance programs.

There are currently 156 intermediaries and 19 non-lending technical assistance providers in the SBA Microloan Program. To date, the lending intermediaries have made 10,230 loans worth

some $105 million. The SBA reports that for every microloan, 1.7 jobs are created. The average loan to a microentrepreneur is about $10,000, with interest rates averaging 11 percent and an average term of 39 months.

Since the microloan program was started in 1991, it has grown from 35 to 156 intermediaries. The market has also changed. Thus, as the Senate Committee on Small Business reviewed the program for reauthorization, it worked with trade associations representing microlenders, the Small Business Administration, and individual microlenders to craft legislation that would meet market needs and foster the success of the program.

Chief among those changes, in large part to reflect inflation, is increasing the maximum loan amount and average loan sizes. The maximum loan amount would increase from $25,000 to $35,000; the average loan size for each intermediary's portfolio would increase from $10,000 to $15,000. For speciality lenders, those making smaller loans and receiving additional technical assistance to make them, this legislation would raise their average loan size from $7,500 to $10,000.

There are 156 intermediaries out of the 200 Congressionally authorized. Three states—Alaska, Louisiana and Wyoming—do not have any intermediaries, though they are working to find appropriate participants. While the need for more technical assistance is partially to blame for the inability of the program to grow and add intermediaries, the industry groups, local economic development leaders and the SBA have asked Congress to expand the program. This Conference Report not only increases the appropriation for direct microloans and technical assistance for each of the next three years to allow the program to expand, but it also takes a balanced approach to increasing the number of intermediaries authorized. The House and Senate Conferees agreed to increase the number of intermediaries from 200 to 300.

TITLE III—CERTIFIED DEVELOPMENT COMPANY PROGRAM

Under the Small Business Investment Act of 1958, 504 guaranteed loans for the following public policy goals are eligible for loans guarantees up to $1,000,000:

Business district revitalization;

Expansion of exports;

Expansion of minority business development;

Rural development;

Enhanced economic competition;

Changes necessitated by Federal budget cutbacks; and

Business restructuring arising from Federal mandated standards or policies affecting the environment or the safety and health of employees.

Both the House and Senate bill add loans to women-owned small businesses to the current list of public policy goals specified under the Act.

In August 1988, Congress approved legislation (P.L. 100–418) to increase the 504 loan guarantee ceiling to $750,000 from $500,000, except for a limited number of loans meeting the special public policy purposes. In order to adjust this amount to reflect inflation, the loan guarantee ceiling would need to be increased to

approximately $1,250,000. Therefore, the Senate agreed with the position taken by the House and approved an increase to $1,000,000. The House and Senate further agreed to increase the maximum guaranteed amount on loans made to meet the public policy purposes to $1,300,000 from $1,000,000.

PROGRAM FEES

In 1995, at the urging of the SBA and the National Association of Development Companies (NADCO), the trade organization that represents the 504 lenders and Certified Development Companies (CDCs), both the House and Senate agreed to legislation mandating that the 504 program be supported entirely by fees paid by the private sector. These new fees were imposed beginning in FY 1996. Subsequently, the SBA undertook an extensive review of the performance of the 504 program, and the credit subsidy rate, which determines the amount of money that must be maintained in the loss reserve account for this program, was increased from 0.57% to 6.85%, an increase of 1200%. Since the 504 program was being funded only by fees paid by the private sector, the fees paid by the borrower in FY 1997 were increased from 0.125% to 0.875%, which placed a financial burden on 504 borrowers. The Conferees are pleased to note that since FY 1997 the credit subsidy rate estimate has dropped resulting in a decrease in borrower fees from 0.875% to 0.472% for FY 2001. The bill authorizes SBA to collect these fees to offset the credit subsidy cost through September 30, 2003.

PREMIER CERTIFIED LENDERS PROGRAM

In October 1994, Congress approved the Premier Certified Lenders Program on a pilot basis (P.L. 103–403). In December 1997, this pilot program was extended by Congress, and the limitation on the number of CDCs that could participate in the PCLP was removed (P.L. 105–135). The Senate noted the success of the program and has agreed with the House of Representatives to make the PCLP a permanent part of the 504 program. In making the PCLP pilot a permanent part of the 504 program, the Conferees expect the SBA to continue its efforts to work with the CDC community to take complete advantage of the strengths of the most successful and well-run CDCs.

ASSET SALES

In response to the plans by the SBA to undertake the sale of assets held by the Agency, both the Senate and House approved a provision that requires the SBA to notify CDCs prior to including a 504 loan in an asset sale. The Committee adopted this section in order to insure there is an open dialogue and cooperation between the Agency and the relevant CDCs. For the past four years, the Committee has encouraged the SBA to move forward with its asset sales program; however, we do not believe this step forward should necessarily harm its lending partners.

LOAN LIQUIDATION PROGRAM

In response to reports about low recoveries after the default of a 504 loan, the Congress approved legislation in 1996 to establish

the Loan Liquidation Pilot Program (P.L. 104–208). The pilot liquidation program allowed up to 20 qualified CDCs to liquidate loans that they originated. It was implemented by the SBA in June 1997. The results to date for the pilot program are encouraging, and the Conferees have concluded that it is in the best interest of the 504 program to allow additional CDCs to conduct their own liquidation and foreclosure activities. The Committee is pleased to note that the recovery estimate for FY 2001 has increased for the first time since 1995. The Administration's estimate for FY 2001 is 31 percent, and the assumptions used by OMB and the SBA do not include an increase in recoveries that should result from making the Loan Liquidation Program permanent. The Conferees urge the SBA to continue its efforts and to make maximum use of the Loan Liquidation Program so that the recovery level will increase further.

A number of CDCs have demonstrated the ability through the pilot program and other lending programs in which they participate, to perform such activities, and have indicated a willingness to perform such functions to supplement SBA's activities in this area. Accordingly, the Conference Report makes the pilot liquidation program permanent and requires SBA to permit certain CDCs to foreclose and liquidate defaulted loans that they have originated under the 504 loan program.

In order to participate in the loan liquidation program, a CDC must have made at least 10 loans per year for the past three fiscal years, and it must have at least one employee with two years of liquidation experience or be a member of the Accredited Lenders Program with at least one employee with two years of liquidation experience. Representatives of either group must complete a training program developed by SBA. Participants in the pilot liquidation program and Premier Certified Lenders automatically qualify for the permanent liquidation program.

CDCs eligible to participate in liquidation activities are required to perform all liquidation and foreclosure functions pursuant to a liquidation plan approved by SBA. The Conference Report also authorizes CDCs to take other actions, in lieu of full liquidation or foreclosure, to mitigate loan losses pursuant to a workout plan. Prior to a CDC commencing liquidation or foreclosure activities and prior to engaging in other actions to mitigate loan losses, a CDC is required to provide the SBA with a liquidation plan or workout plan, as the case may be, for approval. The SBA has 15 days to approve a liquidation plan or a workout plan. The legislation further permits CDCs to litigate matters relating to their liquidation activities subject to SBA monitoring of such litigation.

SBA is authorized to suspend or revoke the authority of a CDC to liquidate loans if the CDC either does not meet the eligibility requirements or fails to comply with any statutory or regulatory requirement relating to the foreclosure or liquidation of loans or any other applicable provision of law. CDCs are also prohibited from taking any action that would result in an actual or apparent conflict of interest in connection with the liquidation of their loans.

The bill requires the SBA to submit annually to Congress a report on the results of the delegation of authority to CDCs to liq-

uidate and foreclose loans and a comparison of such results to SBA's liquidation performance.

TITLE IV—CORRECTIONS TO THE SMALL BUSINESS INVESTMENT ACT OF 1958

DEFINITIONS

The provisions generally make some technical improvements to the operations of the SBIC Program. Under current law, national banks, member banks of the Federal Reserve, and nonmember insured banks as permitted by State law are allowed to invest in SBICs. The Senate and House Committees approved a provision to allow any Federal Savings Association to make similar investments in SBICs.

The Committees also approved a provision to clarify what is meant by the term "long-term" as found in Section 103 of the Small Business Investment Act. It is the Committees' understanding that the SBA has construed "long term" to mean a minimum of five years for all SBIC investments other than those made to "disadvantaged businesses," when "long term" is construed to mean four years. The Committee believes the Agency's interpretation of "long-term" to be overly restrictive. Under the Generally Accepted Accounting Principles (GAAP), the accounting principles that govern business commerce in the United States, the term "long-term" is defined as any period of time greater than one year. Therefore, the Conferees have adopted a definition of "long-term" to be a period of time of not less than one year.

SUBSIDY FEES

The President's FY 2001 budget request for SBA, as amended, included a "0" credit subsidy rate for the SBIC Debenture program. The House and Senate Committees have been informed by SBA staff that the income generated by fees paid by the SBICs to SBA will actually exceed the amounts needed to fund the reserve account required under the Federal Credit Reform Act of 1990 (2 U.S.C. 661a). The Conferees believe it is important that the SBICs should not be required to pay more in fees than is necessary to bring the credit subsidy rate to "0." Therefore, the Conferees have adopted a provision, similar to the one it adopted for the 504 Development Company Program in 1996, which directs the SBA to reduce the annual fee paid by the SBIC from 1 percent to the amount necessary to reduce the credit subsidy rate to "0." The new provision applies to the SBIC Debenture and Participating Securities programs.

DISTRIBUTIONS

The Senate Committee approved a technical change that permits a qualifying SBIC to make a quarterly tax distribution any time during the applicable calendar quarter. The House passed a similar provision in H.R. 3845. Conferees concur with this provision. Under current law, SBICs may make prioritized payment distributions, profit distributions, and other optional distributions on any date with prior SBA approval. Tax distributions, however, may only be made at the end of calendar year quarters. The SBIC com-

munity has informed the Senate Committee that the practical impact of this restriction is that SBICs are forced to delay otherwise permitted interim distributions (including tax distributions) to the end of a quarter or split their distributions into two distributions. Postponing an entire distribution to the end of a quarter has negative cash flow and internal rate of return (IRR) implications. Consequently, most SBICs decide to split their distributions, making tax distributions at the end of the calendar quarter, while making all other distributions at any time during the quarter. Splitting distributions requires the preparation, submission, and SBA review of two sets of documents. The result is an inefficient use of time and resources by SBA and the SBICs.

TITLE V—REAUTHORIZATION OF SMALL BUSINESS PROGRAMS

Sec. 502. Reauthorization of Small Business Programs

Title I of the bill authorizes appropriations for SBA's business loan programs and certain other SBA programs. Included among the loan programs are Section 7(a) Guaranteed Business Loans, 504 Development Company Loans, Microloans, Disaster Loans, and Small Business Investment Company Debentures and Participating Securities.

Funding for these SBA programs is detailed in the following chart. As indicated, the bill is a three year authorization. The Conferees have carefully considered the Administration's funding request for each program as well as recommendations from small business owners, individual entrepreneurs, the lending community, and members of this Conference.

PROGRAM LEVELS FOR SBA REAUTHORIZATION BILL

[In millions of dollars unless otherwise noted]

Program	Current level FY00	FY01 budget request	SBA 3 year authorization request 01/02/03	Reauthorization bill 2001	Reauthorization bill 2002–2003	Reauthorization bill
7(a) (in billions)	$9.8	$11.5	$14.5/15/16	$14.5	$15	$16
504 (in billions)	$3.5	$3.75	$5/5.25/5.5	$4	$4.5	$5
SBIC:						
Debentures	$800	$500	$1,000/1,200/1,400	$1,500	$2,500	$3,000
Participating Securities	$1,350	$2,000	$2,000/2,500/3,000	$2,500	$3,500	$4,000
Microloan:						
Technical Assistance	$23.2	$45.0	$59/80/100	$45	$60	$70
Direct Loans	$29	$60	$75/80/85	$60	$80	$100
Guaranteed Loans	carryover	$0	$40/40/40	$50	$50	$50
Delta	$1,000		$0/0/0	$500	$500	$500
Surety Bond Guarantee:						
General Program	$1,800	$1,700	$2,000/2,000/2,000	$4,000	$5,000	$6,000
Preferred Program				50% of total	50% of total	50% of total
SCORE	$3.5	$5.0	$5.9/8/8.5	$5	$6	$7
SBDC	$84.5	$85	$95/95/95	$125	$125	$125
HUBZone	$2.0	$5.0	$6/6/6	$10	$10	$10

DRUG-FREE WORKPLACE PROGRAM

In 1998, the Congress enacted the Drug-Free Workplace Demonstration Program under the leadership of Senator Paul Coverdell of Georgia. The purpose of the program is to provide financial and technical assistance to small business concerns seeking to establish a drug-free workplace program. The law authorized $10 million in FY 1999 and 2000. Section 809 extends the Drug-Free Workplace Program for FY 2001, 2002 and 2003 and authorizes $5 million for each in the period. The Conference Report recognizes the important work of Senator Coverdell and names the program in his honor.

HUBZONE PROGRAM

This subsection would increase the annual authorization for the HUBZone Program to $10,000,000 for fiscal years 2001, 2002, and 2003. It is the Conferees intention that funds appropriated under the authorization in this subsection shall be used for direct HUBZone Program expenses and should not be diverted by the SBA for any other program or account that is not part of the HUBZone Program.

VERY SMALL BUSINESS PROGRAM

This section would extend the Very Small Business Program pilot. The pilot program is targeted at firms seeking to do business with the Federal government with 15 or fewer employees and with less than $1 million in annual receipts. To date, SBA has had insufficient experience and data to evaluate the program, which SBA failed to implement until March 4, 1999, more than four years after Congress enacted the program. The Conferees anticipate that new reporting requirements set forth in the Federal Procurement Data System will provide SBA with sufficient data to evaluate the program over the next three years.

SOCIALLY AND ECONOMICALLY DISADVANTAGED BUSINESSES PROGRAM

The Federal Acquisition Streamlining Act of 1994 (P.L. 103–355; 15 U.S.C. 644 note) establishes procurement procedures to help small business concerns owned and controlled by socially and economically disadvantaged individuals to meet certain Federal procurement goals. The procurement procedures are scheduled to terminate on September 30, 2000. The Conference Report approved an extension of the program for three years, through September 30, 2003.

COSPONSORSHIP

This program provides a means of leveraging the scarce resources at SBA, the Agency engages in a variety of cosponsorships with public and private sector organizations. Current statutory language refers only to training as a permitted cosponsored activity with for-profit entities. SBA defines training as being limited to narrower topics of interest to relatively small numbers of business owners or those in certain types of businesses. There are, however, broader business-related topics, such as the effective use of technology, e-commerce, exporting/importing, about which all small businesses should be informed and educated.

The SBA has recommended that the terms "information and education" be added to the types of assistance that can be provided to small businesses. SBA believes this change will give it the flexibility in the types of assistance that can be provided to small businesses. The Conferees agreed with the SBA's recommendation, concluding that while traditional training in these areas may also be offered, the need to reach broader audiences with timely, updated information and education is vital to the success of the largest number of small businesses.

TITLE VI: HUBZONE PROGRAM

The HUBZone program aims to direct portions of Federal contracting dollars into areas of the country that in the past have been out of the economic mainstream. HUBZone areas, which include qualified census tracts, poor rural counties, and Indian reservations, often are relatively out-of-the-way places that the stream of commerce passes by, and thus tend to be in low or moderate income areas. These areas can also include certain rural communities and tend, generally, to be low-traffic areas that do not have a reliable customer base to support business development. As a result, business has been reluctant to move into these areas. It simply has not been profitable, without a customer base to keep them operating.

The HUBZone Act seeks to overcome this problem by making it possible for the Federal government to become a customer for small businesses that locate in HUBZones. While a small business works to establish its regular customer base, a Federal contract can help it stabilize its revenues and remain profitable. This gives small business a chance to get a foothold and provides jobs to these areas. New business and new jobs mean new life and hope for these communities.

Since the HUBZone Act was adopted in the Small Business Reauthorization Act of 1997, the Small Business Administration has been implementing the program. On March 22, 1999, SBA began accepting applications from interested firms. Experience to date has revealed several difficulties with implementation, which the Senate Committee has sought to rectify in this legislation.

Subtitle A—HUBZones in Native America Act

One such problem was an unintended consequence of wording in the 1997 legislation that inadvertently excluded Indian Tribal enterprises and Alaska Native Corporations from participation. The definition of "HUBZone small business concern" specified that eligible small businesses must be 100% owned and controlled by U.S. citizens. This provision sought to insure that HUBZone benefits, financed by the American taxpayer, should be available only for U.S. beneficiaries.

However, since citizens are "born or naturalized" under the Fourteenth Amendment, ownership by citizens implies ownership by individual flesh-and-blood human beings. Corporate owners and Tribal government owners are not "born or naturalized" in the usual meanings of those terms. Thus, the Small Business Administration found that it had no authority to certify small businesses

owned wholly or partly by Alaska Native Corporations and Tribal governments.

Since Native American communities were always intended to benefit from HUBZone opportunities, the Committee has included language to make such firms eligible. On many reservations, particularly the isolated ones, the only investment resources available are the Tribal governments. Excluding those governments from investing in their own reservations means, in practical terms, excluding those reservations from the HUBZone program entirely. Similarly, Alaska Native Corporations have corporate resources that are necessary to make real investments in rural Alaska and to provide jobs to Alaska Natives who currently have no hope of getting them.

The Senate Committee was guided by three broad principles in crafting this legislation. First, no firm should be made eligible solely by virtue of who it is. For example, Alaska Native Corporations will not be eligible solely because they are Alaska Native Corporations. Instead, Alaska Native Corporations and Indian Tribal enterprises should be eligible only if they agree to advance the goals of the HUBZone program: job creation and economic development in the areas that need it most.

Second, the Senate Committee sought to make the HUBZone program conform to existing Native American policy. The Committee is aware of controversy over whether to change Alaska Native policy so that Alaska Natives exercise governmental jurisdiction over their lands, just like Tribes in the Lower 48 States do on both their reservations and trust lands. The Alaska Native Claims Settlement Act (ANCSA) of 1971 deliberately refrained from creating Alaska Native jurisdictions in Alaska, and this Committee's legislation is intended to conform to existing practice in ANCSA.

The third principle underlying this bill is that Alaska Natives and Indian Tribes should participate on as even a playing field as possible. Exact equivalence is not possible because the Federal relationship with Alaska Natives differs significantly from the relationship with Indian Tribes, and also because Alaska is a very different State from the Lower 48. However, ANCSA provided that Alaska Natives should be eligible to participate in Federal Indian programs "on the same basis as other Native Americans." The House Conferees have agreed to adopt the Senate provision.

Subtitle B—Other HUBZone Provisions

Subtitle B contains several technical changes to clarify interpretive issues concerning the original HUBZone Act, as well as new language to correct an unforeseen situation regarding procurement of commodities. Subtitle B makes a further amendment to the categories of eligible HUBZone firms, to include the HUBZone program as one of the tools Community Development Corporations can use in rebuilding their communities and neighborhoods.

The Conference Report includes a technical correction to the definition of "qualified census tract." It also makes two major substantive changes to the definition of "qualified nonmetropolitan county."

First, the definition is clarified to ensure that nonmetropolitan counties in the HUBZone program are those that were considered to be such as of the time of the last decennial (10 year) census. The

HUBZone program relies on census tracts selected in metropolitan areas based on the last census, so that a metropolitan county—in order to have such census tracts—must have been considered metropolitan at that time. A nonmetropolitan county may be eligible as a HUBZone based on income data collected during the census or on unemployment data produced annually by the Bureau of Labor Statistics.

During the ten-year period between each census, some counties become so integrated into the commercial activities of a metropolitan area that they are moved from the nonmetropolitan category to the metropolitan category. Such counties would become ineligible for HUBZone participation. They would not have been metropolitan counties at the time of the last census, so no qualified census tracts would have been selected there. They would also no longer be nonmetropolitan counties, so the income and unemployment tests available to such counties would no longer apply. Thus, counties that change from nonmetropolitan to metropolitan, in the period between each census, would become ineligible until the next census is taken. The Conference Report corrects this problem by freezing, for HUBZone purposes, the categories of metropolitan and nonmetropolitan counties as they stood at the time of the last census.

The second major change to the definition of "qualified nonmetropolitan county" is the addition of a grandfathering clause. Because the Bureau of Labor Statistics (BLS) issues new county-level unemployment data annually, nonmetropolitan counties may shift into and out of eligibility on a yearly basis. The Committee believes that this type of movement is too fluid for a program that should be stable in its first few years. Companies will be confused about the merits of the program if firms lose and gain eligibility from year to year. A company will not want to invest in such a county only to have it suddenly become ineligible, due to new BLS data, before the company has even had the opportunity to recoup its investment by participating in the HUBZone program.

The legislation seeks to stabilize this situation by looking at the unemployment picture over a three-year period for nonmetropolitan counties. It also provides that companies in such a county will have a one year period to pursue HUBZone opportunities and wrap up its activities under the program, after such a county becomes ineligible due to new BLS data. A similar one year period is provided for changes that may result due to enactment of this legislation.

COMMODITIES PROCUREMENT

In 1999, the Senate Committee became aware of potential implementation problems in HUBZone procurements of certain commodities, particularly food-aid commodities purchased by the Department of Agriculture (USDA), that could lead to unintended and anti-competitive results. Because bids for commodities generally tend to fall within a narrow range of prices, the 10% price evaluation preference that currently exists could be overwhelmingly decisive. In such purchases, a handful of HUBZone firms could secure significant portions of these markets. This, in turn, could prompt other vendors to abandon these markets, thus reducing USDA's vendor base and reducing competition. These are results that

would be contrary to the goals set forth in § 2 of the Small Business Act.

To prevent irreparable harm to USDA's vendor base until the matter could be addressed more comprehensively in this legislation, Senator Bond sponsored a proviso in the Fiscal 2000 Agriculture Appropriations Act. As adopted in the conference report, § 751 of that Act limited the price evaluation preference to 5% for up to half of the total dollar value of each commodity in a particular tender (solicitation). It also prohibited contract awards to a HUBZone firm that would be of such magnitude as to require the firm to subcontract to purchase the commodity being procured, since such a scenario would simply allow these firms to purchase commodities from subcontractors and in turn sell them to the Government at inflated prices.

The legislation seeks to address this issue on a more permanent basis. The Conferees are aware that USDA relies upon a complex computer program to evaluate commodities bids, and thus the Conference Report seeks to set a long-term policy that will not require frequent and expensive changes to this software. Although the legislation reduces the level of HUBZone program incentives that otherwise would be available under the HUBZone Act, the bill still seeks to ensure substantial awards to HUBZone concerns, while protecting existing incentives available to other types of small business concerns. The Conferees intend that these incentives help commodities procurements contribute their fair share toward achieving the Government-wide goal of 23% of prime contract dollars to small business concerns, but without the anti-competitive effects of awarding overwhelming shares of the market to HUBZone firms.

COMMUNITY DEVELOPMENT CORPORATIONS

For reasons similar to the problems preventing HUBZone program participation by Indian Tribal enterprises and Alaska Native Corporations, small businesses owned by Community Development Corporations were also inadvertently made ineligible by the original HUBZone Act. The Conference Report has included a provision to correct this problem. As with Tribal enterprises and Alaska Native Corporations, addressed in Subtitle A of this Title, Community Development Corporations are not made automatically eligible. These firms must agree to advance the job-creation goals of the HUBZone program. Specifically, as other businesses must do, these enterprises must maintain their principal office in a HUBZone and employ 35% of their workforce from one or more HUBZones.

TITLE VII: NATIONAL WOMEN'S BUSINESS COUNCIL REAUTHORIZATION

The Senate bill would re-authorize the National Women's Business Council for three years, from FY 2001 to 2003, and to increase the annual appropriation from $600,000 to $1 million. The increase in funding will allow the Council to: support new and ongoing research; produce and distribute reports and recommendations prepared by the Council; and create an infrastructure to assist states in developing women's business advisory councils, coordinate sum-

mits and establish an interstate communication network. The House Conferees agree in part with the Senate's title.

The increase will also be used to assist Federal agencies meet the procurement goal for women-owned businesses established by Congress in 1994 under section 15(g) of the Small Business Act. By law, Federal agencies must strive to award women-owned small businesses at least 5 percent of the total amount of Federal prime contract dollars. The Conferees feel strongly that Federal agencies should meet the five-percent goal, and it supports the Council's plan to expand its efforts to increase the percentage of prime contracts that go to women-owned businesses. Based on current data, women are not receiving awards proportionate to their presence in the economy. For example, women-owned businesses make up 38 percent of all small businesses, yet women-owned businesses received only 2.42 percent of the $189 billion in Federal prime contracts in FY1999.

According to the National Foundation for Women Business Owners, over the past decade the number of women-owned businesses in this country has grown by 103 percent to an estimated 9.1 million firms. They generate almost $3.6 trillion in sales annually and employ more than 27.5 million workers. With the impact of women-owned businesses on our economy increasing at an unprecedented rate, Congress relies on the Council to serve as its eyes and ears as it anticipates the needs of this burgeoning entrepreneurial sector. Since it was established in 1988, the Council, which is bi-partisan, has provided important unbiased advice and counsel to Congress.

This Conference Report allows the Council to continue to perform its duties at the level it has done so far, as well as expand its activities to support initiatives that are creating the infrastructure for women's entrepreneurship at the state and local level.

TITLE VIII: MISCELLANEOUS PROVISIONS

LOAN APPLICATION PROCESSING

The Senate Conferees agreed with the House provision directing the SBA to conduct a study in one year from the date of enactment to determine the average time SBA requires to process an SBA-guaranteed loan.

APPLICATION OF OWNERSHIP REQUIREMENTS

The Conferees agreed to a provision to clarify the impact of community property state laws to determine the eligibility for applicants for assistance under SBA's credit programs. The new provision applies to the Small Business Act and the Small Business Investment Act of 1958. It states that eligibility of an applicant under the SBA's credit programs will be determine without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

SUBCONTRACTING PREFERENCE FOR VETERANS

The House Conferees agreed with the Senate provision to clarify that service-disabled veterans are on the same preference level

as small disadvantaged businesses (SDBs) and women-owned small businesses for Federal contracting opportunities. When the Congress enacted the Veterans Entrepreneurship and Small Business Development Act (P.L. 106–50), it was not absolutely clear that the contracting preferences were to apply specifically to service-disabled veterans. The Conferees intend for this section to clear up any misunderstandings that might remain.

SMALL BUSINESS DEVELOPMENT CENTER PROGRAM FUNDING

The House Conferees agreed with the Senate provision to clarify the funding formula for States to receive funds under the Small Business Development Center (SBDC) program. This funding formula was developed in close consultation with the SBA and the SBDC association. Importantly, the formula sets forth how the minimum funding level will be applied. The Conference Agreement assures that each SBDC will receive a minimum of $500,000 annually unless the annual appropriation from Congress is less than $81,500,000. If the annual appropriation is more than $90,000,000, the minimum annual amount shall be $500,000 plus a percentage amount equal to the percentage amount by which the appropriation exceeds $90,000,000.

NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION CORRECTION

The Conferees have agreed to a technical change that defers for one year the requirement that the National Veterans Business Development Corporation provide matching funds. The authorization level for the Corporation to receive Federal funds has been adjusted to the following: $4,000,000 in fiscal years 2001 and 2002, and $2,000,000 in fiscal years 2003 and 2004.

PRIVATE SECTOR RESOURCES FOR SCORE

The Committees on Small Business for the Senate and House of Representatives have followed the success and growth of the SCORE program over the past five years. Much of the success or the program is tied to its ability to obtain in-kind and monetary contributions from the private sector to supplement the annual Congressional appropriation. Companies have donated computers and Internet services to support the efforts of 14,000 SCORE volunteers to provide counseling to small businesses throughout the United States. The section approved by the Conferees makes it clear that SCORE may solicit cash and in-kind contributions from the private sector to carry out its functions under the Small Business Act.

CONTRACT DATA COLLECTION

The Senate Conferees agreed with the House Conferees to include a new section that makes improvements in the collection of data on the growing practice by Federal agencies to bundle multiple contract requirements into one large contract. This practice has had a detrimental impact on the ability of small businesses to compete for Federal contracts. The new section clarifies the definition of a bundled contract and requires the SBA to prepare an an-

nual report for the House and Senate Committees on Small Business. The section also strengthens the ability of the Administrator of SBA to challenge an agency decision to bundle multiple contract requirements.

PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS

The Senate Conferees agreed with the House Conferees to include a new section to give Federal agencies the authority to restrict competition for any contract for the procurement of goods or services by the Federal government to small businesses owned and controlled by women who are economically disadvantaged. The SBA Administrator may waive the requirement that the businesses must be owned by women who are economically disadvantaged if it is determined the business is in an industry in which small business concerns owned and controlled by women are substantially under represented.

The purpose of H.R. 5545 the "New Markets Venture Capital Program Act of 2000," is to promote economic development, wealth and job opportunities in low income (LI) areas by encouraging venture capital investments and offering technical assistance to small enterprises. The central goal of the legislation is to fulfill the unmet equity investment needs of small enterprises primarily located in LI areas.

The bill creates a developmental venture capital program by amending the Small Business Investment Act to authorize the U.S. Small Business Administration (SBA) to enter into participation agreements with 10 to 20 New Markets Venture Capital (NMVC) companies in a public/private partnership. It further authorizes SBA to guarantee debentures of NMVC companies to enable them to make venture capital investments in smaller enterprises in LI areas. And it authorizes SBA to make grants to NMVC companies, and to other entities, for the purpose of providing technical assistance to smaller enterprises that are financed, or expected to be financed, by such companies.

The Act will also enhance the ability of existing Small Business Investment Companies (SBICs) to invest in LI areas. It allows them to have access to the leverage capital authorized under the program, without entering into a participation agreement with SBA to act as an NMVC company.

Finally, enhances the ability of existing Specialized Small Business Investment Companies (SSBICs) to invest in LI areas. It allows them to have access to the operational assistance grant funds authorized under the program, also without entering into a participation agreement with SBA to act as an NMVC company.

Despite our unprecedented economic prosperity, there remain places in America that have yet to reap the benefits of this prosperity. Although many Americans enjoy strong income and wage growth, millions in underserved areas still do not have access to jobs or entrepreneurial opportunities.

For example, between 1997 and 1998, the median income for the nation's households rose 3.5 percent in real terms. Yet 12.7 percent of Americans (34.5 million people) still live below the poverty level. These 34.5 million people live in the inner cities and rural

areas of America, where jobs are scarce and there is little to attract would-be small business investors.

The overall poverty rate for the U.S. in 1998 was 12.7 percent, but the poverty rate among both African American and Latino populations was 26 percent—double the national average. In rural communities, poverty remains a persistent problem. Job growth is well below the national average, with unemployment hovering at or above 14%. Additionally, the unemployment levels in many urban communities range from 7.5% for African Americans to 6.4% for Hispanics. Both are nearly double the national average.

It is not enough to merely create jobs in these pockets of poverty. Rather, we must create a small business backbone, an economic infrastructure to enable these communities to develop their full potential and participate fully in the economic mainstream.

H.R. 5545 uses SBA resources targeted to corporations and small businesses that want to do business in the untapped markets of our underserved communities. It is a wise investment in the hopes of millions of families who are not sharing in the American Dream.

There is a pressing need for this legislation. There are virtually no institutional sources of equity capital in distressed communities. The national venture capital industry for community development comprises only 25 firms managing approximately $157 million. Only 14 of those are capitalized at $5 million or more—the absolute minimum for economic viability.

H.R. 5545 will tap unrealized resources in our nation, thus benefiting our economy as a whole. It will increase the attractiveness of investment in places with high unemployment and too few businesses. The more the business community knows about these new markets, the more likely they will invest in them—and the more businesses that invest in these new markets, the more these areas will share in our nation's economic prosperity. This legislation provides a road map for the next generation to succeed, and it makes good sense from both a public policy and business standpoint.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designates the bill as the "New Markets Venture Capital Program Act of 2000."

Section 2. New Markets Venture Capital Program

This Section amends Title III of the Small Business Investment Act of 1958 by adding new Sections 351 through 368 to establish the "New Markets Venture Capital Program."

H.R. 5545 will add the following new sections to the Small Business Investment Act:

Section 351. Definitions

Establishes definitions for developmental venture capital, New Markets Venture Capital Companies, low- or moderate-income geographic area, operational assistance, participation agreement, and

Specialized Small Business Investment Companies as used in the legislation.

"Developmental venture capital" is defined as equity capital invested in small businesses, with a primary objective of fostering economic development in low income geographic areas. For the purposes of this Act, the Committee considers equity capital investments to mean stock of any class in a corporation, stock options, warrants, limited partnership interests, membership interests in a limited liability company, joint venture interests, or subordinated debt with equity features if such debt provides only for interest payments contingent upon earnings. Such investments must not require amortization. They may be guaranteed; but neither the Equity capital investment nor the guarantee may be secured.

A "New Markets Venture Capital Company" is defined as a company that has been approved by the Administration to operate under the New Markets Venture Capital Program, and has entered into a participation agreement with the Administration to make equity investments and provide technical assistance to small enterprises located in low- or moderate-income areas.

The term "low income geographic area" means a census tract, or the equivalent county division as defined by the Bureau of the Census for purposes of defining poverty areas, in which the poverty rate is not less than 20 percent. In those areas in a metropolitan area 50 percent or more of the households must have an income equal to less than 60 percent of the median income for the area. In rural areas the median household income for a tract must not exceed 80 percent of the statewide median household income. This definition also includes any area located within a HUBZone, an Urban Empowerment Zone or an Urban Enterprise Community, or a rural Empowerment Zone or a Rural Enterprise Community.

The term "low income individual" is included for the purpose of allowing waivers of the low income area requirement for areas of significant economic disadvantage that may not otherwise qualify. A low income individual is defined as someone whose income does not exceed 80 percent of the area median income in metropolitan areas, or 80 percent of either the area or statewide median income in rural areas.

The term "operational assistance" is defined as management, marketing, and other technical assistance that assists a small business concern with business development.

"Participation agreement" is defined as an agreement between the Administration and an NMVC Company detailing the company's operating plan and investment criteria; and requiring that investments be made in smaller enterprises at least 80 percent of which are located in low income geographic areas.

"Specialized Small Business Investment Company" means any small business investment company that was licensed under section 301(d) as in effect before September 30, 1996.

Section 352. Purposes

Describes the purposes of the Act, which are:

(1) to promote economic development and the creation of wealth and job opportunities in low- or moderate-income geographic areas and among individuals living in such areas by

encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

(2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small entrepreneurs located in low- or moderate-income areas; to be administered by the Small Business Administration; to enter into a participation agreement with NMVC companies; to guarantee debentures of NMVC companies to enable each such company to make developmental venture capital investments in smaller enterprises in low- or moderate-income geographic areas; and to make grants to NMVC companies for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

Section 353. Establishment

Authorizes the SBA to establish the NMVC Program, under which the SBA may form New Markets Venture Capital companies by entering into participation agreements with firms that are granted final approval under the requirements set forth in Section 354 and formed for the purposes outlined in Section 352.

This Section also authorizes SBA to guarantee the debentures issued by the NMVC Companies as provided in Section 355; and to make operational assistance grants to NMVC Companies and other entities in accordance with Section 358.

Section 354. Selection of the New Markets Venture Capital Companies

Establishes the criteria to be followed by SBA in selecting the NMVC Companies. This section provides for specific selection criteria to be developed by the SBA—based on the criteria enumerated in this legislation—and designed to ensure that a variety of investment models are chosen and that appropriate public policy goals are addressed. Geographic dispersion must also be taken into account in the selection process.

H.R. 5545 requires Program participants to satisfy the following application requirements:

(1) Each NMVC must be a newly formed, for-profit entity with at least $5 million of contributed capital or binding capital commitments from non-Federal investors, and with the primary objective of economic development in low- or moderate-income geographic areas.

(2) Each NMVC's management team must be experienced in some form of community development or venture capital financing.

(3) Each NMVC must concentrate its activities on serving its investment areas, and submit a proposal that will expand economic opportunities and address the unmet capital needs within the investment areas.

(4) Each applicant must submit a strong proposal to provide operational assistance, including the possible use of outside, licensed professionals.

(5) Each NMVC must have binding commitments (in cash or in-kind) for operational assistance and overhead, payable or

available over a multi-year period not to exceed 10 years, in an amount equal to 30% of its committed and contributed capital. These commitments may be from any non-SBA source and the cash portion may be invested in an annuity payable semi-annually over a multi-year period not to exceed 10 years.

The Committee is well aware that it will be difficult for some NMVCs to raise their entire operational assistance match during the application stage. Those NMVCs that are unable to raise the required match, but have submitted a reasonable plan to the Administrator to meet the requirement, may be granted a conditional approval from the Administrator and be allowed to draw one dollar of federal matching funds for every dollar of private funds raised provided that (for the purpose of final approval) they raise at least 20 percent of the required matching funds, and have at least 20 percent of the match on hand when applying for additional grant funds.

The Committee believes that it is important to give NMVCs the flexibility to obtain the required private operational assistance funds, however, from a safety and soundness standpoint, federal assistance funds should not be placed at greater risk than private assistance funds.

This conditional approval shall be made with the expectation that the required capital funding commitments will be obtained within two years of the conditional approval.

The bill also authorizes SBA to select firms that have experience with investing in enterprises located in low income areas to participate as NMVCs. SBA will enter into an agreement with each NMVC setting forth the specific terms of that firm's participation in the program. Each agreement will be tailored to the particular NMVC's operations and will be based on the NMVC's own proposal, submitted as part of the NMVC's application form. The agreement will require that investments be made by the NMVC in smaller enterprises, at least 80% of which are located in low income geographic areas.

In order for an investment to be counted toward the 80% goal under H.R. 5545, the investment must be made in a small business concern located in an LI area. This ensures that the New Markets Venture Capital Company Program will focus investment capital where it is most needed, rather than duplicating existing SBA programs.

The Committee believes that the targeting of low-income communities is the most important element of H.R. 4530. If Congress and the Administration are serious about helping our nation's low-income cities, towns, and rural areas we should demonstrate our commitment by ensuring that this bill is focused on these areas. The Committee has accomplished this by requiring that 80% of all investment will concentrate on those needing this help the most.

By clearly focusing this legislation on the communities that need assistance the most, the Committee has maximized the impact of this program. It is also the Committee's view that by investing the majority of funds in low income communities, we will not only provide the benefit of increased opportunities for working families, but H.R. 4530 will also provide the benefit of improving the physical community. This double benefit ensures that the resources

spent under H.R. 4530 will provide the maximum economic impact on the low- or moderate-income communities to which this bill is targeted.

The Committee recognizes that the legislation may offer some benefits to working families located outside of the LMI areas as defined by the legislation. To address this concern, up to 20% of a New Markets Venture Capital Company's investments are permitted in those businesses that are in need of equity investment, but fall outside the LMI areas as defined by the legislation. However, it is the Committee's strong opinion that to reduce the targeting below 80% would significantly diminish the impact in the LMI areas, and would be contrary to the intent of the program. In addition, the Act includes a provision allowing the Administrator to waive the low income designation requirements for areas of significant economic distress that would not otherwise qualify.

Section 355. Debentures

Authorizes SBA to guarantee debentures issued by NMVC companies. The terms of the guaranteed debentures issued under this section may not exceed 15 years and the maximum total guarantee for any NMVC company shall not exceed 150 percent of a company's private capital.

Section 356. Issuance and guarantee of trust certificates

Authorizes SBA to issue and guarantee trust certificates representing ownership of all or part of the debentures issued by an NMVC company and guaranteed by the Administration. Each guarantee issued under this section is limited to the amount of the principal and interest on the guaranteed debentures that compose the trust or pool of certificates.

This section grants SBA subrogation and ownership rights over the trust certificates guaranteed under this section, but prohibits SBA from collecting a fee for any guarantee of a trust certificate issued under this section. Finally, this section allows SBA to contract with an agent to carry out the pooling and central registration functions for the trust certificates issued.

Section 357. Fees

Authorizes SBA to charge such fees as it deems appropriate with respect to any guarantee or grant issued to an NMVC company.

This authorization is subject to the prohibition contained in Section 356 that prohibits SBA from collecting a fee for any guarantee of a trust certificate issued under that section.

Section 358. Operational assistance grants

Authorizes SBA to make operational assistance grants to New Markets Venture Capital Companies established under the legislation and to certain Specialized Small Business Investment Companies.

Each NMVC is eligible for one or more grants, on a matching basis, in an amount equal to the amount the NMVC makes available for operational assistance. The operational assistance grant will be made available to the NMVC semi-annually over a multi-

year period not to exceed 10 years. SBA is also authorized to provide supplemental grants to NMVCs.

This section of the bill also allows Specialized Small Business Investment Companies ("SSBICs") access to the operational assistance grant funds authorized under the program without entering into a participation agreement with SBA to act as an NMVC company. The participation of the SSBICs, however, is limited only to investments they make in LMI areas after the date of enactment, and they must match the operational assistance funds to one LMI investment.

This section of the bill explicitly prohibits NMVCs and SSBICs from using operational assistance grants, both the federal contribution and the match, to supplement their own bottom line. This prohibition includes items that are not aimed at directly benefiting the small enterprises, such as, but not limited to—the purchase of furniture, office supplies, physical improvements to the NMVCs' or SSBICs' places of business, and marketing services. The Committee included this limitation to ensure that the investments made through this program will be for the benefit of small businesses located in LMI areas, which is the intent of the legislation.

It is the Committee's view that this provision does allow for operational assistance funds under the legislation to be used for salaries of those NMVC or SSBIC employees that are providing direct technical assistance to the small enterprise. NMVCs and SSBICs that use their own staff to provide the necessary direct assistance to smaller enterprises may be reimbursed for the direct cost of staff out of grant funds, but only to the extent such costs are allocable to the operational assistance.

This section also requires the NMVC companies to document in their operation plan the extent to which they intend to use licensed professionals (e.g., licensed attorneys and Certified Public Accountants) when providing technical assistance that requires such expertise. This ensures that the NMVC companies will provide the best assistance possible to the small business concerns. It is not meant to be construed as requirement that licensed professionals are sole persons to provide such assistance, but their use is encouraged in highly technical situations.

Evidence presented to the Congress by the community development venture capital advocates indicates that providing technical assistance to a small business dramatically increases that business' chance of success. The Congress wishes to ensure that all small businesses receiving technical assistance under this program will receive the best technical assistance available. We believe this will further increase the businesses' chances of success.

Section 359. Bank participation

Allows any national bank, and any member bank of the Federal Reserve System to invest in an NMVC company formed under this legislation so long as the investment would not exceed 5 percent of the capital and surplus of the bank.

Banks that are not members of the Federal Reserve System are allowed to invest in an NMVC company formed under this legislation so long as such investment is allowed under applicable

State law, and so long as the investment would not exceed 5 percent of the capital and surplus of the bank.

Section 360. Federal financing bank

Establishes that Section 318 of the Small Business Investment Act does not apply to any NMVC company created under this legislation.

Section 361. Reporting requirements

Establishes reporting requirements for the NMVC companies. Specifically, the NMVC companies are required to provide to SBA such information as the Administration requires, including: information related to the measurement criteria that the NMVC proposed in its program application; and, for each case in which the NMVC makes an investment or a grant to a business located outside of an LMI area, a report on the number and percentage of employees of the business who reside in an LMI area.

Section 362. Examinations

Requires that each NMVC company shall be subjected to examinations made at the direction of the Investment Division of SBA. This section allows for examinations to be conducted with the assistance of a private sector entity that has both the necessary qualifications and expertise.

It is the intent of the Committee that the oversight of the NMVC program be modeled after that developed for the SBIC program and administered by SBA's Investment Division. Oversight should include a close working relationship between SBA analysts and NMVC management teams, detailed reporting requirements, frequent on-site examinations to evaluate performance and conformance with the operating plan, and careful analysis of the firm's economic impact.

Section 363. Injunctions and other orders

Grants SBA the power of injunction over NMVC companies and the authority to act as a trustee or receiver of a company if appointed by a court.

This section of the legislation closely tracks the existing injunction provision (Section 311) of the Small Business Investment Act of 1958. Again, it is the Committee's intent that oversight of the NMVC program be modeled after that developed for the SBIC program and administered by SBA's Investment Division. This oversight should include a close working relationship between SBA analysts and NMVC management teams, detailed reporting requirements, frequent on-site examinations to evaluate performance and conformance with the operating plan, and careful analysis of the firm's economic impact.

Section 364. Additional penalties for noncompliance

Grants SBA or the Attorney General the authority to file a cause of action against an NMVC company for noncompliance. Should a court find that a company violated or failed to comply with provisions of this legislation or other provisions of the Small Business Investment Act of 1958, this section grants SBA the au-

thority to void the participation agreement between the company and the SBA.

Section 365. Unlawful acts and omissions; breach of fiduciary duty

Defines what is to be considered as a violation of this legislation, who is considered to have a fiduciary duty, and who is ineligible to serve as an officer, director, or employee of any NMVC company because of unlawful acts.

This section of the legislation closely tracks the unlawful acts provision (Section 314) of the Small Business Investment Act of 1958. It is the Committee's intent to grant SBA the same authority over NMVC companies that it has over Small Business Investment Companies with respect to unlawful acts and the breach of fiduciary responsibility.

Section 366. Removal or suspension of directors or officers

Grants SBA the authority to use the procedures set forth in Section 313 of the Small Business Investment Act of 1958 to remove or suspend any director or officer of an NMVC company.

Section 367. Regulations

Authorizes the Small Business Administration to issue such regulations as it deems necessary to carry out the provisions of the legislation.

Section 368. Authorization of appropriations

Authorizes appropriations for the Program for Fiscal Years 2001 through 2006. This section authorizes such subsidy budget authority as necessary to guarantee $150,000,000 of debentures and $30,000,000 to make operational assistance grants.

The Committee estimates that the Program will only require a one-time appropriation of $45 million—$15 million for loan guarantees and $30 million for operational assistance grants. This $15 million will allow SBA to back $150 million in loans to small business in low- or moderate-income areas.

Section 368(c). Conforming amendment

Makes a conforming change to the Small Business Investment Act of 1958 to account for the changes made by this legislation.

Section 368(d). Calculation of maximum amount of SBIC leverage

Allows Small Business Investment Companies ("SBICs") to obtain additional access to leverage outside the statutory caps. The exemption of the SBICs, however, is limited only to investments they make in LMI areas.

This section provides that investments made in LMI areas will not apply against the leverage cap of the individual SBIC as long as the total amount invested through the program does not exceed 50% of the SBIC's paid-in capital.

Section 368(e). Bankruptcy exemption for new markets venture capital companies

Adds NMVC companies to the list of entities that may not be considered a debtor under a Title 11 bankruptcy proceeding.

Section 368(f). Federal savings associations

Amends the "Home Owners Loan Act" to allow federal savings associations to invest in an NMVC company formed under this legislation so long as the investment would not exceed 5 percent of the capital and surplus of the savings association.

BUSINESSLINC

H.R. 5545, also establishes the BusinessLINC program, designed to promote business growth in inner cities and economically distressed rural areas by matching large and small firms into business-to-business partnering and mentoring relationships. BusinessLinc would accomplish this by providing seed funding to third party entities such as local Chambers of Commerce to promote such relationships. In addition to seed funding, such entities will also receive funds for technical assistance programs to small businesses to supplement the mentor-protege relationships established as a result of BusinessLINC.

BusinessLINC helps businesses by providing online information and a database of companies that are interested in mentor-protege programs.

Grants may be made to a coalition/combination of private and public entities only if the coalition/combination provides an amount, either in kind or in cash, equal to the grant amount for the purposes above.

Despite the unprecedented economic prosperity we are experiencing in this country, there are several areas of the country that have still not achieved parity. These areas are primarily inner cities, rural areas, and Native American communities. BusinessLINC will enable business opportunities for small businesses who would otherwise have no access to outside larger markets. While these small businesses have strong potential, they are located in communities where corporate America would not necessarily look. BusinessLINC will break that barrier. When the BusinessLINC model has been applied in the past, small businesses have seen growth as much as 45 percent. With this assistance, the local community will be charting its own path to recovery. The "LINC" in BusinessLINC stands for "Learning, Information, Networking, and Collaboration."

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designates the bill as the "BusinessLINC Act of 2000."

Section 2. Authorization

This Section amends the Small Business Act by Adding a new paragraph (m), "BusinessLINC grants and cooperative agreements."

Paragraph (1) allows the Administrator to make grants or enter into cooperative agreements with any coalition/combination of private and/or public entities to (a) promote business-to-business relationships between large and small businesses and (b) to provide

online information and a database of companies that are interested in mentor-protege programs.

It is the opinion of the Conference that private and/or public entities eligible for grants should be limited to chambers of commerce and other not-for-profit business organizations. The Conferees intend that grant money be provided to large businesses. Further, if a grant is made to a combination of entities, one entity must take a lead position.

It is further the opinion of the Conference that promotion of business-to-business relationships between large and small businesses referenced in paragraph (a) above should include the facilitation of such relationships as mentor-protege, prime/subcontractor, and teaming.

The Conference intends that an element to be considered by the Administrator when evaluating a grant proposal, shall be the training of small businesses or "proteges." An additional evaluation element intended by the Conference shall be measurable goals to be achieved through the business-to-business partnerships.

The Conference further intends that the online database referenced in paragraph (b) above, should make use of the SBA's current PRO-Net database to the greatest extent practicable. The Conference is concerned that online privacy issues should also be addressed by the SBA in the implementation of the databases. Further, it is the Committee's opinion that the databases should be vigilantly maintained by the SBA to ensure that only firms eligible to be mentors should be included in the mentor database, and only those firms eligible to serve as intermediaries should be included in the intermediary database.

Paragraph (2) specifies that the Administrator may make grants as long as the coalition/combination of public and/or private entities provides an amount, either in kind or in cash, equal to the grant amount for the purposes delineated in paragraph (1) above.

The Conference is well aware that it may be difficult for some entities to raise their entire match during the application stage. Those entities that are unable to raise the required match, but have submitted to the Administrator a reasonable plan to meet the requirement, may be granted a conditional approval from the Administrator and be allowed to draw one dollar of federal matching funds for every dollar of private funds raised. This conditional approval shall be made with the expectation that the required funding commitments will be obtained within two years of the conditional approval.

The Conference believes that it is important to give entities the flexibility to obtain the required private operational assistance funds, however, from a safety and soundness standpoint, federal funds should not be placed at greater risk than private capital.

Paragraph (3) specifies the authorization for the program for fiscal years 2001 through 2003. This amount shall be $6,600,000 for each of the three fiscal years.

JIM TALENT,
DICK ARMEY,
Managers on the Part of the House.

CHRISTOPHER BOND,
CONRAD BURNS,
Managers on the Part of the Senate.

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