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109TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
109–276

DEFICIT REDUCTION ACT OF 2005

REPORT

OF THE

COMMITTEE ON THE BUDGET
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 4241

A BILL TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 201(a) OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2006

together with

MINORITY, ADDITIONAL AND DISSENTING VIEWS

NOVEMBER 7, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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CONTENTS

	Page
Introduction	1
Title I—Committee on Agriculture	7
Title II—Committee on Education and the Workforce	57
Title III—Committee on Energy and Commerce	366
Title IV—Committee on Financial Services	586
Title V—Committee on the Judiciary	708
Title VI—Committee on Resources	779
Title VII—Committee on Transportation and Infrastructure	910
Title VIII—Committee on Ways and Means	917
Miscellaneous House Report Requirements	1081
Legislative Text	1117

109TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 109–276

PROVIDING FOR RECONCILIATION PURSUANT TO SECTION 201(a) OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2006

NOVEMBER 7, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NUSSLE, from the Committee on the Budget, submitted the following

R E P O R T

together with

MINORITY, ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 4241]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Budget, to whom reconciliation recommendations were submitted pursuant to section 201(a) of the House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2006, having considered the same, report the bill without recommendation.

BUDGET COMMITTEE INTRODUCTION

OVERVIEW

Four months before Katrina, Congress had already committed to addressing the growing crisis of Federal spending: The budget resolution adopted in April (the conference report on H. Con. Res. 95) included the first effort in nearly a decade to restrain the government's unsustainable entitlement spending. The worst natural disaster in the Nation's history—and the substantial Federal resources needed to help its victims—simply brought the fiscal challenge into a sharper and more immediate focus.

These are the main factors driving the reconciliation bill reported by the Committee on the Budget on 3 November 2005. The discus-

sion below describes the economic, historical, and fiscal context more fully, and offers a sketch of the overall reconciliation plan.

PRE-KATRINA

To fully appreciate the significance of this measure, it is helpful to reflect on the situation before Hurricane Katrina struck—by about mid-August of this year. Both the U.S. economy and the Federal budget seemed to have caught a lucky streak:

—The economy had hit its stride. Real growth in gross domestic product [GDP] had averaged 3.7 percent for the previous eight quarters, and most analysts were projecting a sustained expansion.

—Jobs were growing at an average of about 194,000 a month.

—More than 4 million new payroll jobs had been added in just more than 2 years.

—The always-important manufacturing sector had been expanding for 27 consecutive months.

—Even the oil and gasoline price spikes of mid-summer, though serious, were not throwing the economy off track.

—Federal tax revenue for the current year had risen 15 percent—an increase that was both unprecedented and unpredicted—and the estimated budget deficit had declined by $94 billion in just 6 months.

But "luck is the residue of design," the great Branch Rickey famously said; and that was true of these fiscal and economic fortunes as well: They were the product of a plan. In the middle of 2001, when the economy was slowing, Congress and the President lowered tax burdens (by $1.35 trillion over 11 years) to cushion the fall, and to provide a better foundation for growth. As it turned out, the recession that year was one of the mildest on record; and even with the tax cuts—and the ample spending that budget surpluses at the time allowed—the congressional budget could project $2.4 trillion in debt reduction by 2011.

Then the World Trade Center fell—and the U.S. was forced to meet global terrorism head-on. The ensuing war—which continues today—and the need to enhance security at home added extraordinary burdens to the budget, driving it into deficit.

With sizable deficits came constant reminders of the need for spending control, and Congress responded. The fiscal year 2005 budget level-funded total non-security discretionary spending. The fiscal year 2006 budget actually reduced this spending—marking the first non-security cut since President Reagan. The resolution also budgeted for the Global War on Terror.

In addition, this year's budget committed Congress to the first budget "reconciliation" legislation since 1997, embodied herein.

THE NEED FOR RECONCILIATION

The problem of government entitlement spending has long been known. Mounting medical costs, the forthcoming retirement of the baby-boom generation, and a *permanent* shift in the Nation's demographics—one that reduces the number of workers for each retiree even after the baby-boomers are gone—will place unanswerable demands on Federal resources. They will crowd out other priorities

and strain not only the Federal budget, but the Nation's economy as a whole.

Just 10 years ago, this spending (excluding interest) represented about 49 percent of the budget; today it is 54 percent; in just 10 years, it will exceed 62 percent. Further, overall mandatory spending is growing at a rate of about 6 percent per year. This relentless upward trend typically outpaces both the economy's growth and the long-term average increase in Federal revenue. Hence the problem: this spending growth cannot be sustained without continuous cuts in other programs, ever-increasing taxes, or more debt financing—none of which is acceptable.

Reconciliation is the budgetary process designed to address entitlements. Generally speaking, it works as follows:

—In any given year, the budget resolution may give "instructions" to select authorizing committees to achieve savings in entitlement programs in their respective jurisdictions. The committees involved may be any deemed suitable by the budget resolution, and the amounts of savings are whatever the resolution considers necessary.

—The authorizing committees involved then develop revisions in programs under their jurisdictions pursuant to these instructions. In short, these program revisions "reconcile" projected spending to the savings amounts required. The policy decisions are entirely up to the authorizing committees: The budget resolution instructions involve only the required savings amounts; they do not prescribe the programs affected or the policies to be developed.

—The authorizing committees then submit their policy changes to the Budget Committee, which binds them, without amendment, into a single bill, and reports it to the floor.

—Once passed, the measure goes into a conference with a corresponding bill from the Senate—where reconciliation is exempt from filibuster—and the two bodies develop a final conference report.

Reconciliation not only controls spending, but also tends, in the process, to drive much-needed reform of entitlement programs—some of which have not been revised or updated in decades.

THE EFFECT OF KATRINA

Although the growing demands of entitlement spending are well known, and reform long overdue, they develop and worsen gradually, and hence often fail to command the urgent and continuing attention they deserve. Katrina changed that: It forced Congress to recognize that overall spending had to be restrained starting *now*. It also caused Congress to raise the ante: committees were asked to increase their savings targets, relative to those set forth in the budget resolution, to begin offsetting the tens of billions of dollars that have been, and will be, spent for hurricane recovery.

Thus this reconciliation bill has two broad policy goals, one long-term, and one near: It starts the reform of government entitlements in ways that will make them more effective, more efficient, and less costly; and it recognizes that hurricane recovery is important enough to warrant diverting resources to it that otherwise would have been spent elsewhere. Both apply to the definition of

"setting priorities and making choices"—more simply called "budgeting."

COMPONENTS OF THE MEASURE

The bill reported by the Budget Committee provides $53.9 billion of savings over 5 years. As noted, these savings have three principal goals:

—To provide a down-payment toward hurricane recovery and reconstruction costs. Congress already has provided nearly $65 billion in recovery funding, and more funding is expected in the near future.
—To begin a longer-term effort at slowing the growth of entitlement spending.
—To stimulate reform of entitlement programs.

Eight House authorizing committees have hereby contributed to the savings effort, by modifying the authorizing laws for programs in their respective jurisdictions. Those committees, and their savings amounts, are as follows:

DEFICIT REDUCTION ACT SAVINGS BY COMMITTEE

[Outlays in millions of dollars]

Committee	Savings 2006–10
Agriculture	–3,649
Education and the Workforce	–20,422
Energy and Commerce	–17,066
Financial Services	–470
Judiciary	–428
Resources	–3,678
Transportation and Infrastructure	–156
Ways and Means	–8,047
Total savings	–53,916

Note: Savings are expressed in negative numbers to reflect their effect on the deficit.

The specific provisions that achieve these savings are described hereinafter, in the reports submitted by the respective authorizing committees.

CONCLUSION

It is sometimes said that budgeting is intrinsic to governing. After all, a budget is the one legislative vehicle through which Congress looks at the whole picture, weighs priorities against one another, and sets its agenda. Congress has many priorities, one of which—since August—has been recovering from the devastation of Katrina; and Congress will fulfill its obligations. But the term "priorities" is meaningless without *limits*—in this case, limits on the growth of Federal entitlement spending. If it is true that to govern is to choose, then Congress has chosen—through this reconciliation bill—to govern.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, November 1, 2005.

Hon. JIM NUSSLE,
Chairman, Committee on the Budget,
Cannon Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am transmitting herewith the recommendations of the Committee on Agriculture with respect to the reconciliation bill for fiscal year 2006, provided for under House Concurrent Resolution 95, the Concurrent Resolution on the Budget for Fiscal Year 2006.

The enclosed recommendations were adopted by this Committee in a business meeting on October 28, 2005, in the presence of a quorum. Enclosed please find a hard copy of the Committee's recommendations on Title I—Agriculture; Section-by-Section Analysis; Purpose and Need; Committee Consideration; and the remainder of the contents of the report filed pursuant to Rule XI of the Rules of the House, including a set of Minority Views.

With best wishes, I am

Sincerely,

BOB GOODLATTE,
Chairman.

TITLE I—AGRICULTURAL PROGRAMS

PURPOSE AND NEED

The Concurrent Resolution on the Budget for Fiscal Year 2006, H. Con. Res. 95, directs the Committee on Agriculture to report changes in laws within its jurisdiction to reduce the level of direct spending for the Committee by $173,000,000 in outlays for fiscal year 2006 and $3,000,000,000 in outlays for the period of fiscal years 2006 through 2010.

The nation is facing significant budget pressures and the House is working hard to address them. It is unrealistic to think that we can meet the pressing challenges without reducing federal spending. Mandatory spending today takes up almost 55% of the total federal budget; if left on its current path, in a decade it will consume 60% of the federal budget. $3 billion represents only 1% of mandatory spending within the jurisdiction of this Committee.

While all federal safety net programs, including agriculture, need to be sustainable, the burden of addressing the nation's budget pressures needs to be equitably shared in order to be effective. The provisions passed by the House Committee on Agriculture represent a broad and very balanced response to this Committee's reconciliation instructions. Commodity, conservation, rural development, and research programs, and the food stamp program, all bear some burden but none take a disproportionate cut.

With respect to agricultural commodity programs, the provisions passed by this Committee primarily impact only the direct payments producers receive under Title I of the Farm Security and Rural Investment Act of 2002. The total amount of direct payments to each eligible producer is reduced by 1 percent per year in 2006 through 2009, and the percentage of advance direct payments for which producers are eligible in fiscal years 2006 and 2007 is reduced from 50% to 40%. In addition, $282 million worth of savings is achieved by repealing the special marketing loan provisions for cotton known as "Step-2." Step-2 payments were designed to keep U.S. upland cotton competitive on the world market. However, Brazil successfully argued to a WTO panel that the program is inconsistent with U.S. WTO obligations regarding export subsidies as specified under the Subsidies and Countervailing Measures Agreement.

In several areas, such as conservation, rural development, research and energy, the Committee eliminates funding for programs that were authorized under the Farm Security and Rural Investment Act (the 2002 Farm Bill) but have since been subject to limits and rescissions. These Congressional diversions of mandatory funds have essentially nullified the programs.

In fiscal year 2005 alone, nearly $1.3 billion of mandatory funding for programs that were authorized by the Farm Security and

Rural Investment Act of 2002 was eliminated. And since the 2002 Farm Bill, for example, funding for the rural strategic investment grants program was rescinded in each of fiscal years 2003 through 2006. As a result, $100 million was diverted from the program. The rural strategic investment grants program was supposed to provide rural communities with resources to develop strategic planning processes and implement innovative community development strategies.

Likewise, mandatory funding for the agricultural management assistance program, the broadband access program, the value-added agricultural product grants program, the rural business investment program, the rural firefighters and emergency personnel grants, and the renewable energy program has been diverted. So it is by eliminating funding for the rural strategic investment grants program and similarly affected programs that this Committee can avoid making destructive cuts to programs that are both operating and important to producers and rural communities. We are, in effect, reclaiming these funds to help meet the Committee's priorities.

Next, this Committee achieved reductions in food stamp program spending by making slight adjustments to the food stamp eligibility requirements. The Committee enhanced the categorical eligibility provision related to eligibility for the Temporary Assistance for Needy Families (TANF) program in the Food Stamp Act. Under section 1601, persons who are eligible for cash benefit assistance under TANF will be eligible, categorically, for food stamp benefits. Current law provides that individuals receiving TANF assistance of any kind are categorically eligible for food stamp benefits. Recipients who no longer have categorical eligibility status under the amended provision would have the opportunity to be reviewed for food stamp program eligibility independent of their status as a TANF beneficiary. By refining the eligibility requirements, this proposal ensures that this nation's most needy will continue to receive the food stamp assistance.

Another adjustment this Committee passed relates to the eligibility of non-citizens for food stamp benefits. Under current law, permanent, non-citizen residents of the U.S. are eligible for food stamps after five years of residency. Thus, the current rule represents a drastic deviation from the previous requirement—a record of 40 quarters of work in order to become eligible. This Committee strikes a balance between these disparate historical eligibility requirements by revising the law to require 7 years of residency instead, and notes that a non-citizen may apply for U.S. citizenship status after 5 years of residency and as such would not be further restricted from food stamp eligibility.

The reductions in the food stamp program account for about one-half of one percent of the total food stamp budget: $844 million over five years. Put another way, this accounts for a reduction of about half a penny for every dollar spent on the food stamp program. And while the food stamp program comprises nearly 60 percent of this Committee's mandatory spending, it receives less than 25 percent of the total savings under the package.

Finally, the marginal reductions in the remainder of the provisions keep in tact the safety net for the beneficiaries for which the

programs were intended. This holds firm the promise we made to our producers in 2002 and ensures that the nation's most needy will continue to receive federal assistance.

In total, the reductions in commodity programs constitute $1.007 billion worth of savings in the total proposal. Conservation programs account for $760 million in savings. Reductions in research programs contribute $620 million, and rural development program reductions contribute $446 million. Lastly, changes in food stamp program eligibility save an additional $844 million over five years. Together, these reductions produce a savings of $3.7 billion over 5 years.

Putting together a reconciliation package, like writing a farm bill, requires weighing the diverse interests of production agriculture, conservation, research, rural development and nutrition interests. Because this Committee took a broad and balanced approach, we were able to achieve more than the $3 billion the budget resolution requires of us and continue the long standing tradition that agriculture has always been willing to do its part to ensure the fiscal well-being of our nation.

SECTION-BY-SECTION ANALYSIS

SEC. 1001. SHORT TITLE; TABLE OF CONTENTS

(a) Provides that this title will be known as the "Agricultural Reconciliation Act of 2005."

(b) Provides a table of contents for this title.

Subtitle A—Commodity Programs

SEC. 1101. PERCENTAGE REDUCTION IN AMOUNT OF DIRECT PAYMENTS FOR COVERED COMMODITIES AND PEANUTS

(a) Reduces the total amount of the direct payment to be paid to producers of covered commodities by 1% for each of fiscal years 2006 through 2009.

(b) Reduces the total amount of the direct payment to be paid to producers of peanuts by 1% for each of fiscal years 2006 through 2009.

SEC. 1102. REDUCTION IN PERCENTAGE OF DIRECT PAYMENT AMOUNT AUTHORIZED TO BE PAID IN ADVANCE

(a) Reduces the percentage of advance direct payments for which producers of covered commodities are eligible in fiscal years 2006 and 2007 from 50% to 40%.

(b) Reduces the percentage of advance direct payments for which producers of peanuts are eligible in fiscal years 2006 and 2007 from 50% to 40%.

SEC. 1103. COTTON COMPETITIVENESS PROVISIONS

(a) Repeals the special marketing loan provisions for upland cotton known as "Step 2."

(b) Makes a conforming amendment to Federal Agriculture Improvement and Reform Act of 1996.

(c) Designates that the amendments made by this section will become effective on August 1, 2006.

Subtitle B—Conservation

SEC. 1201. LIMITATIONS ON USE OF COMMODITY CREDIT CORPORATION FUNDS TO CARRY OUT WATERSHED REHABILITATION PROGRAM

(a) Reduces funding for the watershed rehabilitation program by $15 million.

(b) Removes the requirement that funds for the watershed rehabilitation program remain available to the Secretary until such funds are expended.

(c) Rescinds funds that are previously made available and that are unobligated as of September 30, 2006.

SEC. 1202. CONSERVATION SECURITY PROGRAM

(a) Limits the funding for the conservation security program to $2,213,000,000 for fiscal years 2006 through 2010. Increases the funding for the conservation security program to $5,729,000,000 for the period of fiscal years 2006 through 2015.

(b) Extends the authorization for the conservation security program through 2011.

SEC. 1203. LIMITATIONS ON USE OF COMMODITY CREDIT CORPORATION FUNDS TO CARRY OUT AGRICULTURAL MANAGEMENT ASSISTANCE PROGRAM

Eliminates funding for agricultural management assistance program in 2007.

Subtitle C—Energy

SEC. 1301. TERMINATION OF USE OF COMMODITY CREDIT CORPORATION FUNDS TO CARRY OUT RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS PROGRAM

Eliminates funding for loans and grants under the renewable energy systems and energy efficiency improvements program.

Subtitle D—Rural Development

SEC. 1401. ENHANCED ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS

(a) Eliminates funding for enhanced broadband access in fiscal year 2007.

(b) Prohibits funding for this program from remaining available until expended.

(c) Rescinds all funding that is available and unobligated as of September 30, 2006.

SEC. 1402. VALUE-ADDED AGRICULTURAL PRODUCT MARKET DEVELOPMENT PROGRAM GRANTS

(a) Eliminates funding for value-added agricultural product grants in fiscal year 2007.

(b) Prohibits funding for this program from remaining available until expended.

(c) Rescinds all funding that is available and unobligated as of September 30, 2006.

SEC. 1403. RURAL BUSINESS INVESTMENT PROGRAM

(a) Eliminates funding for the rural business investment program in fiscal year 2007.

(b) Prohibits funding for this program from remaining available until expended.

(c) Rescinds all funding that is available and unobligated as of September 30, 2006.

SEC. 1404. RURAL BUSINESS STRATEGIC INVESTMENT GRANTS

(a) Eliminates funding for rural business strategic investment grants in fiscal year 2007.

(b) Rescinds all funding that is available and unobligated as of September 30, 2006.

SEC. 1405. RURAL FIREFIGHTERS AND EMERGENCY PERSONNEL GRANTS

(a) Eliminates funding for rural firefighter and emergency personnel grants in fiscal year 2007.

(b) Prohibits funding for this program from remaining available until expended.

(c) Rescinds all funding that is available and unobligated as of September 30, 2006.

Subtitle E—Research

SEC. 1501. INITIATIVE FOR FUTURE FOOD AND AGRICULTURE SYSTEMS

(a) Eliminates funding for the Initiative for Future Agriculture and Food Systems in fiscal years 2007, 2008, and 2009. Provides $200,000,000 of funding in 2010 and in subsequent fiscal years.

(b) Limits availability of fiscal year 2006 funds to the one year period beginning on October 1, 2005, while maintaining the two-year period of availability for funds made available in other fiscal years.

Subtitle F—Nutrition

SEC. 1601. ELIGIBLE HOUSEHOLDS

(a) Amends the Food Stamp Act to restrict categorical eligibility status. Provides that only persons who are recipients of cash benefits from the Temporary Assistance for Needy Families (TANF) program will be categorically eligible for food stamp program benefits.

(b) Reauthorizations most provisions in the Food Stamp Act through 2011.

SEC. 1602. AVAILABILITY OF COMMODITIES FOR THE EMERGENCY FOOD ASSISTANCE PROGRAM

(1) Authorizes the purchase of $140,000,000 worth of commodities per year through 2011.

(2) Authorizes the purchase of an additional $12,000,000 worth of commodities 2006.

(3) Designates that the additional commodities for 2006 are to be distributed to States affected by Hurricanes Katrina and Rita.

SEC. 1603. RESIDENCY REQUIREMENT

Amends the "Welfare Reform" law to require that noncitizens reside in the U.S. for 7 years before becoming eligible for food stamp benefits.

SEC. 1604. DISASTER FOOD STAMP PROGRAM

Authorizes the Secretary of Agriculture to pay to State agencies 100% of the administrative costs incurred in the delivery of food

stamp benefits to households under the disaster food stamp program initiated in response to Hurricanes Katrina and Rita.

COMMITTEE CONSIDERATION

II. Full Committee Consideration

The Committee on Agriculture met, pursuant to notice, with a quorum present, on October 28, 2005, to consider its recommendations to the Budget Committee as provided in the Budget Resolution Instructions contained in the H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006.

Chairman Goodlatte called the meeting to order and made an opening statement as did Ranking Member Peterson. Without objection, the Chairman's Mark to the Budget Committee for Title I—Agriculture, with respect to the Reconciliation Bill for Fiscal Year 2006 was placed before the Committee and open for amendment at any point. Counsel and staff were then recognized to give a brief summary of the recommendations.

Mr. Holden was then recognized to offer and explain an amendment to eliminate FY 2006 limitations on funding or operation of certain agriculture programs and activities. Discussion occurred and by a roll call vote of 19 yeas, 25 nays, and 2 not voting, the amendment failed. See Roll Call Vote #1.

Mr. Melancon was recognized to offer and explain an amendment to provide assistance to citrus, nursery, vegetable, and fruit crops impacted by Hurricane Katrina or Hurricane Rita. Chairman Goodlatte voiced opposition to the amendment and after a brief discussion by a roll call vote of 19 yeas, 25 nays, and 2 not voting, the amendment failed. See Roll Call Vote #2.

Mr. Peterson was then recognized to offer and explain an amendment to provide emergency food and farm disaster assistance. The Chairman voiced opposition to the amendment and after a brief discussion by a roll call vote of 19 yeas, 25 nays, and 2 not voting, the amendment failed. See Roll Call Vote #3.

There being no further amendments, Mr. Pombo moved to favorably report the Chairman's Mark for Title I—Agriculture, to the Committee on the Budget for insertion in the Reconciliation Bill. Discussion occurred and by a roll call vote of 24 yeas, 20 nays, and 2 not voting, the recommendations were adopted. See Roll Call #4.

Chairman Goodlatte then advised Members that pursuant to the rules of the House of Representatives that Members have 2 calendar days to file such views with the Committee. Ranking Member Peterson indicated that he intended to submit additional views.

Without objection, staff was given permission to make any necessary clerical, technical or conforming changes to reflect the intent of the Committee.

Chairman Goodlatte thanked all the Members and adjourned the meeting subject to the call of the chair.

REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, the Committee sets forth the record of the following rollcall votes taken with respect to consideration of the rec-

ommendations regarding the Reconciliation Bill for Fiscal Year 2006:

ROLLCALL NO. 1

Summary: Amendment to eliminate FY 2006 limitations on funding or operation of certain agriculture programs and activities.

Offered by: Mr. Holden.

Results: Failed by a vote of 19 yeas/25 nays/2 not voting.

YEAS

1. Peterson
2. Holden
3. McIntyre
4. Etheridge
5. Case
6. Cardoza
7. Scott
8. Marshall
9. Herseth
10. Butterfield
11. Cuellar
12. Melancon
13. Costa
14. Salazar
15. Barrow
16. Pomeroy
17. Larsen
18. Davis
19. Chandler

NAYS

1. Goodlatte
2. Boehner
3. Pombo
4. Everett
5. Lucas
6. Moran
7. Jenkins
8. Gutknecht
9. Hayes
10. Johnson
11. Osborne
12. Pence
13. Graves
14. Bonner
15. Rogers
16. King
17. Musgrave
18. Neugebauer
19. Boustany
20. Schwarz
21. Kuhl
22. Foxx
23. Conaway
24. Fortenberry
25. Schmidt

NOT VOTING

1. Baca
2. Boswell

ROLLCALL NO. 2

Summary: Amendment to provide assistance to citrus, nursery, vegetable, and fruit crops impacted by Hurricane Katrina or Hurricane Rita.

Offered by: Mr. Melancon.

Results: Failed by a vote of 19 yeas/25 nays/2 not voting.

YEAS

1. Peterson
2. Holden
3. McIntyre
4. Etheridge
5. Case
6. Cardoza
7. Scott
8. Marshall
9. Herseth
10. Butterfield
11. Cuellar
12. Melancon
13. Costa
14. Salazar
15. Barrow
16. Pomeroy
17. Larsen
18. Davis
19. Chandler

NAYS

1. Goodlatte
2. Boehner
3. Pombo
4. Everett
5. Lucas
6. Moran
7. Jenkins
8. Gutknecht
9. Hayes
10. Johnson
11. Osborne
12. Pence
13. Graves
14. Bonner
15. Rogers
16. King
17. Musgrave
18. Neugebauer
19. Boustany
20. Schwarz
21. Kuhl
22. Foxx
23. Conaway
24. Fortenberry
25. Schmidt

NOT VOTING

1. Baca
2. Boswell

ROLLCALL NO. 3

Summary: Amendment to provide emergency food and farm disaster assistance.

Offered by: Mr. Peterson.

Results: Failed by a vote of 19 yeas/25 nays/2 not voting.

YEAS

1. Peterson
2. Holden
3. McIntyre
4. Etheridge
5. Case
6. Cardoza
7. Scott
8. Marshall
9. Herseth
10. Butterfield
11. Cuellar
12. Melancon
13. Costa
14. Salazar
15. Barrow
16. Pomeroy
17. Larsen
18. Davis
19. Chandler

NAYS

1. Goodlatte
2. Boehner
3. Pombo
4. Everett
5. Lucas
6. Moran
7. Jenkins
8. Gutknecht
9. Hayes
10. Johnson
11. Osborne
12. Pence
13. Graves
14. Bonner
15. Rogers
16. King
17. Musgrave
18. Neugebauer
19. Boustany
20. Schwarz
21. Kuhl
22. Foxx
23. Conaway
24. Fortenberry
25. Schmidt

NOT VOTING

1. Baca
2. Boswell

ROLLCALL NO. 4

Summary: Motion to favorably report the Chairman's Mark for Title I—Agriculture, to the Budget Committee for insertion in the Reconciliation Bill.

Offered by: Mr. Pombo.

Results: Adopted by a vote 24 yeas/20 nays/2 not voting.

YEAS

1. Goodlatte
2. Boehner
3. Pombo
4. Everett
5. Lucas
6. Moran
7. Jenkins
8. Gutknecht
9. Hayes
10. Osborne
11. Pence
12. Graves
13. Bonner
14. Rogers
15. King
16. Musgrave
17. Neugebauer
18. Boustany
19. Schwarz
20. Kuhl
21. Foxx
22. Conaway
23. Fortenberry
24. Schmidt

NAYS

1. Peterson
2. Holden
3. McIntyre
4. Etheridge
5. Case
6. Cardoza
7. Scott
11. Cuellar
12. Melancon
13. Costa
14. Salazar
15. Barrow
16. Pomeroy
17. Larsen

8. Marshall
9. Herseth
10. Butterfield
18. Davis
19. Chandler
20. Johnson

NOT VOTING

1. Baca
2. Boswell

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to reduce the level of direct spending by the Committee on Agriculture for the period fiscal year 2006 thru 2010.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Constitution of the United States or in any department or officer thereof.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 31, 2005.

Hon. BOB GOODLATTE,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Agricultural Reconciliation Act of 2005.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Jim Langley (for farm programs) and Kathleen FitzGerald (for Food Stamps).

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

Agricultural Reconciliation Act of 2005

Summary: The Agricultural Reconciliation Act of 2005 would amend laws governing commodity, conservation, energy, rural development, research, and nutrition programs over the 2006–2010 period. CBO estimates that enacting this legislation would reduce direct spending by $567 million in fiscal year 2006, by about $3.1 billion over the 2006–2010 period, and by about $4.3 billion over the 2006–2015 period, relative to CBO's March 2005 baseline projections (see Table 1). Enacting the legislation would not affect federal revenues.

The estimated savings from this legislation would be affected by provisions in the conference agreement on the agriculture appropriation bill for fiscal year 2006 (H.R. 2744). Upon enactment of that conference agreement (which passed the House on October 28), the savings from this legislation would increase by $528 million—to $3.7 billion over the 2006–2010 period and $4.8 billion over the 2006–2015 period (see Memorandum at the bottom of Table 1). These additional savings are associated with the Initiative for Future Agriculture and Food Systems and several rural development programs, which are discussed in more detail later in this estimate.

This reconciliation legislation would reduce direct payments made by the Commodity Credit Corporation's (CCC's) price and income support program. It also contains a provision that would end that reduction if legislation were enacted to extend direct payments beyond crop year 2009. Because that limitation would take effect only upon enactment of other legislation, it is not reflected in CBO's cost estimate, which assumes that the reduction in direct payments continues indefinitely. The House Budget Committee has directed CBO to consider this limitation to be effective, thus terminating the reduction after crop year 2009. That assumption reduces estimated savings from the legislation, starting in fiscal year 2010. Under that assumption, and assuming enactment of the conference agreement on the agriculture appropriation bill, enacting this reconciliation legislation would reduce direct spending by $567 million in fiscal year 2006, by $3.65 billion over the 2006–2010 period, and by $4.6 billion over the 2006–2015 period (see Table 2).

The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Some of its provisions would reduce federal funding for assistance to state and local governments.

Estimated Cost to the Federal Government: CBO's estimate of the budgetary impact of this legislation is shown in Table 1. Table 2 reflects the scorekeeping direction from the House Budget Committee. It differs from Table 1 with regard to projected savings from the commodity program in 2010 and subsequent years, and assumes that the conference agreement on H.R. 2744 is enacted.

The costs of this legislation fall within budget functions 300 (natural resources), 350 (agriculture), 450 (community and regional development), and 600 (nutrition).

Basis of estimate: This estimate assumes that the bill will be enacted in December 2005.

Commodity Program

Subtitle A would reduce the Department of Agriculture's direct payments to agricultural producers by 1 percent for the 2006 and 2007 crops, reduce advance direct payments by 10 percent in 2006 and 2007, and eliminate the upland cotton Step 2 payments.

CBO's estimate of the budgetary impact of these amendments to the agricultural commodity program is detailed in Table 3.

TABLE 1.—SUMMARY OF CBO'S ESTIMATE OF THE BUDGETARY IMPACT OF THE AGRICULTURAL RECONCILIATION ACT OF 2005

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Commodity Program:												
Estimated Budget Authority	−553	−164	−108	−105	−103	−105	−102	−104	−104	−104	−1,033	−1,552
Estimated Outlays	−553	−164	−108	−105	−103	−105	−102	−104	−104	−104	−1,033	−1,552
Conservation Programs:												
Estimated Budget Authority	−85	−135	−105	−138	−191	−135	−80	−49	−56	−56	−654	−1,030
Estimated Outlays	0	−162	−126	−150	−197	−143	−84	−52	−58	−57	−635	−1,029
Energy Program:												
Estimated Budget Authority	0	−23	0	0	0	0	0	0	0	0	−23	−23
Estimated Outlays	0	−9	−9	−5	0	0	0	0	0	0	−23	−23
Rural Development Programs:												
Estimated Budget Authority	−185	−60	0	0	0	0	0	0	0	0	−245	−245
Estimated Outlays	0	−58	−84	−52	−10	−6	−5	0	0	0	−204	−215
Research, Extension, and Education Grants:												
Estimated Budget Authority	0	−200	−200	−200	0	0	0	0	0	0	−600	−600
Estimated Outlays	0	−30	−100	−160	−170	−100	−40	0	0	0	−460	−600
Food Stamp Program:												
Estimated Budget Authority	−14	−186	−191	−199	−202	−103	0	0	0	0	−794	−896
Estimated Outlays	−14	−186	−191	−199	−202	−103	0	0	0	0	−794	−896
Total Changes:												
Estimated Budget Authority	−837	−768	−604	−642	−497	−343	−182	−153	−160	−160	−3,350	−4,346
Estimated Outlays	−567	−609	−618	−671	−682	−457	−231	−156	−162	−161	−3,149	−4,314
Memorandum:												
Total Changes Assuming Enactment of H.R. 2744:												
Estimated Budget Authority	−1,206	−928	−604	−642	−497	−343	−182	−153	−160	−160	−3,877	−4,875
Estimated Outlays	−567	−776	−798	−797	−736	−464	−226	−156	−162	−161	−3,677	−4,843

Notes.—Table 2 displays the estimated cost of the legislation consistent with the scorekeeping direction from the House Budget Committee.
Details may not sum to total because of rounding.

TABLE 2.—SUMMARY OF THE BUDGETARY IMPACT OF THE AGRICULTURAL RECONCILIATION ACT OF 2005 REFLECTING SCOREKEEPING DIRECTION FROM THE HOUSE BUDGET COMMITTEE AND ENACTMENT OF THE CONFERENCE AGREEMENT ON AGRICULTURE APPROPRIATIONS

	By fiscal year, in millions of dollars											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Commodity Program [1]:												
Estimated Budget Authority	−553	−164	−108	−105	−76	−52	−49	−51	−51	−51	−1,006	−1,260
Estimated Outlays	−553	−164	−108	−105	−76	−52	−49	−51	−51	−51	−1,006	−1,260
Conservation Programs:												
Estimated Budget Authority	−210	−135	−105	−138	−191	−135	−80	−49	−56	−56	−779	−1,155
Estimated Outlays	0	−237	−151	−166	−206	−143	−84	−52	−58	−57	−760	−1,154
Energy Program:												
Estimated Budget Authority	0	−23	0	0	0	0	0	0	0	0	−23	−23
Estimated Outlays	0	−9	−9	−5	0	0	0	0	0	0	−23	−23
Rural Development Programs:												
Estimated Budget Authority	−429	−60	0	0	0	0	0	0	0	0	−489	−489
Estimated Outlays	0	−126	−183	−114	−23	−13	0	0	0	0	−446	−459
Research, Extension, and Education Grants:												
Estimated Budget Authority	0	−360	−200	−200	0	0	0	0	0	0	−760	−760
Estimated Outlays	0	−54	−156	−208	−202	−100	−40	0	0	0	−620	−760
Food Stamp Programs:												
Estimated Budget Authority	−14	−186	−191	−199	−204	−103	0	0	0	0	−794	−896
Estimated Outlays	−14	−186	−191	−199	−204	−103	0	0	0	0	−794	−896
Total Changes:												
Estimated Budget Authority	−1,206	−928	−604	−642	−470	−290	−129	−100	−107	−107	−3,852	−4,585
Estimated Outlays	−567	−776	−798	−797	−710	−411	−173	−103	−109	−108	−3,650	−4,554

[1] The House Budget Committee has directed CBO to estimate the costs of the legislation assuming that subsequent legislation will extend the authority to make direct payments beyond crop year 2009.
Details may not sum to totals because of rounding.

TABLE 3.—IMPACT OF THE AGRICULTURAL RECONCILIATION ACT OF 2005 ON SPENDING FOR THE COMMODITY PROGRAM

	By fiscal year, in millions of dollars									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Reduction of Direct Payments [1]:										
Estimated Budget Authority	−26	−53	−53	−53	−53	−53	−53	−53	−53	−53
Estimated Outlays	−26	−53	−53	−53	−53	−53	−53	−53	−53	−53
Limit on Advance Direct Payments:										
Estimated Budget Authority	−513	0	0	0	0	0	0	0	0	0
Estimated Outlays	−513	0	0	0	0	0	0	0	0	0
Cotton Competitiveness Provisions:										
Estimated Budget Authority	−14	−111	−55	−52	−50	−52	−49	−51	−51	−51
Estimated Outlays	−14	−111	−55	−52	−50	−52	−49	−51	−51	−51
Total Changes:.										
Estimated Budget Authority	−553	−164	−108	−105	−103	−105	−102	−104	−104	−104
Estimated Outlays	−553	−164	−108	−105	−103	−105	−102	−104	−104	−104
Memorandum:										
Commodity Program Outlays Under CBO's March 2005 Baseline	19,289	16,669	14,687	14,962	14,662	14,339	13,962	13,862	13,840	12,865

[1] Using the assumptions specified by the House Budget Committee, savings for the 1 percent reduction in direct payments would be $26 million in 2006, $211 million over the 2006–2010 period, and zero after 2010.

Section 1101—Reduction of Direct Payments. Section 1101 would require a 1 percent reduction in direct payments for the 2006 and 2007 crops of feed grains, oilseeds, wheat, cotton, rice, and peanuts. The legislation also specifies that no reduction occur for the 2010 and subsequent crop years, if future legislation were to authorize direct payments for those crop years. Current law authorizes the CCC price and income support program, including direct payments to applicable crops, through 2007. The Balanced Budget and Emergency Deficit Control Act of 1985 specifies that such expiring programs should be assumed to continue to operate as they exist upon scheduled expiration. Therefore, the CBO baseline assumes that the price and income support program continues indefinitely beyond its expiration date of 2007. Hence, our estimate assumes the 1 percent reduction would apply to the 2010 and subsequent crops.

Relative to CBO's baseline projections, enacting this section would reduce direct spending for the CCC price and income support program by $26 million in 2006, $238 million over the 2006–2010 period, and $503 million over the 2006–2015 period, CBO estimates. The House Budget Committee has directed CBO to assume that the 1 percent reduction in direct payments would end with the

2009 crop, reflecting a provision in the legislation that would be contingent on enactment of legislation to extend direct payments beyond that year. (CBO's cost estimates do not ordinarily incorporate contingencies that depend on enactment of future legislation.). Under the House Budget Committee's assumptions, this section would reduce direct spending by $26 million in 2006, $211 million over the 2006–2010 period, and $211 million over the 2006–2015 period.

Section 1102—Advance Direct Payments. The 2002 farm act (Public Law 107–171) authorizes the Secretary of Agriculture to offer eligible producers up to a 50 percent advance payment on their annual direct payment for feed grains, oilseeds, wheat, cotton, rice, and peanuts. Producers may request advance payments beginning on December 1 of the calendar year before the crop is harvested until the final payment is made in October of the calendar year in which the crop is harvested. Section 1102 would limit those annual advance payments to no more than 40 percent of the direct payments for the 2006 and 2007 crop years.

This section would not affect the total value of direct payments that producers are eligible to receive for each crop year, only the timing of the payment. By shifting payments from each year to the following year, this provision would have the effect of reducing outlays in 2006 and shifting some outlays beyond 2015. CBO estimates that limiting advance direct payments would reduce spending by $513 million in 2006, with no change in total payments in each subsequent fiscal year through 2015.

Section 1103—Cotton Competitiveness Provisions. Section 1103 would eliminate cotton user marketing certificates, more commonly known as the Step 2 payments, effective beginning on August 1, 2006. First authorized in 1990, Step 2 is a provision of the marketing assistance loan program unique to upland cotton. It provides for cash or in-kind payments to eligible domestic users and exporters of U.S.-grown upland cotton whenever U.S. cotton prices are higher than world market cotton prices.

CBO estimates that eliminating Step 2, effective August 1, 2006, would reduce CCC spending for the cotton program by $14 million in 2006, $282 million over the 2006–2010 period, and $536 million over the 2006–2015 period. Those savings are less than CBO's baseline estimates for Step 2 payments over the 2006–2015 period ($1.2 billion) because Step 2 payments also affect the demand for and price of upland cotton.

CBO estimates that eliminating Step 2 would reduce U.S. cotton exports by about 2.5 percent and domestic mill use by a smaller amount (because mill use is a smaller component of total use). We estimate that such a decrease in demand would reduce domestic cotton prices by $0.0075 to $0.0200 per pound, which is 50 percent to 60 percent of the estimated forgone Step 2 payment rate. The payment rate for countercyclical payments is determined, in part, by average U.S. cotton prices; the lower the prices, the higher the countercyclical payments. CBO estimates that lower U.S. prices due to elimination of Step 2 would lead to an increase in countercyclical payments of $484 million over the 2006–2015 period. Eliminating Step 2 would also slightly increase world cotton prices. The world price is used to determine repayment rates for upland cotton

marketing loans and loan deficiency payments. We estimate that higher world prices would reduce the cost of cotton marketing loans by $17 million over the 2006–2015 period.

Conservation

Subtitle B would amend the Watershed Rehabilitation Program, the Conservation Security Program (CSP), and the Agricultural Management Assistance Program (AMAP). Authority for CSP would be extended through 2011 but total spending authority would be reduced. Under the assumptions underlying CBO's March 2005 baseline projections, we estimate that extending CSP through 2011 would result in outlays of $1.6 billion over the 2008–2015 period. Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, such extensions are assumed in the baseline projections and have no cost relative to those projections. CBO's estimates of the budgetary effects of the amendments to conservation programs are detailed in Table 4.

Section 1201—Watershed Rehabilitation Program. The Watershed Rehabilitation Program provides assistance to communities to rehabilitate aging local dams. The Natural Resources Conservation Service (NRCS) provides technical and financial assistance for the planning, design, and implementation of rehabilitation projects that may include upgrading or removing the dams. Section 1201 would limit the availability of CCC funds for 2007 to $50 million, and would rescind all balances from prior years unobligated as of September 30, 2006. CBO estimates that these provisions would reduce spending for watershed rehabilitation by $100 million over the 2006–2010 period.

TABLE 4.—IMPACT OF THE AGRICULTURAL RECONCILIATION ACT OF 2005 ON SPENDING FOR CONSERVATION PROGRAMS

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Watershed Rehabilitation Program:										
Estimated Budget Authority [1]	−85	−15	0	0	0	0	0	0	0	0
Estimated Outlays	0	−60	−20	−13	−7	0	0	0	0	0
Conservation Security Program:										
Estimated Budget Authority	0	−100	−95	−128	−181	−135	−80	−49	−56	−56
Estimated Outlays	0	−100	−95	−128	−181	−135	−80	−49	−56	−56
Agricultural Management Assistance Program:										
Estimated Budget Authority	0	−20	−10	−10	−10	0	0	0	0	0
Estimated Outlays	0	−2	−11	−9	−9	−8	−4	−3	−2	−1

TABLE 4.—IMPACT OF THE AGRICULTURAL RECONCILIATION ACT OF 2005 ON SPENDING FOR CONSERVATION PROGRAMS—Continued

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Total Changes:										
Estimated Budget Authority	−85	−135	−105	−138	−191	−135	−80	−49	−56	−56
Estimated Outlays	0	−162	−126	−150	−197	−143	−84	−52	−58	−57
Memorandum:										
Outlays for Conservation Programs.										
Under CBO's March 2005 Baseline	3,652	4,006	4,224	4,894	4,829	4,771	4,817	4,779	4,748	4,781

[1] If enacted, the conference agreement on H.R. 2744 would prevent the Department of Agriculture from obligating funds—in fiscal year 2006—previously provided for the Watershed Rehabilitation Program. As a result, more funds would be available for obligation at the end of 2006—and thus subject to the rescission in this reconciliation legislation. Therefore, upon enactment of H.R. 2744, the reconciliation provision would save $125 million more over the 2006–2010 and 2006–2015 periods than shown above.

Section 1202—Conservation Security Program. The CSP, first authorized in the 2002 farm act, provides financial and technical assistance to promote conservation and improvement of soil, water, air, plant and animal life, and land currently used for agricultural production. Producers enroll in 5- to-15-year contracts in exchange for cost-share assistance and annual payments. Under current law, total spending on CSP contracts is limited to $6.037 billion over the 2005–2014 period. Fiscal year 2015 is not covered by that limit; CBO's baseline includes $835 million in outlays for 2015.

Section 1202 would restrict CSP spending to $2.213 billion over the 2006–2010 period and $5.729 billion over the 2006–2015 period. CBO estimates that imposing those spending caps would reduce spending on the CSP program by $504 million over the 2006–2010 period and $880 million over the 2006–2015 period.

Section 1203—Agricultural Management Assistance Program (AMAP). This program, authorized by the Agriculture Risk Protection Act of 2000, provides $20 million in 2007 and $10 million each subsequent year for financial assistance to producers in 15 states where participation in the federal crop insurance program has historically been low. Section 1203 would prohibit obligations for AMAP over the 2007–2010 period. CBO estimates that this provision would reduce conservation spending by $31 million over the 2006–2010 period and by $49 million over the 2006–2015 period.

Energy

The renewable energy systems and energy efficiency improvements program provides a combination of loans and grants to farmers to purchase renewable energy systems or to make energy-efficiency improvements. Section 1301 would eliminate funding for the program in 2007. CBO estimates that action would reduce direct spending by $23 million over the 2006–2010 period (see Table 5).

TABLE 5.—IMPACT OF THE AGRICULTURAL RECONCILIATION ACT OF 2005 ON SPENDING FOR ENERGY PROGRAMS

	By fiscal year, in millions of dollars									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Renewable Energy Systems and Energy-Efficiency Improvements Program:										
Estimated Budget Authority	0	−23	0	0	0	0	0	0	0	0
Estimated Outlays	0	−9	−9	−5	0	0	0	0	0	0

Rural Development

The legislation would eliminate fiscal year 2007 funding and rescind unobligated balances for the Rural Community Grants (firefighter assistance) program, the broadband loans component of the Distance Learning, Telemedicine, and the Broadband program, and the Value-Added Marketing program. In addition, the bill would rescind the unobligated balances of both the Rural Strategic Investment and the Rural Business Investment programs. (The rescissions would take effect on September 30, 2006, and would apply to balances available on that date.) In sum, CBO estimates the provisions would reduce direct spending by $204 million over the 2006–2010 period and by $215 million over the 2006–2015 period (see Table 6).

TABLE 6.—IMPACT OF THE AGRICULTURAL RECONCILIATION ACT OF 2005 ON SPENDING FOR RURAL DEVELOPMENT PROGRAMS

	By fiscal year, in millions of dollars									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Rural Firefighers and Emergency Personnel Grants:										
Estimated Budget Authority	0	−10	0	0	0	0	0	0	0	0
Estimated Outlays:	0	−1	−4	−5	0	0	0	0	0	0
Enhanced Access to Broadband:										
Estimated Budget Authority	−60	−10	0	0	0	0	0	0	0	0
Estimated Outlays	0	−1	−7	−11	−10	−6	−5	0	0	0
Value-Added Marketing Program:										
Estimated Budget Authority	−30	−40	0	0	0	0	0	0	0	0
Estimated Outlays	0	−28	−35	−7	0	0	0	0	0	0
Rural Business Investment Program:										
Estimated Budget Authority	−45	0	0	0	0	0	0	0	0	0
Estimated Outlays	0	−23	−18	−4	0	0	0	0	0	0
Rural Business Strategic Investment Grants:										
Estimated Budget Authority	−50	0	0	0	0	0	0	0	0	0
Estimated Outlays	0	−5	−20	−25	0	0	0	0	0	0
Total Changes [1]:										
Estimated Budget Authority	−185	−60	0	0	0	0	0	0	0	0
Estimated Outlays	0	−58	−84	−52	−10	−6	−5	0	0	0

[1] If enacted, the conference agreement on H.R. 2744 would prevent the Department of Agriculture from obligating funds—in fiscal year 2006—previously provided for these rural development programs. As a result, more funds would be available for obligation at the end of 2006—and thus subject to the rescission in this reconciliation legislation. Therefore, upon enactment of H.R. 2744, the reconciliation provision would save $242 million more over the 2006–2010 period and $244 million more over the 2006–2015 period than shown above.

Research

The Initiative for Future Agriculture and Food Systems is a competitive grant program designed to support research, extension and education activities for U.S. agriculture. The Agricultural Research, Extension, and Education Reform Act of 1998 created the initiative and provided mandatory funding for it. The program was reauthorized in the Farm Security and Rural Investment Act of 2002 with mandatory funding of $160 million in 2006 and $200 million in subsequent years. The bill would eliminate funding available to the program over the 2007–2009 period. Funding would remain at $200 million in 2010 and subsequent years. CBO estimates that this provision would reduce mandatory spending by $460 million over the 2006–2010 period and $600 million over the 2006–2015 period (see Table 7).

TABLE 7.—IMPACT OF THE AGRICULTURAL RECONCILIATION ACT OF 2005 ON SPENDING FOR THE INITIATIVE FOR FUTURE AGRICULTURE AND FOOD SYSTEMS

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Initiative for Future Agriculture and Food Systems:										
Estimated Budget Authority [1]	0	−200	−200	−200	0	0	0	0	0	0
Estimated Outlays	0	−30	−100	−160	−170	−100	−40	0	0	0

[1] If enacted, the conference agreement on H.R. 2744 would prevent the Department of Agriculture from obligating funds—in fiscal year 2006—previously provided for the Initiative for Future Agriculture and Food Systems. As a result, more funds would be available for obligation at the end of 2006—and thus subject to the rescission in this reconciliation legislation. Therefore, upon enactment of H.R. 2744, the reconciliation provision would save $160 million more over the 2006–2010 and 2006–2015 periods than shown above.

Nutrition

Subtitle F would extend and modify the Food Stamp program. The 2002 farm act authorized the Food Stamp program through 2007. This legislation would extend that authority through 2011. Under the assumptions underlying CBO's March 2005 baseline projections, we estimate that extending the program through 2011 would result in additional outlays of $137 billion over the 2008–2011 period. Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, this extension is assumed in the baseline projection and has no cost relative to that projection. Other provisions in the subtitle would reduce spending for the Food Stamp program and would increase spending for the Emergency Food Assistance program (see Table 8).

TABLE 8.—IMPACT OF THE AGRICULTURAL RECONCILIATION ACT OF 2005 ON SPENDING FOR NUTRITION PROGRAMS

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Eligible Households:										
Estimated Budget Authority	−40	−127	−132	−136	−139	−71	0	0	0	0
Estimated Outlays	−40	−127	−132	−136	−139	−71	0	0	0	0
Residency Requirement:										
Estimated Budget Authority	−25	−60	−60	−65	−65	−33	0	0	0	0
Estimated Outlays	−25	−60	−60	−65	−65	−33	0	0	0	0
Food Stamp Interaction Effects:										
Estimated Budget Authority	1	1	1	1	1	1	0	0	0	0
Estimated Outlays	1	1	1	1	1	1	0	0	0	0
Emergency Food Assistance Program:										
Estimated Budget Authority	12	0	0	0	0	0	0	0	0	0
Estimated Outlays	12	0	0	0	0	0	0	0	0	0
Disaster Food Stamp Program:										
Estimated Budget Authority	38	0	0	0	0	0	0	0	0	0
Estimated Outlays	38	0	0	0	0	0	0	0	0	0
Total:										
Estimated Budget Authority	−14	−186	−191	−199	−202	−103	0	0	0	0
Estimated Outlays	−14	−186	−191	−199	−202	−103	0	0	0	0
Memorandum:										
Spending for Food Stamp Program Under CBO's March 2005 Baseline	33,445	33,054	33,275	33,882	34,638	35,542	36,474	37,301	38,273	39,277

Food Stamp Eligibility. Subtitle F would change eligibility for the Food Stamp program in two ways: by restricting categorical eligibility; and by extending the residency requirement for legal permanent residents.

Section 1601—Eligible Households. Under current law, households that receive or are eligible to receive any type of benefit from the TANF program are among those considered categorically eligible for food stamps. This includes non-cash benefits such as job placement services. Categorically eligible households are not subject to the same income and asset tests as other participants. This provision would restrict categorical eligibility to only those households receiving cash assistance. Based on information from the Food Stamp Quality Control (QC) Data, CBO estimates that about 225,000 people who are categorically eligible based on non-cash benefits would not be able to meet the income and asset tests for the program. On average, those individuals would lose about $45 a month in food stamp benefits in 2007.

In addition, school-age children in these households would no longer be automatically eligible for free school meals. (All children in Food Stamp households are categorically eligible for free school lunches and breakfasts.) Based on income information from the QC data, we expect that most of these children would nevertheless be eligible for reduced-price meals based on their family income; about 40,000 children would lose their eligibility. On average, benefits for these students would decline by about $185 a year.

This provision would be in effect upon enactment in 2006 and expire on September 30, 2010. CBO assumes that, in 2011, newly eligible individuals would gradually join the program over the course of the year.

Section 1603—Residency Requirement. The 2002 farm act made legal permanent residents who have resided in the United States for at least five years eligible for food stamps. (Legal permanent residents under the age of 18 or who are disabled are eligible without a waiting period.) This provision would extend the residency requirement to seven years during the 2006–2010 period. CBO estimates that about 70,000 people would no longer be eligible for benefits, based on fiscal year 1996 QC data adjusted for changes in Food Stamp rules and recent immigration statistics. Food Stamp outlays would be lowered by $275 million over the 2006–2010 period and by $308 million over the 2006–2015 period. In 2011, when the waiting period would drop back to five years, CBO expects that newly eligible participants would come back onto the program over the course of the year.

Interaction effects. Taken alone, CBO estimates that restricting categorical eligibility would reduce Food Stamp outlays by $546 million and child nutrition outlays by $28 million over the 2006–2010 period. These estimated savings would decline slightly after taking into account the proposal to extend the waiting period for legal permanent residents. (CBO estimates that a small share of categorically eligible participants are legal permanent residents who would lose benefits under the new waiting-period requirements.) As a result, the gross savings cited above would be reduced by an estimated $1 million per year over the 2006–2010 period.

Section 1602—Availability of Commodities for the Emergency Food Assistance Program. Section 1602 would reauthorize $140 million for the purchase of commodities for the Emergency Food Assistance Program through 2011. This provision does not have an estimated budget impact because the extension is already assumed in the baseline. But the legislation would provide an additional $12 million in fiscal year 2006 for commodities to be distributed to states that were under a major disaster declaration as a result of Hurricanes Katrina and Rita, and to states adjacent to those states. CBO estimates that this provision would increase outlays by $12 million in 2006.

Section 1604—Disaster Food Stamp Program. States pay 50 percent of the administrative costs associated with the Food Stamp program. Under the legislation, states would be reimbursed for the full cost of certain administrative expenses for disaster food stamp benefits issued after Hurricanes Katrina and Rita. Data from the Food and Nutrition Service show that 1.1 million households were certified for disaster benefits, including supplements for current food stamp recipients, after the hurricanes. CBO estimates that the increase in the federal share of administrative costs would be $38 million in fiscal year 2006.

Intergovernmental and private-sector impact: The legislation contains no intergovernmental or private-sector mandates as defined in UMRA. Some of its provisions would reduce federal funding for assistance to state and local governments.

Estimate prepared by: Federal Costs: Jim Langley, David Hull, and Greg Hitz (Commodity Program and Research); Gregory Waring (Rural Development); and Kathleen FitzGerald (Nutrition). Impact on State, Local, and Tribal Governments: Marjorie Miller and Leo Lex. Impact on the Private Sector: Craig Cammarata.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

* * * * * * *

TITLE I—COMMODITY PROGRAMS

Subtitle A—Direct Payments and Counter-Cyclical Payments

* * * * * * *

SEC. 1103. AVAILABILITY OF DIRECT PAYMENTS.

(a) * * *

* * * * * * *

(c) PAYMENT AMOUNT.—[The amount] *Except as provided in subsection (e), the amount* of the direct payment to be paid to the producers on a farm for a covered commodity for a crop year shall be equal to the product of the following:

(1) * * *

* * * * * * *

(d) TIME FOR PAYMENT.—

(1) * * *

(2) ADVANCE PAYMENTS.—At the option of the producers on a farm, up to 50 percent of the direct payment for a covered commodity for any of the 2003 through [2007 crop years] *2005 crop years and up to 40 percent of the direct payment for a covered commodity for each of the 2006 and 2007 crop years* shall be paid to the producers in advance. The producers shall select the month within which the advance payment for a crop year will be made. The month selected may be any month during the period beginning on December 1 of the calendar year before the calendar year in which the crop of the covered commodity is harvested through the month within which the direct payment would otherwise be made. The producers may change the selected month for a subsequent advance payment by providing advance notice to the Secretary.

* * * * * * *

(e) DIRECT PAYMENT AMOUNT REDUCTION.—Notwithstanding subsection (c), for the 2006 and 2007 crop years (and the 2008 and 2009 crop years if direct payments are provided under this section for those crop years), the Secretary shall reduce the total amount of the direct payment to be paid to the producers on a farm for a covered commodity for the crop year concerned by an amount equal to 1 percent of the direct payment amount otherwise determined for that farm for that covered commodity for that crop year. No reduction shall be made under the authority of this subsection if direct payments are made for the 2010 or any subsequent crop year of a covered commodity.

* * * * * * *

Subtitle B—Marketing Assistance Loans and Loan Deficiency Payments

* * * * * * *

SEC. 1207. [SPECIAL MARKETING LOAN PROVISIONS FOR UPLAND COTTON.] *UPLAND COTTON IMPORT QUOTAS.*

[(a) COTTON USER MARKETING CERTIFICATES.—

[(1) ISSUANCE.—During the period beginning on the date of the enactment of this Act through July 31, 2008, the Secretary shall issue marketing certificates or cash payments, at the option of the recipient, to domestic users and exporters for documented purchases by domestic users and sales for export by ex-

porters made in the week following a consecutive 4-week period in which—

[(A) the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) 1 3/32-inch cotton, delivered C.I.F. Northern Europe exceeds the Northern Europe price by more than 1.25 cents per pound; and

[(B) the prevailing world market price for upland cotton (adjusted to United States quality and location) does not exceed 134 percent of the loan rate for upland cotton established under section 1202.

[(2) VALUE OF CERTIFICATES OR PAYMENTS.—The value of the marketing certificates or cash payments shall be based on the amount of the difference (reduced by 1.25 cents per pound) in the prices during the fourth week of the consecutive 4-week period multiplied by the quantity of upland cotton included in the documented sales.

[(3) ADMINISTRATION OF MARKETING CERTIFICATES.—

[(A) REDEMPTION, MARKETING, OR EXCHANGE.—The Secretary shall establish procedures for redeeming marketing certificates for cash or marketing or exchange of the certificates for agricultural commodities owned by the Commodity Credit Corporation or pledged to the Commodity Credit Corporation as collateral for a loan in such manner, and at such price levels, as the Secretary determines will best effectuate the purposes of cotton user marketing certificates, including enhancing the competitiveness and marketability of United States cotton. Any price restrictions that would otherwise apply to the disposition of agricultural commodities by the Commodity Credit Corporation shall not apply to the redemption of certificates under this subsection.

[(B) DESIGNATION OF COMMODITIES AND PRODUCTS.—To the extent practicable, the Secretary shall permit owners of certificates to designate the commodities and products, including storage sites, the owners would prefer to receive in exchange for certificates

[(C) TRANSFERS.—Marketing certificates issued to domestic users and exporters of upland cotton may be transferred to other persons in accordance with regulations issued by the Secretary.

[(4) DELAYED APPLICATION OF THRESHOLD.—Through July 31, 2006, the Secretary shall make the calculations under paragraphs (1)(A) and (2) without regard to the 1.25 cent threshold provided under those paragraphs.]

[(b)] *(a)* SPECIAL IMPORT QUOTA.—

(1) ESTABLISHMENT.—

(A) * * *

(B) PROGRAM REQUIREMENTS.—Except as provided in subparagraph (C), whenever the Secretary determines and announces that for any consecutive 4-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) 1 3/32-inch cotton, delivered C.I.F. Northern Europe[,

adjusted for the value of any certificate issued under subsection (a),] exceeds the Northern Europe price by more than 1.25 cents per pound, there shall immediately be in effect a special import quota.

(C) TIGHT DOMESTIC SUPPLY.—During any month for which the Secretary estimates the season-ending United States upland cotton stocks-to-use ratio, as determined under subparagraph (D), to be below 16 percent, the Secretary, in making the determination under subparagraph (B), shall not adjust the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) 1 3/32-inch cotton, delivered C.I.F. Northern Europe[, for the value of any certificates issued under subsection (a)].

* * * * * * *

(4) OVERLAP.—A special quota period may be established that overlaps any existing quota period if required by paragraph (1), except that a special quota period may not be established under this subsection if a quota period has been established under [subsection (c)] *subsection (b)*.

[(c)] *(b)* LIMITED GLOBAL IMPORT QUOTA FOR UPLAND COTTON.—

(1) * * *

(2) NO OVERLAP.—Notwithstanding paragraph (1), a quota period may not be established that overlaps an existing quota period or a special quota period established under [subsection (b)] *subsection (a)*.

* * * * * * *

Subtitle C—Peanuts

* * * * * * *

SEC. 1303. AVAILABILITY OF DIRECT PAYMENTS FOR PEANUTS.

(a) * * *

* * * * * * *

(d) PAYMENT AMOUNT FOR SUBSEQUENT CROP YEARS.—[The amount] *Except as provided in subsection (f), the amount* of the direct payment to be paid to the producers on a farm for the 2003 through 2007 crops of peanuts shall be equal to the product of the following:

(1) * * *

* * * * * * *

(e) TIME FOR PAYMENT.—

(1) * * *

(2) ADVANCE PAYMENTS.—At the option of the producers on a farm, up to 50 percent of the direct payment for any of the 2003 through [2007 crop years] *2005 crop years and up to 40 percent of the direct payment for each of the 2006 and 2007 crop years* shall be paid to the producers in advance. The producers shall select the month within which the advance payment for a crop year will be made. The month selected may be any month during the period beginning on December 1 of the

calendar year before the calendar year in which the crop is harvested through the month within which the direct payment would otherwise be made. The producers may change the selected month for a subsequent advance payment by providing advance notice to the Secretary.

(f) DIRECT PAYMENT AMOUNT REDUCTION.—Notwithstanding subsection (d), for the 2006 and 2007 crops of peanuts (and the 2008 and 2009 crops of peanuts if direct payments are provided under this section for those crops), the Secretary shall reduce the total amount of the direct payment to be paid to the producers on a farm for that crop of peanuts by an amount equal to 1 percent of the direct payment amount otherwise determined for that farm for that crop of peanuts. No reduction shall be made under the authority of this subsection if direct payments are made for the 2010 or any subsequent crop of peanuts.

* * * * * * *

TITLE VI—RURAL DEVELOPMENT

* * * * * * *

SUBTITLE E—MISCELLANEOUS

* * * * * * *

SEC. 6405. RURAL FIREFIGHTERS AND EMERGENCY PERSONNEL GRANT PROGRAM.

(a) * * *

* * * * * * *

(c) FUNDING.—Of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section $10,000,000 for each of fiscal years 2003 through [2007, to remain available until expended] *2006*.

* * * * * * *

TITLE IX—ENERGY

* * * * * * *

SEC. 9006. RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS.

(a) * * *

* * * * * * *

(f) FUNDING.—Of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section $23,000,000 for each of fiscal years 2003 through [2007] *2006*.

* * * * * * *

SECTION 136 OF THE FEDERAL AGRICULTURE IMPROVEMENT AND REFORM ACT OF 1996

[SEC. 136. SPECIAL MARKETING LOAN PROVISIONS FOR UPLAND COTTON.

[(a) COTTON USER MARKETING CERTIFICATES.—

[(1) ISSUANCE.—During the period ending July 31, 2003, the Secretary shall issue marketing certificates or cash payments, at the option of the recipient, to domestic users and exporters for documented purchases by domestic users and sales for export by exporters made in the week following a consecutive 4-week period in which—

[(A) the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) 1 3/32-inch cotton, delivered C.I.F. Northern Europe exceeds the Northern Europe price by more than 1.25 cents per pound; and

[(B) the prevailing world market price for upland cotton (adjusted to United States quality and location) does not exceed 134 percent of the loan rate for upland cotton established under section 132.

[(2) VALUE OF CERTIFICATES OR PAYMENTS.—The value of the marketing certificates or cash payments shall be based on the amount of the difference (reduced by 1.25 cents per pound) in the prices during the 4th week of the consecutive 4-week period multiplied by the quantity of upland cotton included in the documented sales.

[(3) ADMINISTRATION OF MARKETING CERTIFICATES.—

[(A) REDEMPTION, MARKETING, OR EXCHANGE.—The Secretary shall establish procedures for redeeming marketing certificates for cash or marketing or exchange of the certificates for agricultural commodities owned by the Commodity Credit Corporation or pledged to the Commodity Credit Corporation as collateral for a loan in such manner, and at such price levels, as the Secretary determines will best effectuate the purposes of cotton user marketing certificates, including enhancing the competitiveness and marketability of United States cotton. Any price restrictions that would otherwise apply to the disposition of agricultural commodities by the Commodity Credit Corporation shall not apply to the redemption of certificates under this subsection.

[(B) DESIGNATION OF COMMODITIES AND PRODUCTS.—To the extent practicable, the Secretary shall permit owners of certificates to designate the commodities and products, including storage sites, the owners would prefer to receive in exchange for certificates.

[(C) TRANSFERS.—Marketing certificates issued to domestic users and exporters of upland cotton may be transferred to other persons in accordance with regulations issued by the Secretary.

[(b) SPECIAL IMPORT QUOTA.—

[(1) ESTABLISHMENT.—

[(A) IN GENERAL.—The President shall carry out an import quota program during the period ending July 31, 2003, as provided in this subsection.

[(B) PROGRAM REQUIREMENTS.—Except as provided in subparagraph (C), whenever the Secretary determines and announces that for any consecutive 4-week period, the Friday through Thursday average price quotation for the low-

est-priced United States growth, as quoted for Middling (M) 1 3/32-inch cotton, delivered C.I.F. Northern Europe, adjusted for the value of any certificate issued under subsection (a), exceeds the Northern Europe price by more than 1.25 cents per pound, there shall immediately be in effect a special import quota.

[(C) TIGHT DOMESTIC SUPPLY.—During any month for which the Secretary estimates the season-ending United States upland cotton stocks-to-use ratio, as determined under subparagraph (D), to be below 16 percent, the Secretary, in making the determination under subparagraph (B), shall not adjust the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) 1 3/32-inch cotton, delivered C.I.F. Northern Europe, for the value of any certificates issued under subsection (a).

[(D) SEASON-ENDING UNITED STATES STOCKS-TO-USE RATIO.—For the purposes of making estimates under subparagraph (C), the Secretary shall, on a monthly basis, estimate and report the season-ending United States upland cotton stocks-to-use ratio, excluding projected raw cotton imports but including the quantity of raw cotton that has been imported into the United States during the marketing year.

[(2) QUANTITY.—The quota shall be equal to 1 week's consumption of upland cotton by domestic mills at the seasonally adjusted average rate of the most recent 3 months for which data are available.

[(3) APPLICATION.—The quota shall apply to upland cotton purchased not later than 90 days after the date of the Secretary's announcement under paragraph (1) and entered into the United States not later than 180 days after the date.

[(4) OVERLAP.—A special quota period may be established that overlaps any existing quota period if required by paragraph (1), except that a special quota period may not be established under this subsection if a quota period has been established under subsection (c).

[(5) PREFERENTIAL TARIFF TREATMENT.—The quantity under a special import quota shall be considered to be an in-quota quantity for purposes of—

[(A) section 213(d) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(d));

[(B) section 204 of the Andean Trade Preference Act (19 U.S.C. 3203);

[(C) section 503(d) of the Trade Act of 1974 (19 U.S.C. 2463(d)); and

[(D) General Note 3(a)(iv) to the Harmonized Tariff Schedule.

[(6) DEFINITION.—In this subsection, the term "special import quota" means a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota.

[(7) LIMITATION.—The quantity of cotton entered into the United States during any marketing year under the special import quota established under this subsection may not exceed

the equivalent of 5 week's consumption of upland cotton by domestic mills at the seasonally adjusted average rate of the 3 months immediately preceding the first special import quota established in any marketing year.

[(c) LIMITED GLOBAL IMPORT QUOTA FOR UPLAND COTTON.—

[(1) IN GENERAL.—The President shall carry out an import quota program that provides that whenever the Secretary determines and announces that the average price of the base quality of upland cotton, as determined by the Secretary, in the designated spot markets for a month exceeded 130 percent of the average price of such quality of cotton in the markets for the preceding 36 months, notwithstanding any other provision of law, there shall immediately be in effect a limited global import quota subject to the following conditions:

[(A) QUANTITY.—The quantity of the quota shall be equal to 21 days of domestic mill consumption of upland cotton at the seasonally adjusted average rate of the most recent 3 months for which data are available.

[(B) QUANTITY IF PRIOR QUOTA.—If a quota has been established under this subsection during the preceding 12 months, the quantity of the quota next established under this subsection shall be the smaller of 21 days of domestic mill consumption calculated under subparagraph (A) or the quantity required to increase the supply to 130 percent of the demand.

[(C) PREFERENTIAL TARIFF TREATMENT.—The quantity under a limited global import quota shall be considered to be an in-quota quantity for purposes of—

[(i) section 213(d) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(d));

[(ii) section 204 of the Andean Trade Preference Act (19 U.S.C. 3203);

[(iii) section 503(d) of the Trade Act of 1974 (19 U.S.C. 2463(d)); and

[(iv) General Note 3(a)(iv) to the Harmonized Tariff Schedule.

[(D) DEFINITIONS.—In this subsection:

[(i) SUPPLY.—The term "supply" means, using the latest official data of the Bureau of the Census, the Department of Agriculture, and the Department of the Treasury—

[(I) the carry-over of upland cotton at the beginning of the marketing year (adjusted to 480-pound bales) in which the quota is established;

[(II) production of the current crop; and

[(III) imports to the latest date available during the marketing year.

[(ii) DEMAND.—The term "demand" means—

[(I) the average seasonally adjusted annual rate of domestic mill consumption during the most recent 3 months for which data are available; and

[(II) the larger of—

[(aa) average exports of upland cotton during the preceding 6 marketing years; or

[(bb) cumulative exports of upland cotton plus outstanding export sales for the marketing year in which the quota is established.

[(iii) LIMITED GLOBAL IMPORT QUOTA.—The term "limited global import quota" means a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota.

[(E) QUOTA ENTRY PERIOD.—When a quota is established under this subsection, cotton may be entered under the quota during the 90-day period beginning on the date the quota is established by the Secretary.

[(2) NO OVERLAP.—Notwithstanding paragraph (1), a quota period may not be established that overlaps an existing quota period or a special quota period established under subsection (b).]

SECTION 14 OF THE WATERSHED PROTECTION AND FLOOD PREVENTION ACT

SEC. 14. REHABILITATION OF STRUCTURAL MEASURES NEAR, AT, OR PAST THEIR EVALUATED LIFE EXPECTANCY.

(a) * * *

* * * * * * *

(h) FUNDING.—

(1) FUNDS OF COMMODITY CREDIT CORPORATION.—In carrying out this section, of the funds of the Commodity Credit Corporation, the Secretary shall make available[, to remain available until expended]—

(A) * * *

* * * * * * *

(E) [$65,000,000] *$50,000,000* for fiscal year 2007; and

* * * * * * *

FOOD SECURITY ACT OF 1985

* * * * * * *

TITLE XII—CONSERVATION

* * * * * * *

Subtitle D—Agricultural Resources Conservation Program

* * * * * * *

CHAPTER 2—CONSERVATION SECURITY AND FARMLAND PROTECTION

Subchapter A—Conservation Security Program

* * * * * * *

SEC. 1238A. CONSERVATION SECURITY PROGRAM.

(a) IN GENERAL.—The Secretary shall establish and, for each of fiscal years 2003 through [2007] *2011*, carry out a conservation se-

curity program to assist producers of agricultural operations in promoting, as is applicable with respect to land to be enrolled in the program, conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and any other conservation purposes, as determined by the Secretary.

* * * * * * *

Subtitle E—Funding and Administration

SEC. 1241. COMMODITY CREDIT CORPORATION.

(a) IN GENERAL.—[For] *Except as otherwise provided in this subsection, for* each of fiscal years 2002 through 2007, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out the following programs under subtitle D (including the provision of technical assistance):

(1) * * *

* * * * * * *

(3) The conservation security program under subchapter A of chapter 2, using [not more than $6,037,000,000 for the period of fiscal years 2005 through 2014.] *not more than—*

(A) $2,213,000,000 for the period of fiscal years 2006 through 2010; and

(B) $5,729,000,000 for the period of fiscal years 2006 through 2015.

* * * * * * *

SECTION 524 OF THE FEDERAL CROP INSURANCE ACT

SEC. 524. EDUCATION AND RISK MANAGEMENT ASSISTANCE.

(a) * * *

(b) AGRICULTURAL MANAGEMENT ASSISTANCE.—

(1) * * *

* * * * * * *

(4) COMMODITY CREDIT CORPORATION.—

(A) * * *

(B) FUNDING.—

(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the Commodity Credit Corporation shall make available to carry out this subsection not less than $10,000,000 for each fiscal year*, except fiscal years 2007 through 2010*.

(ii) EXCEPTION.—For each of fiscal years 2003 through [2007] *2006*, the Commodity Credit Corporation shall make available to carry out this subsection $20,000,000.

(iii) CERTAIN USES.—Of the amounts made available to carry out this subsection for each of fiscal years 2004 through [2007] *2006* the Commodity Credit Corporation shall use not less than—

(I) * * *

* * * * * * *

SECTION 601 OF THE RURAL ELECTRIFICATION ACT OF 1936

SEC. 601. ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS.

(a) * * *

* * * * * * *

(j) FUNDING.—

(1) IN GENERAL.—Notwithstanding any other provision of law, of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section—

(A) $20,000,000 for each of fiscal years 2002 through 2005**[**, to remain available until expended**]**; and

(B) $10,000,000 **[**for each of fiscal years 2006 and 2007, to remain available until expended**]** *for fiscal year 2006*.

* * * * * * *

SECTION 231 OF THE AGRICULTURAL RISK PROTECTION ACT OF 2000

SEC. 231. VALUE-ADDED AGRICULTURAL PRODUCT MARKET DEVELOPMENT GRANTS.

(a) * * *

(b) GRANT PROGRAM.—

(1) * * *

* * * * * * *

(4) FUNDING.—Not later than 30 days after the date of enactment of this paragraph, on October 1, 2002, and on each October 1 thereafter through **[**October 1, 2006**]** *October 1, 2005*, of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this subsection $40,000,000**[**, to remain available until expended**]**.

* * * * * * *

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

* * * * * * *

TITLE III—AGRICULTURAL CREDIT

* * * * * * *

Subtitle H—Rural Business Investment Program

* * * * * * *

SEC. 384S. FUNDING.

[(a) IN GENERAL.—]Notwithstanding any other provision of law, of the funds of the Commodity Credit Corporation, the Secretary shall make available—

(1) such sums as may be necessary *through fiscal year 2006* for the cost of guaranteeing $280,000,000 of debentures under this subtitle; and

(2) $44,000,000 to make grants under this subtitle.

[(b) AVAILABILITY OF FUNDS.—Funds transferred under subsection (a) shall remain available until expended.]

* * * * * * *

Subtitle I—Rural Strategic Investment Program

* * * * * * *

SEC. 385E. RURAL STRATEGIC INVESTMENT PROGRAM.

(a) IN GENERAL.—If the Secretary approves a national strategic investment plan submitted by the National Board, of the funds of the Commodity Credit Corporation, the Secretary shall transfer to the National Board $100,000,000[, to remain available until expended,] for the Board to use to make planning grants and innovation grants to Regional Boards and to otherwise carry out this subtitle.

* * * * * * *

SECTION 401 OF THE AGRICULTURAL RESEARCH, EXTENSION, AND EDUCATION REFORM ACT OF 1998

SEC. 401. INITIATIVE FOR FUTURE AGRICULTURE AND FOOD SYSTEMS.

* * * * * * *

(b) FUNDING.—

(1) * * *

* * * * * * *

(3) OTHER FUNDING.—Out of funds in the Commodity Credit Corporation, the Secretary shall transfer to the Account—

(A) * * *

* * * * * * *

(D) on October 1, [2006] *2009*, and each October 1 thereafter, $200,000,000.

* * * * * * *

(f) ADMINISTRATION.—

(1) * * *

* * * * * * *

[(6) AVAILABILITY OF FUNDS.—Funds for grants under this section shall be available to the Secretary for obligation for a 2-year period.]

(6) AVAILABILITY OF FUNDS.—

(A) TWO-YEAR AVAILABILITY.—Except as provided in subparagraph (B), funds for grants under this section shall be available to the Secretary for obligation for a 2-year period beginning on the date of the transfer of the funds under subsection (b).

(B) EXCEPTION FOR FISCAL YEAR 2006 TRANSFER.—In the case of the funds required to be transferred by subsection (b)(3)(C), the funds shall be available to the Secretary for obligation for the 1-year period beginning on October 1, 2005.

* * * * * * *

FOOD STAMP ACT OF 1977

* * * * * * *

ELIGIBLE HOUSEHOLDS

SEC. 5. (a) Participation in the food stamp program shall be limited to those households whose incomes and other financial resources, held singly or in joint ownership, are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Notwithstanding any other provisions of this Act except sections 6(b), 6(d)(2), and 6(g) and section 3(i)(4), households in which each member [receives benefits] *in fiscal years 2006 through 2010 receives cash assistance, and in any other fiscal year receives benefits,* under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), supplemental security income benefits under title XVI of the Social Security Act, or aid to the aged, blind, or disabled under title I, X, XIV, or XVI of the Social Security Act, shall be eligible to participate in the food stamp program. Except for sections 6, 16(e)(1), and section 3(i)(4), households in which each member receives benefits under a State or local general assistance program that complies with standards established by the Secretary for ensuring that the program is based on income criteria comparable to or more restrictive than those under subsection (c)(2), and not limited to one-time emergency payments that cannot be provided for more than one consecutive month, shall be eligible to participate in the food stamp program. Assistance under this program shall be furnished to all eligible households who make application for such participation.

* * * * * * *

(j) Notwithstanding subsections (a) through (i), a State agency shall consider a household member who receives supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1382 et seq.), aid to the aged, blind, or disabled under title I, II, X, XIV, or XVI of such Act (42 U.S.C. 301 et seq.), or who [receives benefits] *in fiscal years 2006 through 2010 receives cash assistance, and in any other fiscal year receives benefits,* under a State program funded under part A of title IV of the Act (42 U.S.C. 601 et seq.) to have satisfied the resource limitations prescribed under subsection (g).

* * * * * * *

ADMINISTRATION

SEC. 11. (a) * * *

* * * * * * *

(t) GRANTS FOR SIMPLE APPLICATION AND ELIGIBILITY DETERMINATION SYSTEMS AND IMPROVED ACCESS TO BENEFITS.—

(1) IN GENERAL.—For each of fiscal years 2003 through [2007] *2011*, the Secretary shall use not more than $5,000,000 of funds made available under section 18(a)(1) to make grants to pay 100 percent of the costs of eligible entities approved by the Secretary to carry out projects to develop and implement—

(A) * * *

* * * * * * *

ADMINISTRATIVE COST-SHARING AND QUALITY CONTROL

SEC. 16. (a) * * *

* * * * * * *

(h) FUNDING OF EMPLOYMENT AND TRAINING PROGRAMS.—

(1) IN GENERAL.—

(A) AMOUNTS.—To carry out employment and training programs, the Secretary shall reserve for allocation to State agencies, to remain available until expended, from funds made available for each fiscal year under section 18(a)(1) the amount of—

(i) * * *

* * * * * * *

(vii) for each of fiscal years 2002 through [2007] *2011*, $90,000,000.

* * * * * * *

(E) ADDITIONAL ALLOCATIONS FOR STATES THAT ENSURE AVAILABILITY OF WORK OPPORTUNITIES.—

(i) IN GENERAL.—In addition to the allocations under subparagraph (A), from funds made available under section 18(a)(1), the Secretary shall allocate not more than $20,000,000 for each of fiscal years 2002 through [2007] *2011* to reimburse a State agency that is eligible under clause (ii) for the costs incurred in serving food stamp recipients who—

(I) * * *

* * * * * * *

(k) REDUCTIONS IN PAYMENTS FOR ADMINISTRATIVE COSTS.—

(1) * * *

* * * * * * *

(3) REDUCTION IN PAYMENT.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, effective for each of fiscal years 1999 through [2007] *2011*, the Secretary shall reduce, for each fiscal year, the amount paid under subsection (a) to each State by an amount equal to the amount determined for the food stamp program under paragraph (2)(B). The Sec-

retary shall, to the extent practicable, make the reductions required by this paragraph on a quarterly basis.

(B) APPLICATION.—If the Secretary of Health and Human Services does not make the determinations required by paragraph (2) by September 30, 1999—

(i) * * *

(ii) for each subsequent fiscal year through fiscal year [2007] *2011*, subparagraph (A) applies.

* * * * * * *

RESEARCH, DEMONSTRATION, AND EVALUATIONS

SEC. 17. (a) * * *

(b)(1)(A) * * *

(B) PROJECT REQUIREMENTS.—

(i) * * *

* * * * * * *

(vi) CASH PAYMENT PILOT PROJECTS.—Any pilot or experimental project implemented under this paragraph and operating as of October 1, 1981, involving the payment of the value of allotments in the form of cash to eligible households all of whose members are either age sixty-five or over or entitled to supplemental security income benefits under title XVI of the Social Security Act shall be continued through October 1, [2007] *2011*, if the State so requests.

* * * * * * *

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. (a)(1) To carry out this Act, there are authorized to be appropriated such sums as are necessary for each of the fiscal years 2003 through [2007] *2011*. Not to exceed one-fourth of 1 per centum of the previous year's appropriation is authorized in each such fiscal year to carry out the provisions of section 17 of this Act, subject to paragraph (3).

* * * * * * *

SEC. 19. CONSOLIDATED BLOCK GRANTS FOR PUERTO RICO AND AMERICAN SAMOA.

(a) PAYMENTS TO GOVERNMENTAL ENTITIES.—

(1) * * *

(2) BLOCK GRANTS.—

(A) AMOUNT OF BLOCK GRANTS.—From the sums appropriated under this Act, the Secretary shall, subject to this section, pay to governmental entities to pay the expenditures for nutrition assistance programs for needy persons as described in subparagraphs (B) and (C)—

(i) for fiscal year 2003, $1,401,000,000; and

(ii) for each of fiscal years 2004 through [2007] *2011*, the amount specified in clause (i), as adjusted by the percentage by which the thrifty food plan has been

adjusted under section 3(o)(4) between June 30, 2002, and June 30 of the immediately preceding fiscal year.

* * * * * * *

SEC. 27. AVAILABILITY OF COMMODITIES FOR THE EMERGENCY FOOD ASSISTANCE PROGRAM.

(a) PURCHASE OF COMMODITIES.—From amounts made available to carry out this Act, for each of fiscal years 2002 through [2007,] *2005 and for each of the fiscal years 2007 through 2011* the Secretary shall purchase $140,000,000*, and for fiscal year 2006 the Secretary shall purchase $152,000,000,* of a variety of nutritious and useful commodities of the types that the Secretary has the authority to acquire through the Commodity Credit Corporation or under section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935 (7 U.S.C. 612c), and distribute the commodities to States for distribution in accordance with section 214 of the Emergency Food Assistance Act of 1983 (Public Law 98–8; 7 U.S.C. 612c note). *Of the funds used to purchase commodities in accordance with this subsection for fiscal year 2006, $12,000,000 shall be used to purchase commodities for distribution to States that received a Presidential designation of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206) as a result of Hurricane Katrina or Hurricane Rita and States contiguous to those States.*

* * * * * * *

SECTION 402 OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

SEC. 402. LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR CERTAIN FEDERAL PROGRAMS.

(a) LIMITED ELIGIBILITY FOR SPECIFIED FEDERAL PROGRAMS.—

(1) * * *

(2) EXCEPTIONS.—

(A) * * *

* * * * * * *

(L) FOOD STAMP EXCEPTION FOR CERTAIN QUALIFIED ALIENS.—With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any qualified alien who has resided in the United States with a status within the meaning of the term "qualified alien" for a period of [5 years or more] *7 years or more effective until September 30, 2010, and for a period of 5 years or more effective beginning on October 1, 2010,* beginning on the date of the alien's entry into the United States.

* * * * * * *

MINORITY VIEWS

The budget process this year has been a disaster from the start. We recognize the importance of having our fiscal house in order and the pressing need for balanced federal budgets. If the current budget process actually moved us in the direction of balanced budgets, perhaps this bill's intent would be better understood. Instead, the budget resolution actually increases the national debt more than if Congress did nothing. The Committee is being forced to amend the 2002 Farm Bill that has been fiscally responsible, saving $11 billion since 2002, and that those living in rural and agricultural communities believe is working well.

Despite the savings achieved by this popular law, we were directed to reduce Farm Bill funding at the worst possible time. Farm income is suffering as commodity prices have declined rapidly. Skyrocketing energy costs have squeezed profit margins into losses on the farm. Weather-related disasters including hurricanes, droughts and floods have shrunk harvests and dampened futures. Many farmers have told us that given the rising price of fuel and other inputs and the low prices for their products, they probably won't be able to plant in the coming year.

This budget bill suffers from missed opportunities and misplaced priorities. The premise that agricultural programs should suffer in this budget process that increases the deficit is flawed, and the approach taken to make these cuts in this bill is unacceptable. Below, we have listed many of the major objections to the bill, which passed with no Democratic support.

DISASTER ASSISTANCE

This Committee has shirked its responsibility to provide emergency food and farm disaster assistance to areas ravaged by hurricane, flood, drought and other damaging natural conditions across the nation. It defeated, on a party line vote, an amendment that would have provided nationwide relief that is similar to what we have provided in previous years when disasters have affected our communities. Farmers and ranchers nationwide must now wait until Congress considers a separate proposal to provide assistance. This hesitation by the Committee, when presented with the opportunity to act quickly, underscores the need for a permanent disaster program so that producers and their lenders will have assurances that their needs will be met if disaster strikes.

RURAL DEVELOPMENT

Out-migration has weakened the rural fabric and has left our communities and their hospitals, churches and schools more dependent on farmers' and ranchers' economic prospects. Rural areas are turning to USDA's rural development programs to support essential public facilities and services, provide economic development

resources, and offer technical assistance and information in rural communities. However, this budget measure reduces funding for many of these programs. For example, it eliminates all funding for first responder training for rural firefighter emergency personnel on critical topics, such as how to respond to hazardous materials and bioagents in rural areas. The changes in this budget proposal will limit these programs and hurt rural communities that are already struggling to maintain their local infrastructure, protect its citizens, and provide jobs to keep young people living in their communities.

ENERGY

This budget will cut baseline funding for energy programs, as producers and small businesses are facing some of the highest energy prices that have ever been experienced. Fuel costs have jumped 21%, while the price of other inputs such as fertilizer have risen 15%. High prices at the gasoline pump are particularly painful for Americans living in rural communities because they often must drive long distances every day to get to work, drop their kids off at school, access healthcare and pick up essentials such as prescription drugs. Americans in rural communities should not have to hold their breath as they fill up their gas tanks, wondering if they can afford a trip to the grocery store after facing higher prices at the pump.

CONSERVATION

Right now, the USDA has to turn away three-fourths of farmers who want to participate in conservation programs, and now is not the time to limit these programs further. When Congress passed the 2002 Farm Bill, compromises were made, and a balance between our responsibilities to commodity, rural development, nutrition, energy and conservation programs was reached. The proposed changes to conservation programs are disproportionately high, which will make it harder to negotiate a good faith agreement in the next farm bill.

NUTRITION PROGRAMS

As we have seen in the aftermath of this year's hurricanes, the most immediate and pressing needs of those who have lost everything are for food and shelter. It is the wrong message at the wrong time to change the Food Stamp program, especially when that program was the one example of excellence in the federal government's response to the Gulf region hurricanes.

Recognizing this, the Committee did include reimbursement to states for the full cost of certain administrative expenses for disaster Food Stamp benefits issued after Hurricanes Katrina and Rita. Since the hurricanes, about 1.1 million households have received disaster-related nutrition benefits. The legislation also provides an additional $12 million in fiscal year 2006 for food to be distributed to states that were under a major disaster declaration as a result of Hurricanes Katrina and Rita and to adjacent states.

However, despite the critical needs that those disaster provisions addressed, the bill also makes significant reductions to other parts

of the Food Stamp program. One provision would eliminate the eligibility of about 225,000 people who would otherwise qualify for Food Stamps because they are eligible for non-cash benefits, such as job placement services, under the Temporary Assistance for Needy Families (TANF) program. In addition, about 40,000 school-age children in these affected households may lose their eligibility for free school meals.

Another provision in the bill would increase the waiting period for legal permanent residents to receive Food Stamps from five years to seven years. This change would go into effect next year, making about 70,000 people ineligible to receive more benefits.

The budget process is not the place for a debate about Food Stamps. For now, the fact remains—that demand for nutrition programs in our nation has never been greater. On the day of the Committee's markup, USDA's Economic Research Service released a timely report, Household Food Security in the United States, 2004. It noted, "The prevalence of food insecurity rose from 11.2 percent of households in 2003 to 11.9 percent in 2004 and the prevalence of food insecurity with hunger rose from 3.5 percent to 3.9 percent." As the need for nutrition programs continues to grow, it is not right to shortchange these programs through the budget process.

IMPACT ON BASELINE

As a practical matter, several provisions of this reconciliation proposal will create problems when the Committee seeks the budget resources necessary to fund the next farm bill.

The Congressional Budget Office (CBO) has provided two cost estimates for the section of the legislation that reduces direct payments to producers, one is according to CBO's normal scorekeeping methodology and the other is directed scorekeeping by the House Committee on the Budget.

Specifically, the provision that reduces direct payments is applied to the 2006 through 2009 crop years, but not to the 2010 crop year. The CBO estimate of the budget effect of this provision extends through fiscal year 2015, which would reduce the long-term baseline for the program. So, the Budget Committee's directed scoring instructs CBO to assume that the one percent reduction in direct payments ends with the 2009 crop year, resulting in a reduction of $211 million over the FY2006–10 and the FY2006–15 periods.

The net effect of this budget scorekeeping gimmickry is that the Agriculture Committee is now beholden to the Budget Committee and its non-binding "promise" to restore nearly $300 million in funding for agriculture for the next farm bill.

Similarly, we are concerned that the effect of the language passed by the Committee is to eliminate $734 million of funding that is available for the following sections of the 2002 Farm Bill: Section 2501 (Ag Management Assistance), Section 6029 (Rural Business Investment), Section 6030 (Rural Strategic Investment Grants), Section 6103 (Broadband Loans), Section 6401 (Value-Added Grants), Section 6405 (Rural Firefighters), and Section 2505 (Small Watershed Rehabilitation Program). The bill's provisions

will eliminate budget resources for these programs in the next farm bill.

The action by the Committee has left us shortchanged in funding for the commodity, conservation, rural development and energy titles of the next farm bill by more than $1 billion, and it has also taken away the Committee's flexibility to use these funds for other farm bill priorities.

OTHER CUTS TO AGRICULTURE PROGRAMS

The 2002 Farm Bill has been under attack ever since its passage. Due to the flawed budget scheme enacted by the majority, the Appropriations Committee has been forced to cut mandatory spending from the 2002 Farm Bill by $3.5 billion over the FY2004–2006 period. This action has been necessary to hide the fact that they have shortchanged the needs of American agriculture and the rural areas we represent. This comes at a time when we face nearly a $4 billion backlog in conservation programs alone and all of the rural development and energy title programs are also oversubscribed.

An amendment that would have restored a portion of the $1.5 billion in cuts that the appropriators made to farm bill programs in fiscal year 2006 was defeated on a party-line vote, so the promises that we made in the 2002 Farm Bill were once again ignored.

OTHER CONSIDERATIONS

Agriculture Committee Members need to remember that any changes that we make to the Farm Bill now may hurt us later. The Farm Bureau pointed this out, saying, "If we take cuts in agricultural programs now, we're going to decrease the leverage that our (trade) negotiators have to make sure that we're playing in a fairer trading world."

Despite this, Agriculture Secretary Johanns has suggested that agriculture programs must accept this budget process, as he has told farmers across the country that we must tighten our belts and make sacrifices. He noted that farmers want to do their part to help the deficit.

While the Secretary's remarks are misleading, since this budget process doesn't help the deficit, farmers have always done their part in deficit reduction. And, if a balanced budget and deficit reduction are the goals, we should put aside this entire budget. In fact, according to the Congressional Budget Office's 2005 Baseline Projections, the deficit should decline by more than 50 percent from 2004 to 2009 if we do nothing at all. Instead, this budget process will increase the deficit by $167 billion over five years.

This budget process suffers from bad timing and bad priorities. It will have devastating impacts on rural Americans, underfunding a wide range of programs that are critical to sustaining rural communities. This bill doesn't just reopen the Farm Bill—it dismantles the promise that Congress and the President made with farmers and rural Americans. We strongly oppose this budget process and will continue to fight to protect the promise made to rural America in the 2002 Farm Bill.

Note: The attached tables, provided by Congressional Research Service, show the provided and actual mandatory funding under

the Farm Security and Rural Investment Act of 2002 for conservation, rural development and energy programs as modified by appropriations acts.

Table 1. Authorized and Actual Funding Levels for Mandatory Conservation Programs, FY2003-FY2007

(all figures in millions)

Program	FY2003		FY2004		FY2005		FY2006		FY2007	
	Auth.	Actual	Auth.	Actual	Auth.	Actual	Auth.	Actual[a]	Auth.	Actual[a]
Conservation Reserve Program[b]	39.2 mil. acres ($1,821)	No limit ($1,821)	39.2 mil. acres ($1,798)	No limit ($1,798)	39.2 mil. acres ($1,937	No limit ($1,937)	39.2 mil. acres ($2,020)		39.2 mil. acres	
Conservation Security Program[c]	$0	$0	$53	$41	$282	$202	$331		$450	
Environmental Quality Incentive Program	$700	$695	$1,000	$975	$1,200	$1,017	$1,200		$1,300	
Ground and Surface Water Program	$45	$45	$60	$51	$60	$51	$60		$60	
Klamath River Basin Program[d]	$12	$12	$19	$19	$8	$8	$8			
Grasslands Reserve Program[e]	$38	$38	$57	$57	$128	$128	$0			
Wildlife Habitat Incentive Program	$30	$30	$60	$42	$85	$47	$85		$85	
Farmland Protection Program	$100	$100	$125	$112	$125	$112	$100		$97	
Wetlands Reserve Program[b]	250,000 acres ($314)	245,833 acres ($309)	250,000 acres ($354)	189,144 acres ($285)	250,000 acres ($344)	154,500 acres ($275)	250,000 acres		250,000 acres	
Agriculture Management Assistance Program[f]	$20	$1	$14	$14	$14	$14	$14		$14	
Watershed Rehabilitation Program[g]	$45	$0	$50	$0	$55	$0	$60		$65	
Biomass Program	$14	$14	$14	$14	$14	$14	$14		$14	
TOTAL (% of total authorized that was provided)	$3,139	$3,065 (97.6%)	$3,604	$3,357 (93.1%)	$4,252	$3,805 (89.5%)				

a. These amounts will be filled in after appropriations legislation for these fiscal years is enacted.

b. Information in the appropriations process uses acres rather than dollars; costs are estimated based on enrolled acres during fiscal year.

c. Since this is a capped entitlement for total spending over 10 years, the authorized amounts are CBO estimates of spending.

d. Funding for this program is specified as $50 million, to be made available "as soon as practicable after the date of enactment."

e. Program has both total spending and total acreage limits, without specifying any annual levels for either funding or enrollment.

f. Program amended in FY2004 appropriations making $14 million available for conservation annually, with the remainder available for other purposes.

g. Program also is authorized to receive discretionary funding through annual appropriations.

Table 2: Funding for Selected Rural Development Programs, FY2002-2006

($ million)

Program	P.L.107-171 Authorized Mandatory Funding	FY2002 Actual	FY2003 Actual	FY2004 Actual	FY2005 Actual	FY2006 Conference Report on H.R.2744 (est.)
Enhancement of Rural Access to Broadband *(§ 6103)*	$20.0 million annually FY2002-2005; $10.0 annually million FY2006-2007	$0	$2 million 1/	$0	$0	$0
Rural Business Investment Program *(§ 6029)*	$100.0 million ($44.0 for grants and $56.0 for loan subsidies)	$0	$0	$0	$11.0	$0
Rural Strategic Investment Program (§ 6030)	$100.0 million	$0	$0	$0	$0	$0
Value-added Product Market Development Grants *(§ 6401)*	$40.0 million annually FY2002-2007	$40.0	$40.0	$15.0 2/	$15.5 2/	$20.5 2/
Rural Firefighters *(§ 6405)*	$10.0 million annually FY2003-2007	$0	$0	$0	$0	$0
Renewable Energy Systems *(§ 9006)*	$23.0 million annually FY2003-2007	$0	$23.0	$23.0 2/	$23.0 2/	$23.0 2/
Bioenergy Program *(§9010)*	$150 million annually FY2003-2006	$32.0	$35.0	$34.0	$36.0	Not to exceed $60.0
Biomass R&D *(§9008)*	$5 million FY2002; $14 million FY2003-2007 million FY2002-2007	$5.0	$14.0	$14.0	$14.0	Not to exceed $12.0

1/ Actual amount expended on broadband loan subsidies under Section 6103 of the 2002 farm bill (P.L.107-171) according to USDA. There was $40.0 million available in FY2003 for the broadband program, although CBO originally scored the total amount of expected obligations in FY2003 at $10.0 million because of lower loan subsidy rates than originally projected. Funding for the program was blocked in FY2004-2006. For FY2005, appropriators blocked spending except for the amounts made available in FY2003. The Conference Report for H.R. 2744 blocks funding for the program in FY2006 and prohibits $80.0 million available in unobligated authorization.

2/ Funding provided in the bill is discretionary, not mandatory as authorized.

COLLIN C. PETERSON.
DENNIS CARDOZA.
JIM MARSHALL.
G.K. BUTTERFIELD.
CHARLIE MELANCON.
JOHN T. SALAZAR.
EARL POMEROY.
RICK LARSEN.
BEN CHANDLER.
TIM HOLDEN.
BOB ETHERIDGE.
ED CASE.
DAVID SCOTT.
STEPHANIE HERSETH.
HENRY CUELLAR.
JIM COSTA.
LEONARD L. BOSWELL.
LINCOLN DAVIS.
MIKE MCINTYRE.

COMMITTEE ON EDUCATION AND THE WORKFORCE,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 28, 2005.

Hon. JIM NUSSLE,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

DEAR CHAIRMAN NUSSLE: The House Education & the Workforce Committee has met its instruction to achieve net savings of $18.1 billion as part of the budget reconciliation process, generating savings on behalf of taxpayers and making funds available for critical education assistance. We've done so while achieving our policy goals of expanding college access for low- and middle-income students and strengthening our worker pension system.

I'm proud that our Committee put forward a fiscally responsible package of reforms that reduce program waste and inefficiency and place higher education and pension systems on more stable financial foundations to ensure their long-term viability for students, workers, retirees, and taxpayers. The Committee's reconciliation package also includes funds targeted to provide education relief to the victims of Hurricanes Katrina and Rita.

Pursuant to the reconciliation directives contained in the Conference Report on House Concurrent Resolution 95, the budget resolution for fiscal year 2006, I am pleased to transmit reconciliation recommendations for programs within the jurisdiction of the Committee. The recommendations contained in the first part of this transmission regarding welfare programs were considered and approved in Full Committee markup on October 19 and 20, 2005. The recommendations contained in the second part amending ERISA regarding pension protection were considered and approved on October 26, 2005. The recommendations for the third part amending the Higher Education Act were considered and approved on October 26, 2005.

I am also including the "Family Education Reimbursement Act of 2005" which was considered by the Committee on October 27,

2005, and not reported to the Committee on the Budget. Although the bill was not reported, our Committee has been instructed to provide education hurricane relief, and I strongly believe this is the best policy for providing educational services on behalf of schools and families in response to Hurricanes Katrina and Rita. Enclosed please also find additional material on this proposal including summary information and an editorial, "Education End-Run" (Wall Street Journal, October 27, 2005), submitted for the record during Committee proceedings on the measure.

Pursuant to your letter of June 24, 2005 and subsequent letter of September 14, 2005, a copy of the legislation, report, including the Committee Views together with Summary, Section by Section Analysis and other items necessary to comply with House Rules, and Minority Views are enclosed. An estimate prepared by the Congressional Budget Office and documents prepared by the Office of Legislative Counsel, including the Ramseyer, will be forthcoming. I hope these proposals will be of assistance to your committee in meeting the budget reconciliation targets. If you have questions or comments, please do not hesitate to call me.

Sincerely,

JOHN A. BOEHNER,
Chairman.

COMMITTEE ON EDUCATION AND THE WORKFORCE,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 31, 2005.

Hon. JIM NUSSLE,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

DEAR CHAIRMAN NUSSLE: Pursuant to the reconciliation directives contained in the Conference Report on House Concurrent Resolution 95, enclosed is a letter from the Director of the Congressional Budget Office regarding this Committee's reconciliation recommendations for fiscal year 2006. You will also find enclosed Minority Views of the same on each of the three parts reported from the Committee to the Committee on the Budget. Finally, enclosed is a letter to you from Reps. Tom Osborne, Judy Biggert, and Todd Platts regarding the Family Education Reimbursement Act.

Thank you for your attention to this matter.

Sincerely,

JOHN A. BOEHNER,
Chairman.

INTRODUCTION

In the 109th Congress, the Education & the Workforce Committee has focused on an ambitious agenda aimed at enhancing security, freedom, and prosperity for American families in a changing economy. The issues addressed by the Committee this year are those that touch the daily lives of every American, from preschool to retirement. From expanding college access for low- and middle-income students to reforming outdated pension laws to protect tax-

payers and workers, the Committee has worked with Republicans and Democrats, as well as the Bush Administration, to address issues critical for the future of the nation.

Just as important, the Committee has focused on examining very closely how taxpayers' money is spent. Congress has a responsibility to ensure that taxpayers' money is spent wisely and to cut wasteful spending on programs that have outlived their usefulness or failed to fulfill their promise. Indeed, out-of-control federal spending is a threat to all Americans, from students and families to workers and retirees.

In early 2005, the House and Senate reached a budget agreement to help curb the runaway cost of government. Making fiscal discipline a top priority has taken on an even greater importance this year because of the devastation caused by Hurricanes Katrina and Rita in the Gulf Coast. Congress should cut federal spending to help offset the ongoing hurricane recovery and rebuilding effort, and the Committee has worked to help put forward a responsible budget that demonstrates Congress's resolve to stop out-of-control spending.

As part of that effort, Education & the Workforce Committee Chairman John Boehner (R–OH), along with other Committee Republicans, on October 7 introduced the Setting Priorities in Spending Act (H.R. 4018) to repeal and eliminate 14 federal programs that have proven inefficient, duplicative, or simply unnecessary—an important first step in this process. These programs cost taxpayers approximately $247 million last year alone.

The bill supports the efforts of House Republicans and appropriators to cut discretionary spending as part of the Labor/HHS/Education appropriations bill. The House passed its version of the appropriations bill on June 10, 2005, and it eliminated funding for each of the 14 programs targeted for repeal in the Setting Priorities in Spending Act.

Despite their dubious merits, Congress has continued to fund these programs year after year, and it's time to eliminate them once and for all. Too many other federal programs are funded year after year regardless of whether they're fulfilling their purpose. President Bush was right when he said Congress should cut spending to help pay for hurricane relief, and the House and Senate must show their resolve and make the difficult choices that are in the best interest of not just Gulf Coast residents, but the American taxpayers as well.

As part of the budget process, the Education & the Workforce Committee has been tasked with finding $18.1 billion in savings from the mandatory spending programs within the Committee's jurisdiction. Chairman Boehner has consistently said the Committee intends to be part of the solution, not part of the problem, and that it would act to help put forward a responsible budget that cuts wasteful spending and makes federal programs more efficient and effective.

As part of the reconciliation process, the Education & the Workforce Committee has developed proposals on both higher education and on pensions that will generate savings to the federal government and provide the Pension Benefit Guaranty Corporation with additional resources. Both of these proposals will make federal pro-

grams more efficient and more effective on behalf of students, families, workers, retirees, and American taxpayers.

REFORMING AND STRENGTHENING THE HIGHER EDUCATION ACT

Since 1965, the federal government has invested hundreds of billions of dollars in higher education on the premise that all students, regardless of financial circumstance, should have the opportunity to pursue postsecondary education. Four decades later, taxpayers are spending more than ever before on higher education, yet the goal of higher education access remains elusive to far too many American students.

There is no question that an investment in higher education pays dividends for the future. An educated workforce drives economic growth. Scientific breakthroughs keep America on the cutting edge of technological advancement. Children whose parents are college educated are more likely to pursue postsecondary education themselves, continuing the cycle of success and prosperity. Yet despite the clear imperative for an effective and efficient investment in higher education, billions of taxpayer dollars are being wasted through inefficiency and unwise public policy.

After more than a decade of tuition increases that have far outpaced the rate of inflation and growth in family incomes, it has become clear that blindly increasing federal student aid is doing nothing to solve the challenge of skyrocketing college costs.

Indeed, the vast increases in federal student aid have coincided with these tuition increases, calling into question whether the current federal investments in higher education may actually be a contributing factor to the college cost explosion that is squeezing the budgets of hard working low-and middle-income American families.

Taxpayers are carrying a tremendous higher education cost burden on many fronts. In addition to the more than $70 billion in direct student aid paid for by taxpayers in FY 2005, American families are subsidizing aid to institutions, research, and numerous federal programs outside the Higher Education Act that award funding to colleges and universities. Moreover, higher education consumes a significant portion of the taxes paid at the state level, and even after all of this, families with children enrolled in college are paying more than ever before for their own tuition bills. The Committee believes the federal investment in higher education will continue to be a critical component of the future success of our nation only so long as it is made wisely and in the best interests of students, families, and taxpayers.

To that end, the Committee has developed comprehensive reforms that will expand college access for low- and middle-income students while simultaneously generating savings for taxpayers by eliminating program waste and inefficiency, trimming excess subsidies paid to lenders, and placing the aid programs on a more stable financial foundation to ensure their long-term viability and success for future generations of American students.

Specifically, the proposal includes a number of reforms to generate savings, including putting an end to the practices that have allowed some lenders to profit from excess subsidies on government-backed student loans, providing student loan borrowers a choice between a variable and a fixed interest rate when borrowers

consolidate multiple loans into a single monthly payment, strengthening risk-sharing within the loan programs on behalf of taxpayers, implementing a financially sound interest rate structure, and encouraging more efficient and effective default prevention and protection systems.

These reforms are accompanied by proposals to strengthen student aid programs and expand student benefits. The proposal would reduce student loan fees, expand student loan borrowing opportunities, protect borrowers' credit, ease the financial aid process, and provide greater flexibility within the loan programs.

The Congressional Budget Office estimates these reforms would save $14.5 billion over five years, eliminating waste on behalf of taxpayers while strengthening and expanding student benefits. Taken together, these reforms will help place the federal student aid programs on a strong financial foundation to ensure their stability now and into the future, protecting both students and taxpayers.

RESPONSIBLE PBGC PREMIUMS

After nearly a dozen hearings over two years on the future of the defined benefit pension system, it became clear to the Committee that a piecemeal approach to reform would not improve the overall health of the defined benefit pension system. Rather, a broader effort that addresses all outdated federal pension rules in a comprehensive package is the most responsible and effective way to ensure workers and retirees can count on their pension benefits and help put the Pension Benefit Guaranty Corporation (PBGC) on more sound financial footing.

On June 30, 2005, the Committee passed the Pension Protection Act (H.R. 2830), comprehensive reform legislation that would strengthen the defined benefit pension system and protect the interests of workers, retirees, and taxpayers. Not only would the Pension Protection Act put in place new funding requirements to ensure employers properly fund their plans and provide workers with meaningful disclosure about the financial status of their pension plans, but it also would help to protect taxpayers from a possible multi-billion dollar bailout of the PBGC.

When worker pension plans are terminated and the financial burden is placed on the federal government, workers, retirees, and taxpayers all stand to lose. And as more companies file for bankruptcy and increase the chance of additional employee pension plans being turned over to the PBGC, it has never been more apparent that the health of the nation's worker pension system is a bottom line concern for American taxpayers.

Because of more and more pension plan terminations, the PBGC now has an operating deficit that exceeds $23 billion, making the prospect of a taxpayer bailout of the PBGC loom larger with each plan it takes over. This fact has been taken into serious consideration as the Committee works to meet its budget reconciliation instruction.

Two important steps are essential to improving the financial condition of the PBGC and ensuring its long-term solvency: (1) reforming the funding rules to ensure pensions are more adequately and

consistently funded; and (2) increasing premiums paid by employers to the PBGC in a responsible fashion.

It is important to note that ensuring employers fund their plans properly will prove more helpful to the overall defined benefit system than additional premiums paid to the PBGC. Quite simply, raising premiums alone will not solve the problem. However, Congress has not raised premiums since 1991, so a reasonable increase is both prudent and necessary. These premiums are the chief source of funding for the agency. No tax dollars are used to keep the PBGC afloat. Increasing premiums would help strengthen the PBGC's financial condition in the short-term.

The Committee's proposal to put the PBGC on a more secure financial foundation is two-pronged. First, it would phase in responsible increases in the flat-rate premiums paid to the agency each year. Second, it would establish employer-paid termination premiums.

If Congress passes comprehensive pension reform that is signed into law by President Bush before the end of the year, those comprehensive reforms would take precedence. It is the strong view of the Committee that the benefits of comprehensive reform, which include proposals to strengthen the PBGC, far outweigh the benefits of increases in premiums alone.

The reconciliation proposal would increase premiums from $19 to $30 annually beginning in 2006 and give the PBGC the discretion to increase these premiums up to 20 percent per year thereafter. Should the PBGC prove it is necessary to raise premiums and exercise this discretion, the proposal reserves for Congress the right to disapprove the increase in a straight up-or-down vote each year. The Congressional Budget Office estimates this plan would provide the PBGC an additional $5.2 billion in additional financial resources over five years.

Next, the Committee proposes to establish a $1,250 per participant premium on companies that have gone through bankruptcy and terminated their pension plans. These termination premiums would be paid for three consecutive years once a company emerges from bankruptcy. The Congressional Budget Office estimates this plan would provide the PBGC an additional $1 billion in financial resources over five years.

Although the PBGC has enough resources to make benefit payments for the near future, the long-term outlook for the agency is anything but certain. With some $450 billion in pension plan underfunding among financially weak companies looming on the horizon, the PBGC's debt could deepen even further. The Committee's action on employer premiums is only a small part of the larger effort to place the traditional pension system on more solid ground—but it is nonetheless an important one, for workers, retirees, and taxpayers alike.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 31, 2005.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation recommendations of the House Committee on Education and the Workforce.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Sheila Dacey (for TANF and Child Care), Deborah Kalcevic (for education), and Geoffrey Gerhardt (for pensions).

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

Reconciliation recommendations of the House Committee on Education and the Workforce

Summary: The legislation would make numerous changes to the Temporary Assistance for Needy Families (TANF) program, a child care grant program, and federal higher education programs, as well as changes to the premiums charged by the Pension Benefit Guaranty Corporation (PBGC). CBO estimates that enacting the legislation would reduce federal outlays by $7.7 billion in 2006, $20.4 billion over the 2006–2010 period, and $43.7 billion over the 2006–2015 period.

Changes in higher education programs would account for the largest portion of the savings ($14.3 billion over the first five years and $20.5 billion over the 10-year period, mostly as the result of diminished subsidy costs for the student loan programs). CBO estimates that the net savings from the changes in PBGC premiums and reimbursements, which are recorded as offsets to spending, would be $6.2 billion over the 2006–2010 period and $23.3 billion over 2006–2015 period.

The legislation also would authorize appropriations for child care, a new fatherhood grant program, administrative activities related to student aid, and loan forgiveness for certain types of workers. Subject to appropriation of the specified amounts, CBO estimates that spending for the first three activities would total $14.7 billion over the 2006–2010 period. CBO has not completed an estimate of the costs of expanding the loan-forgiveness program.

The legislation contains no intergovernmental mandates as defined by the Unfunded Mandates Reform Act (UMRA); any costs to state, local, or tribal governments would result from complying with conditions of federal assistance. The legislation would significantly affect the way states administer the TANF program, but because of the flexibility in the program as a whole, the new requirements would not be intergovernmental mandates as defined in UMRA.

Subtitle C contains private-sector mandates on single-employer sponsors of defined-benefit pension plans. CBO estimates that the direct cost of those new requirements would exceed the annual threshold specified in UMRA ($123 million in 2005, adjusted annually for inflation) in each of the first five years the mandates would be effective. Subtitles A and B do not contain any private-sector mandates as defined in UMRA.

Major provisions: Subtitle A would establish new standards for the participation of TANF recipients in work activities and reauthorize funding for a child care grant program.

Provisions addressing the higher education programs (in subtitle B, part 1) that have significant budgetary effects include:

- Changing the formulas for calculating borrower interest rates and lender yields;
- Eliminating the separate formula for lender yields for loans supported with certain tax-exempt funding;
- Changing the insurance provided to lenders and the fees charged by lenders;
- Reducing borrower origination fees and requiring guaranty agencies to pay the government a 1 percent insurance premium that is often not required under current law;
- Eliminating mandatory funding for federal administrative costs for financial assistance programs;
- Increasing the loan limits for first-year, second-year, and graduate students;
- Cancelling the repayment of student loans for certain types of teachers; and
- Reducing the share of collections on defaulted loans that guaranty agencies would retain.

Part 2 of subtitle B would extend certain forms of relief to students and schools affected by Hurricanes Katrina and Rita.

The major provisions affecting the PBGC (subtitle C) would increase premiums paid by sponsors of defined-benefit, single-employer pension plans, and would impose a new charge on former plan sponsors if the PBGC takes over their pension plans as a result of bankruptcy or forced termination.

Estimated cost to the Federal Government: The estimated impact of the legislation on direct spending is shown in Table 1. The costs and savings from this legislation would fall within budget functions 500 (education, training, and social services) and 600 (income security).

TABLE 1.—DIRECT SPENDING EFFECTS OF THE RECONCILIATION RECOMMENDATIONS OF THE HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Subtitle B: Higher Education:												
Part 1—Amendments to Higher Education Act of 1965:												
Estimated Budget Authority	−8,230	−2,580	−1,980	−1,600	−1,245	−1,115	−1,175	−1,240	−1,305	−1,330	−15,635	−21,800
Estimated Outlays	−7,525	−2,100	−1,910	−1,605	−1,330	−1,155	−1,165	−1,230	−1,290	−1,355	−14,470	−20,665
Part 2—Higher Education Relief:												
Estimated Budget Authority	210	0	0	0	0	0	0	0	0	0	210	210
Estimated Outlays	210	0	0	0	0	0	0	0	0	0	210	210
Subtotal, Subtitle B:												
Estimated Budget Authority	−8,020	−2,580	−1,980	−1,600	−1,245	−1,115	−1,175	−1,240	−1,305	−1,330	−15,425	−21,590
Estimated Outlays	−7,315	−2,100	−1,910	−1,605	−1,330	−1,155	−1,165	−1,230	−1,290	−1,355	−14,260	−20,455
Subtitle C: Pension Benefit Guaranty Corporation Premiums:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	−363	−729	−1,186	−1,678	−2,206	−2,837	−3,641	−3,585	−2,814	−4,214	−6,162	−23,252
Total Changes:												
Estimated Budget Authority	−8,020	−2,580	−1,980	−1,600	−1,245	−1,115	−1,175	−1,240	−1,305	−1,330	−15,425	−21,590
Estimated Outlays	−7,678	−2,829	−3,096	−3,283	−3,536	−3,992	−4,806	−4,815	−4,104	−5,569	−20,422	−43,707

Notes: Subtitle A would have no significant effect on direct spending. The legislation also would authorize spending subject to appropriation for some grant programs, for administrative costs for student aid, and for expansion of programs for student loan forgiveness.

* = Less than $500,000.

Basis of estimate: For this estimate, CBO assumes the legislation will be enacted in December 2005.

Subtitle A: TANF and child care (direct spending effects)

Section 102 would require states to have an increasing percentage of TANF recipients participate in work activities while receiving cash assistance. It would maintain current penalties for the failure to meet those requirements. Those penalties can total up to 5 percent of the TANF block grant amount for the first failure to meet work requirements and increase with each subsequent failure. Under current law, funding for TANF block grants expires on December 31, 2005; those grants are assumed to be extended in the baseline, pursuant to the Balanced Budget and Emergency Deficit Control Act.) CBO expects that states would generally be able to either meet the requirements or avoid them by moving families to separate state programs or by some other means. Therefore, we estimate that any penalties for failing to meet the new requirements would total less than $500,000 annually. (The effects of this subtitle on discretionary spending are discussed later in this estimate.)

Subtitle B: Higher education (direct spending effects)

Subtitle B contains some provisions that would reduce direct spending and others that would increase costs. On net, these changes would reduce outlays by $7.3 billion in 2006, $14.3 billion during the 2006–2010 period, and $20.5 billion over the 2006–2015 period. Most of those savings represent estimated changes in the subsidy costs of student loans, calculated on a present value basis. (Subtitle B would also affect discretionary spending, but CBO has not completed an estimate of the potential discretionary costs of implementing this subtitle.)

Major Provisions Reducing Spending. Subtitle B would make changes to the government's student loan programs, affecting payments to lenders and guaranty agencies, fees paid by lenders, and mandatory funding for administrative costs, that would reduce spending significantly. These reductions would total $7.9 billion in 2006, $18.4 billion over the 2006–2010 period, and $33.6 billion over the 2006–2015 period (see Table 2).

TABLE 2.—DIRECT SPENDING EFFECTS OF SUBTITLE B, PART 1: AMENDMENTS TO THE HIGHER EDUCATION ACT

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Major Provisions Reducing Spending:												
Changes in Borrower Interest Rates and Lender Yields:												
Estimated Budget Authority	−6,490	−1,580	−1,495	−1,460	−1,485	−1,510	−1,555	−1,600	−1,635	−1,675	−12,510	−20,485
Estimated Outlays	−5,925	−1,330	−1,340	−1,290	−1,295	−1,320	−1,355	−1,390	−1,425	−1,470	−11,180	−18,140
Changes to Certain Loans Financed with Tax-Exempt Bonds:												
Estimated Budget Authority	−980	−265	−265	−270	−270	−275	−280	−290	−290	−290	−2,050	−3,475
Estimated Outlays	−850	−235	−235	−235	−240	−245	−245	−250	−255	−265	−1,795	−3,055
Changes in Lender Fees:												
Estimated Budget Authority	−610	−355	−375	−395	−410	−430	−445	−465	−485	−495	−2,145	−4,465
Estimated Outlays	−520	−275	−325	−345	−360	−375	−390	−405	−425	−445	−1,825	−3,865
Changes in Lender Insurance:												
Estimated Budget Authority	−425	−145	−150	−160	−165	−170	−180	−185	−195	−200	−1,045	−1,975
Estimated Outlays	−385	−115	−130	−140	−145	−150	−155	−160	−170	−175	−915	−1,725
Changes in Mandatory Administrative Costs:												
Estimated Budget Authority	−13	−646	−665	−684	−705	−724	−744	−766	−789	−812	−2,713	−6,548
Estimated Outlays	17	−345	−549	−640	−689	−709	−730	−750	−773	−795	−2,206	−5,963
Changes in Guaranty Agencies' Share of Collections:												
Estimated Budget Authority	−300	−60	−65	−65	−70	−70	−75	−80	−80	−80	−560	−945
Estimated Outlays	−270	−50	−55	−60	−60	−60	−65	−70	−70	−70	−495	−830
Subtotal:												
Estimated Budget Authority	−8,818	−3,051	−3,015	−3034	−3,105	−3,179	−3,279	−3,386	−3,474	−3,552	−21,023	−37,893
Estimated Outlays	−7,933	−2,350	−2,634	−2,710	−2,789	−2,859	−2,940	−3,025	−3,118	−3,220	−18,416	−33,578
Major Provisions Increasing Spending:												
Changes in Borrower Origination Fees and Insurance Premiums:												
Estimated Budget Authority	−10	265	685	1,045	1,420	1,590	1,610	1,625	1,635	1,660	3,425	11,545
Estimated Outlays	−90	70	450	750	1,070	1,275	1,335	1,345	1,350	1,360	2,250	8,915
Increased Loan Limits:												
Estimated Budget Authority	0	315	540	555	580	600	620	640	660	685	1,990	5,795
Estimated Outlays	0	185	410	485	505	525	540	560	580	595	1,585	4,385
Subtotal:												
Estimated Budget Authority	10	580	1,225	1,600	2,000	2,190	2,230	2,265	2,295	2,345	5,415	16,740
Estimated Outlays	−90	255	860	1,235	1,575	1,800	1,875	1,905	1,930	1,955	3,835	13,300
Other Provisions With Measurable Effects:												
Estimated Budget Authority	245	74	31	36	51	64	66	71	66	71	437	775
Estimated Outlays	192	79	56	31	51	64	69	69	69	74	409	754

TABLE 2.—DIRECT SPENDING EFFECTS OF SUBTITLE B, PART 1: AMENDMENTS TO THE HIGHER EDUCATION ACT—Continued

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Interaction Effects:												
Estimated Budget Authority	333	−183	−221	−202	−191	−190	−192	−190	−192	−194	−464	−1,422
Estimated Outlays	306	−84	−192	−161	−167	−160	−169	−179	−171	−164	−298	−1,141
Total Changes:												
Estimated Budget Authority	−8,230	−2,580	−1,980	−1,600	−1,245	−1,115	−1,175	−1,240	−1,305	−1,330	−15,635	−21,800
Estimated Outlays	−7,525	−2,100	−1,910	−1,605	−1,330	−1,155	−1,165	−1,230	−1,296	−1,355	−14,470	−20,665
Memorandum: Baseline Spending for Student Loans:												
Estimated Budget Authority	8,713	8,937	3,965	9,268	9,467	9,703	9,932	10,149	10,360	10,613	45,350	96,107
Estimated Outlays	6,482	7,297	7,443	7,760	7,991	8,484	8,740	8,979	9,169	9,363	36,973	81,708

Borrower Interest Rate and Lender-Yield Formulas. The legislation would change many of the formulas used to compute what borrowers owe to lenders and what lenders receive from or pay the government under the guaranteed loan program. (The following table summarizes the current-law formulas and the proposed changes.) Borrower rates on new student and parent loans are scheduled to switch from a variable-rate formula to a fixed rate (6.8 percent for students and 7.9 percent for parents) in July 2006; the legislation would eliminate that change and continue the current variable-rate formulas. The rates on consolidated loans would change from a fixed rate based on the weighted average of the loans being consolidated, rounded up to the nearest one-eighth percent. Instead, the borrower would be able to choose between a variable rate (91-day Treasury bill rate plus 2.3 percentage points for students, or plus 3.1 percentage points for parents) and a fixed rate (set at the 91-day Treasury bill rate plus 3.3 percentage points for students, or plus 4.1 percentage points for parents). The borrowers of consolidated loans also would be charged a new origination fee of 1.0 percent. The rates on all student and parent loans would be capped at 8.25 percent and 9.0 percent, respectively.

The lender-yield formulas for student and parent loans would continue to be based on a variable-rate formula, but the legislation would no longer allow the borrowers' rates to serve as the minimum for the lenders' yield. Under current law, lenders receive the higher of the lender-yield formula or the rate paid by borrowers, but the legislation would require lenders to rebate the difference between the two rates to the government when the borrower rate is higher.

TABLE 3.—COMPARISON OF FORMULAS FOR INTEREST RATES AND LENDER YIELDS UNDER CURRENT LAW AND SUBTITLE B

Type of Loan	Current law: Loans originating after December 1999 and before July 2006	Loans originating after June 2006	
		Current Law	Proposed
BORROWER INTEREST RATES			
Student loans:			
In-school, grace, or deferment.	Variable rate set annually at 91-day Treasury bill plus 1.7 percentage points (8.25 percent cap).	Fixed rate at 6.8 percent	Variable rate set annually at 91-day Treasury bill plus 1.7 percentage points (8.25 percent cap)
In repayment	Variable rate set annually at 91-day Treasury bill plus 2.3 percentage points (8.25 percent cap)..	Fixed rate at 6.8 percent	Variable rate set annually at 91-day Treasury bill plus 2.3 percentage points (8.25 percent cap).
Parent loans:	Variable rate set annually at the Treasury bill rate plus 3.1 percent (9.0 percent cap).	Fixed rate at 7.9 percent	Variable rate set annually at 91-day Treasury bill rate plus 3.1 percent (9.0 percent cap).
Consolidation loans:			
Students	Fixed rate set at the weighted average of loans consolidated rounded up to nearest ⅛ percent.	Fixed rate set at the weighted average of loans consolidated rounded up to nearest ⅛ percent.	Choice of variable rate set annually at 91-day Treasury bill rate plus 2.3 percent (8.25 percent cap) or fixed rate set at 91-day Treasury bill rate plus 3.3 percentage points.

TABLE 3.—COMPARISON OF FORMULAS FOR INTEREST RATES AND LENDER YIELDS UNDER CURRENT LAW AND SUBTITLE B—Continued

Type of Loan	Current law: Loans originating after December 1999 and before July 2006	Loans originating after June 2006	
		Current Law	Proposed
Parents	Fixed rate set at the weighted average of loans consolidated rounded up to nearest ⅛ percent.	Fixed rate set at the weighted average of loans consolidated rounded up to nearest ⅛ percent.	Choice of variable rate set annually at 91-day Treasury bill rate plus 3.1 percent (9.0 percent cap) or fixed rate set at 91-day Treasury bill rate plus 4.1 percentage points.
LENDER YIELDS			
Student loans:			
In-school, grace, and deferment.	Greater of the borrower rate or 3-month commercial paper rate plus 1.74 percentage points.	Greater of the borrower rate or 3-month commercial paper rate plus 1.74 percentage points.	3-month commercial paper rate plus 1.74 percentage points.
In repayment	Greater of the borrower rate or 3-month commercial paper rate plus 2.34 percentage points.	Greater of the borrower rate or 3-month commercial paper rate plus 2.34 percentage points.	3-month commercial paper rate plus 2.34 percentage points.
Parent Loans:	Greater of the borrower rate or 3-month commercial paper rate plus 2.64 percentage points (only when the borrower rate is capped at 9.0 percent).	Greater of the borrower rate or 3-month commercial paper rate plus 2.64 percentage points (only when that formula exceeds 9.0 percent).	3-month commercial paper rate plus 2.64 percentage points.
Consolidation loans:			
Student loans	Regular formula less 1.05 percentage points.	Regular formula less 1.05 percentage points.	Regular formula less 1.05 percentage points.
Parent loans	Regular formula less 1.05 percentage points.	Regular formula less 1.05 percentage points.	Regular formula less 1.05 percentage points.

These changes in rates and yields would save an estimated $5.9 billion in 2006, $11.2 billion over the 2006–2010 period, and $18.1 billion through 2015.

Changes in "9.5 Percent" Loans. Another change in the payment formulas for lenders would affect loans that are funded with financing based on tax-exempt bonds issued between 1980 and 1993. Historically, these loans have had a different formula for determining payments to lenders. Specifically, the formula for the government's special allowance payments to the holders of these loans was 50 percent of the sum of the 91-day Treasury bill rate plus 3.5 percentage points or 9.5 percent, whichever was higher. In recent years, the 9.5 percent rate was higher. Consequently, these have come to be referred to as "9.5 percent loans." Legislation enacted in 2004 modified this policy for most new loans from tax-exempt lenders during the October 2004 to December 2005 period, changing the lender formula to conform to the rates paid to other lenders. Under current law, the formula on new loans will revert back to the pre-October 2004 structure. The legislation would continue the practice currently in place (instead of allowing it to expire at the end of December 2005), but expand its scope to include all new loans supported with this type of financing. This policy would save an estimated $850 million in 2006, $1.8 billion over the 2006–2010 period, and $3.1 billion over the 2006–2015 period.

Lender Fees. The legislation would increase two fees currently charged to lenders. The first fee, which is charged on all loans dis-

bursed, would rise from 0.5 percent to 1.0 percent. The second, which is a fee charged annually on outstanding consolidation loans, would be boosted from 1.05 percent to 1.30 percent, but only for those lenders for whom consolidated loans constitute more than 90 percent of their student and parent loan portfolios. CBO estimates that the changes in these fees would save $520 million in 2006, $1.8 billion over the 2006–2010 period, and $3.1 billion over the 2006–2015 period.

Federal Lender Insurance. The legislation would reduce the portion of defaulted loans for which lenders are reimbursed. Under current law, lenders are generally reimbursed for 98 percent of the outstanding balances on loans that go into default. Lenders that meet certain requirements are classified as exceptional lenders and receive 100 percent insurance.

The legislation would reduce the 98 percent insurance level to 96 percent, and would tighten eligibility for designation as an exceptional lender. For those lenders losing exceptional lender status, the insurance rate would drop from 100 percent to 96 percent. CBO estimates that these changes would reduce outlays by $385 million in 2006, $915 million over the 2006–2010 period, and $1.7 billion through 2015.

The legislation also would reduce the rate at which the federal government replenishes the student loan reserve funds held by the various guaranty agencies. However, because those funds are considered the property of the federal government, such transfers are intrabudgetary transactions and have no effect on total federal spending or revenues.

Funding for Mandatory Administrative Costs. Section 458 of the Higher Education Act of 1965 specifies a direct appropriation for the government's administrative costs associated with operating the financial assistance programs for post-secondary education students. The statute does not limit the amount provided for those activities after 2002; thus, this account is an uncapped direct spending program. CBO's baseline assumes that the portion of the account that funds the government's administrative activities would be equal to the actual amount used in 2004, adjusted for anticipated inflation. The other major component of this account is an account maintenance fee paid to guaranty agencies, which equals 0.10 percent of the original principal on outstanding guaranteed student loans.

The legislation would eliminate mandatory funding for the section 458 administrative activities beginning in 2007, but retain the mandatory funding for the account maintenance fees through 2011. Section 458 funding in 2006 would be limited to $820 million. CBO assumes that the entire amount of the fees would be paid, but that a portion would be paid out of the federal student loan reserve funds (the on-budget accounts held by guaranty agencies) instead of section 458 funds. These changes would increase direct spending outlays by $17 million in 2006, but reduce them by $2.2 billion over the 2006–2010 period and by $6.0 billion over the 2006–2015 period, CBO estimates. (The offsetting increases in discretionary spending for administrative costs are discussed in the section on spending subject to appropriation.)

Guaranty Agency Retention Allowance. The legislation would reduce the share of collections on defaulted loans that guaranty agencies are allowed to retain from 23 percent to 20 percent, and would increase the share retained by the government commensurately. CBO estimates that this change would reduce federal costs by $270 million in 2006, $495 million over the 2006–2010 period, and $830 million over the 2006–2015 period.

Major Provisions Increasing Spending. The provisions in the bill that would result in the largest increases in spending are the changes to origination fees and insurance premiums paid by borrowers and increases in loan limits. The estimated costs resulting from these portions of subtitle B total $3.8 billion over the 2006–2010 period and $13.3 billion over the 2006–2015 period.

Borrower Origination Fees and Premiums. The legislation would gradually reduce borrower origination fees for both subsidized and unsubsidized student loans, while at the same time requiring guaranty agencies to charge all borrowers of guaranteed student and parent loans the 1.0 percent insurance premium now authorized. Currently, the origination fee for guaranteed loans is 3.0 percent, and the insurance premium may be as much as 1.0 percent. In the direct loan program, the origination fee is 3.0 percent (although in practice, the Department of Education generally charges 1.5 percent up front and another 1.5 percent if the borrower fails to make timely payments) and there is no insurance fee. The changes in the bill would equalize the total fees charged to students in the guaranteed and direct loan programs.

Total fees on student borrowers would drop to 2.5 percent in July 2007, to 2.0 percent in July 2008, to 1.5 percent in July 2009, and to 1.0 percent in July 2010. (A new origination fee on consolidated loans of 1.0 percent would also be charged, as discussed earlier.) These changes would reduce outlays by $90 million in 2006 because the increased insurance premiums are recorded more quickly than the reduced origination fees (fees are tied to loan disbursements that often fall into a subsequent year). CBO estimates that these changes would increase outlays by $2.3 billion over the 2006–2010 period and by $8.9 billion over the 2006–2015 period.

Increased Loan Limits. Subtitle B would increase the maximum amount of subsidized loans for first- and second-year students from $2,625 and $3,500, respectively, to $3,500 and $4,500 beginning in 2007. In addition, the bill would increase the limit for unsubsidized loans for each year of graduate school from $10,000 to $12,000. To conform the aggregate borrowing limits to the latter changes, the limit on unsubsidized loans would be increased by $10,000. CBO estimates these increases would boost aggregate student loan borrowing from both the direct and guaranteed loan programs, and as a result would increase spending by $1.6 billion over the 2007–2010 period and by $4.4 billion over the 2007–2015 period.

Other Provisions With Measurable Effects. The legislation contains numerous provisions that would have much smaller budgetary effects than those described above. Among them are changes in loan cancellation programs, borrower repayment terms, and interest deferment eligibility. Other provisions with some estimated budget effects during the 2006–2010 period include changes in the income protection allowance for dependent students, the restriction

on eligibility for students with certain drug-related convictions, the eligibility of schools to participate on the basis of distance learning programs, and the multiple disbursement requirements for certain loans for schools with low default rates. Taken together, CBO estimates that these provisions would cost $192 million in 2006, $409 million over the 2006–2010 period, and $754 million over the 2006–2015 period.

Interactions. The overall spending reductions that the legislation would yield are larger than the sum of the individual provisions because many provisions interact. For example, the lender-yield and borrower interest rate changes save even more when the increased loan volume flowing from the changes in loans limits is considered. However, those same loan limit increases boost the costs of the provisions that reduce borrower fees. As another example, the application of the proposed lender yields and borrower interest rates to the 9.5 percent loans increases the savings when compared to that provision alone. In total, the interactions among the various provisions would generate additional estimated savings of $298 million over the 2006–2010 period and $1.1 billion over the 2006–2015 period.

Higher Education Relief. The legislation would provide relief to certain student loan borrowers and educational institutions that were adversely affected by Hurricanes Katrina and Rita. CBO estimates that the total costs of this relief would be $210 million in fiscal year 2006 (with no effect after this year).

The largest portions of the costs are attributable to two policies: (1) the cancellation of repayment for all student loans that were disbursed for cancelled enrollment periods at post- secondary schools that were closed, and (2) the requirement that the federal government pay the interest for up to six months on student and parent loans for borrowers affected by the hurricanes. Based on data provided by the Department of Education, CBO estimates that the costs of cancelling repayments for the loans that had been disbursed for schools that closed as a result of the storm would be $70 million.

CBO estimates that the interest payments on the loans for borrowers affected by the hurricanes would amount to about $130 million. Data are not available to precisely estimate the number of borrowers and amount of outstanding principal that could be affected by this policy. CBO used demographic and economic data from the Census Bureau for the jurisdictions covered by the major disaster designation for Hurricanes Katrina and Rita to estimate the potential number of affected borrowers. CBO estimates that student loan indebtedness for affected borrowers in the affected areas is roughly $5 billion. The estimated gross costs were reduced to reflect the likely use of existing authority for deferment of payments for interest and principal for economic hardship.

The legislation would also waive the requirement for the return of federal student aid in cases when the storm resulted in a cancelled period of enrollment, and would exclude any disbursements for cancelled enrollment periods from the aggregate loan and grant aid limits for affected students. Together, these two provisions would cost an estimated $10 million in 2006.

Subtitle C: Premiums charged by the Pension Benefit Guaranty Corporation

The legislation would increase the per-participant premiums charged to sponsors of defined-benefit pension plans, as well as institute a termination premium, which would be charged to sponsors whose plans are taken over by the PBGC as a result of an involuntary or distress termination. These premium receipts, which are shown in the budget as offsets to direct spending, would total about $363 million in 2006, $6.2 billion over the 2006–2010 period, and $30.6 billion over the 2006–2015 period. The higher premium receipts would eliminate the need for the PBGC to increase the rate at which it reimburses itself from a nonbudgetary fund where it holds the reserves of the pension plans it has taken on. These reimbursements, that also show up as offsets to spending, would decline by $7.4 billion during the 2013–2015 period, thereby reducing the net 10-year savings to $23.3 billion. These estimated changes are displayed in Table 4 and discussed below.

Increase in Flat-Rate Premium for Single-Employer Plans. Under current law, sponsors of single-employer, defined-benefit pension plans insured by the PBGC are required to pay the agency a premium of $19 per participant per year. The legislation would increase the flat-rate premium to $30 per participant in 2006 and index it to wage growth starting in 2007. The PBGC also would have the authority to further increase those premiums by up to 20 percent each year if it determined that such an increase would be necessary to achieve an actuarially sound program. The PBGC has already incurred substantial losses in recent years, and CBO anticipates further losses in the future. (See CBO's recent report, The Risk Exposure of the Pension Benefit Guaranty Corporation, issued in September 2005.) Therefore, CBO believes that the PBGC would need to raise premiums each year by the full 20 percent. If so, the premium rate for single-employer plans would rise to approximately $73 per participant in 2010 and $223 in 2015.

About 35 million people currently participate in tax-qualified, single-employer pension plans. This figure includes active workers, former workers who are vested but have not started collecting retirement benefits, and annuitants. The number of participants in single-employer plans insured by the PBGC has remained nearly constant for the past decade, and CBO assumes it would remain steady for the next 10 years.

The current premium of $19 per participant generates about $650 million in premium income annually for the PBGC. CBO estimates changes to the flat-rate premiums made by the legislation would increase receipts by $5.2 billion over the 2006–2010 period and by $27.8 billion over the 2006–2015 period. Because the PBGC's premiums are recorded as offsetting collections to a mandatory spending account, an increase in premium collections is reflected in the budget as a decrease in direct spending.

Premiums for Certain Terminated Single-Employer Plans. The legislation would create a new premium for sponsors of plans that the PBGC takes over on an involuntary or distressed-termination basis. The required payments would be $1,250 per plan participant for three years after the termination. For sponsors whose plans were terminated while the program was being reorganized under

chapter 11 of the bankruptcy code, the premium would be levied after the sponsor emerges from bankruptcy. The premium would not apply to firms that are liquidated by a bankruptcy court. CBO estimates that these new premiums would total about $1.0 billion over the 2006–2010 period and $2.9 billion over the 2006–2015 period.

TABLE 4.—DIRECT SPENDING EFFECTS OF SUBTITLE B: PENSION BENEFIT GUARANTY CORPORATION PREMIUMS

	Outlays in millions of dollars, by fiscal year—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Increase in Flat-Rate Premiums for Single-Employer Plans	−327	−621	−966	−1,380	−1,863	−2,484	−3,277	−4,278	−5,520	−7,038	−5,155	−27,750
Premiums for Certain Terminated Single-Employer Plans	−36	−109	−220	−298	−342	−354	−364	−375	−386	−398	−1,007	−2,883
Subtotal, Premiums	−363	−729	−1,186	−1,678	−2,206	−2,837	−3,641	−1,653	−5,906	−7,436	−6,162	30,635
Changes in Transfers from PBGC's Nonbudgetary Trust Fund	0	0	0	0	0	0	0	1,068	3,092	3,222	0	7,382
Total Changes	−363	−729	−1,186	−1678	−2,206	−2,837	−3,641	−3,585	−2,814	−4,214	−6,162	−23,252

Note: PBGC = Pension Benefit Guaranty Corporation.

Based on recent PBGC data on terminations, CBO estimates that underfunded plans that will be terminated over the next five years would contain about 120,000 participants per year, with three-quarters of these terminations relating to nonliquidation bankruptcy filings. CBO assumes that a year's bankruptcy cases will emerge from bankruptcy over several years following the filing date. The annual savings would grow rapidly during the first few years because of the likely timing of sponsors emerging from bankruptcy.

Transfers from PBGC's Nonbudgetary Trust Fund. The PBGC's assets are held in two separate funds: an on-budget revolving fund and a nonbudgetary trust fund.[1] In its on-budget fund, the PBGC receives premium payments and makes outlays for benefit payments and administrative costs. The nonbudgetary trust fund holds assets from terminated plans until they are needed to help pay for benefits and other expenses. The PBGC makes periodic transfers from the nonbudgetary fund to the on-budget fund, where they are used to cover about half of all benefit payments and most of the PBGC's administrative costs. As with premiums, these transfers are offsetting collections to a mandatory account, and so are reflected in the budget as offsets to outlays.

In CBO's current-law projections, PBGC's increasing liabilities and steady premium income will cause the agency's on-budget fund to be completely exhausted in about 2013. No precedent exists for how the PBGC would proceed if its on-budget fund is depleted. However, CBO assumes that the agency would cover its expenses by increasing the percentage of benefits and other expenses being paid through transfers from its nonbudgetary trust fund, thus increasing offsetting collections above what they would have been if the fund had remained solvent.

CBO estimates the increases in premium receipts would improve the finances of the on-budget fund and would enable it to remain solvent beyond 2015. As a result, the PBGC would not need to increase the amounts transferred from the nonbudgetary fund to help cover benefit payments and other expenses during the 10-year projection period. By allowing the on-budget fund to remain solvent through the next decade, the legislation would reduce those transfers by $7.4 billion over the 2013–2015 period. Because this change would reduce an offset to mandatory spending, it would result in a net increase in such spending.

Spending subject to appropriation

This legislation would amend and reauthorize the Child Care and Development Block Grant Act of 1990, and would make changes to the Temporary Assistance for Needy Families program, including increasing work participation rates and establishing a new program of grants to promote fatherhood. In addition, the legislation would authorize appropriations for the administrative costs of operating the student financial aid programs. It also would expand eligibility for the discretionary student loan forgiveness program to include early childhood educators, nurses, librarians, first

[1] The PBGC has several different on-budget revolving funds and two nonbudgetary trust funds. For simplicity in budgetary presentation, CBO combines the various on-budget and nonbudgetary funds into just two funds.

responders, and others. CBO has not estimated how much this provision would increase the program's authorization.

Subtitle A. This subtitle would authorize appropriations totaling $2.3 billion in 2006 and increasing amounts in subsequent years. Authorizations would total $13.6 billion over the 2006–2010 period. CBO estimates that appropriation of these amounts would result in additional outlays of $12.5 billion over those five years.

Child Care. The legislation would amend and reauthorize the Child Care and Development Block Grant (CCDBG) program. The CCDBG program was authorized through 2002 by Child Care and Development Block Grant Act of 1990 and has been authorized in appropriation acts since then; it is currently authorized through November 18, 2005, by Public Law 109–77. This legislation would authorize appropriations of $2.3 billion in 2006, $2.5 billion in 2007, $2.7 billion in 2008, $2.9 billion in 2009, and $3.1 billion in 2010. (Funding in 2005 was $2.083 billion.) If these amounts are appropriated, outlays from those appropriations would total an estimated $12.4 billion over the 2006–2010 period.

The CCDBG program provides funding to states for child-care subsidies to low-income families, improvement in the quality of child care services, and other activities. It is one of the two federal programs for child-care subsidies within a program grouping often referred to as the Child Care and Development Fund. The other program is the Child Care Entitlement to States, a mandatory program that would not be affected by the legislation.

TABLE 5.—DISCRETIONARY SPENDING EFFECTS OF SUBTITLES A AND B: TANF, CHILD CARE, AND HIGHER EDUCATION

	By fiscal year, in millions of dollars—					
	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law (from existing appropriations):						
Budget Authority	2,083	0	0	0	0	0
Estimated Outlays	2,116	614	113	21	0	0
Proposed Changes:						
Child Care and Development Block Grant Program:						
Authorization Level	0	2,300	2,500	2,700	2,900	3,100
Estimated Outlays	0	1,633	2,327	2,609	2,830	3,030
Fatherhood Grant Program:						
Authorization Level	0	20	20	20	20	20
Estimated Outlays	0	2	12	22	23	22
Student Aid Administrative Costs:						
Estimated Authorization Level	0	0	646	665	684	705
Estimated Outlays	0	0	345	549	640	689
Total Proposed Changes:						
Authorization Level	0	2,320	3,166	3,385	3,604	3,825
Estimated Outlays	0	1,635	2,684	3,180	3,493	3,741
Total Spending Under the Legislation:						
Authorization Level	2,083	2,320	3,166	3,385	3,604	3,825
Estimated Outlays	2,116	2,249	2,797	3,201	3,493	3,741

Note: CBO has not completed its estimate for the expansion of a loan forgiveness program.

Fatherhood Grant Program. Section 105 would establish new grant programs to promote responsible fatherhood and would authorize appropriations of $20 million annually over the 2006–2010 period. At least 65 percent of the funds would be allotted for competitive grants to community entities and Indian tribes to test the

effectiveness of various approaches to promoting responsible fatherhood. At least $5 million annually would be directed to national organizations to test the use of economic incentives to encourage noncustodial parents to enter the workforce. The remainder could be used for other demonstration projects or for program evaluations. CBO estimates implementing the programs would cost $81 million over the 2006–2010 period.

Subtitle B. This legislation would authorize funding over the 2007–2011 period for the administration of student financial aid programs, as well as for an expanded program of loan forgiveness. CBO estimates that appropriations for the administrative costs, which are authorized at such sums as may be necessary, would be $646 million in 2007 and $2.7 billion over the 2007–2010 period, based on the current mandatory costs for those activities. If these amounts are appropriated, discretionary outlays would total $2.2 billion over the period. CBO has not completed its estimate for the expansion of the loan forgiveness program.

Estimated impact on state, local, and tribal governments: The legislation contains no intergovernmental mandates as defined by UMRA. It would significantly affect the way states administer the TANF program, but because of the flexibility in the program as a whole, the new requirements would not be intergovernmental mandates as defined in UMRA.

In particular, this legislation would increase the work participation rates required in the TANF program, prohibit states from using funds from the TANF program to pay offshore contracting expenses, and increase the proportion of Child Care Development Block Grants that is used for earmarked purposes. It also would authorize funding for child care programs and fatherhood grants and would provide greater flexibility to states through demonstration programs.

The legislation would provide assistance to institutions of higher education affected by or serving students affected by the recent hurricanes. It also would authorize funding for student aid and higher education programs, much of which would go to public institutions of higher education. Any costs to those institutions or to state, local, or tribal governments would result from complying with conditions for receiving federal assistance.

Estimated impact on the private sector: Subtitle C would make changes to the Employee Retirement Income Security Act that would impose mandates on single-employer sponsors of defined-benefit pension plans. Those changes would increase the per-participant premium rates paid to the Pension Benefit Guaranty Corporation and would create a termination premium for sponsors whose plans are terminated by the PBGC on an involuntary or distressed-termination basis. CBO estimates that the cost of those mandates would total about $363 million in 2006 and $6.2 billion over the 2006–2010 period.

Subtitles A and B do not contain any private-sector mandates as defined in UMRA.

Previous CBO estimates: CBO has transmitted a number of cost estimates earlier this year for legislation that would affect the TANF, child care, and higher education programs, and the PBGC.

On March 16, 2005, CBO transmitted a cost estimate for S. 525, the Caring for Children Act of 2005, as ordered reported by the Senate Committee on Health, Education, Labor and Pensions. On March 25, 2005, CBO transmitted a cost estimate for S. 667, the Personal Responsibility and Individual Development for Everyone Act, as reported by the Senate Committee on Finance. Those bills would set up several grant programs and establish requirements for participation in work activities that are different from those in this legislation. S. 525 would authorize the same level of child care funding as this legislation, but S. 667 would authorize fatherhood grants at a slightly higher level.

For higher education programs, CBO has provided estimates for H.R. 609 (as ordered reported by the House Committee on Education and the Workforce) on September 16, 2005, and for the reconciliation recommendations of the Senate Committee on Health, Education, Labor, and Pensions on October 24, 2005. This legislation contains many of the provisions of H.R. 609, but adds changes to lender and borrower fees, mandatory administrative expenses, and payments to guaranty agencies. It differs from the Senate legislation (now embodied in S. 1932, the Deficit Reduction Omnibus Reconciliation Act of 2005) with regard to provisions governing borrower interest rates and loan limits, mandatory administrative expenses, and payments to and fees collected from guaranty agencies. This legislation also does not include two new mandatory grant programs contained in S. 1932.

CBO has provided the Congress with three cost estimates for legislation that would affect the PBGC and private pension plans. On September 26, 2005, CBO transmitted a cost estimate for H.R. 2830, the Pension Protection Act of 2005, as ordered reported by the House Committee on Education and the Workforce. On October 5, 2005, CBO transmitted a cost estimate for S. 1783, the Pension Security and Transparency Act of 2005, as introduced. Unlike the reconciliation recommendations of the House Committee on Education and the Workforce, those bills would require pension sponsors to meet stricter funding targets and rules and to adhere to more stringent accounting rules. The increase in PBGC premiums required by those bills would be substantially less than those specified in this legislation.

The reconciliation recommendations of the Senate Committee on Health, Education, Labor, and Pensions (which are included in S. 1932) also include pension provisions. That legislation would initially set the flat-rate premium at $46.75 in 2006 and increase it with wage inflation thereafter. This House legislation would set the 2006 rate at $30 and subsequently index it; it would also authorize the PBGC to raise those premiums by an additional 20 percent per year. In addition to the increase for sponsors of single-employer plans, the Senate legislation would increase the rate for multiemployer plans. Both sets of reconciliation recommendations would require sponsors who have terminated pension plans via distress or involuntary terminations to pay an additional $1,250 annual premium for three years.

Estimate prepared by: Federal Spending: TANF and Child Care: Sheila Dacey. Education: Deborah Kalcevic, Chad Chirico, and Justin Humphrey. Pensions: Geoffrey Gerhardt and Craig Meklir. Im-

pact on State, Local, and Tribal Governments: Lisa Ramirez-Branum and Leo Lex. Impact on the Private Sector: Nabeel Alsalam and Peter Richmond.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMMITTEE PRINT—THE PERSONAL RESPONSIBILITY, WORK AND FAMILY PROMOTION ACT OF 2005

Committee Report

PURPOSE

The Committee Print, passed on October 20, 2005 entitled the *Personal Responsibility, Work, and Family Promotion Act of 2005*, amends and improves the mandatory work requirements and other work-related provisions of the Temporary Assistance for Needy Families (TANF) block grant and reauthorizes the Child Care and Development Block Grant through 2010. This legislation enhances the opportunities of needy families to achieve self-sufficiency and access quality child care. In addition, the legislation creates new authority for States and localities to conduct demonstration projects coordinating multiple public assistance and workforce development programs to improve services to needy families and working individuals.

COMMITTEE ACTION

107TH CONGRESS

Subcommittee hearings

On Thursday, September 20, 2001, the Subcommittee on 21st Century Competitiveness held a hearing on *Welfare Reform: an Examination of Effects*. The hearing addressed the general effects of reform to date, with emphasis on efforts to assist families, reduce welfare dependence, and increase job preparation and work. Subcommittee Members heard views from leading experts and practitioners on the successes of the welfare reform law. The testifying witnesses were Dr. Ron Haskins, Senior Fellow, The Brookings Institute, Washington, DC; Mr. Joel Potts, Ohio Department of Job and Family Services, Columbus, Ohio; Dr. Sanford Schram, Professor of Social Work, Bryn Mawr College, Bryn Mawr, Pennsylvania; Mr. Robert Rector, Senior Research Fellow, The Heritage Foundation, Washington, DC; and Dr. Heather Boushey, Economist, Economic Policy Institute, Washington, DC.

On Tuesday, October 16, 2001, the Subcommittee on 21st Century Competitiveness held a second hearing, *Welfare Reform: Success in Moving Toward Work*. The hearing was held to explore the degree to which welfare reform's success has been the result of the reform's emphasis on work. A panel of researchers, business owners who have hired participants and local welfare reform implementers offered perspectives on the effects that the reform law's work requirements have had in moving welfare recipients into employment. The testifying witnesses were Dr. Lynn Karoly, Director of Labor and Population Program & Populations Research Center, RAND Institute, Santa Monica, California; Ms. Lashunda Hall,

former Wisconsin Works Participant, Milwaukee, Wisconsin; Ms. Martha Davis, Legal Director of NOW–LDEF, New York, New York; Ms. Mona Garland, Director of Opportunities Industrialization Center of Greater Milwaukee, Wisconsin Works (W–2), Milwaukee, Wisconsin; Mr. Rodney Carroll, President and CEO, The Welfare to Work Partnership, Washington, DC; and Ms. Jennifer Brooks, Director, Self-Sufficiency Programs and Policy, Wider Opportunities for Women, Washington, DC.

On Wednesday, February 27, 2002, the Subcommittee on 21st Century Competitiveness held a hearing on *Assessing the Child Care and Development Block Grant*. The purpose of this hearing was to provide information on the general operation of the Child Care and Development Block Grant (CCDBG) in preparation for its reauthorization as part of the Committee's welfare package. Subcommittee Members heard from leading experts and practitioners about the importance of child care as a support allowing families to obtain and retain employment and the vital role that the block grant plays in meeting that need. The panel highlighted the importance of quality child care in promoting healthy childhood development and school readiness, and offered recommendations for improving access to child care for eligible families. The testifying witnesses were Ms. Janet K. Schalansky, Secretary, Kansas Department of Social and Rehabilitation Services, on behalf of the American Public Human Services Association, Topeka, Kansas; Ms. Helen C. Riley, Executive Director of St. Michael's School and Nursery, Wilmington, Delaware; Ms. Helen Blank, Director of Child Care and Development, Children's Defense Fund, Washington, DC; Mr. Douglas J. Besharov, Resident Scholar, American Enterprise Institute, Washington, DC; and Ms. Karen Ponder, Executive Director of the North Carolina Partnership for Children and Smart Start, Raleigh, North Carolina.

On Tuesday, March 12, 2002, the Subcommittee on 21st Century Competitiveness held a third hearing, *Welfare to Work: Ties Between TANF and Workforce Development*. The hearing focused upon the extent to which TANF work services are provided through the One-Stop delivery system for workforce development established through the Workforce Investment Act of 1998 (WIA) and how such linkages affect participants. The General Accounting Office testified on the results to date of a study the agency is conducting on this topic. In addition, the Subcommittee members heard from a State and a local area that successfully have integrated TANF work services into the One-Stop delivery system. The testifying witnesses were Dr. Sigurd Nilsen, Director, Health, Education and Human Services Division, General Accounting Office, Washington, DC; John B. O'Reilly, Jr., Executive Director, Southeast Michigan Community Alliance, Taylor, Michigan; and, Greg Gardner, Acting Director, Utah Department of Workforce Services, Salt Lake City, Utah.

Full committee hearing

On Tuesday, April 9, 2002, the Committee on Education and the Workforce held a hearing on *Working Toward Independence: the Administration's Plan to Build upon the Successes of Welfare Reform*. The Honorable Tommy Thompson, then-Secretary of the De-

partment of Health and Human Services, testified on the first panel regarding the Administration's proposal to promote work and strengthen families. Jason Turner, Visiting Fellow, The Heritage Foundation, Washington, D.C. and Wendell Primus, Center on Budget and Policy Priorities, Washington, D.C. testified on the second panel.

Legislative action

On Tuesday, April 9, 2002, Representative Howard "Buck" McKeon (R–CA), along with Representatives Boehner (R–OH), Petri (R–WI), Hoekstra (R–MI), Greenwood (R–PA), Upton (R–MI), Tancredo (R–CO), DeMint (R–SC), Isakson (R–GA), Keller (R–FL), and Culberson (R–TX), introduced H.R. 4092, the *Working Toward Independence Act of 2002*, a bill to reauthorize the Temporary Assistance for Needy Families Block Grant (TANF) and the Child Care and Development Block Grant (CCDBG) through 2007.

On Thursday, April 18, 2002, the Subcommittee on 21st Century Competitiveness considered H.R. 4092 in legislative session and reported it favorably, as amended, to the Committee on Education and the Workforce. The roll call vote was 9–7. The Subcommittee adopted two amendments, including a substitute amendment offered by Representative McKeon.

On Wednesday, May 1, 2002 and Thursday, May 2, 2002 the Committee on Education and the Workforce considered H.R. 4092 in legislative session and reported it favorably, as amended, to the House of Representatives. The roll call vote was 25–20. The Committee adopted six amendments, including an amendment in the nature of a substitute offered by Chairman Boehner.

On May 15, 2002, Congresswoman Deborah Pryce (R–OH), along with Chairman John Boehner (R–OH) and Subcommittee Chairman Howard P. "Buck" McKeon (R–CA), introduced H.R. 4737, the *Personal Responsibility, Work, and Family Promotion Act of 2002*. The bill incorporated H.R. 4092, as reported by the Committee on Education and the Workforce, and H.R. 4090, as reported by the Committee on Ways and Means.

On May 16, 2002, the House of Representatives passed H.R. 4737 by a vote of 229–197.

108TH CONGRESS

Legislative action

On February 4, 2003, Congresswoman Deborah Pryce (R–OH), along with Chairman John Boehner (R–OH) and Subcommittee Chairman Howard P. "Buck" McKeon (R–CA), introduced H.R. 4, the *Personal Responsibility, Work, and Family Promotion Act of 2003*. The bill was substantially the same as H.R. 4737, which passed the House in the 107th Congress.

On February 13, 2003, the House of Representatives passed H.R. 4 by a vote of 230–192. Neither the Committee on Education and the Workforce nor the Committee on Ways and Means considered H.R. 4 in legislative session.

Subcommittee hearing

On Tuesday, March 15, 2005, the Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, held a hearing in Washington, DC on "Welfare Reform: Reauthorization of Work and Child Care." The purpose of the hearing was to review the Administration's proposal for reauthorization of welfare and child care and to examine successes and challenges in implementing the programs. The Honorable Wade Horn, Ph.D., Assistant Secretary for Children and Families, U.S. Department of Health and Human Services, Washington, DC testified on the first panel. Curtis Austin, President, Workforce Florida, Tallahassee, Florida; Larry Mead, Ph.D., Professor of Politics, New York University, New York, New York; Casandra Fallin, Executive Director, Baltimore City Child Care Resource Center, Baltimore, Maryland; and Mark Greenberg, Director of Policy, Center for Law and Social Policy, Washington, DC testified on the second panel.

Legislative action

On January 4, 2005, Congresswoman Deborah Pryce (R–OH), along with Chairman John Boehner (R–OH), Subcommittee Chairman Howard P. "Buck" McKeon (R–CA), Congressman Joe Wilson (R–SC), and Congressman John Kline (R–MN), introduced H.R. 240, the *Personal Responsibility, Work, and Family Promotion Act of 2005*. The bill is substantially similar to H.R. 4, which the House passed in the 108th Congress.

On Wednesday, October 19, 2005, and Thursday, October 20, 2005, the Committee on Education and the Workforce considered in legislative session a Committee Print containing the elements of H.R. 240 that are in the jurisdiction of the Committee on Education and the Workforce and ordered it favorably, as amended, to the Committee on the Budget by a vote of 23–20. The Committee considered 19 amendments and adopted the following four amendments:

1. The Committee adopted, by voice vote, an Amendment in the Nature of a Substitute offered by Chairman Boehner (R–OH). The amendment adds language from H.R. 3975, the Hurricane Regulatory Relief Act, to ease federal requirements for state administration of the CCDBG to give families affected by Hurricanes Katrina and Rita easier access to child care services. In addition, the amendment changes the effective date and makes technical changes.

2. The Committee adopted, by voice vote, an en bloc amendment offered by Congressman Luis Fortuño (R–PR). The amendment requires State CCDBG plans to specify how the State will coordinate child care services with services available for infants, toddlers, and pre-school children through the Individuals with Disabilities Education Act (IDEA) and to require states to demonstrate in their CCDBG state plans how they are addressing the needs of limited English proficient families.

3. The Committee adopted, by voice vote, an amendment offered by Congressman Rob Andrews (D–NJ). The amendment adds a new prohibition regarding the use of TANF grants for offshoring.

4. The Committee adopted, by voice vote, an amendment offered by Congressman Danny Davis (D–IL). The amendment creates economic incentive demonstration projects as part of the fatherhood program of the Print.

SUMMARY

The Committee Print makes substantial changes to the work requirements of the Temporary Assistance for Needy Families (TANF) block grant, increases the emphasis within the block grant on moving participants into employment, provides new flexibility to States, and encourages States to improve the quality of child care available to low-income families. The changes are consistent with the recommendations of President Bush and the Department of Health and Human Services (HHS).

Title I—TANF Program

Universal engagement

The legislation creates a policy of universal engagement so that all families must be in work or other activities leading to self-sufficiency. Each family will have a self-sufficiency plan, and each family's participation in activities will be monitored. States will be penalized for failure to establish self-sufficiency plans for families.

Work requirements

Work participation requirements will be increased from the current requirement of 50 percent to 70 percent by 2010. The current, higher participation requirement for two-parent families will be eliminated so as not to discriminate against marriage.

A modified caseload reduction credit continues so that States' work participation requirements are reduced as their caseloads decline, which encourages and rewards States for diverting individuals from enrolling in cash assistance and for moving families off the rolls into work. The current credit rewards states for reductions below their 1995 caseload levels. The updated credit phases-in a four-year look-back, so that by 2009 states get credit for reducing their caseload below 2005 levels.

All families will be required to be involved in activities averaging 40 hours per week in order to be counted toward the required participation rate, so that families are engaged in a full work week of activities. Currently, single and two-parent families must be engaged in work-related activities for 30 and 35 hours a week, respectively.

The Committee Print increases the number of hours that must be spent in actual work, including unsubsidized employment, subsidized private or pubic sector employment, on-the-job training, supervised work experience, and supervised community service, from 20 hours per week to 24 hours per week. States will obtain pro-rata credit for families engaged in activities less than full time as long as they meet the 24-hour direct work requirement.

States' work participation rates will be based on the total number of countable hours worked per month, rather than the number of families meeting the participation standard. Therefore, 160 hours of work per month will count as one family fulfilling the full

40-hour work requirement. This allows for easier calculation of the pro-rata credit for States.

States will define approved activities that will count toward the remaining 16 hours of the work requirement, as long as such activities help achieve a purpose of TANF. Such activities could include education and training, activities that promote child well-being, or activities that promote healthy marriages. The Print eliminates the current restrictions on the percent of the caseload that can participate in vocational education; however, individuals will be required to work part-time (averaging 24 hours per week) while obtaining education.

In addition, the Print allows three months within any 24 consecutive months in full-time substance abuse treatment, rehabilitative services, work-related education or training, and job search to count toward the work requirement. States may permit individuals to participate in four months of full-time education or training in order to complete a certificate program or obtain education necessary to fill a local job need.

The Committee Print maintains current law that gives states flexibility in determining sanctioning policies, except that States must continue assistance for single parents who have a child under age six but who cannot obtain child care. In addition, the Print requires recipients to engage in work activities at least once during a two-month consecutive period to remain eligible for TANF assistance, unless good cause is shown.

Teen parents will either attend school or participate in the full 40 hours of work and other activities, similar to current law. States may continue to exempt parents with a child under age one from the work requirements, but States still must engage such families in constructive activities.

State plan requirements

States will describe in their State plan how they will increase work and reduce dependence. In addition, each State will establish specific work-related performance objectives and measures. States will have complete flexibility to define their measurement methodology, as long as they describe it in their State plans.

States will describe in their State plan particular strategies and programs they may be employing to address important TANF challenges. Such challenges are employment retention and advancement, including placement into high demand jobs; services for clients with special needs; and program integration with the Workforce Investment Act of 1998 (WIA).

Report on integration

The Committee Print requires the Secretary of Health and Human Services and the Secretary of Labor to submit jointly a report to Congress, within six months of enactment, describing changes needed to the definitions, reporting requirements, and performance measures in WIA and TANF to allow greater integration between welfare and workforce development.

Title II—Amendments to the Child Care and Development Block Grant of 1990

Overview

The Committee Print reauthorizes the Child Care and Development Block Grant (CCDBG) through 2010 and creates a short title, the Caring for Children Act of 2005. The Committee Print increases the amount of discretionary funding authorized to $2.3 billion for fiscal year 2006, $2.5 billion for fiscal year 2007, $2.7 billion for fiscal year 2008, $2.9 billion for fiscal year 2009, and $3.1 billion for fiscal year 2010. The current authorization is $1 billion, but the fiscal year 2005 appropriation is $2.1 billion.

Program goals

The Committee Print amends the existing goals to emphasize that the block grant is intended to serve both low-income working families who receive cash assistance and also those who do not. This legislation also creates two new goals to encourage States to improve the quality of child care and to promote cognitive development and school readiness.

State plan requirements

The Committee Print modifies the State plan in several ways. The legislation asks States to collect and disseminate information to both parents of eligible children and child care providers about: the quality and availability of child care services; resources to assist families in obtaining child care; research and best practices on children's development; and, other programs and services for which families may be eligible, including the food stamp, WIC, Medicaid and SCHIP programs.

This legislation requires States to describe partnerships created with public and private entities to increase the supply and quality of child care services, and to demonstrate efforts to coordinate child care services provided by this Act with other child care and early childhood education programs, including Head Start, Early Reading First, Even Start, and state-sponsored pre-kindergarten.

Beginning in 2007, State plans will be required to contain an outline of the State's strategy to address the quality of child care available to children in that State. States will report on the use of quantifiable, objective measures for evaluating the quality of child care services and progress in improving child care quality.

Finally, States are asked to address factors that can make finding care difficult for some parents. States would report in their State plan how the State is working to meet the child care needs of parents eligible for assistance who have children with special needs, work non- traditional hours, or require infant and toddler care.

Quality set-aside

The Committee Print increases from four to six percent the amount of the total block grant that a State must spend on activities to improve the quality of child care provided to eligible families in that State, and establishes permissible uses for those funds. The quality set-aside may be used to support: programs that provide

training, education, and other professional development activities to enhance the skills of the child care workforce, including informal caregivers; activities to enhance early learning and foster school readiness; initiatives to increase the retention and compensation of child care providers; and, other activities deemed by the States to improve the quality of child care services provided in the State.

Federal eligibility guidelines

The Committee Print eliminates the Federal income limit for eligibility, previously set at 85 percent of the State median income. States must continue to prioritize families based on need and serve both TANF and non-TANF families. Beginning in 2007 and biennially thereafter, the Secretary would provide to Congress aggregated statistics on the supply, demand, and quality of child care, early education, and non-school programs available within States.

Hurricane response

In response to Hurricanes Katrina and Rita, the Committee Print authorizes the Secretary to waive or modify certain federal CCDBG requirements through June 30, 2006. The waivers may be used to temporarily suspend income limitations on eligibility to receive services; work requirements applicable to eligibility to receive services; the application of the quality set-aside in states affected by the Gulf hurricanes; and any barrier to providing priority services to displaced children provided that enrolled children residing in such state do not lose eligibility as a result.

Title III—Broadened Waiver Authority

The Committee Print provides new authority for States to apply to conduct demonstration projects coordinating two or more public assistance, workforce development, and other programs to support working individuals and families, help families escape welfare dependency, promote child well-being, or help build stronger families.

The administering entity must seek the waiver. If the programs are administered by two different entities, such as one State entity and one local entity, each must join in the application to conduct the demonstration project. States and localities will be able to seek waivers for activities funded under the Wagner-Peyser Act (employment services), Title I of the Workforce Investment Act (except Job Corps), activities funded under the Adult Education and Family Literacy Act, the Job Opportunities for Low-Income Individuals grant program, and activities funded under the Child Care and Development Block Grant.

Each Federal Secretary who administers a program that is to be included in a demonstration project must approve the request. Secretaries cannot waive certain provisions, including civil rights, purposes or goals of any program, maintenance of effort requirements, health or safety provisions, labor standards under the Fair Labor Standards Act, or environmental protections. In addition, a Secretary may not waive any requirement that a State pass through to a sub-State entity all or part of the funds it receives. In addition, the Secretaries may not waive certain provisions of the Workforce Investment Act.

The demonstration projects will be limited to five years, and the State or local entities conducting the demonstration project must evaluate the results. Waivers must be cost neutral to the federal government. In addition, Federal Secretaries will report to Congress on the success of any demonstration projects awarded.

Title IV—Effective Date

The Committee Print makes changes effective on the date of enactment, unless the Secretary of Health and Human Services determines that State legislation is needed to change a State plan under Part A of the Social Security Act. In such a case, the effective dates shall be after the close of the first regular session of the State legislature that begins after enactment.

COMMITTEE VIEWS

The Committee Print reauthorizes and enhances the work-related provisions of the Temporary Assistance for Needy Families (TANF) block grant through 2010. Enacted in 1996, TANF revolutionized how States assist needy families by requiring, for the first time, that welfare participants work for benefits. The welfare reform law made the crucial difference in maximizing opportunities for welfare recipients to participate in the workforce.

Welfare reform has delivered unprecedented results and has brought a whole new culture to the federal aid program. Welfare caseloads reached their all-time high in March 1994 at 5.1 million families. Since then, caseloads have declined approximately 60 percent to 1.9 million families in June 2004. This represents a 55 percent decline since the enactment of TANF. The total number of families receiving assistance is now lower than at any time since 1970.

Employment among never-married mothers, who comprise the population most likely to go on welfare, rose by 28 percent between 1996 and 2003, from 49.3 percent to 63.2 percent. The percentage of working welfare recipients has more than doubled from 11.3 percent in 1996 to 25.3 percent in 2002.

In addition, according to U.S. Census figures, 1.6 million children have been lifted from poverty. Child poverty rates declined from 20.5 percent in 1996 to 17.9 percent in 2004. Decreases in poverty have been significant among African-American children, declining from 39.9 percent to 33.6 percent. According to HHS, this rate is lower than at any time before welfare reform was enacted, when child poverty rates for African American children were 40 percent or higher. The poverty rate among Hispanic children declined from 40.3 percent to 28.6 percent.

Many have argued that the economy should be credited with the caseload reduction and increase in work. However, that claim easily is disputed by examining welfare caseloads in previous times of economic growth. Not only did previous periods of economic growth not result in lower caseloads, but during two previous economic expansions (in the late 1960s and the 1980s) caseloads actually increased. And, during the recent recession of 2001, caseloads held steady and in some areas continued to decline.

The Committee believes that the challenge for Congress this year is to build on the unprecedented success of the 1996 welfare reform law—by putting even more Americans on the path to self-reliance.

The Committee has modeled the Print after President George W. Bush's welfare reauthorization and improvement plan, Working Toward Independence, unveiled February 26, 2002. In addition, the Print incorporates into the reauthorization of the CCDBG key elements of President Bush's Good Start, Grow Smart plan to improve early childhood education.

Title I—TANF Program

Given the great success of the 1996 welfare reform law, the Committee believes that the basic structure of TANF should remain intact, but the work rules should be strengthened to increase opportunities for families to move to self-sufficiency and make the program more responsive to disadvantaged families.

Universal engagement and family self-sufficiency plans

While TANF reforms significantly reduced welfare caseloads, we still have work to do. According to the Department of Health and Human Services' Temporary Assistance for Needy Families Program Sixth Annual Report to Congress (November 2004), 58 percent of TANF adult recipients are not participating in work activities as defined by federal law. Given the five year lifetime limit on assistance that exists in the broader TANF law, the Committee believes that it would be a disservice to families not to engage them immediately in activities that could assist them in achieving independence. Therefore, the Print creates a policy of universal engagement to ensure that all families are participating in work and other activities that will lead to self-sufficiency.

Under current law, State plans must require that a parent or caretaker engage in work (as defined by the State) after, at most, 24 months of assistance. However, this requirement is not enforced by a specific penalty. Currently, twelve States or territories do not require TANF recipients to engage in work during their first 24 months of receiving benefits.

States no longer will be permitted to wait 24 months before requiring individuals to engage in work. The Committee Print would repeal this allowance and replace it with a provision requiring parents in families receiving assistance to participate in work or other activities that lead to self-sufficiency. While States currently have the option to develop individual responsibility plans, the Print requires States to create a self-sufficiency plan for each family. The Committee Print requires the State to assess, in the manner deemed appropriate by the State, each work-eligible individual before preparing the plan.

The self-sufficiency plan must be established in consultation, as the State deems appropriate, with the work-eligible individual and specify appropriate direct work activities to assist the family in achieving their maximum degree of self-sufficiency. The State will monitor the participation of individuals in the activities specified in the plan, review the progress of the family toward self-sufficiency, and revise the plan as the State deems appropriate. The State will have sole discretion, consistent with the work requirements of the

law, to design activities, monitor progress, and make modifications to the plans. Nothing in the plan shall preclude a State from requiring participation in work and other activities the State deems appropriate for helping families achieve self-sufficiency and improving child well-being. In addition, States may use job search or other appropriate job readiness or work activities to assess the employability of individuals and to determine future engagement activities. The Committee intends that States will have sole discretion to implement the self-sufficiency plans, as long as they are consistent with this section and the work requirements.

Plans must be developed within 60 days of opening a new TANF case, or within twelve months for families enrolled at the time of enactment. States face a penalty for failure to establish self-sufficiency plans as part of the current penalty for failure to satisfy state work

Work requirements

The Committee wants to ensure that all families are on the path to their greatest level of independence. TANF includes annual minimum work participation rate standards for families receiving assistance. Currently, 50 percent of all families receiving benefits are required to participate in federally-recognized work activities for a minimum number of hours per week, and 90 percent of two-parent families are expected to engage in federally-recognized activities. However, the national aggregate participation rate for FY 2000 was only 34 percent, according to HHS. Since then, participation in work activities has dropped. Only 31 percent of all families participated in the required hours of TANF work activities in FY 2003. In addition, States are required to have a much higher percentage of two-parent families participating in work—90 percent. Yet, for FY 2002, the national aggregate participation rate was only 49.9 percent for two-parent families.

Certain families are exempt from required hours of working, including, at a State's option, families with a child under age one. The majority of exempt participants are child-only cases, in which no adult is counted toward the family assistance group.

The Committee prioritizes increasing rates of work participation, since obtaining work experience has been shown to be the most critical factor in helping families break the cycle of dependency. Dr. Larry Mead summarized why work participation is critical when he testified before the Subcommittee on 21st Century Competitiveness on March 15, 2005 when he stated, "The ideal in welfare reform is to link benefits as tightly as possible to work. That requires a clear work test that employable recipients must meet as soon as they apply for aid, not sometime later." Therefore, the Committee raises the rate of work participation. In FY 2006 the standard is 50 percent, and it rises by five percentage points annually so that 70 percent of a State's caseload must be meeting the federal work standard in FY 2010.

As noted, current law has higher participation rates for two-parent families. The Committee eliminates all separate, higher requirements for two-parent families so as not to discriminate against or discourage marriage. States will only need to meet one work standard.

The Committee recognizes that some families may not be able to meet the expected work standard. As noted, with this Print States will be required to have 70 percent of their caseload working by 2010. As a result, 30 percent of the caseloads will not have to be meeting the federal work participation standard (although States still must engage such families in activities leading toward self-sufficiency as specified in their self-sufficiency plans). People who care for disabled children or have other significant barriers to work are some of the populations the Committee expects States to classify into this 30 percent category. Therefore, the Committee does not carve-out from the work requirement any groups of individuals that may have barriers to work.

Current law reduces work standards by a caseload reduction credit. For each percent decline in a State's caseload from the fiscal year 1995 level, which is not attributable to policy changes, the State's work participation standard is reduced by one percentage point. This credit was given to encourage States to move families off assistance and into work and to give States credit for diverting cases from the rolls. States have an incentive not to enroll families that may need only one-time or short-term assistance to get back on their feet. However, policymakers did not anticipate in 1996 the success that States would have in reducing their caseloads. As a result of this success, the existing caseload reduction credit reduced States' annual work rates substantially. The average effective minimum work participation requirement in FY 2002 was only 4.5 percent for all families and 20.6 percent for two-parent families. In FY 2002, 21 States had sufficient caseload reduction credits to reduce their effective all-parent required rate to zero. Only twelve States faced an effective minimum standard greater than ten percent.

While reductions in caseloads were one of the intended effects of the law, the current caseload reduction leaves little incentive for States to continue to move individuals into work and off the welfare rolls. Therefore, the Committee has updated the credit to reward States for further reductions, which will reduce the effective state work participation rate target for States with falling caseloads while requiring more of the remaining caseload to participate in work. For FY 2006, the credit is based on the percent decline in the caseload from FY 1996; for FY 2007, the base year is 1998; for FY 2008, the base is FY 2001. Thereafter, the base year is the 4th preceding fiscal year. For example, the credit in FY 2010 is based on the caseload decline from FY 2006. So, if a State's welfare caseload declines by 20 percent between fiscal years 2006 and 2009, its effective work participation requirement for the remaining caseload in FY 2010 would be 50 percent, given the updated credit for net caseload reduction.

Members have stressed the importance of emphasizing the need not simply to cut people off the welfare rolls but to move TANF participants into work. Such case closures will be rewarded in this credit as long as they contribute to an overall net caseload reduction.

The Committee Print includes a new "superachiever" credit for States that have reduced their caseloads by more than 60 percent since 1995. The value of the credit would be equal to the number of percentage points above 60 percent in caseload reduction that oc-

curred between 1995 and 2001. The superachiever credit may reduce a State's work participation rate only to 50 percent, although any future caseload reduction also may be applied to the work participation rate the State must achieve, after calculating the superachiever credit, in order to encourage further caseload reduction.

Seventeen States achieved caseload declines of more than 60 percent between fiscal years 1995 and 2001. These States would receive percentage reductions in future work requirements as follows: Colorado is eligible for a maximum 12 percent credit against future rates; Florida, 15 percent; Georgia, 4 percent; Idaho, 20 percent; Illinois, 14 percent; Louisiana, 9 percent; Maryland, 5 percent; Michigan, 4 percent; Mississippi, 10 percent; New Jersey, 2 percent; North Carolina, 6 percent; Ohio, 3 percent; Oklahoma, 9 percent; South Carolina, 5 percent; West Virginia, 2 percent; Wisconsin, 16 percent; and Wyoming, 20 percent. The credit recognizes the challenge that these States might have in further reducing caseloads, which would otherwise reduce the rising work requirements.

Under current law, adults generally are required to participate in 30 hours of work activities, of which 20 hours must be in priority work activities per week. For two-parent families the standard is 35 hours per week, with 30 hours in priority work activities. For a single parent of a child under age six, 20 hours of work participation satisfies the requirement. States may exempt the parent of a child under age one from work and exclude them from the calculation of work participation rates.

Current priority work activities include unsubsidized jobs, subsidized private sector employment, subsidized public sector employment, work experience, on-the-job training, job search for up to six weeks, community service, vocational education for up to twelve months, and providing child care for other TANF recipients. Three other activities can count under certain circumstances: job skills training directly related to employment, and, for high school dropouts or students, education directly related to work and completion of secondary school. Participation in education, including vocational education and students finishing high school, may account for no more than 30 percent of persons credited with work for purposes of satisfying the state work participation rate. Teen parents are deemed to meet the weekly hour participation standard by maintaining satisfactory attendance in secondary school.

The Committee Print revises the work requirement for participants. Under the 1996 reform, as stated, families were required to work only 30 hours a week in order to receive TANF benefits. In today's American workforce, employers almost always require at least 40 hours of work per week. In order to help individuals become prepared for the standard workweek, the Print increases the average weekly work requirement to 40 hours for work-eligible individuals. Work-eligible individuals are individuals who are married or are single heads of household and whose needs are included when determining the amount of assistance to be provided to the family.

In order for a work-eligible individual's hours of work to be able to count toward the participation rate calculation, the individual must participate in at least an average of 24 hours of direct work

activities per week in a month. Direct work activities include unsubsidized employment, subsidized private sector employment, subsidized public sector employment, on-the-job training, supervised work experience, or supervised community experience. As noted above, participants now generally are required to work 20 hours in these direct work activities, so this is an increase of four hours of direct work per week.

As under current law, teen parents still will be able to comply with the work requirement by attending school.

The remaining 16 hours of the 40-hour workweek of activities can be in any constructive activity a State determines to be appropriate for the family. The Committee expects such activities to be consistent with the purposes of TANF. Such activities could include education and training, structured activities with a family's children that will promote child well-being, parenting education classes, basic adult education, classes to learn English as a second language, substance abuse treatment, and more.

The Head Start program provides comprehensive early childhood development, educational and other services to low-income preschool children and their families. The Committee recognizes that many TANF participants have children enrolled in the Head Start program. Head Start strongly emphasizes the involvement of families in the program to ensure that programs are responsive to the unique needs of the community and to help improve conditions necessary to prepare children to succeed in school. As part of the program, parents are strongly encouraged to participate in Head Start Centers as volunteers. Such interaction is beneficial for both the parent and the participants. The Committee encourages States to tailor their TANF work programs so that parents can participate in their children's Head Start experience while also engaging in activities that will lead to family self-sufficiency. The Committee believes that parents volunteering in Head Start Centers qualifies as supervised community service and therefore may count toward the 24 hours of direct work activities. In addition, a State may count participation in Head Start toward the 16 hours of other constructive activities, as such participation would be a structured activity that promotes child well-being.

In addition, the Committee believes that parents must be actively involved in their children's education to help their children succeed. Therefore, the Committee Print requires work-eligible individuals to visit the schools of their children at least twice per year, as long as the family continues to receive TANF assistance. States will be required to verify such visits through documentation of their choice. The Committee envisions that such visits should include parent-teacher conferences. If a school does not have such conferences twice a school year, other examples of parental involvement in schools could include volunteering in a child's classroom or on a class field trip. Such activities could count toward the required 16 hours of weekly constructive activities, as they promote child well-being. Not only will this provision allow parents to track their children's academic and social progress, but it also will give parents an opportunity to meet their children's teachers—and vice-versa. At a time when Congress and President Bush are placing such a premium on parental involvement in their children's edu-

cation, this provision will help ensure that low-income children are not left behind in this respect.

The Committee has changed the methodology for calculating the work rates. Currently, to calculate monthly participation rates, the number of families receiving assistance who are meeting the work standard is divided by the number of countable families receiving assistance. Under the Print, the calculation of the monthly participation rates changes to the total number of hours worked during the month by work-eligible individuals in allowable activities divided by 160 times the number of families receiving assistance. In both circumstances, child-only cases are excluded. States also continue to have the option, on a case-by-case basis, to exclude work-eligible individuals who have children under one year old and certain sanctioned families. States also have the option to exclude from the work requirements families during their first month of assistance.

Basing the calculation on 160 hours of countable work activities assumes that the work-eligible individual will participate in an average of 40 hours of activities for four weeks per month. However, since most months are longer than four weeks, the calculation actually equates to an average of 37 hours per week. Therefore, the calculation includes some flexibility for States to ensure the families' work weeks match those of individuals not receiving assistance. This flexibility allows states to accommodate an individual that works in unsubsidized employment and whose business closes for national holidays or other occasions. The Committee does not expect States to find alternative placements for individuals if their place of work is closed for a day.

The new methodology for calculation of the work participation rates increases States' flexibility in how they can meet the participation rate. Under current law, in order to be counted toward the work rate, families must be participating at least 30 hours in federally countable activities. Now, States will receive credit for hours work-eligible individuals spend in work activities, as long as at least a minimum of 24 hours are spent in direct work activities.

For example, without considering the impact of the caseload reduction credit, a State could reach a 60 percent participation rate in a multitude of ways. Assuming a hypothetical caseload of 100 families, a State could reach a 60 percent participation rate if 60 families have a parent who works 40 hours per week, including 24 hours of direct work activities. Or, 80 families could have a work-eligible parent who works 30 hours per week, including 24 hours of direct work. A variety of combinations could be developed, as long as the work-eligible individuals participate in at least 24 hours of direct work. A State may count more than 40 hours worked by one family, as long as the additional hours are done by work-eligible individuals in direct work activities. For instance, both parents may be working in a married family. Unlike the flexibility in the new formula for calculation of work rates, under current law there is only one way to achieve a hypothetical 60 percent participation rate in a 100 family caseload (without counting the caseload reduction credit), which is for 60 families to have a parent who works at least 30 hours per week in allowable activities.

The appropriateness of emphasizing work first in the revised TANF program is supported by research of what has worked since TANF was enacted. Evaluations of welfare programs on work show that direct work activities are more successful and cost-effective in improving participants' financial well-being and child well-being. Dr. Lynn Karoly, of RAND, synthesized national literature on the effect of work requirements on welfare recipients. During testimony before the 21st Century Competitiveness Subcommittee on October 16, 2001, Dr. Karoly informed the Subcommittee that:

> The LFA (labor force attachment) programs, which emphasize job search, result in larger average employment gains than the HCD (human capital development) programs, which emphasize skill-building and generally require the participant to participate in classroom activities. The average employment increase among the search-oriented programs was 9.2 percentage points, compared to 3 percentage points among the skills-oriented programs . . . Among the four work-first programs (included in the synthesis), earnings impacts averaged about $1,200. Among the human-capital programs, earnings impacts were smaller, averaging just under $400. . . . (T)here is evidence that the jobs-first model generated somewhat greater reductions in welfare use than the skills-oriented programs.

However, the Committee believes that to become truly independent of government assistance, families must have the opportunity to obtain education or training that will help them obtain higher paying jobs that are in demand in the local economy. The Committee believes that the Print offers more flexibility for individuals to obtain education than the current law does. Under current law, participants may spend no more than twelve months in vocational education. In addition, no more than 30 percent of a State's caseload may be either teens attending high school or participants in vocational education. Other educational opportunities are strictly limited and can account for no more than ten hours per week. Under the Print, all work-eligible individuals may spend up to 16 hours per week in any kind of education deemed appropriate by the State for up to five years of TANF eligibility, as long as the participant also works part time for an average of 24 hours per week.

The Committee strongly supports blended activities that combine work and education and training. For instance, it is the Committee's intent that vocational education and training programs could combine classroom training with direct work. An individual could spend as many as 16 hours per week in a classroom learning a trade, and could apply newly acquired skills in an actual workplace setting for an average of 24 hours per week. For instance, a nursing student may spend part of her week in a classroom, but also spend part of the week working in a hospital or nursing home to further her skills. These real work experiences should count as direct work.

Curtis Austin, President of Workforce Florida, outlined during his testimony before the Subcommittee on 21st Century Competitiveness on March 15, 2005 one such strategy operating success-

fully in his State called the Career Advancement and Retention Challenge (CARC). In the program, TANF recipients work and receive training. The Committee Print provides the flexibility for States to provide these activities for up to five years, as long as participants work at least 24 hours. According to Mr. Austin:

> The CARC project is a program designed to train those who have obtained employment, but are not yet self-sufficient. . . . One of the keys to this approach is that it allows training for all qualified employees at a given worksite, rather than waiting for such workers to contact the one-stop individually. Such innovative approaches may include, but are not limited to creative, non-traditional training programs, support services and mentoring services. The Regional workforce board staff work with the employer and the employees to plan a training program that considers the employees' regular work schedules, the needs of the employer, opportunities for earnings gains and advancement upon completion of the program and what leveraged dollars or in-kind contributions will be made by the employer or training provider.

The Committee recognizes that short-term, intensive services may be necessary to help some participants become work-ready. As a result, the Print allows substance abuse counseling or treatment, rehabilitation treatment and services, work-related education or training directed effectively at enabling the family member to work, or job search or job readiness assistance to count as direct work activities, as long as the participant engages in the activity at least 24 hours per week, for three months in any 24 consecutive months.

E. Mona Garland, Wisconsin Works Director with the Opportunities Industrialization Center of Greater Milwaukee, who testified before the 21st Century Competitiveness Subcommittee in October 2001, showed the value of short-term training when she said, "We have assigned staff to develop short-term customized training opportunities driven by employment opportunities with higher earning potential in areas such as office skills, medical careers, light industrial, the food service industry and non traditional employment opportunities."

In addition, under certain circumstances, full-time education longer than three months may be necessary. Therefore, the Print allows States, on a case-by-case basis, to allow full time education or training for four months in any 24 consecutive months if four months are needed to permit an individual to complete a certificate program or other education that will allow the person to fill a known job need in a local area. For purposes of obtaining financial aid, the Higher Education Act of 1965 generally defines an academic term as 15 weeks. Therefore, four months will allow individuals to complete a semester of coursework.

The Committee believes the Print also allows sufficient time for job search. In addition to allowing job search for three months in any 24 consecutive months, a State may choose to exclude a work-eligible individual from the work participation rate calculation for the first month the family is on the roll. Therefore, the work-eligi-

ble individual has another month during which she can search for a job, before being subject to other work activities.

The Committee Print maintains current law that allows a State discretion to determine the level of sanction a family will face for failure to participate in program requirements. As under current law, a state may not sanction a family with a child under age six but who cannot obtain child care. However, a State must terminate a family's assistance for at least one month or until the family is compliant with all requirements, whichever is longer, if the work-eligible individual's failure to engage in work is total and persists for at least two consecutive months. The Committee intends total failure to mean that the individual has not participated in direct work or other activities as determined appropriate by the State for even one hour during the two month period. States still are able to determine good cause exemptions for failure to comply. Currently, 15 States never reach a full-family sanction. States with a constitutional or statutory requirement to continue benefits will have a one-year transition in which to comply with this provision.

Although the evidence is not clear, studies suggest that a stricter sanction policy is effective in obtaining compliance with program requirements. A study by Robert Rector at the Heritage Foundation found that States with strong work requirements and full-family sanctions have experienced larger welfare caseload reductions than other States. One example is Wisconsin, which has seen its caseload decline 76 percent since enactment of welfare reform.

Work-related performance improvement

The Committee Print adds provisions to TANF to increase accountability and emphasize program outcomes.

Currently, each State must have a 27-month State plan that describes how the State will conduct a program providing cash assistance to needy families with children, provide parents with work and support services, and comply with other requirements of the law. The Committee Print adds State plan requirements that reflect the legislation's increased focus on engaging more recipients in work and other activities that will lead to self-sufficiency. In addition, the changes reflect Members' interest in helping parents move from a first job to a better job.

The Committee Print requires each State to submit, as part of their required State plans, a description of how the State will pursue ending dependence of needy parents on government benefits by promoting job preparation and work, including specific numerical and measurable performance objectives, and describe the methodology the State will use to measure its performance. Then, beginning in 2007, each State shall submit to the Secretary of HHS a report on achievement of and improvement during the preceding fiscal year regarding the performance measures set forth by the State. The Committee intends for States to have full flexibility to define their performance goals; they simply must describe the goals and the State's ability to obtain them.

In addition, the State shall describe, in its plan, any strategies and programs the State may be undertaking to address employment retention and advancement, including placement into high-demand jobs and whether the jobs are identified using labor mar-

ket information. The Committee encourages States to help recipients obtain employment that can lead to a career. Using labor market information is one way to identify such available jobs. Operated by and available through the nation's One-Stop Career Center system created under the Workforce Investment Act of 1998 (WIA), labor market information assesses the local or regional economy, identifies labor shortages, and contains information on the type of preparation needed to obtain these jobs. Many labor market information resources are available through the internet, as well, as part of America's Labor Market Information System (ALMIS) operated by the U.S. Department of Labor. States are encouraged to avail these resources when preparing recipients for employment.

The Committee Print also requires States to describe any strategies and programs they may be undertaking to address services for struggling and noncompliant families, and for clients with special problems. The Committee wants to ensure that States consider the potentially unique needs and special circumstances of individual families.

States also are asked to describe program integration, including the extent to which TANF employment and training services are provided through the One-Stop delivery system and the extent to which former recipients of such assistance have access to additional core, intensive, or training services funded through WIA. The Committee urges States to integrate TANF work elements with the One-Stop Career Center system created under WIA.

Under current law, the Secretary is to rank States in order of success in moving recipients into long-term private jobs. The legislation deletes the "long-term" qualifier measure used in ranking State performance and adds an employment retention and advancement ranking factor. This change makes clear that Congress intends States to move recipients into jobs that offer opportunities for advancement rather than simply long-term employment in low-wage jobs.

Mandatory partners with one-stop employment training centers

The Committee Print also requires TANF to be a mandatory partner in the One-Stop delivery system for workforce development created in WIA. However, a Governor may opt-out of this requirement if the Governor notifies the Secretaries of Health and Human Services and Labor in writing of a determination by the Governor not to include the program as a required partner in WIA. The Committee strongly encourages States to include TANF in the One-Stop delivery system.

Under this Committee's leadership, Congress passed WIA to integrate the nation's job training system that formerly was fragmented, contained overlapping programs, and did not serve either job seekers or employers well. The system operates through One-Stop centers, at which numerous programs must make their services available. These programs include vocational education, veterans' employment and training, employment services, vocational rehabilitation and adult education, just to name a few. In addition, direct WIA services also are provided to dislocated workers, adults seeking better employment, and youth.

Currently, employment and training programs funded through the TANF block grant are optional partners in the One-Stop centers. In many States, the TANF system and the workforce development systems are overseen by different entities at the State and local levels. Yet, both operate work programs. The Committee believes that operating TANF in conjunction with the One-Stop delivery system could reduce the stigma associated with accessing welfare services and should increase TANF clients' exposure to employers who utilize the One-Stop Career Centers to find new workers. In addition, it will encourage a continuum of services for low-income families that may become unemployed after leaving welfare, or may need additional training to move up the career ladder. Creating a formal connection to the WIA system will ensure TANF clients have access to labor market information and job listings maintained at the One-Stops and should enhance connections to the business community. It also could eliminate some duplication at the State level.

The 21st Century Competitiveness Subcommittee examined the extent to which TANF employment and training services currently are provided through the One-Stop delivery system during a hearing on March 12, 2002. Dr. Sigurd Nilsen, Director of Education, Workforce and Income Security issues for the Government Accountability Office, formerly the General Accounting Office (GAO), testified that State and local efforts to coordinate their TANF and WIA programs increased in 2001. According to a survey conducted by the GAO, 44 States have informal linkages between the two systems, and 28 have formal linkages such as memoranda of understanding. Coordination occurred most often on the operation of work programs, and less frequently on support programs.

John B. O'Reilly Jr., Executive Director of the Southeast Michigan Community Alliance (SEMCA), which is one of 25 Michigan Works agencies, testified before the 21st Century Competitiveness Subcommittee at the hearing with Dr. Nilsen. During the hearing, Mr. O'Reilly provided first-hand evidence of what makes an integrated delivery system successful:

> All of the workforce services are coordinated at the regional level by the Workforce Development Board. All customers are served in a collaborative system that best utilizes resources and existing community support. Employers have a single point of access to services that are specific to their needs. Employers don't know which government program brought our customers into the system, only that they are referred persons who are prescreened to suit the job order placed with the One-Stop.

Curtis Austin of Workforce Florida described the benefits for jobseekers, including TANF recipients, in the integrated system in Florida. In his testimony he stated, "The workforce one-stop system is no longer the welfare office, the unemployment office or the job training office—but rather the public employment center where all services that support employment, including labor market information, available job listings, relevant training opportunities, work supports, career counseling and assessment to identify and address barriers to employment are provided."

However, real integration may not be possible as long as the programs have different performance standards, reporting requirements, and definitions. The GAO also identified such barriers during their examination of the two systems. Therefore, the Committee has included a requirement that the Secretary of HHS and the Secretary of Labor jointly submit a report to Congress no later than six months after enactment of this legislation to describe changes needed to the two systems to allow greater integration between the welfare and workforce development systems.

Fatherhood

The Committee Print amends Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) to create a new fatherhood program.

The Committee recognizes that fathers make unique and irreplaceable contributions to the lives of children. According to the National Fatherhood Initiative, in an analysis of nearly 100 studies on parent-child relationships, the love of a father was as important as a mother's love in predicting the social, emotional, and cognitive development and functioning of children and young adults. Children with involved, loving fathers are significantly more likely to do well in school, have healthy self-esteem, exhibit empathy, and avoid high-risk behaviors as compared to children who have uninvolved fathers.

Yet too many children do not have good relationships with their fathers. Twenty-four million children live absent their biological father. About 40 percent of children in homes absent a father have not seen their father at all during the past year. Unfortunately, we know that the absence of fathers produces negative outcomes for their children. According to the National Fatherhood Initiative, children who live absent their fathers are, on average, at least two to three times more likely to be poor; use drugs; experience educational, health, emotional and behavioral problems; to be victims of abuse; and engage in criminal behavior than their peers who live with married parents. Therefore, the Committee believes that it is important to reinforce the importance of responsible fatherhood to reduce the rates of father absence.

These fathers often are involved with a child at birth. Preliminary survey data from the Fragile Families and Child Wellbeing Study, which studied unmarried couples with children, suggest that most unwed fathers are highly involved shortly after the child's birth, and may even intend to marry the child's mother. The key is for fathers to stay involved in the lives of their children.

The Committee identifies three purposes for the program. The first of the three purposes is to provide for projects and activities by public entities and nonprofit community entities, including religious organizations, to test promising approaches to accomplishing the following four objectives: (1) promoting responsible, caring, and effective parenting and encouraging positive father involvement, including the positive involvement of non-resident fathers; (2) enhancing the abilities and commitment of unemployed or low-income fathers to provide support for their families and to avoid or leave welfare, including connecting fathers to employment services and the one-stop delivery system created through the Workforce Invest-

ment Act of 1998 (WIA).; (3) improving fathers' ability to effectively manage family business affairs; and (4) encouraging and supporting healthy marriages and married fatherhood.

The second purpose is to improve outcomes for children through the activities described in the first purpose, such as increased family income and economic security, improved school performance, better health, improved emotional and behavioral stability and social adjustment, and reduced risk of delinquency, crime, substance abuse, child abuse and neglect, teen sexual activity, and teen suicide.

The third purpose is to evaluate approaches and disseminate findings to encourage replication of effective approaches in accomplishing the objectives.

The Committee Print authorizes the Secretary of HHS to make grants for fiscal years 2006 through 2010 to public and nonprofit community entities, including religious organizations, and to Indian tribes and tribal organizations, for demonstration service projects and activities designed to test the effectiveness of various approaches to accomplish the four objectives.

Entities applying for a full services grant must submit an application to the Secretary. The application must contain: (1) a description of the project and how it will be carried out; (2) information about the applicant's ability to carry out the project; (3) a description of how the applicant will address child abuse and domestic violence, including how the applicant will coordinate with State and local child protective service and domestic violence programs; (4) a commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and other behavioral risks; and (5) a description of how the project would coordinate, as appropriate, with State and local entities responsible for TANF, WIA (including the one-stop delivery system), and other social service programs as the Secretary may require. In addition, the application would include an agreement to maintain records, make reports, and cooperate with reviews or audits as required by the Secretary and an agreement to cooperate with the Secretary's evaluation of the project.

The Secretary also may award grants for limited purposes, which must address at least one of the program objectives. An application for a limited purpose grant of less than $25,000 per fiscal year must contain similar but more limited information and descriptions than those required for full service grants as provided above.

In awarding grants, the Secretary must seek to achieve a balance among entities of differing sizes, entities in differing geographic areas, entities in urban and in rural areas, and entities employing differing methods of achieving the four specified objectives. Also, the Secretary may give preference to projects in which a majority of the clients to be served are low- income fathers.

Federal grant funds may be used for up to 80 percent of the annual costs of full-service projects (or up to 90 percent if the entity demonstrates circumstances limiting the entity's ability to secure non-Federal resources), and for up to 100 percent of annual costs for limited-purpose projects. The non-Federal share may be in cash or in kind.

The Secretary also will award grants for fiscal year 2006 through fiscal year 2010 for two multi-city, multi-State fatherhood projects demonstrating approaches to achieving the four specified objectives. One of the projects is required to test the use of married couples to deliver program services. The Print specifies conditions for an entity to be eligible for such grants. The grants may be used for up to 80 percent of the annual costs of the demonstration projects. The non-Federal share may be in cash or in kind. The Committee believes that the program ought to support efforts by experienced fatherhood organizations to develop projects in major cities.

Further, the Secretary will make grants for fiscal year 2006 through 2010 to support economic incentive demonstration projects. An entity eligible for a grant must be a national, nonprofit fatherhood promotion organization that meets certain conditions. The grant application must specify how the grant would be used for a project that will address each of the fatherhood program's objectives and address employment barriers across programs (such as child support, criminal justice and workforce development programs), using both sanctions and monetary incentives for obtaining employment and earnings subsidies contingent upon work and payment of child support. The projects must direct a majority of its resources to low-income fathers, but does not need to be means-tested. The project will comply with evaluation requirements and coordinate with other specified programs, including TANF and WIA. These demonstration grants can make up no more than 80 percent of the cost of the project, and the non federal share may be cash or in kind.

The Secretary would evaluate the effectiveness of the selected competitive grants for service projects, selected multi-city, multi-State demonstration projects, and the economic incentive demonstration projects from the standpoint of the four specified objectives and other outcomes. The Secretary must publish an implementation evaluation report covering the first 24 months of the activities within 36 months of the initiation of such activities. A final report on the evaluation is to be completed by September 30, 2013. The Committee believes that evaluation is critical in assisting efforts of the Secretary and Congress to determine effectiveness.

The Secretary is also authorized to carry out projects and activities of national significance relating to fatherhood promotion. These projects and activities may include: collection and dissemination of information to interested parties regarding approaches to accomplishing the four specified objectives; development, promotion, and distribution of a media campaign that promotes and encourages involved, committed, and responsible fatherhood; technical assistance in the implementation of local fatherhood promotion programs, and conducting research related to the purposes of the fatherhood program.

The projects and activities assisted must be made available on the same basis to all fathers and expectant fathers able to benefit from such projects and activities, including married and unmarried fathers and custodial and non-custodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers.

The Committee authorizes $20 million for each of fiscal years 2006 through 2010 to carry out the fatherhood initiatives. Of the amount appropriated, no more than 35 percent shall be available for the costs of multicity, multicounty, or multistate demonstration projects; economic incentive demonstration projects; evaluations; and projects of national significance. At least $5 million would be spent on economic incentive demonstration projects.

Prohibition on Offshoring

The Committee Print prohibits states receiving grant money under TANF from using the grant to contract with a service provider or allow that provider to subcontract any TANF service or function outside of the United States. Further, it prohibits states from awarding a grant that would utilize 1 or more employees outside the United States. Concern was expressed about state grant recipients offshoring call center services. Evidence was offered of at least one state entering into contracts for other federal programs that allowed for the offshoring of call centers which later resulted in that state's legislature passing laws to prevent this action.

Title II—Amendments to the Child Care and Development Block Grant of 1990

Child care is an issue of significant public interest. The dramatic increase in the number of women participating in the labor force, and the number of these women who are the sole or primary financial supporters of their children are the most important factors affecting the demand for child care.

Increasingly, the affect of child care on children also has become a significant public issue. Research in the field of child development demonstrates that low-income children can benefit from child care with an early childhood development, the quality of child focus by narrowing the school readiness gap of low-income children at entry into kindergarten. Therefore care available is important so that all young children are developmentally prepared to enter and succeed in school.

Concerns about the supply, quality and affordability of child care for many low-income families led to a national debate over the nature and extent of the Nation's child care problems and what, if any, Federal intervention would be appropriate. Federal lawmakers recognized the need to address the accessibility and affordability of child care so that parents could participate in the workforce—a necessary precursor to achieve self sufficiency, reduce poverty, and improve child well-being. A stable supply of affordable child care is essential so that parents can work.

In response, Congress created the Child Care and Development Block Grant (CCDBG) in 1990. The CCDBG assists States in their efforts to subsidize the cost of child care for low-income families. In 1996, as part of the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA), the CCDBG was consolidated with other Federal child care programs and expanded to provide increased Federal funding to serve both low-income working families and families attempting to transition off welfare through work.

The Committee Print, the Personal Responsibility, Work, and Family Promotion Act of 2005, continues the main objectives of the

Child Care and Development Block Grant Act of 1990 and the PRWORA of 1996, and makes improvements to the current law. The legislation maintains its primary focus to facilitate access to child care services for low-income families and strengthens the Federal commitment to foster quality environments and early learning experiences for young children.

Witnesses before the Subcommittee on 21st Century Competitiveness testified on March 15, 2005 on the growing importance of child care for success of welfare reform. Cassandra Fallin, Executive Director of the Baltimore City Child Care Resource Center told the Subcommittee:

> Child care is a vital support for low-income working families. In 2003, over 1 million families and 1.75 million children were served by the Child Care and Development Block Grant. Almost 90 percent of the children receiving child care assistance were in care because their parents were working, in school, or in training (78 percent because their parents were working; 12 percent while their parents were in training or school) . . . Child care provides the stability needed to keep families working. Research has found that former welfare recipients are 82 percent more likely to keep a job after two years if they receive child care assistance.

Program goals

The Committee Print continues to provide States maximum flexibility in developing child care programs and policies and promotes parental choice so that parents can select the type of child care and setting that they prefer. This legislation amends the existing goals to emphasize that the block grant is intended to serve both low-income working families who receive cash assistance and those who are struggling to maintain independence from the welfare system.

Two new goals also are added to encourage States to improve the quality of child care and to promote cognitive development and school readiness. These goals are consistent with the President's early childhood education initiative, Good Start, Grow Smart, designed to address the cognitive and other developmental needs of young children so that they are prepared to enter and succeed in school.

A primary goal of the Child Care and Development Block Grant is to "promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs." Child care vouchers provided to parents using CCDBG funds promote informed parental choice. In most cases, States allow eligible parents to select their preferred type of care setting and provider, including faith-based providers. In addition to supporting parent choice, the voucher system supports increased child care quality since competition among providers improves the quality of care for all children in preschool settings.

Funding

The Committee Print provides funding for the discretionary portion of the CCDBG. This legislation authorizes $2.3 billion for fiscal year 2006, $2.5 billion for fiscal year 2007, $2.7 billion for fiscal

year 2008, $2.9 billion for fiscal year 2009, and $3.1 billion for fiscal year 2010. Block grant funds authorized by this legislation are just one part of the total block grant funding picture. The discretionary authorization is combined with mandatory funds authorized by the Committee on Ways and Means and State matching funds required to receive a portion of the Federal mandatory money. Together these funding sources are commonly referred to as the Child Care and Development Fund (CCDF).

The Federal Government has made a significant financial commitment to providing access to affordable child care and early education opportunities for low-income families, and assistance to improve the quality of child care and early education. Current funding for child care has reached historic new levels.

Federal child care spending through the CCDF and Temporary Assistance to Needy Families (TANF) has increased 242 percent from $2.6 billion in 1997 to $9.9 billion in 2003. The current authorization is $1 billion, but the fiscal year 2005 appropriation is $2.1 billion. Discretionary funding for the Child Care and Development Block Grant has more than doubled in the last five years to $2.1 billion dollars in fiscal year 2005. Mandatory funding currently is set at $2.7 billion, for a total of $4.8 billion in fiscal year 2005.

In addition to Federal dollars provided through mandatory and discretionary funding, States currently may transfer up to 30 percent of their TANF block grant to the Child Care and Development Block Grant. In fiscal year 2003, States transferred nearly $1.9 billion to the block grant—representing 11 percent of the fiscal year 2003 TANF allotment. The Committee Print would allow States to transfer up to 50% of their TANF block grant into the Child Care and Development Fund. As more people transition from welfare into employment, States may have an increasing amount of TANF resources available to help low-income families pay for child care.

States also may spend additional TANF money directly on child care services outside of the CCDBG. In fiscal year 2003, HHS reports that States spent approximately 5% ($1.7 billion) of their TANF grant for child care, and $1.77 billion in state TANF and separate state program maintenance of effort (MOE) funds (some of which may also be reported as State CCDF spending).

In total, expenditure data show that in fiscal year 2003, States spent nearly $9.5 billion in Federal and State money from the Child Care and Development Block Grant (this amount includes spending from the TANF transfers to the CCDBG). In addition, States spent over $3 billion on child care within the TANF system. Therefore, in total, over $12 billion was spent on child care through the CCDBG and TANF in fiscal year 2003 (of which $8.9 billion were Federal funds). Furthermore, another federal block grant, the Social Services Block Grant, also may be used by States to provide child care services. In fiscal year 2002, States spent $205 million on child care through this block grant, which is currently funded at $1.7 billion.

In addition to the CCDBG, TANF and Social Services Block Grant, which states may use to support child care for low-income families, other Federal programs provide funds for child care and early childhood development. These include: Head Start (funded at

$6.8 billion in fiscal year 2005), the Child and Adult Care Food Program ($2.1 billion), the Individuals with Disabilities Education Act preschool and infant/toddler grants ($826 million), Even Start ($225 million), Early Reading First ($104 million), Early Learning Fund ($36 million) and, for after- school and weekend activities for school age children, the 21st Century Community Learning Centers ($991 million). In total, combined annual funding for child care and early education programs by the Departments of Health and Human Services and Education is estimated to exceed $17.5 billion.

Application and state plan requirements

Under current law, each State that applies for a Federal block grant is required to submit a State plan to the Secretary of the Department of Health and Human Services. The State plan is designed to ensure that States are complying with minimal Federal guidelines before receiving their grant. States are asked to certify that parents have unlimited access to their children while in care and the ability to choose their child's care provider and setting. States also must assure compliance with State licensing, health and safety requirements, address the child care needs of certain population groups, and substantiate that payment rates for child care services are sufficient to ensure equal access to services available to children not eligible for subsidized care.

The Committee Print modifies the State plan in several ways to improve the quality of child care services provided to eligible families. The legislation asks States to collect and disseminate information to both parents of eligible children and child care providers about: the quality and availability of child care services; resources to assist families in obtaining child care; research and best practices on children's development; and, other programs and services for which families may be eligible, including the food stamp, WIC, Head Start programs, Early Head Start program, programs for infants, toddlers and pre-kindergarten age children available through the Individuals with Disabilities Education Act (IDEA), Medicaid and SCHIP programs.

The Committee Print suggests that States utilize State and local child care resource and referral organizations to collect and disseminate information to families eligible to receive child care assistance and to providers of child care to eligible families, however, States retain the flexibility to use other resources for this purpose. State and local child care resource and referral agencies (CCR&R) often are a community's vital link between parents and child care providers. Most States have in place a comprehensive child care resource and referral network that supports families in finding child care; compiles, analyzes and shares information with parents, providers and communities on the supply, cost, and quality of child care and the availability of child care subsidies; and, supports individuals and programs providing care for children. Child care resource and referral organizations most often are a cost-effective resource because they successfully leverage public dollars with contributions from private sources.

This legislation encourages States to create partnerships with public and private entities to increase the supply and quality of child care services, and to coordinate child care services provided

by this Act with other child care and early childhood education programs, such as Head Start; Early Reading First; Even Start; programs for infants, toddlers and pre-kindergarten age children available through the Individuals with Disabilities Education Act (IDEA); and state-sponsored pre-kindergarten.

Beginning in 2007, State plans will contain the outline of the State's strategy to address the quality of child care available to children in that State. States will report on the use of quantifiable, objective measures for evaluating the quality of child care services and its progress in improving child care quality. The Committee does not intend or desire to create any federal standards for quality of child care and intends for States to have complete discretion in fulfilling these provisions.

Finally, States are asked to address factors that can make finding care difficult for some parents. The Committee requests that States report in their State plan how the State is working to meet the child care needs of parents eligible for assistance who have children with special needs, work non-traditional hours, are limited English proficient, or require infant and toddler care.

Limited English proficient (LEP) children account for a growing share of children eligible for child care assistance. According to the National Council of La Raza, 22 percent of children under age 5 who reside in the United States are Hispanic. The Committee recognizes that LEP parents and children have unique needs that must be addressed to ensure equal access to quality programs providing early education and care.

Language barriers are often cited as a main reason that access is impeded to programs and services for which an individual is eligible. An amendment offered by Reps. Fortuño and Hinojosa will ensure that parents, and their young children who are learning English, have equitable access to child care subsidies. The Committee Print requires that information provided to parents shall "be in plain language and, to the extent practicable, be in a language that such parents can understand". The Print defines "limited English proficient" in a manner consistent with the definition included in the No Child Left Behind Act and the School Readiness Act.

Child care quality

The Committee Print places a greater emphasis on the importance of early childhood development and encourages States to improve the quality of child care. The quality of child care is critical to school readiness. Research demonstrates that the experiences of a young child greatly affect all aspects of his or her development, including social and cognitive development.

Knowledge about children's learning has expanded during the past two decades. Research in the neurobiological and behavioral sciences related to young children suggests the importance of the first years of life for healthy brain development. From birth through age five, children rapidly develop the capabilities on which subsequent development builds. In addition to linguistic and cognitive gains, children exhibit dramatic progress in their emotional and social capacities. According to child development expert Dr. T. Berry Brazelton:

> A child's experiences in the first months and years of life determine whether he or she will enter school eager to learn or not. By school age, family and caregivers have already prepared the child for success or failure. The community has already helped or hindered the family's capacity to nurture the child's development.

Although some variation in development can be expected among all young children, early intervention has the ability to substantially reduce the significant racial, ethnic, and socioeconomic gaps that already exist by the time children begin elementary school. While gaps in school readiness can be attributable to many factors such as economic status, environmental stress, health, parenting, early child care experiences, birth weight, and genetics, researchers conclude that education-based interventions targeted at young children have the greatest impact on improving brain function and behavior. Because educational interventions at an early age have been shown to improve children's social and cognitive skills, the Committee supports States' efforts to enhance the quality and educational focus of child care available to children in all settings.

Under current law, States are required to spend a minimum of four percent of all mandatory, matching and discretionary block grant funds on activities to improve the quality and supply of child care. This print maintains the requirement that States spend a portion of their block grant on activities expected to improve the quality of child care. This is commonly referred to as the "quality set-aside." The quality set-aside provides States important financial assistance to improve the quality of child care provided to families eligible for assistance under this Act.

The Committee Print increases the minimum quality set-aside from four to six percent. On average, States currently spend more (6 to 7 percent of CCDF dollars) than the minimum required by current law to support activities to improve the quality of child care. The Committee Print continues to provide States the flexibility to spend funds beyond the minimum 6 percent, and the Committee strongly supports States that demonstrate a greater commitment to improving the quality of child care. Overall, States reported spending $346 million on improving the quality of child care in fiscal year 2003, which amounts to over a $70 million increase over the amount States spent to improve child care quality in fiscal year 2000.

Some advocacy groups and legislators assert that that the quality set-aside should be significantly higher. It is the Committee's view that the Print appropriately balances funding for both quality and access to child care services. A Federal mandate to increase further the percentage of CCDBG dollars a State must spend on quality activities would significantly reduce the amount of money available to States to provide vouchers to low-income families in need of child care. This legislation does not create any Federal standards for child care; rather it provides guidance to States on how child care quality might be improved.

Permissible uses for the quality set-aside

Current law provides States broad authority to decide how to spend their quality dollars. The Committee received comments that

some States could use these dollars more effectively to enhance child care quality. Research has identified indicators for child care quality. Low child to caregiver ratios, small class sizes, higher levels of caregiver education, low caregiver turnover rates, and adequate compensation each have been linked to better quality early learning environments. Based on this research, the Print stipulates permissible uses for the quality set- aside to help ensure that States spend their quality allocation on activities that have been proven to improve the quality of child care. Beginning in 2007, States are asked to report how these funds are used.

The permissible uses include:

• *Programs that provide training, education, and other professional development activities to enhance the skills of the child care workforce, including informal caregivers.* According to the National Academy of Sciences report, Neurons to Neighborhoods, the ways that parents, families and other caregivers relate and respond to a young child directly affect cognitive development. Research suggests that the quality of child care and early education is ultimately dependent on the quality of the relationship between the caregiver and child. Studies indicate that children are more advanced in all realms of development when their parents, teachers or caregivers provide regular verbal and cognitive stimulation, are sensitive and responsive, and give generous amounts of attention and support.

• *Activities to enhance early learning and foster school readiness.* The brain is affected by numerous environmental conditions, including the kind of nourishment, care, surroundings and stimulation an individual receives. The Committee included this permissible use to encourage States to invest in initiatives that will help foster children's literacy, pre-mathematics, and language skills. These skills provide the foundation for school readiness and are easily attainable when young children are exposed to language-rich environments with caregivers who engage them in interactive activities, promote curiosity and challenge children to develop self-confidence and problem-solving skills.

Children also have needs that must be met before learning can occur, for example the need for ongoing, stable, nurturing relationships, physical protection and safety. The research about children's learning and development provide a context for identifying basic characteristics of a quality child care environment.

• *Initiatives to increase the retention and compensation of child care providers.* High staff turnover rate and low wages are barriers to maintaining or expanding the supply of high quality child care. Many caregivers earn low wages making it difficult to hire and retain well-qualified staff. States are encouraged to use a portion of their block grant quality funds to invest in the quality of the early childhood workforce. States might develop compensation and benefit initiatives that provide salary bonuses or other incentives to remain at a job for a certain length of time, or obtain education or training in early childhood development or related field. Early evidence suggests that these initiatives may slow turnover rates among caregivers.

• *Other activities deemed by the States to improve the quality of child care services.* Any State may spend a portion of their quality

set-aside on other activities if the State can demonstrate that the activity contributes to improvement of child care quality. It is the view of this Committee that the quality set-aside should not be used by States to enforce compliance with State licensing requirements and State and local health and safety regulations.

The Committee received recommendations to add other permissible uses to the list established in the Print, but decided to limit the permissible uses to those included in the Print. States maintain the flexibility to decide how to spend their quality dollars, provided that those dollars are spent to improve the quality of child care.

Finally, establishing requirements for quality, such as minimum Federal standards for caregiver credentials or mandated provider accreditation would reduce State flexibility and could jeopardize the integrity of the voucher program by restricting parental choice in selecting child care. For this reason, the Print does not create any Federal standards for child care quality.

Access to services

The CCDBG assists States in securing affordable care for the greatest number of eligible families who need child care services. Each day in the United States, over 12.5 million children under the age of five are in the care of someone other than their parents. According to a report released by the U.S. Department of Education in November 2004, 50 percent of children are in some form of non-parental child care by the age of 9 months. And, according to the National Research Council, children spend an average of 40 hours per week in child care.

The number of children receiving block grant subsidies has sharply increased at the same time as this historic increase in the number of low-income and single parents working. Between 1996 and 1999, there was an 80 percent increase in the number of children receiving a monthly child care subsidy. Some advocates and lawmakers contend that many potentially eligible children do not receive subsidies due to limited resources. However, the demand for child care services and the number of eligible families in need of subsidies may be overestimated because not all low-income parents need subsidized child care. In fact, not all parents who receive welfare or are transitioning off welfare are working, and many parents make in-home or other informal care arrangements with friends or relatives instead of applying for child care assistance through the block grant. The Committee acknowledges the paucity of reliable data on child care use and availability. For this reason, the Print would require that aggregated statistics on child care supply, demand, and quality be compiled and reported annually to Congress.

Estimates of subsidies needed by children through the Child Care and Development Block Grant and TANF might be reduced further by taking into account the availability of other programs and funding sources serving children, including State-funded pre-kindergarten programs and Head Start. The Congressional Research Services estimates that 44 percent of all 3 and 4 year olds eligible for Head Start are enrolled, and about 62,000 toddlers are served under the Early Head Start program. The Committee strongly encourages States to maximize each public dollar spent on

early care and education by coordinating Federal and local funding streams and services available to young children.

The Committee Print eliminates the Federal income limit for eligibility, previously set at 85 percent of the State median income. States must continue to prioritize families based on need and serve both TANF and non-TANF families. Eight-five percent of the State median income may be too high for some States, yet not high enough for others. For example, 85 percent of the State median income for a family of three in Connecticut is $58,920 a year, yet in Mississippi it is $30,156 for a family of the same size.

The Committee received comments that States might interpret the elimination of a Federal eligibility limit as a suggestion that assistance provided through the block grant should be targeted to TANF families only. This is not the intent of the Committee. The Committee Print states clearly that States must use block grant funds to provide child care assistance to both TANF *and* non-TANF families. The legislation amends the CCDBG goals to clarify the Congressional intent to provide assistance to low-income families, not exclusively those on or transitioning off TANF. States and territories must spend 70 percent of their mandatory child care money to subsidize child care for TANF families, families transitioning off TANF, and families at risk of becoming dependent on public assistance. States also must ensure that "a substantial portion" of the State grant that is not reserved for TANF families and families transitioning off TANF is used to provide assistance to low-income working families not receiving cash assistance.

Finally, the Print requests that States address factors that can make finding child care difficult for some parents. As part of the State plan, States must describe actions within the State, planned or in progress, to meet the child care needs of parents eligible for assistance, particularly those who have children with special needs, work non-traditional hours, or require infant and toddler care.

Gulf coast hurricanes

In August 2005, Hurricane Katrina caused catastrophic damage and forced nearly a million individuals to flee the Gulf coast region of the United States. In terms of physical devastation to property and loss of life, Hurricane Katrina was one of the worst natural disasters in the Nation's history. It was followed by Hurricane Rita, which hit the Gulf coast in September 2005. In the aftermath of Hurricanes Katrina and Rita, communities across the country accepted displaced families seeking temporary evacuation or a new permanent residence. Both displaced families and the communities to which they fled, have unique and urgent needs for family support services such as child care.

In response to these needs, language is included in the Committee Print that grants the Secretary limited authority to waive or ease federal requirements for the State administration of the Child Care and Development Block Grant. This measure will assist the efforts of the Department to provide regulatory relief to States affected by the recent Gulf hurricanes. As a result, States and local providers can better assist displaced families in accessing child care and easing burdens on facilities that have accepted these chil-

dren. Similar language also is included in H.R. 3975, the Hurricane Regulatory Relief Act as introduced by Rep. Jindal.

Specifically, the Committee Print authorizes the Secretary to waive or modify certain federal CCDBG requirements through June 30, 2006. The waivers may be used to temporarily suspend income limitations on eligibility to receive services; work requirements applicable to eligibility to receive services; the application of the quality set-aside in states affected by Hurricane Katrina; and any barrier to providing priority services to displaced children provided that enrolled children residing in such state do not lose eligibility as a result.

In addition, the Secretary of HHS has issued guidance regarding ways in which State child care administrators may use their block grant funds to address needs resulting from the Gulf hurricanes. States may amend their state CCDBG plans to redefine eligibility conditions or broaden priority rules to be more inclusive of displaced families.

Title III—State and Local Flexibility

States have used the flexibility of TANF to transform their public assistance programs into innovative and comprehensive systems. However, welfare reform really began at the State level as States obtained waivers from the Federal government. In addition, the nation's comprehensive workforce development system created through WIA was preceded by waivers that permitted every State to establish One-Stop Career Centers.

Building upon this history of successful implementation of waivers, the Print permits States or local entities to coordinate certain public assistance and workforce development programs. Offering States and localities the opportunity to innovate and experiment will strengthen social services and make them more efficient.

Programs to aid low-income and working families are not as effective as they could be because of the differences in administrative practices and program rules that govern them. The Committee Print will allow the next generation of innovation at the State and local level, permitting what former Secretary of the Department of Health and Human Services Tommy Thompson did as Governor of Wisconsin, and other Governors have done, but for a broader array of programs.

The authority granted under this Title will allow States and local entities to seek program waivers from the Federal agency responsible for administering the program to develop comprehensive strategies to support working individuals and families, help families escape welfare dependency, promote child well-being, or help build stronger families. The heads of the State or sub-State entities that administer the qualified programs to be included in a demonstration project will submit an application to the Secretaries that administer the programs at the federal level. A State cannot seek to waive activities administered locally unless the local administering entities join in the applications. The Committee intends that this provision gives local administering entities a veto over State initiatives that would impact their programs.

Programs for which waivers may be sought include the Workforce Investment Act (excluding Job Corps), the Job Opportunities

for Low-Income Individuals grants, activities funded under the Wagner-Peyser Act, activities funded under the Adult Education and Family Literacy Act, activities funded under the Child Care and Development Block Grant, TANF, housing programs, and food stamps. The entities applying to conduct the demonstration project will need to describe how the purposes of the underlying programs to be coordinated will be achieved, the populations to be served, a description of how the project is to improve or enhance achievement of the purposes of the programs, and a description of performance objectives and outcomes for the proposed demonstration project. They also will be required to evaluate the project.

A demonstration project must receive approval of each relevant Secretary in order to move forward, and the Secretaries only may approve a project if the proposed project is likely to improve the quality or effectiveness of the programs involved. The waiver terms and conditions are subject to cost neutrality requirements.

Secretaries will not be permitted to waive certain critical protections, including the purposes and goals of the underlying programs, civil rights and prohibitions of discrimination, labor market standards under the Fair Labor Standards Act, environmental protections, health and safety provisions, and matters of maintenance of effort. The Secretaries also cannot waive any requirement that a State pass through to a local entity all or part of an amount paid to the State. In addition, the Secretaries cannot waive any provision of WIA if the waiver would violate section 189(i)(4)(A)(i) of WIA, which will ensure the allocation of funds to local workforce investment areas and the establishment and functions of local areas and local boards will continue as specified in current law.

Each federal department that has approved waivers will be required to report annually on the number and scope of waivers, the success of each project in achieving the goals of the demonstration project, and any recommendations to Congress for the modification of current programs based on findings from the States' evaluations.

Title IV—Effective Date

The Committee Print makes changes effective on the date of enactment, unless the Secretary of Health and Human Services determines that State legislation is needed to change a State plan under Part A of the Social Security Act. In such a case, the effective dates shall be after the close of the first regular session of the State legislature that begins after enactment.

SECTION-BY-SECTION ANALYSIS

Section 2000. Lists of the Table of Contents for the title.

SUBTITLE A—WELFARE REFORM

Part 1—Short Title; References

Section 2001. Establishes the short title of the subtitle to be "Personal Responsibility and Family Protection Act of 2005."

Section 2002. Explanation of References.

Part 2—TANF

Section 2011. Universal engagement and family self-sufficiency plan requirements

Amends Section 402(a)(1)(A) of the Social Security Act to modify State plan requirements to ensure States require parents or caretakers to engage in work and self-sufficiency activities, in accordance with family self-sufficiency plans; amends Section 408(b) of the Act to require States to establish family self-sufficiency plans and require States to monitor and review the participation of work eligible members of the family; amends Section 409(a)(3) of the Act to create a penalty against States for failure to establish such plans.

Section 2012. Work participation requirements

Amends Section 407 of the Act to increase States' rates of required work participation from 50 percent in 2006 to 70 percent in 2010, revise the caseload reduction credit, establish minimum hours of countable work and other activities, define work activities, clarify penalties against individuals for failure to engage in work activities, and make conforming amendments.

Section 2013. Work-related performance improvement

Amends Section 402(a)(1) of the Act to modify State plan requirements to address work- related performance objectives and strategies to address certain issues; amends Section 411 of the Act to require a report on performance goals; amends Section 413 of the Act to require the development of performance measures.

Section 2014. Report on coordination

Requires the Secretary of Health and Human Services and the Secretary of Labor to jointly submit a report to Congress on program simplifications needed to allow greater integration between the welfare and workforce development systems.

Section 2015. Fatherhood program

Amends Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to recognize the need to promote responsible fatherhood; allow the Secretary to make grants for fiscal years 2006 through 2010 to public and nonprofit community entities for demonstration service projects and activities designed to test the effectiveness of various approaches to accomplish the objectives of the section; allow the Secretary to make grants for fiscal years 2006 through 2010 for two multicity, multistate projects demonstrating approaches to achieve the objectives of the section and for economic incentive demonstration projects; direct the Secretary to evaluate the effectiveness of the funded projects under this section from the standpoint of specified purposes; authorize the Secretary to carry out projects of national significance relating to fatherhood promotion; and to authorize appropriations of $20,000,000 for each of fiscal years 2006 through 2010 to carry out the provisions of this section.

Section 2016. State option to make TANF programs mandatory partners with one-stop employment training centers

Requires TANF programs to be mandatory partners with One-Stop Employment Training Centers created under the Workforce Investment Act of 1998.

Section 2017. Sense of the Congress

Specifies that it is the sense of the Congress that a welfare-to-work program should include a mentoring program.

Section 2018. Prohibition on Offshoring

Amends Section 408(a) by adding language to prohibit a State to which a grant is made under section 403 from using TANF funds for offshoring.

Part 3—Child Care

Section 2021. Short title

Specifies that the title of this part may be cited as the "Caring for Children Act of 2005."

Section 2022. Goals

Amends Section 658A(b) of the Child Care and Development Block Grant Act of 1990 to assist States to provide child care to low-income families, to encourage States to improve the quality of child care, and to promote school readiness.

Section 2023. Authorization of appropriations

Amends Section 658B of the Child Care and Development Block Grant Act of 1990 to authorize appropriations through 2010.

Section 2024. Application and plan

Amends Section 658E(c)(2) of the Child Care and Development Block Grant Act of 1990 to modify and add State plan requirements in the areas of consumer and provider education information, coordination, public-private partnerships, child care service quality, and access for certain populations; requires States to develop a strategy to address the quality of child care services and report on that strategy.

Section 2025. Activities to improve the quality of child care

Amends Section 658G of the Child Care and Development Block Grant Act of 1990 to establish permissible uses of funds set-aside for quality activities by specifying that no less than six percent of funds a State receives shall be used for activities that provide training and professional development of the child care workforce, enhance early learning for young children, increase the retention and compensation of child care providers, or are deemed by the State to improve the quality of child care services.

Section 2026. Reports and Audits

Amends Section 658K(a)(1)(B)(iii) of the Child Care and Development Block Grant Act of 1990 by inserting "ethnicity, primary language," after race.

Section 2027. Report by Secretary

Requires the Secretary to report to Congress no later than October 1, 2007 and biennially thereafter.

Section 2028. Definitions

Amends Section 658P(4)(B) of the Child Care and Development Block Grant Act of 1990 to provide States more flexibility in establishing who is an eligible child. This section also is amended by redesignating paragraph (9) as paragraph (10) and inserting after paragraph (8) a definition of Limited English Proficiency with respect to an individual.

Section 2029. Waiver Authority to Expand the Availability of Services Under Child Care and Development Block Grant Act of 1990

Specifies that for a period up to June 30, 2006, and to an extent which the Secretary of Health and Human Services considers to be appropriate, the Secretary may waive or modify for an affected State, and any State serving significant numbers of individuals adversely affected by a Gulf hurricane disaster, certain provisions of the Child Care and Development Block Grant of 1990.

Part 4—State and Local Flexibility

Section 2041. Program Coordination Demonstration Projects

Authorizes State demonstration projects to coordinate two or more specified programs in order to support working individuals and families, help families escape welfare dependency, promote child well-being, or help build stronger families, subject to specified conditions and protections.

Part 5—Effective Date

Section 2051. Effective Date

Establishes the effective date of the amendments made by this subtitle.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. The Committee Print amends and improves the mandatory work requirements and other work-related provisions of the Temporary Assistance for Needy Families (TANF) block grant and reauthorizes the Child Care and Development Block Grant. The bill does not prevent legislative branch employees from receiving services provided under this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. The Committee Print reauthorizes spending programs under amends the Temporary Assistance for Needy Families (TANF) block grant

and the Child Care and Development Block Grant. As such, the bill does not contain any unfunded mandates.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 COMMITTEE PRINT – WELFARE DATE October 19, 2005

The ruling of the chair was sustained by a vote of 19 to 17

SPONSOR/AMENDMENT Mr. McKeon / motion to table the appeal of the ruling of the chair on amendment number 5 offered by Mr. Miller

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman	X			
Mr. PETRI, Vice Chairman				X
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. SOUDER	X			
Mr. NORWOOD	X			
Mr. EHLERS				X
Mrs. BIGGERT	X			
Mr. PLATTS				X
Mr. TIBERI				X
Mr. KELLER				X
Mr. OSBORNE	X			
Mr. WILSON	X			
Mr. PORTER				X
Mr. KLINE	X			
Mrs. MUSGRAVE				X
Mr. INGLIS				X
Ms. McMORRIS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. JINDAL	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mrs. DRAKE	X			
Mr. KUHL	X			
Mr. MILLER		X		
Mr. KILDEE		X		
Mr. OWENS		X		
Mr. PAYNE				X
Mr. ANDREWS		X		
Mr. SCOTT				X
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KIND				X
Mr. KUCINICH				X
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Ms. McCOLLUM		X		
Mr. DAVIS		X		
Mr. GRIJALVA		X		
Mr. VAN HOLLEN		X		
Mr. RYAN		X		
Mr. BISHOP		X		
Mr. BARROW				X
TOTALS	19	17		13

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 2 COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 15 DEFEATED 21 - 26
SPONSOR/AMENDMENT Mr. Kind / amendment to allow work by non-custodial parents to count toward the participation rate

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE				X
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	21	26		2

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 3 COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 3 DEFEATED 21 - 26
SPONSOR/AMENDMENT Mr. Tierney / amendment regarding participation in vocational or educational training as direct work activities

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE				X
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	21	26		2

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 4 en bloc COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 4 DEFEATED 22 - 26
SPONSOR/AMENDMENT Mr. Kind / amendment regarding employment credit

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	22	26		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 4 en bloc COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 6 DEFEATED 22 - 26
SPONSOR/AMENDMENT Mr. Van Hollen / amendment regarding a Sense of Congress on raising the minimum wage for TANF recipients

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	22	26		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 4 en bloc COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 7 DEFEATED 22 - 26
SPONSOR/AMENDMENT Mr. Miller / amendment regarding child care funding

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	22	26		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 4 en bloc COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 9 DEFEATED 22 - 26
SPONSOR/AMENDMENT Mr. Kildee / amendment striking the Waiver Authority

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	22	26		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 4 en bloc COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 10 DEFEATED 22 - 26
SPONSOR/AMENDMENT Mr. Andrews / amendment regarding suspending work requirements under certain circumstances

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	22	26		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 4 en bloc COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 13 DEFEATED 22 - 26
SPONSOR/AMENDMENT Mr. Grijalva / amendment regarding participation in certain educational activities as direct work activities

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	22	26		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 4 en bloc COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 14 DEFEATED 22 - 26
SPONSOR/AMENDMENT Mr. Wu / amendment regarding participation in certain educational activities by certain individuals as direct work activities

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	22	26		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 5 COMMITTEE PRINT – WELFARE DATE October 19, 2005
AMENDMENT NUMBER 11 DEFEATED 21 - 27
SPONSOR/AMENDMENT Mr. Scott / amendment regarding religious nondiscrimination in work requirements

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW		X		
TOTALS	21	27		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 6 COMMITTEE PRINT – WELFARE DATE October 20, 2005
AMENDMENT NUMBER 16 A (en bloc) DEFEATED 16 – 22
SPONSOR/AMENDMENT Ms. Woolsey / amendment regarding modification of the self-sufficiency plan

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman				X
Mr. McKEON		X		
Mr. CASTLE				X
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS				X
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT				X
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS				X
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA				X
Mrs. McCARTHY				X
Mr. TIERNEY				X
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM				X
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN				X
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	16	22		11

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 7 COMMITTEE PRINT – WELFARE DATE October 20, 2005
AMENDMENT NUMBER 16 B (en bloc) DEFEATED 19 – 22
SPONSOR/AMENDMENT Ms. Woolsey / amendment regarding work requirements and child care

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman				X
Mr. McKEON		X		
Mr. CASTLE				X
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS				X
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT				X
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS				X
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY				X
Mr. TIERNEY				X
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	19	22		8

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 8 COMMITTEE PRINT – WELFARE DATE October 20, 2005
AMENDMENT NUMBER 16 C (en bloc) DEFEATED 20 - 23
SPONSOR/AMENDMENT Ms. Woolsey / amendment regarding non-traditional occupations

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman				X
Mr. McKEON		X		
Mr. CASTLE				X
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS				X
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER				X
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS				X
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY				X
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	20	23		6

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 9 COMMITTEE PRINT – WELFARE DATE October 20, 2005

Committee Print was approved, as amended, for transmittal to the Committee on the Budget by a vote of 23 – 20

SPONSOR/AMENDMENT Mr. McKeon / motion to authorize the Chairman to transmit the Committee Print, as amended, to the Committee on the Budget

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman	X			
Mr. PETRI, Vice Chairman				X
Mr. McKEON	X			
Mr. CASTLE				X
Mr. JOHNSON	X			
Mr. SOUDER	X			
Mr. NORWOOD	X			
Mr. EHLERS				X
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. TIBERI	X			
Mr. KELLER				X
Mr. OSBORNE	X			
Mr. WILSON	X			
Mr. PORTER	X			
Mr. KLINE	X			
Mrs. MUSGRAVE	X			
Mr. INGLIS	X			
Ms. McMORRIS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. JINDAL	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mrs. DRAKE	X			
Mr. KUHL	X			
Mr. MILLER		X		
Mr. KILDEE		X		
Mr. OWENS				X
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY				X
Mr. KIND		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Ms. McCOLLUM		X		
Mr. DAVIS		X		
Mr. GRIJALVA		X		
Mr. VAN HOLLEN		X		
Mr. RYAN		X		
Mr. BISHOP		X		
Mr. BARROW		X		
TOTALS	23	20		6

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c) of House Rule XIII, the goal of the Committee Print is to improve the mandatory work requirements and other work-related provisions of the Temporary Assistance for Needy Families (TANF) block grant, improve the Child Care and Development Block Grant, and increase flexibility for certain federal welfare programs. The Committee expects the Departments of Health and Human Services, Education, and Labor to comply with these provisions and implement the changes to the law in accordance with these stated goals.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the Committee Print. The Committee believes that the amendments, made by this bill to the Social Security Act, are within Congress' authority under Article I, section 8, clause 1 of the Constitution.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee will receive a cost estimate for the Committee Print from the Director of the Congressional Budget Office, which will be transmitted.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out the Committee Print. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic

and existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

PART A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

* * * * * * *

SEC. 402. ELIGIBLE STATES; STATE PLAN.

(a) IN GENERAL.—As used in this part, the term "eligible State" means, with respect to a fiscal year, a State that, during the 27-month period ending with the close of the 1st quarter of the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

(1) OUTLINE OF FAMILY ASSISTANCE PROGRAM.—

(A) GENERAL PROVISIONS.—A written document that outlines how the State intends to do the following:

(i) * * *

[(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier, consistent with section 407(e)(2).

[(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407.]

(ii) Require a parent or caretaker receiving assistance under the program to engage in work or alternative self-sufficiency activities (as defined by the State), consistent with section 407(e)(2).

(iii) Require families receiving assistance under the program to engage in activities in accordance with family self-sufficiency plans developed pursuant to section 408(b).

* * * * * * *

(vii) The document shall—

(I) describe how the State will pursue ending dependence of needy families on government benefits and reducing poverty by promoting job preparation and work;

(II) include specific, numerical, and measurable performance objectives for accomplishing subclause (I); and

(III) describe the methodology that the State will use to measure State performance in relation to each such objective.

(viii) Describe any strategies and programs the State may be undertaking to address—

(I) employment retention and advancement for recipients of assistance under the program, including placement into high-demand jobs, and whether the jobs are identified using labor market information;

(II) services for struggling and noncompliant families, and for clients with special problems; and

(III) program integration, including the extent to which employment and training services under the program are provided through the One-Stop delivery system created under the Workforce Investment Act of 1998, and the extent to which former recipients of such assistance have access to additional core, intensive, or training services funded through such Act.

(B) SPECIAL PROVISIONS.—

(i) * * *

* * * * * * *

[(iv) Not later than 1 year after the date of enactment of this section, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 407(e)(2), require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 407(c), to participate in community service employment, with minimum hours per week and tasks to be determined by the State.]

* * * * * * *

[SEC. 407. MANDATORY WORK REQUIREMENTS.

[(a) PARTICIPATION RATE REQUIREMENTS.—

[(1) ALL FAMILIES.—A State to which a grant is made under section 403 for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to all families receiving assistance under the State program funded under this part:

[If the fiscal year is:	The minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 or thereafter	50.

[(2) 2-PARENT FAMILIES.—A State to which a grant is made under section 403 for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to 2-parent families receiving assistance under the State program funded under this part:

[If the fiscal year is:	The minimum participation rate is:
1997	75
1998	75
1999 or thereafter	90.]

[(b) CALCULATION OF PARTICIPATION RATES.—

[(1) ALL FAMILIES.—

[(A) AVERAGE MONTHLY RATE.—For purposes of subsection (a)(1), the participation rate for all families of a State for a fiscal year is the average of the participation rates for all families of the State for each month in the fiscal year.

[(B) MONTHLY PARTICIPATION RATES.—The participation rate of a State for all families of the State for a month, expressed as a percentage, is—

[(i) the number of families receiving assistance under the State program funded under this part that include an adult or a minor child head of household who is engaged in work for the month; divided by

[(ii) the amount by which—

[(I) the number of families receiving such assistance during the month that include an adult or a minor child head of household receiving such assistance; exceeds

[(II) the number of families receiving such assistance that are subject in such month to a penalty described in subsection (e)(1) but have not been subject to such penalty for more than 3 months within the preceding 12-month period (whether or not consecutive).

[(2) 2-PARENT FAMILIES.—

[(A) AVERAGE MONTHLY RATE.—For purposes of subsection (a)(2), the participation rate for 2-parent families of a State for a fiscal year is the average of the participation rates for 2-parent families of the State for each month in the fiscal year.

[(B) MONTHLY PARTICIPATION RATES.—The participation rate of a State for 2-parent families of the State for a month shall be calculated by use of the formula set forth in paragraph (1)(B), except that in the formula the term "number of 2-parent families" shall be substituted for the term "number of families" each place such latter term appears.

[(C) FAMILY WITH A DISABLED PARENT NOT TREATED AS A 2-PARENT FAMILY.—A family that includes a disabled parent shall not be considered a 2-parent family for purposes of subsections (a) and (b) of this section.]

SEC. 407. WORK PARTICIPATION REQUIREMENTS.

(a) PARTICIPATION RATE REQUIREMENTS.—A State to which a grant is made under section 403 for a fiscal year shall achieve a minimum participation rate equal to not less than—

(1) 50 percent for fiscal year 2006;

(2) 55 percent for fiscal year 2007;

(3) 60 percent for fiscal year 2008;

(4) 65 percent for fiscal year 2009; and

(5) 70 percent for fiscal year 2010 and each succeeding fiscal year.

(b) CALCULATION OF PARTICIPATION RATES.—

(1) AVERAGE MONTHLY RATE.—For purposes of subsection (a), the participation rate of a State for a fiscal year is the average of the participation rates of the State for each month in the fiscal year.

(2) MONTHLY PARTICIPATION RATES; INCORPORATION OF 40-HOUR WORK WEEK STANDARD.—

(A) IN GENERAL.—For purposes of paragraph (1), the participation rate of a State for a month is—

(i) the total number of countable hours (as defined in subsection (c)) with respect to the counted families for the State for the month; divided by

(ii) 160 multiplied by the number of counted families for the State for the month.

(B) COUNTED FAMILIES DEFINED.—

(i) IN GENERAL.—In subparagraph (A), the term "counted family" means, with respect to a State and a month, a family that includes a work-eligible individual and that receives assistance in the month under the State program funded under this part, subject to clause (ii).

(ii) STATE OPTION TO EXCLUDE CERTAIN FAMILIES.—At the option of a State, the term "counted family" shall not include—

(I) a family in the first month for which the family receives assistance from a State program funded under this part on the basis of the most recent application for such assistance;

(II) on a case-by-case basis, a family in which the youngest child has not attained 12 months of age; or

(III) a family that is subject to a sanction under this part or part D, but that has not been subject to such a sanction for more than 3 months (whether or not consecutive) in the preceding 12-month period.

(iii) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN OR TRIBAL WORK PROGRAM.—At the option of a State, the term "counted family" may include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412 or under a tribal work program to which funds are provided under this part.

(C) WORK-ELIGIBLE INDIVIDUAL DEFINED.—In this section, the term "work-eligible individual" means an individual—

(i) who is married or a single head of household; and

(ii) whose needs are (or, but for sanctions under this part or part D, would be) included in determining the

amount of cash assistance to be provided to the family under the State program funded under this part.

(3) PRO RATA REDUCTION OF PARTICIPATION RATE DUE TO CASELOAD REDUCTIONS NOT REQUIRED BY FEDERAL LAW AND NOT RESULTING FROM CHANGES IN STATE ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The Secretary shall prescribe regulations for reducing the minimum participation rate otherwise required by this section for a fiscal year by the number of percentage points equal to the number of percentage points (if any) by which—

(i) * * *

[(ii) the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.]

(ii) the average monthly number of families that received assistance under the State program funded under this part during the base year.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

(B) ELIGIBILITY CHANGES NOT COUNTED.—The regulations required by subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part [and eligibility criteria under the State program operated under the State plan approved under part A (as such plan and such part were in effect on September 30, 1995)] *and the eligibility criteria in effect during the then applicable base year*. Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

(C) BASE YEAR DEFINED.—In this paragraph, the term "base year" means, with respect to a fiscal year—

(i) if the fiscal year is fiscal year 2006, fiscal year 1996;

(ii) if the fiscal year is fiscal year 2007, fiscal year 1998;

(iii) if the fiscal year is fiscal year 2008, fiscal year 2001; or

(iv) if the fiscal year is fiscal year 2009 or any succeeding fiscal year, the then 4th preceding fiscal year.

[(4) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN OR TRIBAL WORK PROGRAM.—For purposes of paragraphs (1)(B) and (2)(B), a State may, at its option, include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412 or under a tribal work program to which funds are provided under this part.

[(5) STATE OPTION FOR PARTICIPATION REQUIREMENT EXEMPTIONS.—For any fiscal year, a State may, at its option, not re-

quire an individual who is a single custodial parent caring for a child who has not attained 12 months of age to engage in work, and may disregard such an individual in determining the participation rates under subsection (a) for not more than 12 months.]

(4) SUPERACHIEVER CREDIT.—

(A) IN GENERAL.—The participation rate, determined under paragraphs (1) and (2) of this subsection, of a superachiever State for a fiscal year shall be increased by the lesser of—

(i) the amount (if any) of the superachiever credit applicable to the State; or

(ii) the number of percentage points (if any) by which the minimum participation rate required by subsection (a) for the fiscal year exceeds 50 percent.

(B) SUPERACHIEVER STATE.—For purposes of subparagraph (A), a State is a superachiever State if the State caseload for fiscal year 2001 has declined by at least 60 percent from the State caseload for fiscal year 1995.

(C) AMOUNT OF CREDIT.—The superachiever credit applicable to a State is the number of percentage points (if any) by which the decline referred to in subparagraph (B) exceeds 60 percent.

(D) DEFINITIONS.—In this paragraph:

(i) STATE CASELOAD FOR FISCAL YEAR 2001.—The term "State caseload for fiscal year 2001" means the average monthly number of families that received assistance during fiscal year 2001 under the State program funded under this part.

(ii) STATE CASELOAD FOR FISCAL YEAR 1995.—The term "State caseload for fiscal year 1995" means the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.

[(c) ENGAGED IN WORK.—

[(1) GENERAL RULES.—

[(A) ALL FAMILIES.—For purposes of subsection (b)(1)(B)(i), a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection:

[If the month is in fiscal year:	The minimum average number of hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30.

[(B) 2-PARENT FAMILIES.—For purposes of subsection (b)(2)(B), an individual is engaged in work for a month in a fiscal year if—

[(i) the individual and the other parent in the family are participating in work activities for a total of at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection; and

[(ii) if the family of the individual receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, the individual and the other parent in the family are participating in work activities for a total of at least 55 hours per week during the month, not fewer than 50 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d).

[(2) LIMITATIONS AND SPECIAL RULES.—

[(A) NUMBER OF WEEKS FOR WHICH JOB SEARCH COUNTS AS WORK.—

[(i) LIMITATION.—Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d)(6) of a State program funded under this part, after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States or the State is a needy State (within the meaning of section 403(b)(6)), 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

[(ii) LIMITED AUTHORITY TO COUNT LESS THAN FULL WEEK OF PARTICIPATION.—For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d)(6) for 3 or 4 days during a week as a week of participation in the activity by the individual.

[(B) SINGLE PARENT OR RELATIVE WITH CHILD UNDER AGE 6 DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS IF PARENT OR RELATIVE IS ENGAGED IN WORK FOR 20 HOURS PER WEEK.—For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient who is the only parent or caretaker relative in the family of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

[(C) SINGLE TEEN HEAD OF HOUSEHOLD OR MARRIED TEEN WHO MAINTAINS SATISFACTORY SCHOOL ATTENDANCE DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS.—For purposes of determining monthly participation rates under sub-section (b)(1)(B)(i), a recipient who is married or a head of household and has not attained 20

years of age is deemed to be engaged in work for a month in a fiscal year if the recipient—

[(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

[(ii) participates in education directly related to employment for an average of at least 20 hours per week during the month.

[(D) LIMITATION ON NUMBER OF PERSONS WHO MAY BE TREATED AS ENGAGED IN WORK BY REASON OF PARTICIPATION IN EDUCATIONAL ACTIVITIES.—For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), not more than 30 percent of the number of individuals in all families and in 2-parent families, respectively, in a State who are treated as engaged in work for a month may consist of individuals who are determined to be engaged in work for the month by reason of participation in vocational educational training, or (if the month is in fiscal year 2000 or thereafter) deemed to be engaged in work for the month by reason of subparagraph (C) of this paragraph.

[(d) WORK ACTIVITIES DEFINED.—As used in this section, the term "work activities" means—

[(1) unsubsidized employment;

[(2) subsidized private sector employment;

[(3) subsidized public sector employment;

[(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

[(5) on-the-job training;

[(6) job search and job readiness assistance;

[(7) community service programs;

[(8) vocational educational training (not to exceed 12 months with respect to any individual);

[(9) job skills training directly related to employment;

[(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

[(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

[(12) the provision of child care services to an individual who is participating in a community service program.]

(c) COUNTABLE HOURS.—

(1) DEFINITION.—In subsection (b)(2), the term "countable hours" means, with respect to a family for a month, the total number of hours in the month in which any member of the family who is a work-eligible individual is engaged in a direct work activity or other activities specified by the State (excluding an activity that does not address a purpose specified in section 401(a)), subject to the other provisions of this subsection.

(2) LIMITATIONS.—Subject to such regulations as the Secretary may prescribe:

(A) MINIMUM WEEKLY AVERAGE OF 24 HOURS OF DIRECT WORK ACTIVITIES REQUIRED.—If the work-eligible individuals in a family are engaged in a direct work activity for an average total of fewer than 24 hours per week in a month, then the number of countable hours with respect to the family for the month shall be zero.

(B) MAXIMUM WEEKLY AVERAGE OF 16 HOURS OF OTHER ACTIVITIES.—An average of not more than 16 hours per week of activities specified by the State (subject to the exclusion described in paragraph (1)) may be considered countable hours in a month with respect to a family.

(3) SPECIAL RULES.—For purposes of paragraph (1):

(A) PARTICIPATION IN QUALIFIED ACTIVITIES.—

(i) IN GENERAL.—If, with the approval of the State, the work-eligible individuals in a family are engaged in 1 or more qualified activities for an average total of at least 24 hours per week in a month, then all such engagement in the month shall be considered engagement in a direct work activity, subject to clause (iii).

(ii) QUALIFIED ACTIVITY DEFINED.—The term "qualified activity" means an activity specified by the State (subject to the exclusion described in paragraph (1)) that meets such standards and criteria as the State may specify, including—

(I) substance abuse counseling or treatment;

(II) rehabilitation treatment and services;

(III) work-related education or training directed at enabling the family member to work;

(IV) job search or job readiness assistance; and

(V) any other activity that addresses a purpose specified in section 401(a).

(iii) LIMITATION.—

(I) IN GENERAL.—Except as provided in subclause (II), clause (i) shall not apply to a family for more than 3 months in any period of 24 consecutive months.

(II) SPECIAL RULE APPLICABLE TO EDUCATION AND TRAINING.—A State may, on a case-by-case basis, apply clause (i) to a work-eligible individual so that participation by the individual in education or training, if needed to permit the individual to complete a certificate program or other work-related education or training directed at enabling the individual to fill a known job need in a local area, may be considered countable hours with respect to the family of the individual for not more than 4 months in any period of 24 consecutive months.

(B) SCHOOL ATTENDANCE BY TEEN HEAD OF HOUSEHOLD.—The work-eligible members of a family shall be considered to be engaged in a direct work activity for an average of 40 hours per week in a month if the family includes an individual who is married, or is a single head of house-

hold, who has not attained 20 years of age, and the individual—

(i) maintains satisfactory attendance at secondary school or the equivalent in the month; or

(ii) participates in education directly related to employment for an average of at least 20 hours per week in the month.

(C) PARENTAL PARTICIPATION IN SCHOOLS.—Each work-eligible individual in a family shall make verified visits at least twice per school year to the school of each of the individual's minor dependent children required to attend school under the law of the State in which the minor children reside, during the period in which the family receives assistance under the program funded under this part. Hours spent in such activity may be specified by the State as countable hours for purposes of paragraph (2)(B).

(d) DIRECT WORK ACTIVITY.—In this section, the term "direct work activity" means—

(1) unsubsidized employment;

(2) subsidized private sector employment;

(3) subsidized public sector employment;

(4) on-the-job training;

(5) supervised work experience; or

(6) supervised community service.

(e) PENALTIES AGAINST INDIVIDUALS.—

[(1) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part refuses to engage in work required in accordance with this section, the State shall—

[(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or

[(B) terminate such assistance,

subject to such good cause and other exceptions as the State may establish.]

(1) REDUCTION OR TERMINATION OF ASSISTANCE.—

(A) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under a State program funded under this part fails to engage in activities required in accordance with this section, or other activities required by the State under the program, and the family does not otherwise engage in activities in accordance with the self-sufficiency plan established for the family pursuant to section 408(b), the State shall—

(i) if the failure is partial or persists for not more than 1 month—

(I) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the failure occurs; or

(II) terminate all assistance to the family, subject to such good cause exceptions as the State may establish; or

(ii) if the failure is total and persists for at least 2 consecutive months, terminate all cash payments to the family including qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for at least 1 month and thereafter until the State determines that the individual has resumed full participation in the activities, subject to such good cause exceptions as the State may establish.

(B) SPECIAL RULE.—

(i) IN GENERAL.—In the event of a conflict between a requirement of clause (i)(II) or (ii) of subparagraph (A) and a requirement of a State constitution, or of a State statute that, before 1966, obligated local government to provide assistance to needy parents and children, the State constitutional or statutory requirement shall control.

(ii) LIMITATION.—Clause (i) of this subparagraph shall not apply after the 1-year period that begins with the date of the enactment of this subparagraph.

* * * * * * *

(f) NONDISPLACEMENT IN WORK ACTIVITIES.—

(1) IN GENERAL.—Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal Government may fill a vacant employment position in order to engage in a [work activity described in subsection (d)] *direct work activity*.

(2) NO FILLING OF CERTAIN VACANCIES.—No adult in a [work activity described in subsection (d)] *direct work activity* which is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned—

(A) * * *

* * * * * * *

SEC. 408. PROHIBITIONS; REQUIREMENTS.

(a) IN GENERAL.—

(1) * * *

* * * * * * *

(12) PROHIBITION ON OFFSHORING.—A State to which a grant is made under section 403 shall not use any part of the grant—

(A) to enter into a contract with an entity that, directly or through a subcontractor, provides any service, activity or function described under this part at a location outside the United States; or

(B) to reduce employment in the United States through use of 1 or more employees outside the United States.

[(b) INDIVIDUAL RESPONSIBILITY PLANS.—

[(1) ASSESSMENT.—The State agency responsible for administering the State program funded under this part shall make an initial assessment of the skills, prior work experience, and employability of each recipient of assistance under the program who—

[(A) has attained 18 years of age; or

[(B) has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school.

[(2) CONTENTS OF PLANS.—

[(A) IN GENERAL.—On the basis of the assessment made under subsection (a) with respect to an individual, the State agency, in consultation with the individual, may develop an individual responsibility plan for the individual, which—

[(i) sets forth an employment goal for the individual and a plan for moving the individual immediately into private sector employment;

[(ii) sets forth the obligations of the individual, which may include a requirement that the individual attend school, maintain certain grades and attendance, keep school age children of the individual in school, immunize children, attend parenting and money management classes, or do other things that will help the individual become and remain employed in the private sector;

[(iii) to the greatest extent possible is designed to move the individual into whatever private sector employment the individual is capable of handling as quickly as possible, and to increase the responsibility and amount of work the individual is to handle over time;

[(iv) describes the services the State will provide the individual so that the individual will be able to obtain and keep employment in the private sector, and describe the job counseling and other services that will be provided by the State; and

[(v) may require the individual to undergo appropriate substance abuse treatment.

[(B) TIMING.—The State agency may comply with paragraph (1) with respect to an individual—

[(i) within 90 days (or, at the option of the State, 180 days) after the effective date of this part, in the case of an individual who, as of such effective date, is a recipient of aid under the State plan approved under part A (as in effect immediately before such effective date); or

[(ii) within 30 days (or, at the option of the State, 90 days) after the individual is determined to be eligible for such assistance, in the case of any other individual.

[(3) PENALTY FOR NONCOMPLIANCE BY INDIVIDUAL.—In addition to any other penalties required under the State program funded under this part, the State may reduce, by such amount as the State considers appropriate, the amount of assistance otherwise payable under the State program to a family that includes an individual who fails without good cause to comply with an individual responsibility plan signed by the individual.

[(4) STATE DISCRETION.—The exercise of the authority of this subsection shall be within the sole discretion of the State.]

(b) FAMILY SELF-SUFFICIENCY PLANS.—

(1) IN GENERAL.—A State to which a grant is made under section 403 shall—

(A) assess, in the manner deemed appropriate by the State, the skills, prior work experience, and employability of each work-eligible individual (as defined in section 407(b)(2)(C)) receiving assistance under the State program funded under this part;

(B) establish for each family that includes such an individual, in consultation as the State deems appropriate with the individual, a self-sufficiency plan that specifies appropriate activities described in the State plan submitted pursuant to section 402, including direct work activities as appropriate designed to assist the family in achieving their maximum degree of self-sufficiency, and that provides for the ongoing participation of the individual in the activities;

(C) require, at a minimum, each such individual to participate in activities in accordance with the self-sufficiency plan;

(D) monitor the participation of each such individual in the activities specified in the self sufficiency plan, and regularly review the progress of the family toward self-sufficiency;

(E) upon such a review, revise the self-sufficiency plan and activities as the State deems appropriate.

(2) TIMING.—The State shall comply with paragraph (1) with respect to a family—

(A) in the case of a family that, as of October 1, 2005, is not receiving assistance from the State program funded under this part, not later than 60 days after the family first receives assistance on the basis of the most recent application for the assistance; or

(B) in the case of a family that, as of such date, is receiving the assistance, not later than 12 months after the date of enactment of this subsection.

(3) STATE DISCRETION.—A State shall have sole discretion, consistent with section 407, to define and design activities for families for purposes of this subsection, to develop methods for monitoring and reviewing progress pursuant to this subsection, and to make modifications to the plan as the State deems appropriate to assist the individual in increasing their degree of self-sufficiency.

(4) RULE OF INTERPRETATION.—Nothing in this part shall preclude a State from--

(A) requiring participation in work and any other activities the State deems appropriate for helping families achieve self-sufficiency and improving child well-being; or

(B) using job search or other appropriate job readiness or work activities to assess the employability of individuals and to determine appropriate future engagement activities.

* * * * * * *

(h) STATE OPTION TO MAKE TANF PROGRAMS MANDATORY PARTNERS WITH ONE-STOP EMPLOYMENT TRAINING CENTERS.—For purposes of section 121(b) of the Workforce Investment Act of 1998, a

State program funded under part A of title IV of the Social Security Act shall be considered a program referred to in paragraph (1)(B) of such section, unless, after the date of the enactment of this subsection, the Governor of the State notifies the Secretaries of Health and Human Services and Labor in writing of the decision of the Governor not to make the State program a mandatory partner.

SEC. 409. PENALTIES.

(a) IN GENERAL.—Subject to this section:

(1) * * *

* * * * * * *

(3) FAILURE TO SATISFY MINIMUM PARTICIPATION RATES *OR ESTABLISH FAMILY SELF-SUFFICIENCY PLAN*.—

(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 for a fiscal year has failed to comply with section 407(a) *or 408(b)* for the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to the applicable percentage of the State family assistance grant.

* * * * * * *

(14) PENALTY FOR FAILURE TO REDUCE ASSISTANCE FOR RECIPIENTS REFUSING WITHOUT GOOD CAUSE TO WORK *OR REFUSING TO ENGAGE IN ACTIVITIES UNDER A FAMILY SELF-SUFFICIENCY PLAN*.—

(A) * * *

* * * * * * *

SEC. 411. DATA COLLECTION AND REPORTING.

(a) * * *

* * * * * * *

(c) ANNUAL REPORT ON PERFORMANCE IMPROVEMENT.—Beginning with fiscal year 2007, not later than January 1 of each fiscal year, each eligible State shall submit to the Secretary a report on achievement and improvement during the preceding fiscal year under the numerical performance goals and measures under the State program funded under this part with respect to the matter described in section 402(a)(1)(A)(vii).

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SEC. 413. RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.

(a) * * *

* * * * * * *

(d) ANNUAL RANKING OF STATES AND REVIEW OF MOST AND LEAST SUCCESSFUL WORK PROGRAMS.—

(1) ANNUAL RANKING OF STATES.—The Secretary shall rank annually the States to which grants are paid under section 403 in the order of their success in placing recipients of assistance under the State program funded under this part into [long-term private sector jobs,] *private sector jobs, the success of the recipients in retaining employment, the ability of the recipients to increase their wages,* reducing the overall welfare caseload, and, when a practicable method for calculating this informa-

tion becomes available, diverting individuals from formally applying to the State program and receiving assistance. In ranking States under this subsection, the Secretary shall take into account the average number of minor children living at home in families in the State that have incomes below the poverty line and the amount of funding provided each State for such families.

* * * * * * *

(k) PERFORMANCE IMPROVEMENT.—The Secretary, in consultation with States, shall develop uniform performance measures designed to assess the degree of effectiveness, and the degree of improvement, of State programs funded under this part in accomplishing the work-related purposes of this part.

* * * * * * *

PART C—FATHERHOOD PROGRAM

SEC. 441. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that there is substantial evidence strongly indicating the urgent need to promote and support involved, committed, and responsible fatherhood, and to encourage and support healthy marriages between parents raising children, including data demonstrating the following:

(1) In approximately 84 percent of cases where a parent is absent, that parent is the father.

(2) If current trends continue, half of all children born today will live apart from one of their parents, usually their father, at some point before they turn 18.

(3) Where families (whether intact or with a parent absent) are living in poverty, a significant factor is the father's lack of job skills.

(4) Committed and responsible fathering during infancy and early childhood contributes to the development of emotional security, curiosity, and math and verbal skills.

(5) An estimated 19,400,000 children (27 percent) live apart from their biological father.

(6) Forty percent of children under age 18 not living with their biological father had not seen their father even once in the last 12 months, according to national survey data.

(b) PURPOSES.—The purposes of this part are:

(1) To provide for projects and activities by public entities and by nonprofit community entities, including religious organizations, designed to test promising approaches to accomplishing the following objectives:

(A) Promoting responsible, caring, and effective parenting through counseling, mentoring, and parenting education, dissemination of educational materials and information on parenting skills, encouragement of positive father involvement, including the positive involvement of nonresident fathers, and other methods.

(B) Enhancing the abilities and commitment of unemployed or low-income fathers to provide material support for their families and to avoid or leave welfare programs by

assisting them to take full advantage of education, job training, and job search programs, to improve work habits and work skills, to secure career advancement by activities such as outreach and information dissemination, coordination, as appropriate, with employment services and job training programs, including the One-Stop delivery system established under title I of the Workforce Investment Act of 1998, encouragement and support of timely payment of current child support and regular payment toward past due child support obligations in appropriate cases, and other methods.

(C) Improving fathers' ability to effectively manage family business affairs by means such as education, counseling, and mentoring in matters including household management, budgeting, banking, and handling of financial transactions, time management, and home maintenance.

(D) Encouraging and supporting healthy marriages and married fatherhood through such activities as premarital education, including the use of premarital inventories, marriage preparation programs, skills-based marriage education programs, marital therapy, couples counseling, divorce education and reduction programs, divorce mediation and counseling, relationship skills enhancement programs, including those designed to reduce child abuse and domestic violence, and dissemination of information about the benefits of marriage for both parents and children.

(2) Through the projects and activities described in paragraph (1), to improve outcomes for children with respect to measures such as increased family income and economic security, improved school performance, better health, improved emotional and behavioral stability and social adjustment, and reduced risk of delinquency, crime, substance abuse, child abuse and neglect, teen sexual activity, and teen suicide.

(3) To evaluate the effectiveness of various approaches and to disseminate findings concerning outcomes and other information in order to encourage and facilitate the replication of effective approaches to accomplishing these objectives.

SEC. 442. DEFINITIONS.

In this part, the terms "Indian tribe" and "tribal organization" have the meanings given them in subsections (e) and (l), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act.

SEC. 443. COMPETITIVE GRANTS FOR SERVICE PROJECTS.

(a) IN GENERAL.—The Secretary may make grants for fiscal years 2006 through 2010 to public and nonprofit community entities, including religious organizations, and to Indian tribes and tribal organizations, for demonstration service projects and activities designed to test the effectiveness of various approaches to accomplish the objectives specified in section 441(b)(1).

(b) ELIGIBILITY CRITERIA FOR FULL SERVICE GRANTS.—In order to be eligible for a grant under this section, except as specified in subsection (c), an entity shall submit an application to the Secretary containing the following:

(1) PROJECT DESCRIPTION.—A statement including—

(A) a description of the project and how it will be carried out, including the geographical area to be covered and the number and characteristics of clients to be served, and how it will address each of the 4 objectives specified in section 441(b)(1); and

(B) a description of the methods to be used by the entity or its contractor to assess the extent to which the project was successful in accomplishing its specific objectives and the general objectives specified in section 441(b)(1).

(2) EXPERIENCE AND QUALIFICATIONS.—A demonstration of ability to carry out the project, by means such as demonstration of experience in successfully carrying out projects of similar design and scope, and such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs under parts A, B, and D of this title, including programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(7) SELF-INITIATED EVALUATION.—If the entity elects to contract for independent evaluation of the project (part or all of the cost of which may be paid for using grant funds), a commitment to submit to the Secretary a copy of the evaluation report within 30 days after completion of the report and not more than 1 year after completion of the project.

(8) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including random assignment of clients to service recipient and control groups, if determined by the Secretary to be appropriate, and

affording the Secretary access to the project and to project-related records and documents, staff, and clients.

(c) ELIGIBILITY CRITERIA FOR LIMITED PURPOSE GRANTS.—In order to be eligible for a grant under this section in an amount under $25,000 per fiscal year, an entity shall submit an application to the Secretary containing the following:

(1) PROJECT DESCRIPTION.—A description of the project and how it will be carried out, including the number and characteristics of clients to be served, the proposed duration of the project, and how it will address at least 1 of the 4 objectives specified in section 441(b)(1).

(2) QUALIFICATIONS.—Such information as the Secretary may require as to the capacity of the entity to carry out the project, including any previous experience with similar activities.

(3) COORDINATION WITH RELATED PROGRAMS.—As required by the Secretary in appropriate cases, an undertaking to coordinate and cooperate with State and local entities responsible for specific programs relating to the objectives of the project including, as appropriate, jobs programs and programs serving children and families.

(4) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(5) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

(d) CONSIDERATIONS IN AWARDING GRANTS.—

(1) DIVERSITY OF PROJECTS.—In awarding grants under this section, the Secretary shall seek to achieve a balance among entities of differing sizes, entities in differing geographic areas, entities in urban and in rural areas, and entities employing differing methods of achieving the purposes of this section, including working with the State agency responsible for the administration of part D to help fathers satisfy child support arrearage obligations.

(2) PREFERENCE FOR PROJECTS SERVING LOW-INCOME FATHERS.—In awarding grants under this section, the Secretary may give preference to applications for projects in which a majority of the clients to be served are low-income fathers.

(e) FEDERAL SHARE.—

(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for a share of the cost of such project in such fiscal year equal to—

(A) up to 80 percent (or up to 90 percent, if the entity demonstrates to the Secretary's satisfaction circumstances limiting the entity's ability to secure non-Federal resources) in the case of a project under subsection (b); and

(B) up to 100 percent, in the case of a project under subsection (c).

(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal

share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

SEC. 444. MULTICITY, MULTISTATE DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for 2 multicity, multistate projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). One of the projects shall test the use of married couples to deliver program services.

(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

(2) EXPERIENCE WITH MULTICITY, MULTISTATE PROGRAMS AND GOVERNMENT COORDINATION.—The organization must have experience in simultaneously conducting such programs in more than 1 major metropolitan area in more than 1 State and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

(1) QUALIFICATIONS.—

(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

(A) IN GENERAL.—A detailed description of the proposed project design and how it will be carried out, which shall—

(i) provide for the project to be conducted in at least 3 major metropolitan areas;

(ii) state how it will address each of the 4 objectives specified in section 441(b)(1);

(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving low-income fathers (but the project need not make services available on a means-tested basis).

(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

(i) in consultation with the evaluator selected pursuant to section 446, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(d) FEDERAL SHARE.—

(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal

share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

SEC. 445. ECONOMIC INCENTIVE DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for two to five projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). Drawing on the success of economic-incentive programs in demonstrating strong employment effects for low-income mothers, projects shall test the use of economic incentives combined with a comprehensive approach to addressing employment barriers to encourage non-custodial parents to enter the workforce and to contribute financially and emotionally to their children. The Secretary may make grants based on the level of innovation, comprehensiveness, and likelihood to achieve the goal of increased employment by the applicant.

(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

(2) EXPERIENCE ADDRESSING MULTIPLE BARRIERS TO EMPLOYMENT.—The organization must have experience in conducting such programs and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

(3) NEGOTIATED AGREEMENTS WITH STATE AND LOCAL AGENCIES FOR APPROPRIATE POLICY CHANGES TO ADDRESS BARRIERS TO EMPLOYMENT.—The organization must have agreements in place with State and local government agencies, including State or local agencies responsible for child support enforcement and workforce development, to incorporate appropriate policy changes proposed to address barriers to employment.

(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

(1) QUALIFICATIONS.—

(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

(A) IN GENERAL.—A detailed description of the proposed project design and how the project will be carried out, which shall—

(i) state how the project will address each of the 4 objectives specified in section 441(b)(1);

(ii) state how the project will address employment barriers across programs (such as child support, criminal justice, and workforce development programs) using both sanctions and compliance along with monetary incentives for obtaining employment, with earning subsidies contingent upon work and child support payment;

(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving low-income fathers (but the project need not make services available on a means-tested basis).

(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

(i) in consultation with the evaluator selected pursuant to section 446, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(d) FEDERAL SHARE.—

(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

SEC. 446. EVALUATION.

(a) IN GENERAL.—The Secretary, directly or by contract or cooperative agreement, shall evaluate the effectiveness of service projects funded under sections 443 and 444 from the standpoint of the purposes specified in section 441(b)(1).

(b) EVALUATION METHODOLOGY.—Evaluations under this section shall—

(1) include, to the maximum extent feasible, random assignment of clients to service delivery and control groups and other appropriate comparisons of groups of individuals receiving and not receiving services;

(2) describe and measure the effectiveness of the projects in achieving their specific project goals; and

(3) describe and assess, as appropriate, the impact of such projects on marriage, parenting, domestic violence, child abuse and neglect, money management, employment and earnings, payment of child support, and child well-being, health, and education.

(c) EVALUATION REPORTS.—The Secretary shall publish the following reports on the results of the evaluation:

(1) An implementation evaluation report covering the first 24 months of the activities under this part to be completed by 36 months after initiation of such activities.

(2) A final report on the evaluation to be completed by September 30, 2013.

SEC. 447. PROJECTS OF NATIONAL SIGNIFICANCE.

The Secretary is authorized, by grant, contract, or cooperative agreement, to carry out projects and activities of national significance relating to fatherhood promotion, including—

(1) COLLECTION AND DISSEMINATION OF INFORMATION.—Assisting States, communities, and private entities, including religious organizations, in efforts to promote and support marriage and responsible fatherhood by collecting, evaluating, devel-

oping, and making available (through the Internet and by other means) to all interested parties information regarding approaches to accomplishing the objectives specified in section 441(b)(1).

(2) MEDIA CAMPAIGN.—Developing, promoting, and distributing to interested States, local governments, public agencies, and private nonprofit organizations, including charitable and religious organizations, a media campaign that promotes and encourages involved, committed, and responsible fatherhood and married fatherhood.

(3) TECHNICAL ASSISTANCE.—Providing technical assistance, including consultation and training, to public and private entities, including community organizations and faith-based organizations, in the implementation of local fatherhood promotion programs.

(4) RESEARCH.—Conducting research related to the purposes of this part.

SEC. 448. NONDISCRIMINATION.

The projects and activities assisted under this part shall be available on the same basis to all fathers and expectant fathers able to benefit from such projects and activities, including married and unmarried fathers and custodial and noncustodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers on the same basis as to fathers.

SEC. 449. AUTHORIZATION OF APPROPRIATIONS; RESERVATION FOR CERTAIN PURPOSE.

(a) AUTHORIZATION.—There are authorized to be appropriated $20,000,000 for each of fiscal years 2006 through 2010 to carry out the provisions of this part.

(b) RESERVATION.—Of the amount appropriated under this section for each fiscal year, not more than 35 percent shall be available for the costs of the multicity, multicounty, multistate demonstration projects under section 444, the economic incentives demonstration projects under section 445, evaluations under section 446, and projects of national significance under section 447, with not less than $5,000,000 allocated to the economic incentives demonstration project under section 445.

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

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SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—BLOCK GRANTS FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sec. 101. Findings.

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Sec. 117. Fatherhood program.

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TITLE I—BLOCK GRANTS FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

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SEC. 117. FATHERHOOD PROGRAM.

(a) IN GENERAL.—Title IV (42 U.S.C. 601–679b) is amended by inserting after part B the following:

"PART C—FATHERHOOD PROGRAM

"SEC. 441. FINDINGS AND PURPOSES.

"(a) FINDINGS.—The Congress finds that there is substantial evidence strongly indicating the urgent need to promote and support involved, committed, and responsible fatherhood, and to encourage and support healthy marriages between parents raising children, including data demonstrating the following:

"(1) In approximately 84 percent of cases where a parent is absent, that parent is the father.

"(2) If current trends continue, half of all children born today will live apart from one of their parents, usually their father, at some point before they turn 18.

"(3) Where families (whether intact or with a parent absent) are living in poverty, a significant factor is the father's lack of job skills.

"(4) Committed and responsible fathering during infancy and early childhood contributes to the development of emotional security, curiosity, and math and verbal skills.

"(5) An estimated 19,400,000 children (27 percent) live apart from their biological father.

"(6) Forty percent of children under age 18 not living with their biological father had not seen their father even once in the last 12 months, according to national survey data.

"(b) PURPOSES.—The purposes of this part are:

"(1) To provide for projects and activities by public entities and by nonprofit community entities, including religious organizations, designed to test promising approaches to accomplishing the following objectives:

"(A) Promoting responsible, caring, and effective parenting through counseling, mentoring, and parenting education, dissemination of educational materials and information on parenting skills, encouragement of positive father involvement, including the positive involvement of nonresident fathers, and other methods.

"(B) Enhancing the abilities and commitment of unemployed or low-income fathers to provide material support for their families and to avoid or leave welfare programs by assisting them to take full advantage of education, job training, and job search programs, to improve work habits and work skills, to secure career advancement by activities such as outreach and information dissemination, coordination, as appropriate, with employment services and job

training programs, including the One-Stop delivery system established under title I of the Workforce Investment Act of 1998, encouragement and support of timely payment of current child support and regular payment toward past due child support obligations in appropriate cases, and other methods.

"(C) Improving fathers' ability to effectively manage family business affairs by means such as education, counseling, and mentoring in matters including household management, budgeting, banking, and handling of financial transactions, time management, and home maintenance.

"(D) Encouraging and supporting healthy marriages and married fatherhood through such activities as premarital education, including the use of premarital inventories, marriage preparation programs, skills-based marriage education programs, marital therapy, couples counseling, divorce education and reduction programs, divorce mediation and counseling, relationship skills enhancement programs, including those designed to reduce child abuse and domestic violence, and dissemination of information about the benefits of marriage for both parents and children.

"(2) Through the projects and activities described in paragraph (1), to improve outcomes for children with respect to measures such as increased family income and economic security, improved school performance, better health, improved emotional and behavioral stability and social adjustment, and reduced risk of delinquency, crime, substance abuse, child abuse and neglect, teen sexual activity, and teen suicide.

"(3) To evaluate the effectiveness of various approaches and to disseminate findings concerning outcomes and other information in order to encourage and facilitate the replication of effective approaches to accomplishing these objectives.

"SEC. 442. DEFINITIONS.

"In this part, the terms 'Indian tribe' and 'tribal organization' have the meanings given them in subsections (e) and (l), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act.

"SEC. 443. COMPETITIVE GRANTS FOR SERVICE PROJECTS.

"(a) IN GENERAL.—The Secretary may make grants for fiscal years 2006 through 2010 to public and nonprofit community entities, including religious organizations, and to Indian tribes and tribal organizations, for demonstration service projects and activities designed to test the effectiveness of various approaches to accomplish the objectives specified in section 441(b)(1).

"(b) ELIGIBILITY CRITERIA FOR FULL SERVICE GRANTS.—In order to be eligible for a grant under this section, except as specified in subsection (c), an entity shall submit an application to the Secretary containing the following:

"(1) PROJECT DESCRIPTION.—A statement including—

"(A) a description of the project and how it will be carried out, including the geographical area to be covered and the number and characteristics of clients to be served, and

how it will address each of the 4 objectives specified in section 441(b)(1); and

"(B) a description of the methods to be used by the entity or its contractor to assess the extent to which the project was successful in accomplishing its specific objectives and the general objectives specified in section 441(b)(1).

"(2) EXPERIENCE AND QUALIFICATIONS.—A demonstration of ability to carry out the project, by means such as demonstration of experience in successfully carrying out projects of similar design and scope, and such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

"(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

"(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

"(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs under parts A, B, and D of this title, including programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

"(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

"(7) SELF-INITIATED EVALUATION.—If the entity elects to contract for independent evaluation of the project (part or all of the cost of which may be paid for using grant funds), a commitment to submit to the Secretary a copy of the evaluation report within 30 days after completion of the report and not more than 1 year after completion of the project.

"(8) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including random assignment of clients to service recipient and control groups, if determined by the Secretary to be appropriate, and affording the Secretary access to the project and to project-related records and documents, staff, and clients.

"(c) ELIGIBILITY CRITERIA FOR LIMITED PURPOSE GRANTS.—In order to be eligible for a grant under this section in an amount

under $25,000 per fiscal year, an entity shall submit an application to the Secretary containing the following:

"(1) PROJECT DESCRIPTION.—A description of the project and how it will be carried out, including the number and characteristics of clients to be served, the proposed duration of the project, and how it will address at least 1 of the 4 objectives specified in section 441(b)(1).

"(2) QUALIFICATIONS.—Such information as the Secretary may require as to the capacity of the entity to carry out the project, including any previous experience with similar activities.

"(3) COORDINATION WITH RELATED PROGRAMS.—As required by the Secretary in appropriate cases, an undertaking to coordinate and cooperate with State and local entities responsible for specific programs relating to the objectives of the project including, as appropriate, jobs programs and programs serving children and families.

"(4) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

"(5) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

"(d) CONSIDERATIONS IN AWARDING GRANTS.—

"(1) DIVERSITY OF PROJECTS.—In awarding grants under this section, the Secretary shall seek to achieve a balance among entities of differing sizes, entities in differing geographic areas, entities in urban and in rural areas, and entities employing differing methods of achieving the purposes of this section, including working with the State agency responsible for the administration of part D to help fathers satisfy child support arrearage obligations.

"(2) PREFERENCE FOR PROJECTS SERVING LOW-INCOME FATHERS.—In awarding grants under this section, the Secretary may give preference to applications for projects in which a majority of the clients to be served are low-income fathers.

"(e) FEDERAL SHARE.—

"(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for a share of the cost of such project in such fiscal year equal to—

"(A) up to 80 percent (or up to 90 percent, if the entity demonstrates to the Secretary's satisfaction circumstances limiting the entity's ability to secure non-Federal resources) in the case of a project under subsection (b); and

"(B) up to 100 percent, in the case of a project under subsection (c).

"(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

"SEC. 444. MULTICITY, MULTISTATE DEMONSTRATION PROJECTS.

"(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for 2 multicity, multistate projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). One of the projects shall test the use of married couples to deliver program services.

"(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

"(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

"(2) EXPERIENCE WITH MULTICITY, MULTISTATE PROGRAMS AND GOVERNMENT COORDINATION.—The organization must have experience in simultaneously conducting such programs in more than 1 major metropolitan area in more than 1 State and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

"(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

"(1) QUALIFICATIONS.—

"(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

"(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

"(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

"(A) IN GENERAL.—A detailed description of the proposed project design and how it will be carried out, which shall—

"(i) provide for the project to be conducted in at least 3 major metropolitan areas;

"(ii) state how it will address each of the 4 objectives specified in section 441(b)(1);

"(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

"(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving low-income fathers (but the project need not make services available on a means-tested basis).

"(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

"(i) in consultation with the evaluator selected pursuant to section 446, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

"(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

"(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

"(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

"(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

"(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

"(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

"(d) FEDERAL SHARE.—

"(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

"(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

"SEC. 445. ECONOMIC INCENTIVE DEMONSTRATION PROJECTS.

"(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for two to five projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). Drawing on the success of economic-incentive programs in demonstrating strong employment effects for low-income mothers, projects shall test the use of economic incentives combined with a comprehensive approach to addressing employment barriers to encourage non-custodial parents to enter the workforce and to contribute financially and emotionally to their children. The Secretary may make grants based on the level of innovation, comprehensiveness, and likelihood to achieve the goal of increased employment by the applicant.

"(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

"(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

"(2) EXPERIENCE ADDRESSING MULTIPLE BARRIERS TO EMPLOYMENT.—The organization must have experience in conducting such programs and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

"(3) NEGOTIATED AGREEMENTS WITH STATE AND LOCAL AGENCIES FOR APPROPRIATE POLICY CHANGES TO ADDRESS BARRIERS TO EMPLOYMENT.—The organization must have agreements in place with State and local government agencies, including State or local agencies responsible for child support enforcement and workforce development, to incorporate appropriate policy changes proposed to address barriers to employment.

"(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

"(1) QUALIFICATIONS.—

"(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

"(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

"(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

"(A) IN GENERAL.—A detailed description of the proposed project design and how the project will be carried out, which shall—

"(i) state how the project will address each of the 4 objectives specified in section 441(b)(1);

"(ii) state how the project will address employment barriers across programs (such as child support, criminal justice, and workforce development programs) using both sanctions and compliance along with monetary incentives for obtaining employment, with earning subsidies contingent upon work and child support payment;

"(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

"(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving low-income fathers (but the project need not make services available on a means-tested basis).

"(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

"(i) in consultation with the evaluator selected pursuant to section 446, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

"(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

"(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

"(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

"(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

"(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

"(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

"(d) FEDERAL SHARE.—

"(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

"(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

"SEC. 446. EVALUATION.

"(a) IN GENERAL.—The Secretary, directly or by contract or cooperative agreement, shall evaluate the effectiveness of service projects funded under sections 443 and 444 from the standpoint of the purposes specified in section 441(b)(1).

"(b) EVALUATION METHODOLOGY.—Evaluations under this section shall—

"(1) include, to the maximum extent feasible, random assignment of clients to service delivery and control groups and other appropriate comparisons of groups of individuals receiving and not receiving services;

"(2) describe and measure the effectiveness of the projects in achieving their specific project goals; and

"(3) describe and assess, as appropriate, the impact of such projects on marriage, parenting, domestic violence, child abuse and neglect, money management, employment and earnings, payment of child support, and child well-being, health, and education.

"(c) EVALUATION REPORTS.—The Secretary shall publish the following reports on the results of the evaluation:

"(1) An implementation evaluation report covering the first 24 months of the activities under this part to be completed by 36 months after initiation of such activities.

"(2) A final report on the evaluation to be completed by September 30, 2013.

"SEC. 447. PROJECTS OF NATIONAL SIGNIFICANCE.

"The Secretary is authorized, by grant, contract, or cooperative agreement, to carry out projects and activities of national significance relating to fatherhood promotion, including—

"(1) COLLECTION AND DISSEMINATION OF INFORMATION.—Assisting States, communities, and private entities, including religious organizations, in efforts to promote and support marriage and responsible fatherhood by collecting, evaluating, devel-

oping, and making available (through the Internet and by other means) to all interested parties information regarding approaches to accomplishing the objectives specified in section 441(b)(1).

"(2) MEDIA CAMPAIGN.—Developing, promoting, and distributing to interested States, local governments, public agencies, and private nonprofit organizations, including charitable and religious organizations, a media campaign that promotes and encourages involved, committed, and responsible fatherhood and married fatherhood.

"(3) TECHNICAL ASSISTANCE.—Providing technical assistance, including consultation and training, to public and private entities, including community organizations and faith-based organizations, in the implementation of local fatherhood promotion programs.

"(4) RESEARCH.—Conducting research related to the purposes of this part.

"SEC. 448. NONDISCRIMINATION.

"The projects and activities assisted under this part shall be available on the same basis to all fathers and expectant fathers able to benefit from such projects and activities, including married and unmarried fathers and custodial and noncustodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers on the same basis as to fathers.

"SEC. 449. AUTHORIZATION OF APPROPRIATIONS; RESERVATION FOR CERTAIN PURPOSE.

"(a) AUTHORIZATION.—There are authorized to be appropriated $20,000,000 for each of fiscal years 2006 through 2010 to carry out the provisions of this part.

"(b) RESERVATION.—Of the amount appropriated under this section for each fiscal year, not more than 35 percent shall be available for the costs of the multicity, multicounty, multistate demonstration projects under section 444, the economic incentives demonstration projects under section 445, evaluations under section 446, and projects of national significance under section 447, with not less than $5,000,000 allocated to the economic incentives demonstration project under section 445.".

(b) INAPPLICABILITY OF EFFECTIVE DATE PROVISIONS.—Section 116 shall not apply to the amendment made by subsection (a) of this section.

* * * * * * *

CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT OF 1990

SEC. 658A. SHORT TITLE AND GOALS.

(a) * * *

(b) GOALS.—The goals of this subchapter are—

(1) * * *

* * * * * * *

(3) to [encourage] *assist* States to provide consumer education information to help parents make informed choices about child care;

[(4) to assist States to provide child care to parents trying to achieve independence from public assistance; and]

(4) to assist States to provide child care to low-income parents;

(5) to encourage States to improve the quality of child care available to families;

(6) to promote school readiness by encouraging the exposure of young children in child care to nurturing environments and developmentally-appropriate activities, including activities to foster early cognitive and literacy development; and

[(5)] *(7)* to assist States in implementing the health, safety, licensing, and registration standards established in State regulations.

SEC. 658B. AUTHORIZATION OF APPROPRIATIONS.

There [is] *are* authorized to be appropriated to carry out this subchapter [$1,000,000,000 for each of the fiscal years 1996 through 2002] *$2,300,000,000 for fiscal year 2006, $2,500,000,000 for fiscal year 2007, $2,700,000,000 for fiscal year 2008, $2,900,000,000 for fiscal year 2009, and $3,100,000,000 for fiscal year 2010*.

* * * * * * *

SEC. 658E. APPLICATION AND PLAN.

(a) * * *

* * * * * * *

(c) REQUIREMENTS OF A PLAN.—

(1) * * *

(2) POLICIES AND PROCEDURES.—The State plan shall:

(A) * * *

* * * * * * *

[(D) CONSUMER EDUCATION INFORMATION.—Certify that the State will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.]

(D) CONSUMER AND CHILD CARE PROVIDER EDUCATION INFORMATION.—

(i) CERTIFICATION.—Certify that the State will collect and disseminate, through resource and referral services and other means as determined by the State, to parents of eligible children, child care providers, and the general public, information regarding—

(I) the promotion of informed child care choices, including information about the quality and availability of child care services;

(II) research and best practices on children's development, including early cognitive development;

(III) the availability of assistance to obtain child care services; and

(IV) other programs for which families that receive child care services for which financial assist-

ance is provided under this subchapter may be eligible, including the food stamp program, the WIC program under section 17 of the Child Nutrition Act of 1966, the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act, Head Start programs, Early Head Start programs, services and activities under section 619 and part C of the Individuals with Disabilities Education Act, and the medicaid and SCHIP programs under titles XIX and XXI of the Social Security Act.

(ii) INFORMATION.—Information provided to parents shall be in plain language and, to the extent practicable, be in a language that such parents can understand.

* * * * * * *

(I) COORDINATION WITH OTHER EARLY CHILD CARE SERVICES AND EARLY CHILDHOOD EDUCATION PROGRAMS.—Demonstrate how the State is coordinating child care services provided under this subchapter with Head Start programs, Early Head Start programs, Early Reading First, Even Start, Ready-To-Learn Television, services and activities under section 619 and part C of the Individuals with Disabilities Education Act, State pre-kindergarten programs, and other early childhood education programs to expand accessibility to and continuity of care and early education consistent with the goals of this Act, without displacing services provided by the current early care and education delivery system.

(J) PUBLIC-PRIVATE PARTNERSHIPS.—Demonstrate how the State encourages partnerships with private and other public entities to leverage existing service delivery systems of early childhood education and increase the supply and quality of child care services.

(K) CHILD CARE SERVICE QUALITY.—

(i) CERTIFICATION.—For each fiscal year after fiscal year 2006, certify that during the then preceding fiscal year the State was in compliance with section 658G and describe how funds were used to comply with such section during such preceding fiscal year.

(ii) STRATEGY.—For each fiscal year after fiscal year 2006, contain an outline of the strategy the State will implement during such fiscal year for which the State plan is submitted, to address the quality of child care services in the State available from eligible child care providers, and include in such strategy—

(I) a statement specifying how the State will address the activities described in paragraphs (1), (2), and (3) of section 658G;

(II) a description of measures for evaluating the quality improvements generated by the activities listed in each of such paragraphs that the State will use to evaluate its progress in improving the quality of such child care services;

(III) a list of State-developed child care service quality targets for such fiscal year quantified on the basis of such measures; and

(IV) for each fiscal year after fiscal year 2006, a report on the progress made to achieve such targets during the then preceding fiscal year.

(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to require that the State apply measures for evaluating quality to specific types of child care providers.

(L) ACCESS TO CARE FOR CERTAIN POPULATIONS.—Demonstrate how the State is addressing the child care needs of parents eligible for child care services for which financial assistance is provided under this subchapter who have children with special needs, are limited English proficient, work nontraditional hours, or require child care services for infants or toddlers.

(3) USE OF BLOCK GRANT FUNDS.—

(A) * * *

(B) CHILD CARE SERVICES AND RELATED ACTIVITIES.—The State shall use amounts provided to the State for each fiscal year under this subchapter for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through [(5)] *(7)* of section 658A(b), with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs.

* * * * * * *

[SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.

[A State that receives funds to carry out this subchapter for a fiscal year, shall use not less than 4 percent of the amount of such funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care (such as resource and referral services).]

SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE SERVICES.

A State that receives funds to carry out this subchapter for a fiscal year, shall use not less than 6 percent of the amount of such funds for activities provided through resource and referral services and other means, that are designed to improve the quality of child care services in the State available from eligible child care providers. Such activities include—

(1) programs that provide training, education, and other professional development activities to enhance the skills of the child care workforce, including training opportunities for caregivers in informal care settings;

(2) activities within child care settings to enhance early learning for young children, to promote early literacy, and to foster school readiness;

(3) initiatives to increase the retention and compensation of child care providers, including tiered reimbursement rates for providers that meet quality standards as defined by the State; or

(4) other activities deemed by the State to improve the quality of child care services provided in such State.

* * * * * * *

SEC. 658K. REPORTS AND AUDITS.

(a) REPORTS.—

(1) COLLECTION OF INFORMATION BY STATES.—

(A) * * *

(B) REQUIRED INFORMATION.—The information required under this subparagraph shall include, with respect to a family unit receiving assistance under this subchapter information concerning—

(i) * * *

* * * * * * *

(iii) the gender, race, *ethnicity, primary language,* and age of children receiving such assistance;

* * * * * * *

[SEC. 658L. REPORT BY SECRETARY.

[Not later than July 31, 1998, and biennially thereafter, the Secretary shall prepare and submit to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 658K. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.]

SEC. 658L. REPORT BY SECRETARY.

(a) REPORT REQUIRED.—Not later than October 1, 2007, and biennially thereafter, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report that contains the following:

(1) A summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 658K.

(2) Aggregated statistics on the supply of, demand for, and quality of child care, early education, and non-school-hours programs.

(3) An assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

(b) COLLECTION OF INFORMATION.—The Secretary may utilize the national child care data system available through resource and re-

ferral organizations at the local, State, and national level to collect the information required by subsection (a)(2).

* * * * * * *

SEC. 658P. DEFINITIONS.

As used in this subchapter:

(1) * * *

* * * * * * *

(4) ELIGIBLE CHILD.—The term "eligible child" means an individual—

(A) * * *

(B) whose family income does not exceed [85 percent of the State median income] *income levels as established by the State, prioritized by need,* for a family of the same size; and

* * * * * * *

(9) LIMITED ENGLISH PROFICIENT.—The term "limited English proficient" means with respect to an individual, that such individual—

(A)(i) was not born in the United States or has a native language that is not English;

(ii)(I) is a Native American, an Alaska Native, or a native resident of a territory or possession of the United States; and

(II) comes from an environment in which a language that is not English has had a significant impact on such individual's level of English language proficiency; or

(iii) is migratory, has a native language that is not English, and comes from an environment in which a language that is not English is dominant; and

(B) has difficultly in speaking or understanding the English language to an extent that may be sufficient to deny such individual—

(i) the ability to successfully achieve in classrooms in which the language of instruction is English; or

(ii) the opportunity to fully participate in society.

[(9)] *(10)* PARENT.—The term "parent" includes a legal guardian or other person standing in loco parentis.

* * * * * * *

MINORITY VIEWS

When President Bush spoke to the nation from New Orleans six weeks ago on September 15, 2005, he described the "deep, persistent poverty" that Hurricane Katrina had laid bare on television, and he called for bold action to combat poverty in America.[i] The President is right—bold action is needed. America has the most and the deepest poverty of any developed nation except Mexico,[ii] and we should be doing much more to address it.

But six short weeks after he delivered that speech, the President's party in Congress is preparing as much as $50 billion in spending cuts, and the poor will bear much of the brunt of these misguided cuts. At the same time, the Majority party plans to force through another $70 billion in tax cuts, on top of the trillion-dollar tax cuts that Congress has already passed over the last several years. The welfare bill considered in Committee is just more of the same—while Congress gives more handouts to people who don't need them, it further robs millions of Americans of the ability to get back on their feet. Katrina should have been a wake-up call, but the Republicans keep looking the other way when it comes to helping Americans get good jobs that lead the way out of poverty.

Democrats and Republicans alike have agreed that the welfare system of the prior half-century had significant problems and needed to be replaced with a program that stressed moving ablebodied adult welfare recipients towards employment and self-support. Nine years later, results of that experiment are in, and they are mixed. The evidence gathered in numerous studies documents that while we have moved many off of welfare, the current program enacted in 1996 has not achieved the goals of promoting long-term economic independence, jobs that lift and keep families out of poverty, or improved living standards for million of children.[iii]

It is clear that the next phase of welfare reform must be focused squarely on reducing poverty.

The Republican bill fails American families by neglecting to shift its focus to poverty reduction from that of simply welfare reduction. The Republican welfare bill is concerned much more with pushing people off of welfare assistance than with how they are doing once they leave the welfare rolls. Instead of building on current state strategies to help families engage in work and find better jobs, this bill would require states to adopt a rigid federally-prescribed program structure. It requires a "one size fits all" model that ignores individual differences and needs and will limit states' abilities to provide the best opportunities for lasting employment. This inflexibility will force states to create make-work and other welfare programs that limit placement of welfare recipients into real jobs with real wages.

Furthermore, it creates an enormous financial burden for states that will force states to shift resources away from helping working

families. The non-partisan Congressional Budget Office estimates that H.R. 240 will cost states $11.6 billion to implement the new work requirements, maintain the current level of child care assistance, and keep pace with inflation. The Republicans provide $0.5 billion in additional mandatory funding for these purposes, short-changing the states by more than $11 billion.

Democrats have a better idea: welfare reform should be about helping move people off of welfare and into jobs that pay decent wages that will get them out of poverty. We believe that welfare success should be gauged by employment rates, moving and staying off welfare, and mobility out of poverty. The Democratic approach to welfare reform aims to make work pay by requiring welfare recipients to engage in a combination of work, education, and training, and by providing states with the flexibility, incentives, and resources to move welfare recipients into meaningful jobs that pay living wages and benefits.

Because the Republican welfare bill fails to help American families move off of welfare and out of poverty, places enormous unfunded mandates on states that will limit their ability to run innovative programs that provide meaningful opportunities for families, and worsens the child care crisis in this country, Democrats voted unanimously in opposition to the Republican bill. Democrats offered numerous amendments in Committee as part of an attempt to amend the welfare bill to create a policy that will help move families off of welfare and out of poverty. These amendments were rejected by the Republicans. Some of these amendments are described below.

GROWING POVERTY SHOWS NEED FOR NEW APPROACH

The goal of moving from welfare to work is not going to be achieved under the approach that this bill takes. We must instead pass a bill that allows states to create programs that will really help families get out of poverty.

Census data released in August of this year makes clear the urgency of this task. Despite the growing economy, the number of Americans living in poverty has increased for the fourth year in a row, by half a million people, according to the U.S. Census Bureau.[iv] Today, 37 million Americans—many of them full-time workers—live in poverty. That's 13 percent of all Americans still in poverty. One in every three poor people in this country is a child. This disgraceful situation must be changed.

The poverty rate and welfare rolls began to drop in 1993, and after Congress enacted welfare reform in 1996, the welfare rolls were halved and poverty continued to decline until the year 2000. But the increasing poverty of the last few years shows that poverty declines in the 1990's were due much more to the booming economy than to welfare reform.

Though millions have left welfare, studies document that many former welfare recipients remain poor and lack a steady job.[v] We should not judge welfare reform by the number of people on or off of welfare assistance alone, but also by how many families still live in poverty. Welfare reform will be successful when families leave welfare for decent jobs and economic stability. Unfortunately, this bill does not get us any closer to achieving that goal.

MINIMUM WAGE

The Katrina disaster gave America a new look at our nation's poor—many of whom are deprived of decent housing, jobs that pay enough to lift them out of poverty, access to a good education, and access to health care. We can design the best welfare system in the world, but the truth is—the single most effective action this Committee and this Congress can take, to move millions of Americans out of poverty, is to increase the minimum wage. Today, a woman who gets off of welfare and lands a minimum wage job working 40 hours a week all year would still be stranded in poverty, with no reasonable shot at adequately providing for herself or her children.

Ranking Member Miller and Representatives Van Hollen, Owens, and Payne offered amendments to directly, and through a Sense of the Congress, raise the federal minimum wage in three stages to $7.25. The Majority rejected both amendments.

It has been eight years since we increased the minimum wage. That alone is a disgrace. The value of the minimum wage relative to average wages is now at an appallingly 57 year low. Minimum wage employees working 40 hours a week, 52 weeks a year, earn $10,700 a year, $5,000 below the poverty line for a family of three. Raising the minimum wage to $7.25 an hour will mean an additional $4,380 a year to help minimum wage earners support their families.

According to the Economic Policy Institute, seven and a half million workers will directly benefit from the minimum wage increase to $7.25. More than 72% of those workers are 20 years old or older. Approximately 54% provide more than half of their family's income. One million and eight hundred thousand are parents with children under 18, including 740,000 single mothers. Almost half (43.9%) work full-time and another third (34.5%) work between 20 and 34 hours a week. Over sixty percent are women.

In the past eight years, Members of Congress will have raised their own pay seven times—by $28,500. In those same eight years, minimum wage workers have not gotten a single raise—they continue to earn $10,700 a year.

According to the Kaiser Family Foundation, the average premiums for health insurance for a family of four in 2005 have surpassed the total before-tax income of a minimum wage earner. If you work a minimum wage job and want to buy health insurance for your family, you'll fall almost $200 short trying to pay just the premiums, and not have a single penny to spare for any other expense—not food, not clothing, not housing—nothing.

The Committee needs to act to raise the minimum wage—this is the most effective measure for lifting families out of poverty.

EDUCATION, TRAINING AND BETTER WAGES

Democrats believe that welfare success should be gauged by employment rates, moving and staying off welfare, and mobility out of poverty. If states are to accomplish these important goals, federal welfare policy must provide the flexibility for states to design innovate programs that meet recipients' individual education, training, and employment needs, and it must provide meaningful incentives and adequate resources to states.

To ensure welfare recipients receive the education and training they need to leave welfare, stay off of welfare, and move out of poverty, Representatives Tierney, Bishop, and McCollum offered an amendment that allows expanded educational opportunities to count for the full work requirement for the first 24 months. These same opportunities can then count for 16 hours weekly for the next 24 months. The amendment expands educational opportunities to include vocational training, post secondary education, work study, internships, job training, ESL, GED and basic adult literacy.

Evidence clearly demonstrates the importance of education opportunities. In a December 2000 study by the U.S. Department of Health and Human Services and the U.S. Department of Education, TANF leavers who were most successful in sustaining employment were also twice as likely to have a technical or two-year degree.[vi] According to 2000 data from the Census Bureau, almost 39% of women without a high school education live in poverty, while only 17.6% of women with a high school diploma live in poverty. Only 8.5% of women with some college education live below the poverty line, while only 4.3% of women with a 4-year college degree live in poverty.[vii] The Educational Testing Service reports that nearly 70% of the jobs created through 2006 will require workers with education skills that are higher than the levels of most current welfare recipients.[viii]

Research on different welfare-to-work programs found that welfare recipients fared the best when education and training were combined with job search and work.[ix] The Tierney amendment allows states the flexibility to offer these types of innovative programs, but the Republican bill does not. Republicans rejected the Tierney amendment.

To ensure welfare leavers are employed at welfare exit and in well-paying jobs, an amendment to add an employment credit was offered by Representative Kind. This amendment would eliminate the current caseload reduction credit and phase in an employment credit that rewards states for helping families get jobs, with a bonus to states for families who obtain higher paying jobs. This employment credit provides an important method for creating an incentive for states to move people from welfare to work. This amendment would result in states focusing efforts on improving employment outcomes and access to work supports, efforts Democrats believe are important for realizing the welfare goal of reducing poverty.

In contrast, the Majority's caseload reduction credit rewards state for just removing people from the welfare caseload and misses an important legislative opportunity to reward states from running programs more likely to keep people off of welfare and out of poverty. Under the Republican plan, states are rewarded for caseload declines regardless of the reason for exit from the caseload.

The Republican approach is short-sighted and does nothing to help welfare-to-work programs focus on helping recipients get meaningful jobs that lead to long-term self-sufficiency. Currently, about 30–40% of welfare leavers are not employed when they exit welfare.[x] Under the Republican plan, states would get rewarded for this outcome even though this clearly is not a desirable situation. National data also suggest that ovr 20% of those who left welfare

between 1997 and 1999 returned within that same time period.[xi] This too is an undesirable outcome which would be addressed by the Democratic amendment but not the Republicans. The Minority believes the Majority is inconsistent at best when they tout the goal of self-sufficiency but reject state incentives that would accomplish this goal. The Majority rejected this amendment.

CHILD CARE

Democrats also oppose this bill because its child care funding is grossly inadequate. Child care assistance for low income families is a critical part of any effort to move families into jobs and off welfare and to keep low income working families employed and off of welfare.

There are two central problems with this child care assistance program: parents are unable to access quality child care; and too many hard-working low income families do not receive child care assistance. Access to quality child care is an essential part of education reform to ensure that all children arrive at school ready to succeed. Though the Child Care and Development Block Grant promises parent choice and access to quality, it does not deliver. Parents do not have real choice in their child care options and cannot afford to put their child in quality care because the assistance payments they get are far below the cost of child care in their area. The law promises equal access but only suggests states pay 75% of current market rates. Because states are often caught in a bind between providing quantity or quality, most states set their assistance rates well below the cost of care. For example, the state of Michigan reports paying only the 75 percentile of 1996 rates.[xii] What this means is that parents have few choices and low-income children—who are the ones most in need of high quality child care—are often in low quality care. The Republican bill does nothing to help this situation.

Secondly, while we do not currently provide enough funding to serve the majority of the lowincome working families who are eligible and in need of this assistance, the Republican bill makes this situation much worse. If low-income workers do not have payment assistance, they may not be able to keep working. Two-parent families with two minimum wage workers often spend more than half their income on child care if they do not receive child care assistance under this program, which is why child care assistance for low-income workers is so vital to our nation's economy.

The situation is dire. According to the Department of Health and Human Services, 100,000 fewer children were served by this child care program in 2004 than in 2003 and estimates that an additional 300,000 fewer children will be served in this program by 2009.[xiii] Seventeen states have waiting lists.[xiv] For example, the state of California estimates there are 280,000 families waiting for subsidized care. These data are not surprising given the Republican child care assistance budgets of the past four years have failed to keep pace with inflation.

But according to the Congressional Budget Office (CBO), the Republicans do not even cover the cost of inflation for child care in their bill. According to CBO, $4.832 billion is needed over the next five years just to maintain the current level of services. The Repub-

licans provide $.5 billion in mandatory funding for child care. CBO also estimates the child care costs associated with the work requirements in H.R. 240 and inflation equal $8.332 billion. According to these estimates, the Republicans are over $7 billion dollars short in providing enough child care funding to ensure that the number of children served in the program remains level with the number served today.

Representatives Miller, Andrews, Woolsey, and Holt offered an amendment that would provide $11 billion in new child care funding and require states pay at least 75% of the current market rate. This important amendment would cover the child care and inflation costs under H.R. 240, help parents access higher quality child care, and makes steps to serve more of the hundreds of thousands of names on the waiting lists all over this country. If we are serious about helping low-income workers stay employed, we have to help with child care costs. Republicans rejected this Democratic amendment.

OUTSOURCING

Many American workers' sense of job security is rapidly eroding as more and more companies ship all kinds of work offshore. According to a study by the investment firm Goldman Sachs, between 300,000 to 500,000 American jobs were sent overseas in just three years.[xv] Business Week estimated that 400,000 to 500,000 jobs went offshore during the same time period.[xvi] Even state governments, through contractors for public program work, are shipping jobs typically performed by state residents overseas. Taxpayer money should be used to create jobs at home, not overseas.

A recent study by Good Jobs First found that, as of July 2004, only 9 states had electronic benefit transfer call centers located within the United States.[xvii] These call centers handle electronic benefit transfer issues for programs like Food Stamps and TANF. The rest of the states had contracted with private contractors who had outsourced this call center work to foreign countries such as India.

It is especially ironic for any work financed by federal TANF funds to be sent abroad. A principle goal of TANF is to move families off welfare into work, but if jobs are moving offshore, there are fewer job opportunities for welfare families.

For this reason, Representatives Andrews, Ryan, and Bishop offered an amendment to prohibit TANF monies from being used to offshore outsource jobs. This amendment passed by a voice vote. The Andrews-Ryan-Bishop amendment prohibits use of any TANF grant monies to outsource any jobs overseas. The money may not be used to either (1) contract or subcontract out work to a location outside of the United States or (2) reduce employment within the United States by using any employees outside of the United States.

SUPERWAIVER

Democrats also have serious concern over a "superwaiver" provision in this bill which would give expansive new authority to the Executive Branch to override virtually any federal law or rule governing federal low-income programs including parts of the Workforce Investment Act, Wagner-Peyser Act, Adult Education and

Family Literacy Act, CCDBG Act, and the Family Support Act. Fundamental, and even controversial, changes in federal low-income programs and policies could be made by the Executive Branch and States without the support or even consultation of Congress. Such sweeping changes could include changes in how federal funds are administered, the types and amounts of benefits provided, the target population served, and even eligibility criteria for beneficiaries.

Representative Kildee offered an amendment to strike this provision and protect federal low income programs from being drastically reshaped without the consent of Congress. Republicans rejected this amendment.

ENDNOTES

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[iv] DeNavas-Walt, C., Proctor, B.D., & Lee, C.H. (2005). Current Population Reports, P60–229. Income, Poverty, and Health Insurance Coverage in the United States: 2004. U.S. Census Bureau. U.S. Government Printing Office, Washington, D.C.

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[vii] Bauman, K.J. & Graf, N.L. (2003). Educational Attainment: 2000. U.S. Census Bureau.

[viii] Educational Testing Service, (1999). Getting Down to Business, Princeton, New Jersey.

[ix] Hamilton, G. (2002). Moving People from Welfare to Work: Lessons from the National Evaluation of Welfare-to-Work Strategies. New York: MDRC.

[x] Schumacher, R. & Greenberg, M. (1999). Child Care After Leaving Welfare: Early Evidence from State Studies. Center for Law and Social Policy.

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[xii] Schulman, K. & Blank, H. (2005). Child Care Assistance Policies 2005: States Fail to Make Up Lost Ground, Families Continue to Lack Critical Supports. Washington, DC: National Women's Law Center.

[xiii] Analytic Perspectives, Budget of the United States Government, Fiscal Year 2006. (2005). Office of Management and Budget. U.S. Government Printing Office.

[xiv] Schulman, K. & Blank, H. (2005). Child Care Assistance Policies 2005: States Fail to Make Up Lost Ground, Families Continue to Lack Critical Supports. Washington, DC: National Women's Law Center.

[xv] Kirchhoff, S. & Hagenbaugh, B. (October 1, 2003). Economy Races Ahead, Leaving Jobs in the Dust. USA Today.

[xvi] D'Andrea Tyson, L. (February 23, 2004). Outsourcing: Who's Safe Anymore? Business Week.

[xvii] Mattera, P. et al. (July 2004). Your Tax Dollars at Work . . . Offshore: How Foreign Outsourcing Firms Are Capturing State Government Contracts. Good Jobs First.

GEORGE MILLER.
DANNY K. DAVIS.
BETTY MCCOLLUM.
RON KIND.
CHRIS VAN HOLLEN.
DENNIS J. KUCINICH.
DONALD M. PAYNE.
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RAÚL M. GRIJALVA.

RUSH HOLT.
CAROLYN MCCARTHY.
BOBBY SCOTT.
TIM RYAN.
MAJOR R. OWENS.
TIM BISHOP.
ROBERT ANDREWS.

HIGHER EDUCATION BUDGET RECONCILIATION ACT OF 2005

Committee Report

PURPOSE

As part of the FY 2006 budget process, the Education & the Workforce Committee was tasked with finding $18.1 billion in net savings from the direct spending programs within the Committee's jurisdiction. Chairman Boehner has consistently said the Committee would help put forward a responsible budget that cuts wasteful spending and promotes fiscal responsibility while achieving the Committee's underlying policy goals of expanding college access for low- and middle-income students. The Committee's reform package submitted pursuant to the budget reconciliation instruction achieves these goals by reducing waste and inefficiency and strengthening student benefits. A key component of the Committee's reconciliation effort was to provide relief for the victims of Hurricanes Katrina and Rita. To aid the students, borrowers and institutions of higher education whose ways of life were dramatically altered by the hurricanes, the Committee Print provides relief through waivers and forgiveness of expended funds. These provisions will assist students and borrowers attending school in, or living in, the affected areas while ensuring these expenditures are paid for to protect taxpayers and avoid adding to the Federal deficit. The reconciliation process presented the Committee with an opportunity to re-examine the mandatory spending provisions in the Higher Education Act. The reforms made in the Higher Education Budget Reconciliation Act of 2005 address excess spending in the student loan programs and ensure that the successful partnership the Federal government has had with the private sector, institutions of higher education and students continues into the future.

COMMITTEE ACTION

Of the 35 total hearings the Committee on Education and the Workforce and the Subcommittees on 21st Century Competitiveness and Select Education held since 2001 in preparation for the reauthorization of the Higher Education Act, 15 hearings were held on issues included in the Committee Print.

107TH CONGRESS

Hearings—First Session

On Wednesday, June 20, 2001, the Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness,

held a hearing in Washington, D.C., on "H.R. 1992, the Internet Equity and Education Act of 2001." The purpose of the hearing was to hear testimony on the provisions in H.R. 1992 introduced by Representative Johnny Isakson (R–GA) on May 24, 2001. Testifying before the Subcommittee were Dr. Stanley Ikenberry, President, American Council on Education, Washington, D.C.; Dr. Richard Gowan, President, South Dakota School of Mines and Technology, Rapid City, South Dakota; Dr. Joseph DiGregorio, Vice Provost for Distance Learning, Continuing Education and Outreach, Georgia Institute of Technology, Atlanta, Georgia; Ms. Lorraine Lewis, Inspector General, U.S. Department of Education, Washington, D.C.; and Mr. Omer Waddles, Executive Vice President, ITT Educational Services, Inc., Indianapolis, Indiana.

Hearings—Second Session

On Tuesday, July 16, 2002, the Committee on Education and the Workforce held a hearing in Washington, D.C., on "Access to Higher Education for Low-Income Students: A Review of the Advisory Committee on Student Financial Assistance Report." The purpose of the hearing was to consider the issue of access to postsecondary education, specifically for low-income students, by examining two reports released by the Advisory Committee on Student Financial Assistance, entitled Empty Promises—The Myth of College Access in America (July 2002) and Access Denied (February 2001). Testifying before the Committee were Dr. Juliet Garcia, Chairperson, Advisory Committee on Student Financial Assistance, Washington, D.C.; Mr. Lawrence E. Gladieux, Education and Public Policy Consultant, Potomac Falls, Virginia; Dr. Shirley A.R. Lewis, President, Paine College, Augusta, Georgia; and Ms. Elizabeth Sengkhammee, student, University of Wisconsin-Milwaukee, Milwaukee, Wisconsin.

Legislative Action—First Session

On May 24, 2001, Representatives Johnny Isakson (R–GA), John Boehner (R–OH), Howard P. "Buck" McKeon (R–CA), Mike Castle (R–DE), and Bob Goodlatte (R–VA) introduced H.R. 1992, the Internet Equity and Education Act of 2001, to amend the Higher Education Act and repeal the 50 percent rule for telecommunications and make additional reforms regarding distance education.

On June 28, 2001, the Subcommittee on 21st Century Competitiveness considered H.R. 1992 in legislative session and reported it favorably, as amended, to the Committee on Education and the Workforce by voice vote. The Subcommittee considered and adopted by voice vote the following amendments to H.R. 1992:

• Representative Isakson (R–GA) offered a substitute amendment that made technical and clarifying changes to the legislation. Specifically, the amendment clarified provisions dealing with incentive compensation and third-party service providers.

• Representative Wu (D–OR) offered an amendment to require a study and a report on the effect of the provisions enacted by H.R. 1992.

• On August 1, 2001, the Committee on Education and the Workforce considered H.R. 1992 in legislative session and reported it favorably, as amended, to the House of Representatives by a vote

of 31–10. The Committee considered and adopted by voice vote the following amendments to H.R. 1992:

• Representative Isakson (R–GA) offered a substitute amendment that made technical and clarifying changes to the legislation. Specifically, the amendment made modifications to the 50 percent rule for telecommunications. Additionally, the amendment modified the 12-hour rule to require non-traditional programs that provide less than 12 scheduled hours of instruction to notify the Secretary of Education.

• Representative Miller (D–CA) offered an amendment to authorize the Learning Anytime Anywhere Partnership Grants at $30 million, an increase from the current law authorization of $10 million.

Legislative Action—Second Session

On July 11, 2002, Representatives Lindsey Graham (R–SC), John Boehner (R–OH), Howard P. "Buck" McKeon (R–CA), Todd Platts (R–PA), James Greenwood (R–PA), Johnny Isakson (R–GA), Charlie Norwood (R–GA), John Cooksey (R–LA), Sam Graves (R–MO), Van Hilleary (R–TN), Todd Tiahrt (R–KS), Richard Burr (R–NC), and Ileana Ros-Lehtinen (R–FL) introduced H.R. 5091, the Canceling Loans to Allow School Systems to Attract Classroom Teachers Act (CLASS ACT), which amended the Higher Education Act to provide discretionary loan forgiveness of up to $17,500 for math, science and special education teachers.

On Thursday, September 5, 2002, the Committee on Education and the Workforce considered H.R. 5091 in legislative session and reported it favorably, as amended, to the House of Representatives by voice vote. The Committee considered and adopted by voice vote the following amendments to H.R. 5091:

• Representative Graham (R–SC) offered a substitute amendment to make technical and clarifying changes to the legislation.

• Representative Kind (D–WI) offered an amendment to have the Secretary of Education notify local educational agencies eligible to participate in the Small Rural Achievement Program of the benefits provided by the teacher loan forgiveness program within H.R. 5091, and to encourage those agencies to notify their teachers of the program.

• Representative Holt (D–NJ) offered an amendment to set a priority for teacher loan forgiveness for those teachers teaching math or science, or special education teachers.

• Representative Miller (D–CA) offered an amendment to set a priority for teacher loan forgiveness for those teachers employed in local educational agencies that are determined by the State educational agency to have failed to make progress toward annual increases in the employment of highly qualified teachers as required by the Elementary and Secondary Education Act of 1965, for two consecutive years.

• Representative McCarthy (D–NY) offered an amendment to provide loan forgiveness for spouses of victims who died or became permanently and totally disabled as a result of the terrorist attacks on September 11, 2001. The amendment also provided for forgiveness of the consolidation loan debt of surviving spouses who consolidated their loans together with the victim, as well as parent

loans if the child on whose behalf the loan was taken died or become totally and permanently disabled as a result of the September 11th attacks.

108TH CONGRESS

Hearings—First Session

On Tuesday, May 13, 2003, the Committee on Education and the Workforce held a hearing in Washington, D.C., on "The State of American Higher Education: What Are Parents, Students and Taxpayers Getting for Their Money?" The purpose of the hearing was to learn what institutions of higher education can and should be doing to assure the American public that the investment in higher education by a student, parent or taxpayer is one that will produce results and assist with lifelong career pursuits. Testifying before the Committee were Mr. Charles Miller, Chairman, University of Texas System, Board of Regents, Houston, Texas; Dr. Frank Newman, Director, The Futures Project, Brown University, Providence, Rhode Island; and Dr. Mary Ellen Duncan, President, Howard Community College, Columbia, Maryland.

On Thursday, July 10, 2003, the Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, held a hearing in Washington, D.C., on "Affordability in Higher Education: We Know There's a Problem; What's the Solution?" The purpose of the hearing was to examine the effects of ever-rising college tuition and debate some of the possible solutions to this problem. Testifying before the Subcommittee were Dr. Sandy Baum, Professor, Skidmore College, Saratoga Springs, New York; Mr. Scott Ross, Executive Director, Florida Student Association, Tallahassee, Florida; Dr. Carol Twigg, Executive Director, Center for Academic Transformation, Troy, New York; Dr. Rolf Wegenke, President, Wisconsin Association of Independent Colleges and Universities, Madison, Wisconsin; and Dr. Patrick Kirby, Vice President and Dean of Enrollment Services, Westminster College, Fulton, Missouri.

On Tuesday, July 15, 2003, the Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, held a hearing in Washington, D.C., on "Expanding Access to College in America: How the Higher Education Act Can Put College Within Reach." The purpose of this hearing was to examine the college access programs that currently exist at a national, state and local level; to hear recommendations for improvements in these programs; and to learn what provisions in the law may currently prohibit some postsecondary institutions from accessing resources that would enable them to work more closely with various student populations. Testifying before the Subcommittee were Dr. Richard Fonte, President, Austin Community College, Austin, Texas; Ms. Teri Flack, Deputy Commissioner, Texas Higher Education Coordinating Board, Austin, Texas; Mr. Mark Dreyfus, President, ECPI College of Technology, Virginia Beach, Virginia; Ms. Christina Milano, Executive Director, National College Access Network, Cleveland, Ohio; and Dr. Arnold Mitchem, President, Council for Opportunity in Education, Washington, D.C.

On Tuesday, July 22, 2003, the Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, held a hearing in Washington, D.C., on "Consolidation Loans: What's Best for Past Borrowers, Future Students & U.S. Taxpayers?" The purpose of the hearing was to learn how the consolidation loan program fits into the mission of the Higher Education Act by increasing access and affordability to students pursuing postsecondary education, and to learn more about whether the program is fair for all borrowers. The first panel testifying before the Subcommittee included The Honorable Ralph Regula (R–OH), U.S. House of Representatives, Chairman, Subcommittee on Labor, Health and Human Services, and Education, Committee on Appropriations, Washington, D.C., and The Honorable Rosa DeLauro (D–CT), U.S. House of Representatives, Member, Subcommittee on Labor, Health and Human Services, and Education, Committee on Appropriations, Washington, D.C. The second panel testifying before the Subcommittee included Ms. Rebecca Wasserman, Vice President, United States Student Association, Washington, D.C.; Ms. June McCormack, Executive Vice President, Sallie Mae, Fishers, Indiana; Mr. Paul Wozniak, Managing Director and Manager, Education Loan Group, UBS Financial Services, Inc., New York, New York; Dr. Dallas Martin, President, National Association of Student Financial Aid Administrators, Washington, D.C.; and Mr. Barry Morrow, Chief Executive Officer, Collegiate Funding Services, Fredericksburg, Virginia.

On Thursday, September 11, 2003, the Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, held a hearing in Washington, D.C., on "H.R. 3039, the Expanding Opportunities in Higher Education Act of 2003." The purpose of the hearing was to hear testimony regarding the provisions in H.R. 3039, introduced by Representative Tom Cole (R-OK) on September 9, 2003. Testifying before the Subcommittee were Dr. Donald E. Heller, Associate Professor, Center for the Study of Higher Education Policy, The Pennsylvania State University, University Park, Pennsylvania; Dr. Antonio Flores, President and Chief Executive Officer, Hispanic Association of Colleges and Universities, San Antonio, Texas; Mr. George Chin, University Director for Financial Aid, City University of New York, New York, New York; and Mr. David G. Moore, Chairman and Chief Executive Officer, Corinthian Colleges, Inc., Santa Ana, California.

Hearings—Second Session

On Wednesday, March 17, 2004, the Committee on Education and the Workforce held a hearing in Washington, D.C., on "Fiscal Responsibility and Federal Consolidation Loans: Examining Cost Implications for Taxpayers, Students, and Borrowers." The purpose of the hearing was to examine the consolidation loan program and how student lending issues fit within the broader goal of expanding access to low- and middle-income students pursing a postsecondary education. Testifying before the Committee were Ms. Cornelia M. Ashby, U.S. Government Accountability Office, Director, Education, Workforce and Income Security, Washington, D.C.; Mr. Titus M. Hamlett, Student, University of Maryland, Baltimore, Maryland; Dr. Tom S. Neubig, National Director, Quantitative Economics and

Statistics, Ernst and Young LLP, Washington, D.C.; and Dr. Robert Shapiro, Chairman, Sonecon, LLP, and Senior Fellow, Brookings Institution and Progressive Policy Institute, Washington, D.C.

On Wednesday, May 12, 2004, the Committee on Education and the Workforce held a hearing in Washington, D.C., on "H.R. 4283, the College Access and Opportunity Act of 2004." The purpose of this hearing was to examine the provisions in H.R. 4283 and to provide an opportunity for Members of Congress to hear about provisions in the bill. Testifying before the Committee were Mr. Jim Boyle, President, College Parents of America, Washington, D.C.; Dr. Dallas Martin, President, National Association of Federal Student Aid Administrators, Washington, D.C.; Ms. Rebecca Wasserman, President, United States Student Association, Washington, D.C.; Dr. Charles Reed, Chancellor, California State University System, Long Beach, California; and Mr. Michael Grayer, Recent Graduate, Virginia College, Jackson, Mississippi.

On Wednesday, June 16, 2004, the Committee on Education and the Workforce held a hearing in Washington, D.C., on "H.R. 4283, the College Access & Opportunity Act: Are Students at Proprietary Institutions Treated Equitably Under Current Law?" The purpose of this hearing was to examine issues facing students attending eligible proprietary institutions of higher education. Testifying before the Committee were Dr. Dwight Smith, President and Chief Executive Officer, Sophisticated Systems, Inc., Columbus, Ohio; Mr. Andrew Rosen, President and Chief Operations Officer, Kaplan Inc., President, Kaplan College, Boca Raton, Florida; Dr. Alice Letteney, Director, University of New Mexico—Valencia, Los Lunas, New Mexico; Mr. Barmak Nassirian, Associate Director, American Association of Collegiate Registrars and Admissions Officers, Washington, D.C.; and Mr. David Moore, Chairman and Chief Executive Officer, Corinthian Colleges Inc., Santa Ana, California.

Legislative Action—First Session

On January 29, 2003, Representatives Joe Wilson (R–SC), John Boehner (R–OH), Howard P. "Buck" McKeon (R–CA), Johnny Isakson (R–GA), Todd Platts (R–PA), James Greenwood (R–PA), Patrick Tiberi (R–OH), Tom Cole (R–OK), Mark Souder (R–IN), Richard Baker (R–LA), Sam Graves (R–MO) and Heather Wilson (R–NM) introduced H.R. 438, the Teacher Recruitment and Retention Act of 2003, which amended the Higher Education Act to provide up to $17,500 in loan forgiveness for math, science and special education teachers.

On June 4, 2003, the Subcommittee on 21st Century Competitiveness considered H.R. 438 in legislative session and reported it favorably, as amended, to the Committee on Education and the Workforce by voice vote. The Subcommittee considered and adopted by voice vote the following amendment to H.R. 438:

• Representative McKeon (R–CA) offered a substitute amendment to make technical and clarifying changes to the legislation. Specifically, the amendment requires all teachers seeking increased loan forgiveness to be highly qualified under the No Child Left Behind Act.

Hearings—First Session

On Tuesday, March 1, 2005, the Committee on Education and the Workforce held a hearing in Washington, D.C., entitled, "Enforcement of Federal Anti-Fraud Laws in For-Profit Education." The purpose of this hearing was to examine the effectiveness and enforcement of Federal laws that exist to prevent fraud and abuse in for-profit education. Testifying before the Committee were The Honorable Maxine Waters (D–CA), Member of Congress, U.S. House of Representatives; Mr. Thomas A. Carter, Deputy Inspector General, Department of Education, Washington, D.C.; Mr. David Rhodes, President, The School of Visual Arts, New York, New York; Mr. Nicholas Glakas, President, Career College Association, Washington, D.C.; and Ms. Paula Dorsey, former Director of Admissions, Bryman College, Reseda, California.

On Friday, April 22, 2005, the Committee on Education and the Workforce held a hearing entitled, "College Access: Is Government Part of the Solution, or Part of the Problem?" This hearing served as a forum to discuss the effects of ever-rising college tuition costs and debate some of the possible solutions to this problem. Testifying before the Committee were Dr. Richard Vedder, Distinguished Professor of Economics, Ohio University, Athens, Ohio; and Dr. Donald Heller, Associate Professor and Senior Research Associate, Center for the Study of Higher Education, The Pennsylvania State University, University Park, Pennsylvania.

Legislative Action—First Session

On February 8, 2005, Representatives John Boehner (R–OH) and Howard P. "Buck" McKeon (R–CA) introduced H.R. 609, the College Access and Opportunity Act, to reauthorize the Higher Education Act (HEA) through fiscal year 2011.

The Subcommittee on 21st Century Competitiveness considered H.R. 609 in legislative session on Wednesday, July 13 and Thursday, July 14, 2005 and reported it favorably, as amended to the Committee on Education and the Workforce by a vote of 18–15. The Subcommittee considered and adopted the following amendments to H.R. 609:

• Representative McKeon (R–CA) offered a substitute amendment to make technical and clarifying changes to the legislation. Specifically, under title I of the bill, the amendment modified the provision on Student Speech and Association Rights; clarified the college cost reporting requirements; and added a prohibition for propaganda not authorized by Congress. The substitute amended title II of the bill to include gifted and talented as one of the learning styles on which teacher preparation programs should focus and amended reporting requirements to include additional information on the academic fields being studied by students participating in teacher preparation programs. Title III was amended by adding a new eligible institution to the Historically Black Graduate Institution (HBGI) program. Amendments to title IV included a reconfiguration of the reduction of origination fees that incorporated the mandatory guaranty fee while still reducing fees paid by students to 1 percent by 2010; clarified the prohibition of the ability for stu-

dents to consolidate their loans while in-school in both the Federal Family Education Loan (FFEL) program and the Direct Loan (DL) program; eliminated the ability of FFEL lenders to take advantage of the "super two step" loophole in the consolidation loan program; prospectively eliminated the ability of lenders to earn a minimum of 9.5 percent special allowance through the practice of "recycling"; clarified how much money a guarantor can retain from defaulted borrowers through consolidation versus rehabilitation of a borrower's defaulted loan; amended the date for Perkins loan Federal Capital Contributions recovery; established eligibility for competency based programs for title IV purposes; removed the reporting requirements on transfer of credit; and added due process language for program reviews and accreditation hearings. In addition, the substitute amendment made minor changes to the Education of the Deaf Act, by linking the accountability provisions of the No Child Left Behind Act with the elementary and secondary schools operated by Gallaudet University. The amendment was adopted by voice vote.

• Representative Fortuno (R–PR) offered an amendment to maintain the single definition of an institution of higher education, but exempt titles III and V of the Higher Education Act from those funds for which for-profit institutions would be eligible to compete. The amendment was adopted by a vote of 22–10.

• Representative Foxx (R–NC) offered an amendment to prohibit the Department of Education from implementing the proposed student unit record database. The amendment was adopted by voice vote.

• Representative Wu (D–OR) offered an amendment to allow for the development of dual degree programs that allow students to earn two undergraduate degrees, one in education and the other in the subject of the student's choosing. The amendment was adopted by voice vote.

• Representative Price (R–GA) offered an amendment to authorize the Teacher Incentive Fund, which will provide funds to states that want to develop merit pay initiatives. The amendment was adopted by a vote of 17–15.

• Representative Keller (R–FL) offered an amendment to waive Pell Grant repayment obligations for students who withdraw from their institution of higher education due to Federally-declared natural disasters. The amendment was adopted by voice vote.

• Representative Keller (R–FL) offered an amendment to prohibit individuals who are subject to an involuntary civil commitment upon completion of a period of incarceration for a sexual offense from being eligible for a Pell Grant. The amendment was adopted by voice vote.

• Representative Keller (R–FL) offered an amendment to raise the maximum authorized Pell Grant to $6,000. The amendment was adopted by voice vote.

• Representative Johnson (R–TX) offered an amendment to limit a student's Pell Grant to 16 semesters (8 years) or 24 quarters (6 years). The amendment was amended by unanimous consent to limit a student's Pell Grant to 18 semesters (9 years) or 27 quarters (7 years). The amendment was adopted by voice vote.

• Representative Castle (R–DE) offered an amendment to strike the repeal of the 90/10 rule and move the rule to the Program Participation Agreement and further define what is included in the 10 percent part of the ratio. The amendment was adopted by voice vote.

• Representatives Porter (R–NV) and McCarthy (D–NY) offered an amendment to modify the existing Child Care Loan Forgiveness discretionary program to include loan forgiveness for nurses and other occupations deemed by the Secretary to be areas of national need. The amendment was adopted by voice vote.

• Representative McCollum (D–MN) offered an amendment to direct the Secretary of Education to commission a study on fraud and abuse in the title IV student financial aid programs. The amendment was adopted by a vote of 33–0.

The Committee on Education and the Workforce considered H.R. 609 in legislative session on Wednesday, July 20, Thursday, July 21 and Friday, July 22, 2005 and reported it favorably, as amended, to the House of Representatives, by a vote of 27–20, 1 present. The Committee considered and adopted the following amendments to H.R. 609:

• Representative Boehner (R–OH) offered a substitute amendment to make technical and clarifying changes to the legislation. Specifically, under title I of the bill, the substitute clarified that degrees offered by Rabbinical schools are recognized as equivalent to the baccalaureate degree and Rabbinical schools are able to participate in the title IV student financial aid programs; and improved the fraud and abuse protections for students that receive title IV aid enrolled in foreign schools. In title II, the substitute added language that allowed states to further evaluate the content knowledge of potential teachers in the subject matter they will be teaching; allowed funds to be used to increase the supply of highly qualified math, science and special education teachers and the faculty needed to train them; clarified that funds can be used to help recruit high achieving students, including those who are bilingual, into the field of early childhood education; and allowed institutions of higher education to develop articulation agreements to make it easier for existing early childhood educators to obtain a bachelor's degree. In title III, the substitute included a provision for the Tribally Controlled Colleges and Universities and the Alaska-Native and Native-Hawaiian Serving Institutions to use grant funds to support instruction in tribal governance and tribal public policy. In title IV, the substitute clarified that individuals who are convicted of fraud and abuse within the title IV student aid programs are no longer eligible for such aid until they pay back to the Federal government the aid received through fraudulent means. Additionally, the substitute specifically addresses the needs of homeless youth in the TRIO program and GEAR UP and clarifies that TRIO programs should include services to address the transition of veterans into math and science fields. The substitute adds language to ensure that a loan cannot be transferred into a qualifying tax exempt bond to obtain 9.5 percent special allowance. The substitute also includes a provision to provide the opportunity for active duty members of the Armed Services who are out of school to obtain a student loan deferment of up to three years. The substitute consoli-

dates and clarifies consumer empowerment information by establishing a central location for the collection of such information, designated as the College Opportunities On-Line (COOL) website operated by the Department of Education. The substitute also includes foreign language teachers and U.S. government employees who are in positions that regularly require the use of a foreign language in the discretionary national need loan forgiveness program. The substitute amendment reflected the amendments made to H.R. 509 and H.R. 510, the reauthorization bills for title VI and VII of the Higher Education Act, respectively. Under title VI of the bill, the substitute clarifies that when the members of the International Advisory Board assess activities of centers or programs supported by title VI funds, the materials that are used to make assessments must be those submitted by grantees to the Department of Education as part of the grant requirements. Under title VII of the bill, the substitute adds language to prohibit funds from the Fund for the Improvement of Postsecondary Education (FIPSE) from being spent on students who are not eligible for title IV aid; and allows FIPSE funds to be used to support students who are fulfilling internships in disadvantaged communities. The substitute renames the "Education of the Deaf Act of 1986" as the "Gallaudet University and National Technical Institute for the Deaf Act." The amendment was adopted by voice vote.

• Representative Castle (R–DE) offered an amendment to clarify for-profit institutions cannot automatically compete for other Federal programs outside of the Higher Education Act. The amendment was adopted by voice vote.

• Representative McCarthy (D–NY) offered an amendment to require that reports of graduation rates under the college cost section of the bill must indicate whether completion or graduation rates are from two- or four-year institutions, and if the rates are from a two-year program of instruction, they be accompanied by the percentage of students who transferred to a four-year institution. The amendment was adopted by unanimous consent.

• Representative McCarthy (D–NY) offered an amendment to clarify that the College Affordability Index must be presented next to an institution's tuition and fees on the College Opportunities On-Line (COOL) website. The amendment was adopted by unanimous consent.

• Representatives Hinojosa (D–TX), Grijalva (D–AZ), Fortuno (R–PR), and Tiberi (R–OH) offered an amendment to create a new program for graduate programs at Hispanic Serving Institutions (HSIs). The amendment was adopted by a vote of 46–2.

• Representative Wu (D–OR) offered an amendment to establish or expand dual enrollment programs at institutions of higher education with funds from the Fund for the Improvement of Postsecondary Education (FIPSE). The amendment was adopted by unanimous consent.

• Representatives Tiberi (R–OH) and Barrow (D–GA) offered an amendment to clarify that programs that reduce postsecondary remediation rates and improve degree attainment rates for low-income students and former high school dropouts are eligible for funds under FIPSE. The amendment was adopted by voice vote.

• Representative Price (R–GA) offered an amendment to direct the Secretary of Education to study the indebtedness of medical school graduates. The amendment was adopted by voice vote.

• Representative Davis (D–IL) offered an amendment to direct the Secretary of Education to study the graduation rates of minority male students. The amendment was adopted by voice vote.

• Representatives Petri (R–WI) and Boehner (R–OH) offered an amendment to provide borrowers a choice between a fixed interest rate and a variable interest rate on consolidation loans. The amendment was adopted by a vote of 26–20.

• Representative Petri (R–WI) offered an amendment to reduce insurance and reinsurance rates for lenders and guarantors, respectively. The amendment was adopted by voice vote.

• Representatives Kildee (D–MI) and Van Hollen (D–MD) offered an amendment to reform the school as lender initiative in the FFEL program. The amendment was adopted by unanimous consent.

• Representative Grijalva (D–AZ) offered an en bloc amendment to expand the discretionary national need loan forgiveness program to include librarians, teachers of bilingual education, first-responders, and child welfare workers. The amendment was adopted by voice vote.

• Representative Musgrave (R–CO) offered an amendment to exempt small business assets from being included in the disclosure of assets for the purposes of need analysis. The amendment was adopted by a vote of 28–18.

• Representatives Osborne (R–NE) and Holt (D–NJ) offered an amendment to make community colleges eligible to participate in the year-round Pell Grant program. The amendment was adopted by voice vote.

• Representative Boustany (R–LA) offered an amendment to consider children who are adopted after age 13 to be included in the "special circumstances" discretion allowed for school financial aid officers in need analysis determinations. The amendment was adopted by voice vote.

• Representative Musgrave (R–CO) offered an amendment to ensure that a student's Federal student aid is not impacted by his or her participation in a State choice program. The amendment was amended by unanimous consent by Representative Musgrave by changing "entity" to "State" and adopted by voice vote.

• Representative Foxx (R–NC) offered an amendment to increase accountability in the TRIO programs. The amendment was adopted by a vote of 27–19.

• Representative Castle (R–DE) offered an amendment to further define the 90/10 ratio and increase the penalties for non-compliance. The amendment was adopted by voice vote.

• Representative Platts (R–PA) offered an amendment to require colleges and universities that are in the top 25 percent of those in their sector to exceed the College Affordability Index to establish college cost task forces. The amendment was adopted by voice vote.

• Representative Ehlers (R–MI) offered an amendment to require accrediting agencies to monitor the growth of distance education programs. The amendment was adopted by unanimous consent.

• Representatives McKeon (R–CA), Ehlers (R–MI) and Kind (D–WI) offered an amendment to provide scholarships to the top high school seniors to pursue undergraduate and graduate degrees in math and science, allow interest repayment on loans for math and science studies, and create education councils on math and science. The amendment was adopted by voice vote.

• Representatives McKeon (R–CA), Ryan (D–OH), and Tierney (D–MA) offered an amendment to authorize the non-mandatory cost provisions of the Advisory Committee on Student Financial Aid report on FAFSA simplification. The amendment was adopted by voice vote.

• Representative Van Hollen (D–MD) offered an amendment to continue the Experimental Sites initiative and experiments. The amendment was amended by unanimous consent by clarifying institutional experiments in the Experimental Sites initiative would continue unless the Secretary determines the institution's participation has not been successful. The amendment was adopted by voice vote.

• Representative McKeon (R–CA) offered an amendment to ensure accreditors take into account an institution's religious mission during the institutional review. The amendment was adopted by voice vote.

• Representative Andrews (D–NJ) offered an amendment to require institutions of higher education to disclose fire safety policies and procedures to enrolled and prospective students. The amendment was adopted by a vote of 35–13.

• Representative Andrews (D–NJ) offered an amendment to modify the return of title IV provisions for clock hour institutions. The amendment was adopted by voice vote.

• Representative Wu (D–OR) offered an amendment to establish a Sense of the Committee regarding textbook costs. The amendment was adopted by voice vote.

• Representative Kind (D–WI) offered an amendment to direct the Secretary of Education to do a study on adult learners attending institutions of higher education. The amendment was adopted by voice vote.

The Committee on Education and the Workforce filed the Committee Report on H.R. 609 with the House of Representatives on September 22, 2005.

The Committee on Education and the Workforce considered the Committee Print in legislative session on Wednesday, October 26, 2005 and approved it as amended for transmittal to the Committee on the Budget. The Committee considered and adopted the following amendment to the Committee Print:

• Representative Boehner (R–OH) offered a substitute amendment to make technical and clarifying changes to the legislation. Specifically, the amendment added a definitions section to the higher education relief provisions included in the Committee Print.

• Representative Ehlers (R–MI) offered an amendment to direct the Secretary of Education to require the National Academy of Sciences to conduct a study on the quality of distance education programs as compared to campus-based education programs. The amendment was adopted by voice vote.

The Committee on Education and the Workforce filed the Committee Report on the Committee Print with the Committee on the Budget on October 28, 2005.

Below is a summary of the Committee Print.

SUMMARY

SUBTITLE B—HIGHER EDUCATION

Short title; table of contents

Section 2101 gives the short title of the Committee Print as the Higher Education Budget Reconciliation Act of 2005 and sets forth the table of contents.

References; effective date

Section 2102 specifies that the provisions of the Committee Print amend the Higher Education Act of 1965, and makes these amendments (except as otherwise provided in the legislation) effective upon enactment of the legislation.

50 percent rule

The Committee Print repeals the 50 percent rule for telecommunications courses.

Federal Family Education Loan (FFEL) & Direct Loan (DL) programs

The Federal Family Education Loan (FFEL) program is reauthorized through fiscal year 2011 and the insurance provisions are reauthorized through fiscal year 2012. The Direct Loan (DL) program is also reauthorized through fiscal year 2011. The Committee Print moves the administrative portion of the section 458 account from a mandatory spending program to a discretionary program. The portion of section 458 that provides administrative fees to the guaranty agencies will remain mandatory; however, the funding caps set in the law will be removed so that guaranty agencies will receive account maintenance fees that equal 0.10 percent of their loan volume.

The Committee Print increases the annual maximum loan limits in both the FFEL and DL programs for first and second year college students from $2,625 to $3,500 and from $3,500 to $4,500, respectively, beginning with loans issued on or after July 1, 2007. The Committee Print also clarifies that underlying loans that have been wrapped into a consolidation loan will still count against the borrower's aggregate loan limits. Finally, the Committee Print increases the annual unsubsidized graduate loan limits in both the FFEL and DL programs from $10,000 to $12,000.

The Committee Print retains the variable rate formula for both the FFEL and DL programs and repeals the change in Stafford loan and PLUS loan interest rates scheduled for July 1, 2006.

Beginning on July 1, 2006, the Committee Print changes the interest rates on consolidation loans in both the FFEL and DL programs to offer the borrower a choice between a fixed interest rate or a variable interest rate. The fixed interest rate is equal to the 91-day Treasury bill + 3.3 percent, capped at 8.25 percent. The variable interest rate is equal to the 91-day Treasury bill + 2.3 per-

cent, capped at 8.25 percent. The fixed interest rate for PLUS loans is equal to the 91-day Treasury bill + 4.1 percent, capped at 9.0 percent. The variable interest rate for PLUS loans is equal to the 91-day Treasury bill + 3.1 percent, capped at 9.0 percent. Under the Committee Print, borrowers will be assessed a one time consolidation offset fee on either option of one percent.

The Committee Print retains a provision from current law that limits the number of times a borrower can consolidate his loans; however, the Committee Print does allow a borrower to move into the DL program for purposes of avoiding default by utilizing income contingent repayment. The Committee Print also eliminates in-school consolidation in the FFEL and DL programs and closes a loophole in the consolidation loan program that permits borrowers to re- consolidate by switching between the FFEL and DL programs. The Committee Print eliminates the single holder rule but requires that a borrower notify the holder of his loans of his intent to consolidate if all of the loans are held by one lender. In addition, the Committee Print requires the lender to provide the borrower with more information, such as the benefits the borrower could lose by consolidating, when the borrower requests to consolidate his loans. Taken together, these two reforms give greater flexibility for borrowers to choose their consolidation lender and ensure they receive all the information about the advantages and disadvantages of consolidating their loans.

The Committee Print makes several conforming and technical amendments within the special allowance section. The Committee Print requires lenders to rebate to the Federal government their "floor income." Floor income is a benefit to lenders that takes place when the fluctuating guaranteed rate of return for lenders is lower than the fluctuating borrower interest rate. During this period, current law permits the lender to keep the higher amount being paid by the borrower, rather than just retaining the lender's guaranteed rate of return. The Committee Print requires the lender only receive its guaranteed rate of return and rebate to the Federal government the difference between lender yield and the borrower's interest rate, when the borrower's rate is higher.

The Committee Print requires lenders with over 90 percent of their student loan portfolio in consolidation loans to pay a 1.30 percent annual portfolio fee, rather than the currently authorized 1.05 percent annual portfolio fee.

The Committee Print permanently closes the 9.5 percent subsidy by extending the Taxpayer-Teacher Protection Act (P.L. 108–409) and shutting down the ability of lenders to recycle additional loans to gain the minimum 9.5 percent special allowance.

The Committee Print requires guaranty agencies to charge the one percent Federal default fee on loans disbursed on or after July 1, 2006. This fee is authorized in current law, but the guaranty agencies have the ability to waive the fee. The new required fee will be deposited in the guaranty agencies' Federal Student Loan Reserve fund. The Committee Print also phases down the origination fee charged on FFEL Stafford loans from three percent to zero percent over the course of the reauthorization. The Committee Print phases down the origination fee required on Direct Loans from the statutorily required four percent to one percent by 2010.

The Committee Print also prohibits the Secretary of Education from waiving this fee as a repayment incentive and prohibits any sort of repayment incentive to be given prior to the borrower entering repayment. By 2010, students will only be charged a one percent fee on their student loans in both the FFEL and the DL programs.

The Committee Print increases the origination fee lenders pay on all loans from 0.50 percent to one percent for loans disbursed after July 1, 2006.

To prevent against further fraud and abuse within the student loan program, the Committee Print requires the disbursement of Federal loan funds to students attending foreign schools to be sent to the institution.

The Committee Print aligns the DL extended repayment plan with the FFEL extended repayment plan. The Committee Print also requires a borrower to take into account their spouse's income when determining income for purposes of the income contingent repayment plan. The Committee Print creates a new interest only repayment plan under which the borrower would only pay the interest on the loan for the first two years of repayment. This plan was created in both the FFEL and Direct Loan programs.

The Committee Print adds a new deferment option for student loan borrowers (either in the FFEL, DL or Perkins programs) that are serving in the U.S. Armed Forces.

The Committee Print authorizes additional areas for discretionary loan forgiveness in both the FFEL and DL programs, including early childhood educators, nurses, foreign language specialists, librarians, bilingual educators, first responders in low income areas, child welfare workers, speech language pathologists and other areas of national need as designated by the Secretary.

The Committee Print increases risk sharing for lenders and guarantors in the FFEL program by lowering the lender insurance from 98 percent to 96 percent. The Committee Print maintains guarantor reinsurance at the 95 percent. The Committee Print grants 100 percent insurance for claims with respect to loans for which it is determined that the borrower, without the lender's knowledge, provided false information when the loan was made that caused the loan to be ineligible for interest benefits under the Federal loan programs. The Committee Print also tightens the requirements on the exceptional performance program and lowers the insurance from 100 percent to 98 percent. The Committee Print lowers the amount guarantors are permitted to keep as collection costs from 18.5 percent to 10 percent if the borrower consolidates a defaulted loan rather than pursuing rehabilitation. In addition, the Committee Print imposes a limit of 45 percent on the amount of a guarantor's collections portfolio that can be in consolidation loans. The Committee Print lowers the amount a guarantor or collection agency can keep on the collection of defaulted loans from 23 percent of borrower payments to 20 percent of borrower payments. The Committee Print also lowers the number of payments for a borrower to rehabilitate the loan from 12 to 9 and infuses more requirements of financial literacy into borrower education initiatives.

The Committee Print adds a provision that requires parents to repay loan funds obtained by fraud before any additional funds can

be lent if the parents are convicted of fraud in the student loan programs.

The school as lender program provisions are reformed to clarify that schools can only lend to graduate students and any profits made by the school through the school as lender program must be put toward need based aid.

To ease the burden on student loan borrowers that are already facing formidable challenges due to a disability, the Committee Print provides that if the Veterans Administration or the Social Security Administration determines an individual to be totally and permanently disabled, the Secretary of Education shall accept that determination and the borrower need not provide the Secretary of Education with additional paperwork for the discharge of student loan obligations.

The Committee Print also eliminates the requirement that a forbearance agreement be in writing in the FFEL and DL programs, and instead requires that a notice of forbearance agreement be sent to the borrower and kept in the borrower's file.

Teacher loan forgiveness

The Committee Print makes permanent an increase in the allowable maximum loan forgiveness for math, science, special education teachers and reading specialists in the FFEL and the DL programs from $5,000 to $17,500. This loan forgiveness was originally included for one year in the Taxpayer-Teacher Protection Act of 2004 (P.L. 108–409). This increased loan forgiveness is available for highly qualified math, science and special education teachers and reading specialists teaching in high need, title I schools. The Committee Print also permits private school teachers that are exempt from state "highly qualified" requirements to be eligible for the loan forgiveness.

Need analysis

The Committee Print simplifies and expands the eligibility of families to utilize the Simplified Needs Test for need analysis to include those already receiving benefits under a means-tested Federal benefit program, which is defined in the Committee Print. The Committee Print also authorizes the Secretary to regularly evaluate the impact of these eligibility guidelines and ensure that the Simplified Needs Test continues to be targeted to the maximum number of low- and moderate-income students as possible.

The Committee Print calls for improvements to the paper and electronic Free Application for Federal Student Aid (FAFSA). The Committee Print directs the Secretary to permit applicants to complete their FAFSA in the three years prior to enrollment in order to obtain a non-binding estimate of the family contribution. The Committee Print also authorizes an evaluation by the Secretary to determine differences between initial, non-binding early estimates and the final financial aid award made to the student. Additionally, the Committee Print authorizes the Secretary to develop and use a simplified paper application form to be known as the EZ–FAFSA for applicants who meet the requirements of eligibility for the Simplified Needs Test. The Secretary shall annually report to Congress on the impact of the digital divide on students completing applica-

tions for Federal student aid and also report on the steps taken to phase out the paper form as barriers to the electronic form are eliminated. In addition to the EZ–FAFSA, the Secretary shall develop and use a simplified electronic application with reduced data elements and state data that only applies to the applicant.

For all forms, the Secretary shall ensure that data collection complies with privacy requirements and that all forms developed shall maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of the information.

The Committee Print authorizes a streamlined reapplication process for students and further encourages the Secretary to work to reduce the number of data elements on the FAFSA. The Secretary shall encourage States to take such steps as necessary to encourage the use of simplified application forms and conduct an annual review to determine which forms and data items the States require to award need-based State aid to applicants.

The Committee Print makes clear that the FAFSA, in whatever form it is produced, shall be produced, distributed, and processed by the Secretary and no parent or student shall be charged a fee for the collection, processing or delivery of financial aid through the use of the FAFSA.

The Committee Print clarifies that a student who is an orphan, in foster care, or is a ward of the court, or was in foster care or a ward of the court until the age of 18, is considered an independent student. The Committee Print also treats active duty members of the military as independent students for the purposes of need analysis. The Committee Print clarifies that a student's status as a ward of the court prior to 18 years of age, a student's status as an individual adopted at or after age 13, or a student's status as a homeless or unaccompanied youth can be considered as a "special circumstance" for the purposes of awarding title IV Federal financial aid.

The Committee Print increases the dependent student work protection allowance from $2,200 to $3,000. The Committee Print excludes distributions from eligible 529 plans from counting as income or a resource and equalizes the treatment of both tuition savings plans and pre-paid tuition plans in the need analysis formula. Under the Committee Print, plans will be treated as assets of the parents for dependent students and assets of the student for independent students. The Committee Print provides for an exception to be made to the need analysis formula for families that own small businesses that employ less than 100 full-time equivalent employees. The Committee Print also provides for a clarification to the need analysis formula for students who receive a stipend from their State as a replacement for the direct appropriation of funds to the institution of higher education.

Definition of eligible program

The Committee Print recognizes that an eligible program can include an instructional program that utilizes direct assessment of student learning, in lieu of credit or clock hours.

Distance education

The Committee Print amends the definition of distance education as an eligible program for title IV student aid purposes as a program that is offered in whole or part through telecommunications, if provided by an accredited institution of higher education, other than a foreign school. The accreditor that accredits the institution must have the evaluation of distance education within its scope. The Committee Print eliminates the connection between correspondence and telecommunications for the purposes of the repeal of the 50 percent rule and title IV program participation.

Student eligibility

The Committee Print amends various provisions concerning student eligibility. Students who are convicted of title IV program fraud are required to repay the funds they fraudulently obtained to the Secretary or the holder of the loan. Second, individuals who are subject to involuntary civil commitments upon completion of a period of incarceration for sexual offenses are not eligible for student loans. Third, the Committee Print clarifies eligibility for students from the Freely Associated States for Pell Grants.

The Committee Print authorizes the Secretary of Education to work with the Secretary of the Treasury to provide for an IRS data match.

The Committee Print clarifies that the suspension of eligibility for drug offense convictions occurs only for those students enrolled in an institution of higher education and receiving title IV aid when convicted of their offense. The Committee Print also requires the institution of higher education to inform students of the possibility of suspension of eligibility for title IV aid for drug related offenses.

Institutional refunds

The Committee Print allows an institution of higher education to contact a student who may be eligible for a late disbursement of loan funds and get the borrower's agreement before disbursing the funds. The Committee Print also provides an institution with 45 days from the date of determination that a student has withdrawn to return loan funds.

College access initiative

The Committee Print creates a new section, the College Access Initiative, that is intended to provide outreach and better information regarding student financial aid and access programs to students and their families. The College Access Initiative requires guaranty agencies to gather information on programs and student aid available in the State in which they are designated. That information must be made available to the public and reported to the Secretary to establish a directory of programs and provide for access to the information through the Internet and any other means determined by the Secretary. Each guaranty agency shall establish a plan to gather and disseminate the information required and the plan shall include how the agency will undertake the task, how it will publicize the information gathered, and how it will coordinate with other entities in the State. Information collected by the guar-

antors will include resources on college planning, career preparation and paying for college. Guarantors may utilize funds from their operating fund and if any funds remain, they may use funds from their former restricted accounts.

Cancellation of student loan debt for survivors of victims of the September 11, 2001 attacks

The Committee Print provides for cancellation of student loan debt for survivors of victims of the September 11, 2001 terrorist attacks.

Independent study on distance education

The Committee Print requires the Secretary of Education to direct the National Academy of Sciences to conduct an evaluation of the quality of distance education programs as compared to campus-based education programs.

Regulatory relief

The Committee Print provides the Secretary of Education with a waiver to ensure that financial aid administrators re-examine the calculation of the expected family contribution (EFC) for students who were affected by the Gulf Coast hurricanes, Katrina and Rita. The Committee Print also provides the Secretary with a waiver to expand the distance education demonstration program for institutions of higher education that were affected by the hurricanes.

The Committee Print authorizes the Secretary of Education to waive the continuous service requirement needed for teachers to be eligible for the teacher loan forgiveness program in the FFEL and DL programs.

Waiver of repayment of student aid funds

The Committee Print waives the requirement that affected institutions and students return title IV funds. This waiver includes grant funds and loan funds received by students attending institutions affected by the Gulf Coast hurricanes.

Discharge of student loan funds

The Committee Print discharges the student loan funds received by students who were attending schools that had to cease operations due to the Gulf Coast hurricanes. The Secretary of Education will reimburse lenders in the FFEL program and institutions in the Perkins loan program for the funds that were discharged. Funds made available through the DL program will also be discharged. The loans that are discharged will not be counted against a student's annual or aggregate loan limits.

Deferment of student loans

The Committee Print provides for a six month deferment for any student loan borrower who was living in or working in an area affected by Hurricanes Katrina and Rita. Student loan borrowers will be able to defer any payment of principal for 6 months. In addition, the Secretary of Education will pay the interest on all loans in the FFEL or Perkins programs and interest will not accrue on loans in the DL program.

Information dissemination

The Committee Print requires the Secretary of Education to make an extra effort to notify families that are eligible for means-tested Federal benefit programs that they may also be eligible for the maximum Pell Grant.

COMMITTEE VIEWS

In 1965, the Higher Education Act was established as a means to help low- and middle-income students gain access to college. Since that time, the Federal government has invested billions of dollars into the student loan programs. Funding for higher education has grown dramatically in recent years. According to information from the College Board in its 2005 Trends in Student Aid report, funds for Federally supported student aid programs have increased by 141 percent in the last decade. This includes increases in Pell Grants, Supplemental Educational Opportunity Grants, Federal Work Study, support for veterans and other military personnel, and student loans. As the cornerstone of the need-based Federal student aid programs, the increases in the Pell Grant program are striking. Since Republicans gained control of the House of Representatives in 1995, total Pell Grant funding has doubled, increasing from $6.2 billion to $12.4 billion for fiscal year 2005. The maximum Pell Grant award has increased from $2,340 to $4,050 in that same period. In fiscal year 2005 alone, the Federal government devoted approximately $70 billion in direct student aid to college students all across the country that had the dream of attending one of America's college or universities.

The Committee is proud of the financial commitment Congress has demonstrated in recent years toward higher education. This support will continue. However, the Committee is concerned that the value of this investment may be diminished by a lack of market discipline, meaningful competition, and consumer awareness. While the Committee believes strongly that the Federal government needs to continue its investment in higher education, we also need to ensure that Federal dollars are being spent wisely. Federal dollars spent on higher education must provide assistance for low- and middle-income students in an efficient and effective manner that reflects the goals of the Higher Education Act—to expand college access—and the goals of fiscally responsible leadership—to protect the interests of taxpayers and act as good stewards of the Federal budget. Unless both these priorities are reflected in the Federal higher education investment, it is the American taxpayers, some of whom do not have the opportunity to attain a postsecondary education, that are forced to bear the brunt of wasteful spending and misused dollars.

The reforms included in this package reflect the ideals of the Committee to reduce excess subsides from the student loan programs, increase program efficiency, build on economies of scale and ensure that students continue to have access to needed resources to achieve their higher education aspirations.

Student assistance

Through the Higher Education Act, the Federal government is providing more than $70 billion in direct financial aid to students in fiscal year 2005 alone. Those funds, provided through Pell Grants, student loans, and campus-based and other financial aid programs, are meant to help defray the cost of college and level the playing field so low- and middle-income students can access higher education opportunities like those available to higher income students.

The Committee is not convinced that the current structure of the student loan programs is the most efficient structure. In fact, the reforms reflected in the Committee Print demonstrate that some of the financial burdens placed on the American taxpayer are unnecessary. The Committee Print reduces this burden by $14.5 billion.

American taxpayers are already shouldering a tremendous higher education cost burden. In addition to the more than $70 billion annually in direct Federal student aid, Federal dollars support institutional aid, research, and a wide-range of programs outside the scope of the Higher Education Act but still involving colleges and universities. In addition, a significant portion of State revenues are devoted to higher education subsidies. And even after all this taxpayer support, students and families must also contend with annual tuition and fee increases that grow at double-digit rates and squeeze family budgets to the breaking point.

The Committee believes the reforms in the Committee Print will encourage providers in the student loan programs to reduce defaults and operate more efficiently. The Committee also believes that students will be better off over the long-term with the reforms made in this package. This bill will reduce fees paid by students and increase the ability for students to borrow Federal loans—loans that have more benefits to the borrower than any other type of consumer loan. In addition, by instituting proposals that harness the power of the market, both students and taxpayers will benefit in the end.

The Committee Print demands greater accountability, efficiency, and effectiveness from the existing student aid programs. The bill continues a long-standing effort to reduce red tape, eliminate unnecessary bureaucracy, and examine the underlying causes that drive up the costs of the student aid programs. By reassessing current investments in higher education, the Committee believes the reforms contained in the Committee Print will make better use of the significant Federal investment in higher education by expanding college access while simultaneously protecting the interests of all American taxpayers who are providing the resources.

Stafford loan programs

The Federal student loan system is comprised of two separate student loan programs—the Federal Family Education Loan (FFEL) program and the Direct Loan (DL) program. In the FFEL program, private lenders partner with the Federal government to disburse the capital. Borrowers then deal with their private lender as the loan moves through its life cycle. Lenders can be banks, stand-alone student loan companies or non-profit agencies. Guaranty agencies work with the lenders and the borrowers to ensure

that the borrowers stay out of default and administer the Federal guarantee to the lenders if the borrower does default on the loan. All government partners in the FFEL program work to provide borrowers with customer service and financial education with the goal of avoiding borrower defaults. Secondary markets, which are generally non-profit state agencies/organizations that act as lenders, purchase loans from other lenders to free up capital and also originate their own loans, often offering significant cuts to the borrower interest rate or favorable repayment terms.

The main difference between the FFEL program and the DL program is that in the DL program, the capital is disbursed directly from the Federal Treasury, via the Department of Education, to the schools on behalf of the student. Borrowers then deal with the Department of Education and its contractors for customer service.

Over the years, the two programs have competed against each other and the participants in the FFEL program competed against themselves. This competition has dramatically improved the level of service being offered in both programs and lowered the cost of the programs. In addition, because the two student loan programs were created at different times, the borrower benefit offerings in the programs differ. The Committee Print took steps toward equalizing the two student loan programs to ensure that borrowers did not have different benefits in one program over the other program.

The Committee entered into the Higher Education Act reauthorization with the goal of making it easier for America's young people to access and persist in completing some form of higher education. A primary effort has been made to reevaluate the current investment and determine whether program priorities are in need of realignment. The Committee specifically identified the pressing need to address the explosion in subsidies directed to college graduates; the dramatic growth in the cost of the consolidation loan program, for example, poses a very real threat to the ability of Congress to direct future aid increases to low- and middle-income students who have not yet had the opportunity to pursue a college education. The Committee has developed a reasonable, sustainable loan structure that will continue to serve college graduates working to repay their loans, while refocusing the primary investment on current and future students. The Committee has met these goals by passing a number of reforms to both the FFEL program and the DL program that will increase loan limits, significantly decrease fees paid by borrowers and better align the borrower benefits offered in the FFEL and DL programs. The Committee offers these additional benefits to borrowers through common sense reforms that curb the excess funds being spent unwisely in the student loan programs. The American taxpayer should not be asked to continue to pay for these unnecessary expenditures in the programs. The reforms included in the Committee Print will better equalize the Stafford loan programs and also put both programs on a more solid financial foundation that will allow the program to operate efficiently for years into the future.

Borrower benefits

The Federal student loan programs offer unparalleled borrower benefits. Students are able to access Federally guaranteed loans at

below-market interest rates without collateral or credit checks. Lower income borrowers who qualify for the subsidized Stafford Loan program are not charged interest on their loans while in school, in their six month grace period following graduation, or in periods of loan deferment. Borrowers can access a variety of repayment options, and the already low fees in the programs are lowered even further under the Committee Print. However, the Committee believes inequities between the FFEL and DL programs must be corrected so that all student loan borrowers, regardless of which loan program their school has chosen, have access to the same level of borrower benefits.

In the area of loan fees, the Committee believes the current fee structure is unnecessarily complex, and unevenly applied to borrowers. For example, under current law, the fees paid by the borrowers can vary lender by lender or between student loan programs. The Higher Education Act requires that the Secretary charge a four percent origination fee for loans originated in the DL program and lenders charge a three percent origination fee in the FFEL program, plus an optional one percent fee to be charged by guarantors. Thus, under a strict reading of the law, borrowers in both programs are to be charged a total of four percent in fees upon origination of their Federal student loans. Congress originally added most of these fees as a temporary cost saving measure during the Omnibus Budget Reconciliation Act of 1981. These fees were never intended to be a permanent addition to the Higher Education Act.

Since that time, a number of changes have been made to the origination fees charged on Federal student loans. In the DL program, beginning under the Clinton Administration, the Department of Education interpreted the origination fee provision to permit DL to only charge a three percent fee. This practice has continued. The program then further discounts the origination fee by offering an up-front rebate of 1.5 percent of the loan principal purported to be a repayment incentive. When a borrower enters repayment, if the borrower does not make 12 on-time payments, the fee is capitalized back onto the principal of the loan. Only about 24 percent of students in the DL program are actually able to meet the 12 on-time payments requirement. In practice, this policy results in some DL borrowers paying a 1.5 percent fee and others are paying a three percent fee.

In the FFEL program, the government must receive a three percent origination fee on loans, but the statute is not specific as to who pays that fee—lenders or borrowers. Thus, similar to the uneven borrower treatment in DL, some borrowers in the FFEL program will pay the full three percent fee, while others pay a discounted origination fee because some or all of the fee will be paid by the lender on the borrower's behalf. The FFEL borrower also may pay a fee of one percent of the loan to the guaranty agency to be deposited into the guarantor's Federal Reserve fund; however, guaranty agencies currently have the authority to waive charging this fee to the student. The funds deposited into the Federal Reserve fund are property of the Federal government, and the Committee believes it is unwise public policy for Congress to grant guaranty agencies the authority to waive collection of the Federal

dollars, thereby endangering the fiscal health of the agency and weakening the overall strength of the FFEL program. The guaranty fee has always been included in the structure of the Higher Education Act and unlike origination fees, was never thought to be a temporary measure.

The Committee Print provides for a multi-step process by which total loan fees will be reduced for all borrowers while the future fiscal health of the loan programs will be improved. The Committee Print mandates that borrowers pay the existing one percent fee charged by guaranty agencies, renamed the Federal default fee, to ensure the long-term viability of the loan guaranty structure. At the same time, the Committee Print phases out the temporary origination fees in the FFEL program, and phases total DL fees to one percent, concurrently eliminating the complex and uneven practice of rebating fees prior to repayment. Taken together, this will result in both FFEL and DL borrowers paying a total of just one percent in loan fees, a 75 percent reduction from the four percent fees under existing law. This simplified structure will ensure borrowers in both programs are treated equally and increase the amount of money a borrower actually receives to help pay for his education. Borrowers will pay a small fee (one percent) for the benefit of a consumer loan capped at a fiscally responsible 8.25 percent that includes a number of benefits that will assist students as they work to complete their education, allow borrowers to pay back their loans in a timely fashion and assist struggling borrowers to develop repayment options.

Loan limits

To encourage responsible borrowing habits, prevent excessive student loan debt, and protect taxpayers against loan defaults, the Higher Education Act provides for annual and aggregate loan limits. As the Committee developed its higher education reform package, there was considerable debate between those who sought significantly higher loan limits, and those who believed loan limits should remain at their current levels, or even be reduced for some borrowers.

At the heart of this debate is the question of whether higher loan limits will do more to expand college access, simply expand student debt, or push institutions of higher education to increase tuition and fees. According to the College Board, the cost of attendance at a public four-year institution has risen 28 percent over the past 10 years. However, loan limits for first year students have not increased significantly since 1986. As a result, many would argue that loan limits should be increased to keep pace with the explosion in tuition. Groups such as the American Council on Education (ACE), Association of American Universities (AAU), College Parents of America, Consumer Bankers Association (CBA), Education Finance Council (EFC), National Association of Independent Colleges and Universities (NAICU), National Association of State Universities and Land Grant Colleges (NASULGC), National Association of Student Financial Aid Administrators (NASFAA), National Council of Higher Education Loan Programs (NCHELP) and Sallie Mae all spoke out in favor of increased loan limits for students. As the cost of attending college rapidly increases, students and fami-

lies are relying more and more on student loans to assist them in pursuing their education. At the same time, the level of student debt continues to rise as well. The average Stafford loan debt level for a student graduating in 1995–1996 was $10,471; this figure rose to $15,862 for those graduating in 2003–2004. The Committee believes reasonable concern should be given to ensure the Federal government is not contributing to unmanageable debt burdens by providing irresponsible loan limits. The Committee believes that the Federal government should do its part to ensure that borrowers have access to affordable loans through the Stafford loan program. If students complete their first and second years, they are more likely to continue on through graduation. By increasing the loan limits for these students, the Committee believes students will be better equipped to enter into and graduate from college. The Committee Print provides reasonable increases in annual maximum loan limits for first and second year undergraduate students from $2,625 to $3,500 and $3,500 to $4,500, respectively, but does not increase the aggregate limit of $23,000. Similarly, the Committee Print increases the annual maximum graduate loan limits from $10,000 to $12,000 but does not increase the aggregate loan limit.

Interest rates

Throughout the four decade history of the Federal student loan program, one of the most contentious issues has been that of the interest rate charged to borrowers. The Federal government has implemented a variety of fixed interest rates, only to be forced to revisit those rates when the inevitable occurs and the rate becomes out of sync with market conditions. The Committee believes it is of paramount importance that the student loan programs be placed on a solid financial foundation based in sound economic principles. As such, the Committee believes a variable interest rate that fluctuates with the market offers a viable, long-term solution to the interest rate question. This solution also protects the interests of the taxpayer against periods during which large special allowances will be paid out to lenders due to a drastic increase in market rates. By allowing the market forces to dictate the rates, the taxpayer is protected. By setting a reasonable interest rate cap, the student is also protected under this policy.

Under current law, the Stafford loan program is provided to borrowers on a variable interest rate pegged to the 91-day Treasury bill. The rate is adjusted annually, and a discount is provided to borrowers in school, in a grace period, or in deferment. However, that variable rate structure is scheduled to be replaced by a fixed, 6.8 percent interest rate for all borrowers beginning on July 1, 2006. Without Congressional action, all future Stafford loan borrowers would pay a static 6.8 percent interest rate regardless of market conditions.

Over the past several years, interest rates have fallen dramatically, and the variable rate structure of the student loan programs has allowed for students to benefit tremendously from these circumstances. In fact, interest rates have hit an all-time low in recent years for the student loan programs, residing at 3.37 percent last year. Even as interest rates rose somewhat in July 2005 to 4.7 percent for students in school and 5.3 percent for borrowers in re-

payment, the rates have not risen to the level set to take effect on July 1, 2006, which would lock borrowers in with no opportunity to benefit from changes in the economic climate. Prior to the introduction of the variable interest rate in 1992, Congress made a number of failed attempts at predicting future economic conditions by setting fixed interest rates ranging from six percent to up to 10 percent over time. The Committee believes the history of the loan programs demonstrate clearly that a fixed rate is unsustainable because it prevents borrowers from taking advantage of fluctuations in the market. However, the variable rate currently in place—and included in the Committee Print—offers borrowers dual benefits. It allows borrowers access to low rates when they are made available, and it protects borrowers from excessive rate increases through an interest rate cap of 8.25 percent. The Committee Print eliminates the switch to a fixed interest rate on July 1, 2006 and keeps the interest rates set on a variable rate formula. If current law were left in place, the interest rate on Stafford loans would be 6.8 percent. The rate could not go any lower than 6.8 percent. Interest rates on Stafford loans are currently 4.7 percent for students who are in school. If current law remains in place, the interest rate would jump at least two percent on student loans. In the past, every reauthorization period resulted in Congress adjusting the interest rates to match the current economic environment. By maintaining a variable interest rate with a reasonable cap of 8.25 percent, the Committee Print ensures that students are able to take advantage of low interest rates when rates decline and are protected by a fiscally responsible and reasonable cap should interest rates rise. The 8.25 percent cap also protects the taxpayers' liability in the program.

Considerable debate during the reauthorization also surrounded the issue of interest rates for the consolidation loan program. The consolidation loan program was originally intended to assist two groups of borrowers: first, borrowers with multiple lenders who wanted to consolidate their debt in order to make just one student loan payment per month, and second, those borrowers who had so much debt that they needed to stretch out their repayment term to lower their monthly payments. Congress never intended the consolidation loan program to be a refinancing tool. In fact, when the consolidation loan program was created in 1986, borrowers paid the greater of the weighted average of the underlying loans rounded up to the nearest whole percent, or nine percent. That means borrowers paid a minimum interest rate of nine percent. Given this historical perspective, it is clear that the consolidation loan program was not created as a refinancing tool to secure interest rates like those seen in recent years, and the explosion in consolidation loan subsidies have been an unintended consequence that must be addressed to ensure the future health and viability of the loan programs.

As interest rates began to decline in recent years, a period most argued was not predicted, nor would last, a record number of borrowers have consolidated their loans not necessarily because they needed the intended benefits of the program, but because of abnormally low interest rates and the unintended disparity between the consolidation program and the underlying Stafford program. Under

current law, Stafford loans are variable interest rate loans, and consolidation loans are fixed interest rate loans. By consolidating a loan under these conditions, a borrower was able to lock in a long term fixed rate based on the rates of their underlying loans. In fact, consolidation loan volume surpassed Stafford loan volume last year. In the 2004–2005 academic year there were $47.220 billion in Stafford loans disbursed and $54.767 billion in consolidation loans disbursed. Just five years ago, during the 1999–2000 academic year, there were $28.838 billion in Stafford loans disbursed and only $10.108 billion in consolidation loans disbursed.

The Committee held a hearing last year entitled, "Fiscal Responsibility and Federal Consolidation Loans: Examining Cost Implications for Taxpayers, Students, and Borrowers," during which Mr. Robert Shapiro, Chairman of Sonecon, LLP and a Senior Fellow with the Brookings Institution and Progressive Policy Institute, testified about the long term budgetary impacts of the consolidation loan program. In his testimony, Mr. Shapiro stated,

> If interest rates move in the most likely way, taxpayers will pay private consolidators almost $14 billion to subsidize the interest on the current stock of fixed-rate consolidated student loans over the lifetime of those loans. Moreover, there is a reasonable likelihood that the costs will be much higher over the lifetime of these loans, if interest rates are 2 to 3 percentage points higher than projected, taxpayers will pay private consolidators more than $48 billion to service the current stock of loans.

In addition, the independent Government Accountability Office pointed out the problem as well in its report, "As Federal Costs of Loan Consolidation Rise, Other Options Should Be Examined," which pointed out that the record low interest rates and the record high consolidation loan volume has led to increased administrative costs and subsidy costs in the student loan programs.

While the Committee acknowledges that in the last few years, the fixed rate structure of the consolidation loan program has been advantageous to some borrowers, it is also clear that sound public policy cannot be based on a snapshot of a few years of unsustainably low interest rates. In making long-term policy, the Committee sought information on long-term trends to see how borrowers and taxpayers would be best served. In that vein, the independent Congressional Research Service (CRS) issued a report in 2004 that demonstrated that variable interest rate consolidation loans would have, more often than not, been cheaper for borrowers. The CRS analysis showed that in 13 of the last 18 years—since 1986, the first year of the consolidation loan program—borrowers would actually have been better off had their consolidation loans been available under a variable interest rate. If borrowers had extended repayment of their consolidation loans to 20 years, the analysis showed borrowers would have paid less interest in 14 of the last 18 years. This analysis demonstrates that over time, variable rates are actually beneficial to borrowers by offering the dual benefits of market fluctuation and an interest rate cap. If current law were adopted, borrowers would be forced into a consolidation loan with an interest rate of 6.8 percent. This option is both inflexible

and unfair to borrowers consolidating at this time. When interest rates fall again, as they have over the past few years, history demonstrates that Congress will be forced to re-examine the policy set forth in current law. If Congress were to change the interest rate structure to adhere to the times, those borrowers who had not yet consolidated will be given the opportunity to consolidate again. History will repeat. Consolidation loan volume will soar and the cries of those borrowers who consolidated in 2005, with a fixed interest rate of 6.8 percent, will be loud. This cycle will always happen with a fixed interest rate.

The Committee Print takes precedent setting steps in offering borrowers new options in the consolidation loan program. For the first time ever, a borrower whose loans are held with one lender will be permitted to shop around with other lenders for the best deal on a consolidation loan. In addition, when the borrower consolidates the borrower will be able to choose between a fixed interest rate loan and a variable interest rate loan. The variable interest rate will be based on the same fiscally prudent formula that sets the Stafford loan interest rate, the 91-day Treasury bill + 2.3 percent. The fixed interest rate will be based off of the 91-day Treasury bill + 3.3 percent. Each of these options would include a small offset fee of one percent that will be paid to the U.S. Treasury. This minimal fee is a small price that is paid for the benefit of having the option between a fixed interest rate and a variable interest rate. These formulas permit borrowers to obtain exceptionally good interest rates (both options maintain the cap of 8.25 percent), but require that a borrower bear a greater share of the costs and risks associated with the benefits of up to a 30 year repayment schedule at a low fixed interest rate. When combined with other reforms included in the Committee Print, offering borrowers a choice of either a fixed interest rate or a variable interest rate on a consolidation loan has the benefit of saving billions of dollars for the taxpayer while also offering flexibility to student loan borrowers. Borrowers will be able to pick the best interest rate that fits their financial needs. This solution provides borrowers added flexibility in the consolidation loan program while still protecting the interests of the American taxpayer and provides long-term stability to the consolidation loan program.

Portfolio fee on consolidation loans

The student loan market is shifting. With the ability to lock in record low interest rates in 2003 and 2004, many graduates acted quickly to inquire about consolidating their student loans. Increased demand for consolidation loans led to an increased supply of lenders making these loans—and only these loans. Consolidation loans became a quick and easy way for new lenders to enter into the student loan industry. Consumers were able to benefit from this phenomenon because much greater borrower benefits were now available on consolidation loans. However, these increased benefits are being paid for at the expense of the American taxpayer who subsidizes these loans for up to 30 years. Additionally, traditional lenders had to fight to protect their loan portfolios by remaining competitive through increasing the benefits available on their consolidation loan products. The more benefits lenders offer

to graduates on consolidation loans, the less benefits lenders will be able to offer to students who receive a Stafford loan as an undergraduate. This shift contradicts the goal of ensuring students have access to some form of postsecondary education, which was one of the main goals the Committee has maintained for both the reauthorization and the reconciliation processes. The lenders that offer a loan portfolio composed primarily of consolidation loans are shifting the marketplace into dangerous territory that threatens the goal of ensuring every student has the opportunity to pursue a higher education.

Under current law, the Secretary assesses an annual fee of 1.05 percent on lenders' consolidation loan portfolios. The Committee Print increases this annual fee to 1.30 percent on a lender's consolidation portfolio if consolidation loans make up at least 90 percent of the lender's total loan portfolio. The Committee believes that this fee increase will provide an incentive to those companies that have recently joined the student loan industry to become more committed to the underlying goals of access that are a cornerstone of the student loan programs and encourage these organizations to diversify their portfolios. Through diversification, these lenders will demonstrate to Congress and the American taxpayers that they are in the program to ensure students have access to low-cost student loans.

With interest rates dropping to all-time low levels in recent years, a number of new lenders joined the student loan marketplace. These lenders specialize solely in the consolidation loan business. The Committee believes one reason consolidation loan volume has skyrocketed from $15 billion in the 2000–2001 award year to $55 billion in the 2004–2005 award year is due in part to the increase in the number of lenders offering only consolidation loans. While the consolidation-only lenders have brought some additional competition to the consolidation loan program that permits borrowers more discounts than ever before available in the consolidation loan program, the competition to consolidate a borrower's loan remains so fierce that the Committee believes companies have exploited a number of loopholes within the Higher Education Act. The Committee Print takes great strides in shutting down these loopholes, such as eliminating the ability of lenders to circumvent the single holder rule and eliminating the practice of in-school consolidation. Despite rules like the single holder rule that are currently in the law, loans are being picked off of the traditional lenders' portfolios by consolidation lenders. When this occurs, borrowers lose, traditional lenders lose, and the taxpayer loses. Borrowers lose because they become confused at the rules surrounding the program and do not clearly understand their rights and responsibilities. Lenders lose because all of their investment into building a trustworthy relationship with the borrower and into technology to improve the origination and disbursement of loans is for naught. Finally, the American taxpayer loses because they are forced to continue to subsidize the loans for years into the future.

The student loan market is slowly transforming from a Stafford loan market to a consolidation loan market whereby all of the discounts and competition for business will also shift from originating a student's loan his freshman year of college to originating his con-

solidation loan after the student has graduated. The shift causes the Federal investment in the student loan programs to be taken from students and applied to borrowers, people that have graduated from college that have already benefited from Federal subsidies, such as lower interest rates and some payment of their accruing interest, while in school. This policy goes against every goal the Committee had when writing the Committee Print, which makes great strides in improving access to college for any qualified student who wants to pursue a postsecondary education. The Committee wants to continue to ensure that students are able to get low cost loans at the front-end of their education career from either individual private lenders who participate in the FFEL program or the government-backed DL program administered by the Department of Education.

Direct loans versus Federal Family Education Loans

Ever since the inception of the Direct Loan program in 1993, there has been confusion and debate as to which program is better, costs less, and whether the two should coexist at all. The Committee continues to be concerned about the budgetary scoring of the Direct Loan (DL) program and the Federal Family Education Loan (FFEL) program. Our concerns echo those expressed in the fiscal year 2006 conference budget resolution adopted earlier this year by Congress. The resolution includes the following report language concerning the budgetary scoring of the student loan programs:

> Although the Congress strongly supports the Federal student loan programs, it is increasingly concerned that the subsidy estimates for the Ford Direct Loan Program do not reflect the program's true cost to the Federal Government. For example, the President's 2006 budget reveals that although the program was expected to result in a net savings of $2 billion from its inception through fiscal year 2004, the actual experience is that the program resulted in a net cost to taxpayers of $3 billion over the same period. This represents a $5-billion underestimate of the program's actual cost to taxpayers over roughly 10 years. Accordingly, the Congress supports the administration's continuing efforts to direct the Department of Education to refine and improve its cost estimating techniques for this program.
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> The Congress believes it is important for estimates to be corrected for all known deficiencies so that the decision makers have sufficient information to compare the cost to taxpayers of competing policy options, and large-scale structural reform proposals, in the student loan programs.

Due to the concerns the Committee had about the costs of the two programs and because the Committee believes the competition between the two programs has been beneficial to all colleges and universities, the Committee made a decision to allow the market to decide in allowing the competition, which has been beneficial both to the programs, students, and institutions, to continue. That competition resulted in better customer service and borrower benefits in the FFEL program and has resulted in some increased account-

ability in the DL program by the Department of Education. Earlier in this Congress, the Committee on Government Reform held a hearing entitled, "Federal Student Loan Programs Are They Meeting the Needs of Students and Schools?" with the purpose of exploring the differences between the two student loan programs as it relates to the services the programs provide schools and students. During this hearing, the Director of Student Financial Aid at The Ohio State University, the country's largest DL institution, Ms. Natala Hart, spoke about the benefits of the competition between the two student loan programs. She stated:

> We at Ohio State believe both FFELP and DL working together have resulted in the most effective and efficient improvements in the financial aid system. While we remain steadfastly a DL school, we encourage continuation of FFELP as well as DL, as competition makes both programs more receptive to students' needs.

At that same hearing, Ms. Cynthia Thorton, Director of Financial Aid at Dillard University also testified. Her testimony focused around the problems her university experienced with the DL program and why they switched back into the FFEL program. Dillard University joined the DL program in 1996 and left the program in 2003 after experiencing continued problems with reconciliation of accounts. She stated:

> Dillard University entered the FDLP in 1996, after the program was two years old. Initially, it appeared that loans were being delivered in a timelier manner. However, in 1997, the FDLP transitioned its loan origination services from Computer Data Systems to Electronic Data Systems. The transition was difficult on the Department of Education and the schools involved.
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> During this transition, student loan services were interrupted for four to five weeks which created a financial crisis for the school and loan recipients awaiting funds to meet fiscal obligations. . . . After evaluating the challenges the students and the administration were experiencing with the FDLP, Dillard University made the decision to return to the FFELP program.
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> Dillard's return to the FFELP was a slow process. I believe if one would ask the Financial Aid Office at FDLP schools what is the one element they dislike about the Direct Loan Program, I am sure the overwhelming response would be the reconciliation. In addition to the arduous task of administering the FDLP, reconciling the FDLP was an additional responsibility not required by the FFELP. I recall many difficulties trying to reconcile and close out the program simply because records were lost at the Direct Loan servicer. Even after providing the agencies copies of cancelled checks, it was difficult to bring closure to discrepancies. We officially closed out our loans with the FDLP at the conclusion of the 2003–2004 school years.

Ms. Thorton was not alone in her experience. In a survey conducted by Rockbridge Associates Inc. of Financial Aid Administra-

tors (FAAs) at institutions that switched from the DL program to the FFEL program, 20 percent of the FAAs surveyed said that the decision to switch programs relied heavily on general issues of customer service and 22 percent said that the fees and borrower benefits in the program were the reasons the institutions switched programs. In addition, since the inception of the DL program, over 500 schools have left the program to return to the FFEL program. Today, approximately 75 percent of the student loan volume is in the FFEL program and 25 percent is in the DL program. However, the DL schools now seem pleased with the level of service they are receiving. For that reason, the Committee focused its efforts in reauthorization around taking steps toward leveling the playing field between the two programs from the borrower's perspective. For example, the Committee Print phases down fees paid by borrowers so that by 2010 students will be paying one percent in both programs. The bill also increases loan limits in each program and aligns the DL program's extended repayment plan to match the FFEL repayment plan.

Over the past several years, the Committee tried to better evaluate the cost of the two student loan programs. While the Committee passed a reauthorization bill that tried to strengthen both student loan programs, the Committee remains concerned that the subsidy estimate for the DL program does not reflect the program's true cost. The President's fiscal year 2006 budget request indicates that over the life of the programs, the FFEL program has been re-estimated to cost $7 billion less than originally estimated while the DL program has been re-estimated to cost $5 billion more than originally estimated. In addition, in a recently released report, Citizens Against Government Waste recommended that closer scrutiny of the costs between the FFEL program and the DL program is warranted. Earlier this year, the independent auditing firm PricewaterhouseCoopers (PwC) concluded that the DL program costs taxpayers significantly more than the Federal budget estimates show because certain costs and revenues are completely ignored. For example, budget estimates fail to account for the revenue generated by taxes paid to the Treasury by private sector lenders, exclude all administrative costs associated with the DL program, and utilize biased scorekeeping rules that continue to underestimate the cost of the DL program.

The Committee is also concerned that the official scorekeeping baselines for the Federal student loan programs are inadequate as a policy decision-making tool because they do not accurately portray the relative cost of the two major student loan programs—the DL and the FFEL—or the cost impact of shifting loan volume between the two programs.

The Committee believes that until the above factors are accurately accounted for in the official scoring baseline, any claim of budgetary savings from shifting loan volume among the student loan programs is premature. This will remain the case so long as a flawed and incomplete system of accounting remains in use. Therefore, the Committee intends to work with the House Budget Committee and the Congressional Budget Office to develop a more accurate official scoring baseline, that incorporates the cost and revenue factors identified by the PricewaterhouseCoopers study,

and which will more correctly account for the budgetary impact of the Federal DL program.

Student aid administrative account

Under current law, the Department of Education's student aid administrative activities are derived from two sources. The first source of administrative funds is derived from a discretionary appropriation. This account was developed after Congress consolidated two discretionary accounts, a FFEL administration account and a program administration account, in 2003. The second source is the account authorized in section 458 of the Higher Education Act. Section 458 authorizes funds for the administrative functions of all of the student aid programs, including the FFEL program, the DL program, the Pell Grant program, and the administration (origination and servicing of loans) for the DL program and the account maintenance fees for the guaranty agencies that participate in the FFEL program. The 458 account is the source of funds for the account maintenance fee (AMF) that the Federal government pays to the 35 guaranty agencies in support of their administration of the Federal guarantee on loans in the FFEL program. The Administration's fiscal year 2006 budget proposed a funding level of $795 million for the administrative costs and $195 million for the AMF. The 458 account is the only mandatory administrative account that funds solely administrative functions under the Committee's jurisdiction. The Committee Print proposes to change the funding streams going into the section 458 account by converting the administrative function portion of the account from a mandatory spending account to a discretionary spending account, but leaving the portion of section 458 that funds the AMF as a mandatory expenditure.

The 458 account was originally proposed by the Clinton Administration to administer and service the Direct Loan program in 1994. Up until this time, the Department's administration of the student loan program had been run from discretionary appropriations. During the 1998 reauthorization, the funding stream for the guaranty agencies was reformed and the responsibility for the AMF also ended up in the section 458 account. Since that time, the Department's Office of Federal Student Aid (FSA) has been transformed and worked to better integrate all of its student aid functions so that the system can run in a more efficient and cost-effective manner. This transformation has led to the integration of the administrative functions for all the student aid programs. Today, the administrative portion of the section 458 account encompasses much more than the Direct Loan program—it funds most of the administration of the student aid programs. For example, since 2001, FSA has worked with one contractor to develop an origination system that runs the origination and disbursement functions for both the Direct Loan program and the Pell Grant program. This system works at the borrower level, rather than working at a broader programmatic level. In addition, in 2003, FSA created the Common Services for Borrowers (CSB) system that integrates back-end operations in the office, DL servicing, and consolidation, and FFEL and DL debt collection functions into one system, which is administered by one contractor. With the integration of the servicing and admin-

istration of the various student aid programs, the Department has aligned itself in such a way that it no longer needs this account as a mandatory burden on the taxpayers' shoulders. In fact, for the past 3 years, President Bush has proposed to make the section 458 account discretionary on the grounds that having one centralized new discretionary Student Aid Administration account would increase accountability, reduce costs, and improve financial controls. The Committee Print converts this portion of the section 458 funds from a mandatory expenditure to a discretionary expenditure.

As previously mentioned, section 458 also funds the account maintenance fee for the 35 guaranty agencies. This fee assists the guaranty agencies with the administrative functions of preventing defaults and administering the government's guarantee on student loans. Under current law, the guaranty agencies have had to transfer funds between their operating fund and the Federal fund to make up for an $84 million shortfall in the 458 account. This shortfall is expected to grow by an additional $120 million this year and continue to increase 10 to 15 percent in coming years. This shortfall is causing a significant drain on the guaranty agencies' Federal funds because the statutorily established caps for the AMF have not moved since 2003, yet the student loan volume has increased by approximately $13 billion since that time. The shift of funds between the Federal fund and the operating fund severely endangers the health of the guaranty agency. The funds in the operating fund are spent on valuable default aversion activities such as creating new systems to educate borrowers about their financial responsibilities, creating new programs that encourage borrowers to repay their student loans on time, or teach borrowers how to better allocate their finances. The Committee believes the increase in innovative financial literacy programs and default aversion activities contributed to the sharp decrease in the cohort default rate recently. Since fiscal year 1993, the cohort default rate decreased from 11.6 percent to 4.5 percent. The Committee does not believe guaranty agencies would be able to continue to develop these programs or conduct activities to the same extent done now if the agencies had to rely on the appropriations process every year. It is for that reason the Committee proposes to maintain this portion of section 458 as a mandatory expenditure.

While the funds in the section 458 account were used in the past to fund solely the Direct Loan program, this is no longer the case. Across the Federal government, there are only a small number of administrative accounts that are supported by mandatory funds and most of the funds spent in these accounts are a part of a Federal match to a program. The section 458 account is the only account that is composed entirely of mandatory funds. In a time when technology has improved so drastically, there is no reason that this administrative account needs to remain a mandatory spending requirement for the Federal government. The Department has made strides in recent years to better integrate all of its administrative functions so that, at this time, it only makes sense to combine the different administration accounts into one discretionary account with a funding level set based on the needs of the programs on an annual basis. At the same time, the Committee believes that the function of the guaranty agencies in default aver-

sion and recovery of funds is an important piece to the FFEL program. It is for that reason, that the portion of the section 458 account that funds the AMF will remain a mandatory expenditure. The Committee strongly believes this change to the section 458 account continues along our goal of equalizing the treatment of the two loan programs.

Teacher loan forgiveness

No Child Left Behind requires each State educational agency to develop a plan to ensure that all teachers teaching in core academic subjects within the State are highly qualified not later than the end of the 2005–2006 school year. Additionally, over the next ten years, school districts will need to hire over two million additional teachers to keep up with increased student enrollment.

States and school districts must recruit a greater quantity of people to the teaching profession while also ensuring teacher quality. Unfortunately, schools with concentrated poverty have greater teacher and administrator shortages, fewer applications for vacancies, higher absenteeism among teachers and staff, and higher rates of teacher and administrator turnover. Shortages of math, science and special education teachers are at a critical level. While No Child Left Behind will help school districts recruit and train high quality teachers, more help is needed.

The expanded loan forgiveness for math, science and special education teachers, as well as reading specialists, is a longstanding priority for the Committee and the Congress. There are demonstrated shortages of teachers in these subject areas, particularly in rural and urban school districts that serve disadvantaged students. According to The Urban Teacher Challenge, released in January 2000, the nation's largest urban school districts responding to a national survey reported immediate needs for math (95 percent), science (98 percent) and special education teachers (98 percent). The National Center for Education Statistics reports, for the 1999–2000 school year, that 67 percent of public elementary and middle schools had vacancies in special education, 70 percent in mathematics, 61 percent in biology and 51 percent in physical science. According to the Center for the Study of Teaching Policy, almost 57 percent of public school teachers are teaching physical science without a major or minor in their field. The Committee Print will provide incentives that will allow flexibility to local schools to recruit and retain highly qualified teachers in these critical subject areas in both public and private elementary and secondary schools across the country. Similar loan forgiveness measures have been included in President Bush's annual budget requests in 2002, 2003, 2004, 2005, and 2006 and approved by the House in 2002 (H.R. 5091), 2003 (H.R. 438), and signed into law in 2004 (H.R. 5186).

The Committee Print complements No Child Left Behind's focus on improving the education that children receive, particularly the education that disadvantaged students and students with disabilities receive, by supporting quality teachers for our children. The Committee Print makes permanent the expanded mandatory teacher loan forgiveness maximum amount of $17,500, up from the previous $5,000, of a teacher's outstanding loan obligation for those teaching math, science or special education for five years in a title

I school. In addition, the Committee Print includes loan forgiveness for reading specialists, recognizing that literacy is one of the most important building blocks students need to learn in order to be successful throughout their lives. The teacher must teach for five consecutive years in a title I school for five years in order to qualify. Additionally, in order to aid those students who are not able to meet their loan payments while they are teaching, the Secretary has authority to provide the borrower a waiver of that repayment obligation if the borrower can prove, in accordance with regulations promulgated by the Secretary, economic hardship.

By offering additional financial support for public and private elementary and secondary teachers who have made a commitment to teach in title I schools in the defined critical subject areas—math, science and special education—this bill can make it possible for more disadvantaged students to be taught by caring and competent teachers in subject areas that will help shape not only the student but the economic future of the country. Teaching in high need, low income schools isn't always easy, but nowhere is it more important.

The Committee Print includes a provision that would permit private school teachers who are otherwise exempt from State certification requirements related to highly qualified teacher status to also take advantage of the increased amount of teacher loan forgiveness. The Committee Print considers private school teachers to be in the same category as charter school teachers under the highly qualified teacher provisions of No Child Left Behind. Further, allowing private school teachers to fulfill rigorous subject matter and skills knowledge requirements by achieving passing scores on nationally developed and available teacher competency tests would provide private school teachers the opportunity to participate in the loan forgiveness program even in States that preclude such teachers from taking State teacher competency tests.

The Committee believes we need to do everything we can to encourage college students to enter a field that, while challenging, is one of the most rewarding careers one can undertake. The Committee Print will help to encourage the best and the brightest of our nation's college students to enter the teaching profession to remain committed to the profession and the schools in which they teach.

National need loan forgiveness

The Committee Print also updates the existing authority for discretionary loan forgiveness for child care workers, a program that has not received funding in recent years in its current form. Under the Committee Print, the Committee expanded the program to offer up to $5,000 of loan forgiveness to individuals in professions considered to be areas of national need as designated by the Secretary. This program includes loan forgiveness for early childhood educators, nurses, foreign language specialists, librarians, bilingual educators, first responders in low income communities, child welfare workers and speech language pathologists. These items were added by the Committee as priorities at this time.

During the mark-up of H.R. 609, Representative Porter (R–NV) highlighted that dating back to 2000, there was a six percent shortage of nurses and other health care professionals. That shortage is

projected to increase to a shortage of almost 30 percent in the next 15 to 20 years. There is also a shortage of professionals available to teach students to become nurses, exacerbating the shortages today and those we will see into the future. Over the next 10 years, more than two million teachers will leave the field for other careers. With the continued vacancies in the nursing profession, we need people willing to go into the teaching field to educate students hoping to pursue a career in nursing. In addition, Representative Platts (R–PA) brought to the Committee's attention the shortage of early childhood educators and the importance of having qualified people serve in these positions. The Economic Policy Institute, the Keystone Research Center and the Foundation for Child Development recently published a report titled, "Losing Ground in Early Childhood Education: Declining Workforce Qualifications in an Expanding Industry, 1979–2004," in which it was demonstrated that the number of early childhood staff with college degrees has dropped significantly over the past 20 years, from 43 percent to 30 percent. In addition, the report pointed out that the most educated cohort of early childhood teachers are retiring in the next 15 years and there are not enough students in the pipeline to fill those positions.

The Committee believes authorizing loan forgiveness for these areas with demonstrated national need will provide a step in the right direction as the nation works to alleviate shortages in key fields.

Cutting excess spending out of the student loan programs

The Committee Print makes a number of reforms that alter the Federal investment in the student loan programs and ensure Federal funds will be spent more wisely on behalf of students and taxpayers. Perhaps most visible of these reforms given the significant media attention to the issue in the months preceding reauthorization is the provision for a comprehensive and permanent end to provisions that allow certain lenders to collect higher than market rate yields—the so-called half SAP/9.5 floor for special allowance—on some students loans. The history of these provisions is complex, but the solution provided under the Committee Print is unambiguous.

By way of background, current law and regulations permit lenders with access to pre-October 1, 1993 tax-exempt bond estates to receive a minimum return on the loans of 9.5 percent. This practice originated in order to place non-profit lenders on a more level playing field with other types of lenders; through eligible tax-exempt bonds, non-profit lenders were guaranteed to receive half the special allowance payment (SAP) of banks, or a minimum of 9.5 percent. The special allowance payment of half SAP or at least 9.5 percent, from here forward to be referred to as 9.5 percent subsidies, was put into the law in the 1980s when interest rates were much higher and the Federal government needed to infuse additional capital into the program.

The Omnibus Reconciliation Act of 1993 eliminated the guaranteed 9.5 percent rate of return for tax-exempt bonds going forward as interest rates began to fall. Many, including the Committee, believe Congressional intent was that over time, as the eligible bonds

were paid off and retired, the 9.5 subsidies would be eliminated entirely. However, through a series of administrative actions, the subsidy payments were allowed to continue.

In 1993, the Clinton Administration issued a Dear Colleague Letter that permitted the 9.5 percent subsidies to continue by allowing eligible bonds to be refinanced without losing the 9.5 percent benefit. In 1996, the Department of Education under the Clinton Administration issued another piece of administrative guidance that permitted loans to be transferred in and out of eligible bonds, allowing still more loans to become subject to the higher guaranteed rate of return. This practice of transferring, in particular, has been responsible for the significant growth in volume of 9.5 percent subsidies, as eligible loans have been transferred to taxable bonds.

In recent years interest rates have dropped dramatically and the 9.5 percent subsidies have provided a significant return for some lenders. The Committee believes that while the 9.5 percent subsidies may have made sense two decades ago, when the economic climate was much different than it is today, the time has come to put an end to this unnecessarily high rate of return. During the 108th Congress, temporary legislation was enacted to provide an immediate halt to the practices that had allowed the volume of 9.5 percent subsidies to grow: transferring loans in and out of eligible bonds, and refunding bonds to extend the maturity date. The Committee was clear when that bill, the Taxpayer-Teacher Protection Act (P.L. 108–409), was enacted, it was merely a temporary solution. The complete and permanent closure of the 9.5 percent subsidies was to come during the Higher Education Act reauthorization.

There is ample evidence that the administrative actions during the Clinton Administration allowed the 9.5 percent subsidies to expand, rather than decline as was originally intended. From 2001 to 2004, the Department of Education's special allowance payments on these "9.5 loans" increased from $209 million to $955.5 million. Between the time Congress passed the Taxpayer-Teacher Protection Act in October 2004 and the third quarter of fiscal year 2005, special allowance payments on these loans have dropped from $262 million to $210 million and loan volume has decreased from $17.5 billion to $14.6 billion.

With demonstrated proof that the Taxpayer Teacher Protection Act is working, the Committee believes the 9.5 percent subsidies are well on their way to being eliminated entirely. Through the Committee Print, the Committee makes the provisions of the Taxpayer-Teacher Protection Act permanent, and goes a step further by also closing down the practice known as recycling, which permits the proceeds of an eligible bond to be reinvested in new loans which also carry the higher rate of return. Taken together, the reforms in the Committee Print will halt the practices of transferring, refunding, and recycling, and no additional loans will be tagged with the special 9.5 percent subsidies. Subsidies are already declining rapidly, and under the bill, in time they will be eliminated all together.

A second practice which spends Federal funds unwisely is known as the "Super Two Step," a practice whereby lenders counsel borrowers with FFEL consolidation loans to re-consolidate into the DL

program and then re-consolidate again into the FFEL program. As previously stated, the intent of the consolidation loan program was to permit borrowers to either lower their monthly loan payments by stretching out their repayment term or consolidate multiple payments into one payment. The program was *never* intended to be used for refinancing purposes. This practice subverts all Congressional intent of the statute and has resulted in millions of dollars being bled from the Federal Treasury.

The Committee Print also stops another form of excess earnings in the loan programs, in which lenders are able to collect more than their guaranteed minimum rate of return. The structure of the loan programs provides for a minimum rate of return for lenders to ensure funds are available to students, as well as a below market interest rate for borrowers. The lenders' guaranteed rate of return, known as a lender yield, fluctuates with the market. Student loan interest rates also fluctuate with the market. As a result, the borrower rate—still below the market rate for other consumer loan products—may sometimes exceed the lender yield. In simple terms, this means the rate being paid by the borrower is actually higher than the minimum rate guaranteed to the lender. The Committee Print requires lenders to return to the Federal government these excess earnings, otherwise referred to as "floor income." This reform will generate savings for taxpayers while preserving the basic structure of low rates for borrowers and minimum returns for lenders.

The Committee Print also lowers the amount guarantors are permitted to keep as collection costs from 18.5 percent to 10 percent if the borrower consolidates a defaulted loan, with the 8.5 percent difference going to the Department of Education. Furthermore, beginning October 1, 2009, guaranty agencies must return to the Secretary the entire amount of collection costs charged with respect to each defaulted loan that is paid off with excess consolidation proceeds. The new provision also defines the term "excess consolidation proceeds" to mean the proceeds of consolidation of defaulted loans that exceed 45 percent of the agency's total collections on defaulted loans in a given Federal fiscal year.

The Committee believes strongly that agencies should counsel more borrowers to rehabilitate their loans to get out of default rather than just consolidate the loans. To rehabilitate a loan, borrowers must make 9 consecutive, on-time payments. Through rehabilitation, a borrower learns to make consistent payments and earns the benefit of cleaning up his credit record. If the borrower consolidates to get out of default, he does not receive the same benefit of cleaning up his credit. In addition, the borrower does not get in the habit of making consistent payments and the chances of re-defaulting on the loan increase significantly. The Committee Print provides an incentive to guaranty and collection agencies to counsel borrowers to rehabilitation by permitting the agencies to retain the full 18.5 percent if the borrower enters rehabilitation.

Finally, the Committee Print adjusts the amount guaranty agencies are permitted to retain from collections on non-consolidated defaulted loans. Under current law, guaranty agencies, upon the remittance of each borrower payment, may retain 23 percent of the payment. The Committee Print reduces the amount the guaranty

agency can retain on borrower payments on defaulted loans to 20 percent, thus increasing the amount remitted to the Department of Education by 3 percentage points.

Risk sharing

The Federally guaranteed loan program is based on the premise that the Federal government guarantees lenders against default, in exchange for which lenders offer capital to loan borrowers at below market rates. In the past several years, lenders have significantly increased efficiency and improved program operation, and as a result, are able to provide student loans with a lower cost of capital while still providing valuable benefits to borrowers. Student loan borrowers have already begun to benefit from the improvements made by lenders, and under the Committee Print, taxpayers will also begin to benefit.

Given the increased efficiency in the loan programs and the historically low default rates, the Committee believes it is prudent for lenders to accept a modest increase in the risk sharing. In addition, the Committee feels strongly that FFEL program participants, lenders, and guarantors must continue efforts in the area of default aversion to ensure default rates remain low. The Committee agreed with the President's fiscal year 2006 budget submission to Congress on this point. Representative Tom Petri (R–WI) responded by introducing an amendment to H.R. 609, which the Committee accepted, that reduced lender insurance from 98 percent to 96 percent and reduced guarantor reinsurance from 95 percent to 93 percent. Since this amendment was accepted, the Committee learned that guarantor agencies will receive a disproportionate reduction that would risk the financial stability of the agencies. Therefore, the Committee Print reinstates the guarantor reinsurance to the level authorized in current law, which is 95 percent.

To further strengthen the loan programs in the interest of American taxpayers, the Committee has provided for common sense changes to reward high-performing lenders and servicers. Currently, a large majority of the loan volume qualifies for the 100 percent insurance award that comes with the designation of a lender or service as an "Exceptional Performer." As of the writing of this report, the Department of Education has awarded the Exceptional Performer designation to 11 lenders or servicers. Of those 11, the servicers together service loans for 93 lenders and the lenders are all in ranked in the top 35 of loan holders. These numbers demonstrate that a large majority of the loan volume is currently receiving 100 percent insurance, rather than the currently authorized level of 98 percent. With so little risk sharing in the program, lenders and servicers have little incentive to continue to strive to improve their default aversion methods. The Exceptional Performer program has achieved its goal and the Committee believes it is time to retool the program so that it continues to serve its original purpose—to push lenders and servicers to improve their programs thereby resulting in lower defaults. To that end, the Committee ties the Exceptional Performer designation to outcome based measures rather than the current method, which demands nothing more than a score on a compliance audit. The new Exceptional Performer designation is also constructed in such a way that the best lenders

and servicers are awarded this designation by only permitting the top five percent in the industry to receive the special recognition.

The Committee Print also requires lenders to increase their contribution to the student loan program by increasing the origination fee lenders pay on all loans from 0.50 percent to one percent. This one-time fee is currently paid by the lenders on all loans to the U.S. Treasury.

These reductions and reforms fit the Committee's goal of improving efficiency in the program, encouraging lenders to improve their services to avoid defaults, and relieving some of the financial burden on the taxpayer.

Repayment plans

In recent years, college students have seen a rise in the cost of college and similarly, a rise in the amount of student loan debt they need to take on in order to pay for that rise in college tuition. In addition, over the past few years, the market has provided record low interest rates on student loans. When students graduate, they are faced with a decision about whether to consolidate their loans, thereby stretching out their monthly payments, or to pick one of the repayment plans currently offered within the Stafford loan program. Under current law, DL borrowers will find themselves with different options than FFEL borrowers. The Committee Print levels the playing field by conforming the DL repayment plans to match the FFEL repayment plans.

Under current law, borrowers who have just graduated and may not have a job right away or who may have a low-paying job have limited options as far as avenues to lower their monthly payment without stretching out their debt. The Committee believes this is an important gap to fill as some students may just need temporary relief and do not want to stretch their payments out longer than 10 years. The Committee Print implements an interest only repayment plan whereby borrowers pay only the interest accruing on their loan, or $600 annually which ever is more, for the first two years they are in repayment. This new interest only repayment plan, which is added to both the FFEL and DL programs, will give borrowers additional repayment relief as they begin their careers without having the borrowers forced into the consolidation loan program or forced to default because they do not have the funds to make the initial payments.

Military deferment

In 2003, Congress originally extended the Higher Education Relief Opportunities for Students Act (HEROES), P.L. 108–76, granting the Department of Education waiver authority of statutory and regulatory student loan requirements for college students who had been called to active duty in the U.S. Armed Forces. This bill, P.L. 109–78, was extended again this year for another two years. The Department of Education implemented the waivers in December 2003. Since that time, students serving in the Armed Forces have enjoyed the benefits of extended in-school deferment on their loans, relaxed requirements to obtain a leave of absence from the school and extended grace periods if the student was in grace when he or she was called to serve. In addition, student loan borrowers that

obtained loans prior to July 1, 1993 were able to qualify for a military deferment. This deferment option was removed during the 1992 Higher Education Act reauthorization.

The Committee believes members of the military that have accrued loans since July 1, 1993 should also be afforded these same benefits and accepted an idea proposed by Representative Tom Osborne (R–NE) to solve this discrepancy. As a result, H.R. 609 added a provision that extends a student loan deferment option to members of the Armed Forces or National Guard serving on active duty during a war or other military emergency or national emergency. This provision was also included in the Committee Print. This new deferment will permit the borrowers to forgo payments on their loan principal without going into default. In addition, all interest accruing on subsidized loans will be paid for by the Department of Education. The borrower will have the option of either paying the interest that is accruing on the unsubsidized loans or not paying the interest and having it capitalize at the end of the deferment period. This new provision will permit our service members the ability to concentrate on the task at hand without having to worry that they are meeting their monthly student loan payments. The provision also sends a message of support to our deployed troops, many of whom have left their families and often their civilian jobs that they do not have to forfeit the right to an affordable education in order to serve their country in uniform.

Financial education & additional disclosures

The rules and regulations surrounding the student loan program are complex and can be extremely confusing to borrowers. With students taking on increased levels of student loan debt to finance their education and with the strong detrimental effects on a borrower's credit report that evolves from defaulting on student loan payments, the Committee strongly believes that more financial education should be infused into the law. Currently, students must attend both entrance counseling and exit counseling in order to receive a student loan. However, often these sessions are held in auditoriums or big group settings where the borrower is not given counseling that directly meets their financial situation. In addition, more and more financial aid offices are taking their entrance and exit counseling on-line where the borrower can quickly click through some instructions and answer a fairly simple quiz that, again, does not address their specific financial situation. These counseling sessions also do not take into account other spending or budgeting needs of a new graduate. The Committee has spoken with many lenders, servicers and guarantors regarding the steps these entities are already taking to provide borrowers with better counseling. FFEL participants are taking more steps than necessary in order to ensure that their customers are well informed. However, the Committee strongly believes there is an important Federal purpose here, so the Committee Print is infused with various provisions requiring guaranty agencies to undertake additional steps in the financial education area. It is the hope of the Committee that with the new provisions, students and borrowers will be better informed about the burden of borrowing more money than necessary and will also be counseled on how to work their student

loan obligations into their overall budget, which will prevent delinquencies and defaults.

The goal of creating better informed borrowers also spills into the consolidation loan program. Over the past several years, the Committee has heard from Americans all across the country who consolidated their loans at much higher interest rates because they were not told that they could only consolidate once or that they would lose certain benefits upon consolidating. In addition, with the advent of the record low interest rates, an increased amount of direct-to-consumer advertising in the student loan industry has commenced. In response to these new trends, the Committee Print takes steps to ensure that borrowers are being given all of the relevant information by these companies. The bill requires that lenders give borrowers information on the effects of consolidation on the borrower's total interest to be paid, fees to be paid and length of repayment. In addition, the borrower is to be told about how the consolidation loan would change the benefits given by the underlying loan, the ability of a borrower to prepay the loan or pay on a shorter schedule. Finally, lenders are also required to disseminate information on any tax benefits for which the borrower could be eligible. The Committee believes these additional disclosures will help borrowers more fully understand their rights under the student loan program and assist borrowers in deciding whether it is financially prudent to consolidate their loans.

The Committee has also heard from borrowers who indicated that they wanted to be able to find the best offer on their consolidation loans or find a lender with different customer service. Currently, if borrowers have all of their loans with one lender, the borrower must consolidate with that lender. The Committee Print expands the borrower's options in eliminating this inflexible rule known as the single holder rule. With the changes in the Committee Print, borrowers will now be able to shop around to find the best offer that suits their financial needs.

Credit bureaus

In 2003, the media reported on an incident with one lender where the student loan company stopped reporting to all three national credit bureaus and instead reported its borrowers' payment information to just one bureau. The lender defended its actions by saying that it wanted to protect its customers' privacy because the other two credit bureaus were selling its borrowers' loan information to other student loan companies. This lack of disclosure affected borrowers' ability to obtain mortgages and credit cards, and had a particularly detrimental effect on first time home buyers. Mortgage lenders will often look at all three bureaus credit scores and average them for a particular borrower in order to determine the feasibility of lending to the borrower. If the borrower's scores are inconsistent, this could harm the borrower's ability to obtain a positive review by the mortgage lender. The Committee understands the dramatic effect paying, or not paying, student loans back has on a borrower's credit rating and believes strongly that a lender should report information to all national credit bureaus. The Committee Print requires that lenders must report loan pay-

ment information to all national credit bureaus, not just one or two particular companies.

Disability determination

The Committee Print makes a subtle but powerful change to the parameters around total and permanent disability discharge provisions. The Higher Education Act has long provided for the discharge of a student's loan in the case of death and total and permanent disability. In 2000, the regulations surrounding the total and permanent disability discharge changed dramatically. New and additional burdens to students already facing very difficult life and health situations were added in an effort to stem perceived fraud and abuse. While the Committee agrees with enforcing standards to ensure only those truly eligible receive such a benefit, the accompanying requirements must also be reasonable. The Committee Print provides if the Veterans Administration or the Social Security Administration determines an individual is in fact totally and permanently disabled, the Secretary of Education shall accept that determination. The Committee believes that a balance can be achieved between providing for this discharge without unnecessary administrative burden on recipients and preventing fraud and abuse. The Committee believes that once an individual has met the burden of proof relating to disability for the purposes of the discharge of a student loan under rules established under another Federal agency, there should be no need for an additional Federal agency to revisit that determination.

School as lender

The Committee believes that there is a need to clarify Congressional intent with respect to the school as lender program and put into place additional protections for students whose schools serve as the lender given the inherent conflict of interest that may exist with this arrangement. According to the Government Accountability Office, schools receive a premium for the loans anywhere between two or six percent of the face value of the loans. Under current law, schools are permitted to use the premiums made off of selling the loans for their own purposes, but must use the borrower interest payments and special allowance payments from the government for need based grant programs. For students attending those institutions, the financial aid office is both their lender as well as their financial advisor. The Committee views the school as lender program as an inherent conflict of interest in the school's role, which is first and foremost, to educate the student and second, to ensure that the student is receiving the best financial aid package for his or her financial situation. The Committee Print takes additional steps to reduce the role schools can play as a student's bank by permitting schools to only lend to graduate students, not parents or undergraduate students, and also further restricts where the profits the school is making can be spent. If schools are making money from the program, the Committee believes it should be put back into the need-based aid programs at the school. Through requiring that the schools' profits from its lending programs be put into the need based aid programs; the Committee Print takes one more step to ensure that students receive the fund-

ing they truly need to attend college, without forcing the student to take out more costly private loans.

Institutional default reduction initiatives

The Committee Print permanently extends two expiring provisions within the Higher Education Act that provide incentives to institutions to keep their default rates low and assist students in receiving student loan funds without delay. The 1998 Higher Education Act reauthorization provided for a waiver of multiple disbursements required for single term loans, and of a 30–day delay in delivering loan funds to a student who is enrolled in the first year of an undergraduate program of study and who has not previously borrowed. The Committee believes that it is important to extend these two provisions, as they have provided an incentive for institutions of higher education to maintain low default rates and serve to benefit students, who are able to receive Federal student aid funds faster and more efficiently.

Need analysis—simplification

Two years ago, Congress tasked the Advisory Committee on Student Financial Assistance, which provides advice and counsel to Congress and the Secretary of Education on student financial aid matters, to conduct a study on options to simplify the student financial aid process. Its primary task was to examine possible changes to the financial aid process to make it more understandable and less complex, especially for low- to moderate-income families, without increasing program costs or reducing program integrity. The final report, "*The Student Aid Gauntlet*" was released with ten major recommendations. In response to Congressional concern that the Advisory Committee had not fulfilled its obligation regarding the potential costs associated with its recommendations, the Advisory Committee claimed that "Eight of the ten recommendations do not require any increase in program costs." The Committee wishes to reiterate that the Advisory Committee's analysis only took into account the cost implications to the Pell Grant program, and not the mandatory cost implications for the student loan program. While minimal, some of the modifications made to the Committee Print as suggested by the Advisory Committee's report have mandatory cost implications. The Advisory Committee's recommendations that were not adopted in the Committee Print would likely have had significant cost implications. The Committee is committed to access and providing streamlined and simplified means for students to access postsecondary education. However, given current budgetary and fiscal constraints, the Committee believes the Advisory Committee should have more appropriately recognized the fiscal barriers that precluded implementation of some of the recommendations.

While many of the reforms of the Advisory Committee were adopted in the Committee Print and have bipartisan support, the Committee remains concerned that the approach taken by the Advisory Committee in its dissemination of the final report to the press prior to delivery to Congressional requesters was careless and inappropriate. The Committee hopes that with a new reauthorization, the Advisory Committee will work together with Congres-

sional leaders to continue the work of providing policymakers with ways to understand and ideas to reform the Federal, State and institutional programs that provide need-based aid to millions of students.

The Committee Print provisions and the amendment offered by Representatives Howard P. "Buck" McKeon (R–CA), Tim Ryan (D–OH) and John Tierney (D–MA) during the consideration of H.R. 609 implement the non-cost related recommendations of the Advisory Committee. The provisions help break down barriers for students and their families that want to pursue the dream of a higher education by directing the Secretary to develop a streamlined application and re-application form and encouraging the Secretary to reduce the number of data elements required on the Free Application for Federal Student Aid (FAFSA). Excessive data elements make the FAFSA confusing and time-consuming, especially for low- and middle-income families and first-generation college students.

The Committee Print aligns eligibility for the Simplified Needs Test (SNT) to other means-tested Federal benefit programs. The Committee believes this alignment will allow more students to take advantage of the simplified application form for SNT eligible students. Additionally, the bill directs the Secretary to develop an EZ–FAFSA to allow auto-zero eligible students access to a simplified paper application.

Additionally, the bill directs the Secretary to submit to students and their families "early estimates" where a student can submit their FAFSA prior to enrollment to obtain an estimate of their financial aid package. The Committee believes this will allow families to plan in advance for their child's education and be more informed about the realities of college cost and the amount of financial aid available.

During the 1992 reauthorization of the Higher Education Act, the bill passed by the House of Representatives included a provision that exempted small business assets from need analysis formula. During the consideration of H.R. 609, Representative Marilyn Musgrave (R–CO) offered, and the Committee accepted, a similar amendment that exempted small business assets from the need analysis formula for families that own a business that employs less than 100 full-time equivalent employees. Under current law, farm equipment and other assets attributed to farms are excluded from the need analysis formula. The Committee believes this same protection should apply to small business owners, who should not be asked to borrow against their way of living to finance a child's education and the modification is included in the Committee Print.

Internal revenue service data match

The Committee Print contains a provision that will greatly enhance the integrity of Federal student aid programs and will help accomplish the goals of President Bush's initiative to reduce erroneous student aid payments government-wide. The bill provides authorization for the Secretary of Education to work with the Secretary of the Treasury to provide for an Internal Revenue Service (IRS) data match. Multiple Inspector General (IG) reports have found significant evidence of student applicants (either by error or

fraud) underreporting income on the student financial aid application and the FAFSA thus gaining eligibility to higher than deserved Pell Grant awards. Statistical test matches between the Department of Education and the IRS confirm the IG findings of significant underreporting (and thus significant overpayments) in the Pell Grant program. IG reports have further concluded that the Department of Education's current verification process is inadequate to address the fraud and error in Pell Grant awards. During the 108th Congress, H.R. 3613, the Student Aid Streamlined Disclosure Act of 2003, was introduced by Representative Sam Johnson (R–TX) and would require the Federal government to improve the verification process for Pell Grant awards through an IRS data match. In addition to helping to reduce the under-awarding of Pell Grant benefits for students who actually qualify for more generous awards, the bill was estimated to free up as much as $340 million that Congress could use to better serve the increasing number of needy students legitimately receiving Pell grants or increase the maximum Pell Grant award for students.

Income protection allowance

The Committee Print increases the income protection allowance for dependent students to $3,000 for the 2006–2007 academic year. This increase will offer additional protections for students that need to work while in college without having those hard-earned funds reduce the amount of Federal financial aid awarded to them.

Portable student scholarship treatment

Facing increasing pressure to deal with high college costs and tight budgets, some States are seeking innovative opportunities to focus higher education funding directly on students. Some States are directing the subsidy they traditionally provide to institutions of higher education to individual students in the form of portable scholarships, rather than subsidizing State-level institutions that in turn may serve some students within the State.

For example, the State of Colorado developed the College Opportunity Fund (COF), which links State funding directly to resident undergraduate students. Through the COF, the State is able to be up front with potential students and their parents about the cost of higher education, and the State's willingness to help fund college costs. The State of Colorado will do this by collecting information through performance contracts that will make public information such as: student enrollment, transfer, and graduation rates; student satisfaction and performance; and institutional cost and productivity. Specifically, under the new State system, the State will no longer make direct lump-sum financial transactions to its public institutions for undergraduate education. Instead, funds will go to public and private institutions on behalf of resident undergraduate students in the form of a per-student stipend. Stipends are set annually by the General Assembly in Colorado during the budget process and the allocation is defined on a credit hour basis. The stipend for the 2005–2006 academic year is $2,400 per student for public institutions and $1,200 per student for the participating private institutions.

While these types of state choice programs may appear to direct a large sum of financial aid to students, in reality, it is simply a new methodology for distributing subsidies that have always been provided to higher education. Student financial aid is calculated based on a complex group of factors, including the amount of aid awarded from other sources. Therefore, because this is a new way of awarding funds to students, this type of State higher education subsidy if not protected in Federal law, may actually hinder a student's eligibility for Federal student aid. The Committee believes that students should not lose out on Federal aid simply because their State has chosen an innovative option for funding higher education institutions. The amendment offered by Representative Marilyn Musgrave (R–CO) during the consideration of H.R. 609 and included in the Committee Print simply ensures students will not lose eligibility because of their State higher education funding process.

Return of title IV

Within the return of title IV funds policy, the Committee Print simply clarifies current law that a program measured in clock hours may, under certain circumstances, use scheduled hours to determine the percentage of the payment period or period of enrollment for which assistance has been earned. The Committee Print makes clear that students are not to return more than 50 percent of the total grant assistance they received. This clarification will assist students from the lowest income families who receive large Pell Grant awards. The amount returned will be only that amount which exceeds the 50 percent remaining after the calculation has been completed. The Committee wishes to alleviate a burden, which falls disproportionately on the lowest income students, while ensuring that students are responsible to return some portion of the grant assistance received from the Federal government when the student withdraws from school. The bill also clarifies that a student will not be required to return sums of $50 or less.

Drug provision

The Committee believes strongly in providing clarification to the drug ineligibility requirements now in law. Only those students who are enrolled in an institution of higher education and receiving Federal financial aid should be subject to the ineligibility requirements. This will ensure the provision serves the purpose for which it was intended: to serve as a deterrent to prevent drug offenses while students are enrolled in higher education at taxpayer expense, and not to reach back and limit financial aid for past offenses.

Distance education

In the 1992 reauthorization of the Higher Education Act, Congress enacted provisions to restrict access to title IV funds for institutions offering more than 50 percent of their courses by correspondence or enrolling 50 percent or more of their students in correspondence courses. An unintended and unforeseen result was that the definition of correspondence included telecommunications,

which over the last decade has encompassed distance education on the Internet.

In 1998, Congress created the Distance Education Demonstration Program that provides waivers to these rules for participating institutions and created a Commission to study the quality and accessibility of distance education. Internet-based distance education was still relatively new at that time. The Distance Education Demonstration Program was one means to study distance education to determine appropriate changes to the Higher Education Act. The Commission, with former Senator Bob Kerrey as Chairman and then-Congressman Johnny Isakson as Vice-Chairman, and the Distance Education Demonstration Program found that distance education is capable of providing access to millions of students, particularly working adults at a level comparable to on-ground education. Both the Web-based Commission and the Department of Education have recommended the repeal of the 50 percent rules which continue to limit students' access to distance education.

The Committee repeals the application of the 50 percent rule's application to distance education to ensure the higher education system can take advantage of technological advancements that create new opportunities for students and schools. By removing unnecessary barriers to distance education, the Committee believes institutions of higher education will be given the flexibility to increase the use of technology and provide students with new postsecondary options. Financial rules, administrative capability rules, and accreditation safeguards remain in place to prevent fraud and abuse.

The Committee understands that Internet-based distance learning is a mode of learning by which students pursue higher education, courses are conducted and managed, and institutions of higher education expand to reach a new and non-traditional group of students. The Committee further understands that distance learning can be a cost-effective way of educating students through both synchronous (live) and asynchronous (interactive) means. Therefore, the Committee encourages institutions of higher education to consider the use of "computer transmission," whether synchronous or asynchronous, and "computer conferencing," that is, distance learning, in a way that uses a distributed learning system which ensures secure and encrypted protection for students getting their education through an Internet-based system.

The Committee expects institutions that offer distance education today to have security mechanisms in place, such as identification numbers or other pass code information required to be used each time the student participates in class time or coursework on-line. In time, as technology develops, the Committee anticipates that additional identification technologies will become more sophisticated, less expensive and more mainstream.

In its third report to Congress on the Distance Education Demonstration Program, the Department of Education reports that repeal of the 50 percent rule is necessary to expand access to non-traditional student populations, including minority students. The Committee concurs with the Department's statement:

> The advent of distance learning has forever changed this critical segment of our educational system. Indeed, the evidence would suggest that several of the rules that were in-

tended to protect Federal funds have instead protected brick-and-mortar institutions, by limiting Title IV eligibility to institutions that offer primarily on-site courses, and delayed appropriate expansion of this alternative mode of delivery.

Along with the development of new delivery modes, the changing demographics of postsecondary education stunts bring into focus the problems arising from the outmoded assumptions that at one time warranted using term structure as a foundation for financial aid rules.

Gulf coast hurricane relief

On August 29, 2005 Hurricane Katrina, followed shortly by Hurricane Rita, made landfall in the Gulf Coast region, causing massive destruction to property, business and livelihoods in five states. The damage affected over 50 institutions of higher education, 89,000 postsecondary students, and at least 200,000 student loan borrowers. Of the 50 institutions that experienced some type of damage, at the date of this report, at least 39 are still closed. Shortly after the hurricanes hit, the House of Representatives swiftly passed two bills to grant immediate relief to institutions of higher education and students that were affected by the hurricanes. First, the House of Representatives passed H.R. 3668, the Pell Grant Hurricane and Natural Disaster Relief Act (P.L. 109–66), introduced by Representative Ric Keller (R–FL) to permit the Secretary of Education to waive the return of funds provision as it relates to Pell Grants for those affected by natural disasters. The House of Representatives also passed H.R. 3863, the Natural Disaster Student Aid Fairness Act (P.L. 109–79), that would permit the Secretary of Education to reallocate unused or returned campus-based aid funds to institutions of higher education that were affected by the hurricanes either because the schools were severely damaged or because the schools took in displaced students. On October 6, 2005, the Committee took one further step to address the long term needs of the institutions and students that were affected by these storms by supporting Representative Bobby Jindal (R–LA) who introduced H.R. 3975, the Hurricane Regulatory Relief Act of 2005, a bill providing comprehensive relief for those affected by the hurricanes. The higher education provisions from H.R. 3975 were incorporated in this Committee Print, which permits the Committee to offset the costs of the policies with some of the savings generated through student loan program reforms. By providing an offset for the mandatory spending policies included in these three bills, the Committee guarantees that the funds spent will aid those whose lives have been destroyed by Hurricanes Katrina and Rita while at the same time doing what is best for the country's fiscal interest.

Regulatory relief

The Committee Print includes a package of regulatory relief for institutions of higher education and students affected by the Gulf Coast hurricanes. Through this relief, the Committee grants the Secretary of Education waiver authority to ensure that financial aid administrators adjust a student's expected family contribution

(EFC) to reflect any changes in a student's financial condition due to the hurricanes.

Through the Committee Print, the Secretary is also given the authority to open the Distance Education Demonstration Program (DEDP) to those institutions serving students affected by the hurricanes. By opening up the DEDP, the Committee is ensuring that the same standards and protections that apply to the current demonstration, will also apply here. At the same time, the Committee wants to provide higher education institutions with the utmost flexibility as they try to serve their students—students that have been displaced to all different parts of the country. Distance education is a powerful tool that will allow institutions to connect with students, regardless of where they live. On-line learning opportunities for students displaced by the hurricanes permits those who were in the midst of their studies to continue their degree pursuits and encourage students to stay on track toward graduation, even in the midst of this disaster. Both non-profit and proprietary higher education institutions are able to expand their distance education offerings under the waivers allowed through the DEDP. The provision permits the Secretary to waive the current law limits on the number of participants in the DEDP for up to a year, but once an institution is granted participation in the demonstration, they are eligible for participation for the duration of the authorization.

Student loan relief

When students were forced to flee their institutions of higher education when the hurricanes hit, many students were able to continue their studies because institutions in other states opened their doors. All of the waivers, forgiveness and accommodations provided in this legislation will last for one year.

To ease administrative burden, and permit students to begin classes as soon as possible, the Department of Education issued guidance that allowed students to receive a new financial aid package, without taking into account the funds students may have already received.

Under current law, the institutions that were hit by the hurricanes and the students that were displaced would be required to return the unused portion of their student loan funds. The semester had barely started at the majority of the institutions affected, which would result in an institution or student having to return almost all of the student aid funds that were disbursed prior to the hurricane, totaling at least $80 million. Students may have already spent their student aid on items that were destroyed, such as books, rent for housing, or various supplies for their classes.

Many institutions of higher education have announced that they will close at least for the semester, if not longer, to allow damage to be assessed and repaired. In addition to other challenges, private, non-profit institutions cannot immediately receive Federal Emergency Management Agency (FEMA) funds and have faced difficulty in dealing with the Small Business Association (SBA) to obtain lower interest loans. Given that many of these institutions also face extensive damage and students are trying to rebuild their lives both inside and outside of the classroom, the Committee believes it is necessary to require the Secretary to cancel the loans

discharged to both students and institutions and not require that either party repay the funds. In canceling the loans disbursed, the bill requires the Secretary to reimburse lenders in FFEL, or institutions participating in the Perkins loan program. This is one sensible solution that the Federal government can enact immediately to ease the financial burdens placed upon the affected students and institutions. In canceling the loans that were disbursed, the Committee Print also states that the loans would not be counted against a student's annual or aggregate loan limits.

Teachers that are working towards eligibility for loan forgiveness will also find relief in this measure. Current law requires that teachers be highly qualified and work for five consecutive years in a title I school to be eligible for at least $5,000 of loan forgiveness, and in some cases, $17,500 of loan forgiveness in the FFEL and DL programs. Teachers living or working in the areas affected by the hurricanes would have experienced a disruption in their continuous service requirement because either their home was severely damaged or their school was destroyed. This provision, introduced originally by Rep. Tom Cole (R–OK) in H.R. 3788, the Teacher Loan Hurricane Relief Act, would waive the continuous service requirement for one year for teachers who cannot work due to the hurricanes.

Finally, the Committee Print will provide relief to student loan borrowers who may have lost their homes, their places of employment, or their jobs due to Hurricanes Katrina and Rita. Adopted from a bill Mr. Miller introduced, H.R. 3690, the Katrina College Student Relief Act, and a proposal put forward by the Bush Administration, this provision would provide for a six month deferment for all student loan borrowers affected by the hurricanes. The deferment would permit borrowers to skip payments on loan principal and would also require that the Secretary pay the interest on all loans, including subsidized and unsubsidized Stafford loans, subsidized and unsubsidized PLUS loans, consolidation loans and Perkins loans, for six months. Interest would also not accrue on subsidized or unsubsidized Direct Loans. The Committee believes this policy affords student loan borrowers the financial relief they need during a time when they need to rebuild their lives.

Targeting financial aid resources

The Committee Print adopts a provision from H.R. 609 that calls on the Secretary to inform those who qualify for Federal means-tested benefit programs of their potential eligibility for a Pell Grant. The Committee believes that in a time when many families and students are in need following the aftermath of the Gulf Coast hurricanes, any coordinated effort between Federal agencies that provide means-tested Federal assistance will help to promote higher education as a way to assist individuals in rebuilding their lives.

CONCLUSION

In surveying the programs in the Higher Education Act for purposes of reconciliation, the Committee discovered that many of the good reforms made in H.R. 609, the College Access and Opportunity Act, also relieved some of the pressures the student loan programs place on the American taxpayer. One of the many goals

of the Committee was to exit the reconciliation process with reforms that improved the efficiency of the programs and redistributed the financial responsibility. The Committee continues to believe that the Federal investment into higher education is vital to ensuring the viability of the programs. However, the Committee also saw many places where Federal dollars were being spent unnecessarily. Over $4.4 billion of these dollars were infused back into the program through new borrower benefits, such as a reduction in a student-paid fee on loans, increased loan limits, and an equalization of the repayment plans in the FFEL and DL programs. Rather than squander the opportunity with a rubber stamp for the status quo, the Committee members rolled up their sleeves and fought for real changes. The result is a bill that will expand college access while at the same time reducing the excess spending that permeates the student loan programs.

SECTION-BY-SECTION ANALYSIS

Title II—Committee on Education and the Workforce

SUBTITLE B—HIGHER EDUCATION

Section 2101. Short title; table of contents

States the short title as the "Higher Education Budget Reconciliation Act of 2005." Contains the Table of Contents.

Part 1—Amendments to the Higher Education Act of 1965

Section 2111. References; effective date

Establishes the effective date as the date of enactment. States that, unless otherwise noted, any amendment to repeal or amend a section or provision amends or repeals a section or provision of the Higher Education Act of 1965.

Section 2112. Modification of 50/50 rule

Repeals the 50 percent rule as it pertains to distance education by telecommunication.

Section 2113. Reauthorization of Federal Family Education Loan program

Amends section 421(b) to reference loan processing and issuance fee rather than administrative cost allowance.

Amends section 424(a) to extend Federal insurance on student loans to 2012. Further amends section 424(a) to extend Federal insurance on student loans for students who have other loans under this part and are continuing their education through 2016.

Amends sections 428(a) and 428C(e) to continue the authorization for the guaranteed and consolidation loan programs.

Section 2114. Loan limits

Amends sections 425(a) and 428(b) to increase the maximum annual loan limits for freshmen from $2,625 to $3,500 and for sophomores from $3,500 to $4,500.

Amends section 428C(a) by inserting a new clause (ii) in paragraph (3)(B) to clarify that the underlying loans in a consolidation loan will count against a borrower's aggregate borrowing limits.

Establishes that amendments made by this section will apply to loans made, insured, or guaranteed under part B or part D beginning July 1, 2007.

Section 2115. Interest rates and special allowances

Amends section 427A(k) to repeal the interest rate change to a fixed interest rate scheduled to take effect in 2006.

Amends section 427A by striking subsection (l) with regards to interest rates for new loans on or after July 1, 2006.

Amends section 455(b) to repeal the interest rate change to a fixed interest rate scheduled to take effect in 2006. Further amends section 455(b) by striking paragraph (7) with regards to interest rates for new loans on or after July 1, 2006.

Further amends section 427A(k) by specifying in the heading of paragraph (4) that the paragraph applies to loans made before July 1, 2006. Further amends section 427A(k) by inserting a new paragraph (5) to provide borrowers a choice between a variable rate and a fixed rate for all consolidation loans made on or after July 1, 2006. Establishes how the interest rates will be determined and establishes an interest rate cap.

Amends section 455(b) by specifying in the heading of subparagraph (D) of paragraph (6) that the subparagraph applies to loans made before July 1, 2006. Further amends section 455(b) by inserting a new subparagraph (E) in paragraph (6) to provide borrowers a choice between a variable rate and a fixed rate for all consolidation loans made on or after July 1, 2006. Establishes how the interest rates will be determined and establishes an interest rate cap.

Makes technical amendment to section 428C.

Makes technical and conforming amendments to section 438(b). Further amends section 438(b) by striking clauses (v), (vi), and (vii) and inserting a new clause (v) in subparagraph (I) of paragraph (2) that requires the annual return of excess interest to the Federal treasury, outlines how the excess interest is to be calculated, and defines the term "special allowance support level." States that the amendments made to this subsection do not apply to any special allowance payments made under this section before July 1, 2006.

Section 2116. Additional loan terms and conditions

Amends section 428(b) by inserting a new subparagraph (H) in paragraph (1) to require guaranty agencies to collect a single insurance premium equal to no more than 1 percent of the loan principal for loans for which the first disbursement of principal is made before July 1, 2006, or for the collection and deposit into the Federal Student Loan Reserve Fund of a Federal default fee of 1 percent of the loan principal for loans made on or after July 1, 2006. Further amends section 428(b) in paragraph (N) to require the disbursement of loan funds to students attending foreign schools to be sent to the institution but made payable to the student. Also requires the endorsement or other certification by the student. Further amends section 428(b) to prohibit the Secretary from restricting the proportions or ratios by which payments may be graduated

with the informed agreement of the borrower. Further amends section 428(b) by inserting a new clause (iv) in subparagraph (A) of paragraph (9) to provide for an interest only repayment plan, so long as the interest amounts to at least $600, for the first two years of repayment.

Amends section 428H(h) to require guaranty agencies with agreements with the Secretary under section 428(b)(1) to, in lieu of the insurance premium, collect and deposit into the Federal Student Loan Reserve Fund a Federal default fee of 1 percent of the loan principal for loans made on or after July 1, 2006.

Amends section 428A(a) by inserting a new subparagraph (C) in paragraph (1) to prohibit the Secretary from waiving the Federal default fee under sections 428(b)(1)(H) and 428H(h).

Amends section 455(d) to make technical and conforming amendments to align repayment plans in part D with repayment plans in part B.

Amends section 438(c) by inserting a new subparagraph heading in paragraph (2) to read: "(A) In General—." Further amends section 438(c) by inserting a new subparagraph (B) within paragraph (2) to gradually reduce origination fees paid by students to 0 percent by 2010 for loans, except consolidation loans, made under part B.

Amends section 455(c) to reduce origination fees to 1 percent by 2010 for loans, except PLUS loans and consolidation loans, made under part D. Further amends section 455(c) by prohibiting the Secretary from waiving any amount of the loan fee prescribed under this section as part of a repayment incentive. Also prohibits the Secretary from providing any repayment incentive before a borrower enters repayment.

Further amends section 438(c) by inserting a new paragraph (9) that establishes a consolidation loan offset charge in an amount not to exceed 1 percent of the principal for consolidation loans.

Further amends section 455(c) by inserting a new paragraph (4) that establishes a consolidation loan offset charge in an amount not to exceed 1 percent of the principal for consolidation loans.

Section 2117. Consolidation loan changes

Amends section 428C(a) to terminate a student's status as an eligible borrower under this section and section 455(g) upon the receipt of a consolidation loan. Further amends section 428C(a) by inserting a new subclause (V) in clause (i) of subparagraph (B) of paragraph (3) to allow a student who has already consolidated their loan to obtain a subsequent Direct Loan consolidation loan only for the purposes of obtaining an income contingent repayment plan and only if the loan has been submitted to the guaranty agency for default aversion. Further amends section 428C(a) to include a cross-reference to section 428(b)(7)(A) in subclause (I) of clause (ii) of subparagraph (3). Further amends section 428C(a) by striking subparagraph (C) of paragraph (3) with regards to spousal consolidation.

Amends section 428C(b) to require the Secretary to offer any eligible borrower that is denied a consolidation loan, or a consolidation loan with income-sensitive repayment terms, by an eligible lender under subsection (a)(1) of this section, a direct consolidation

loan if the eligible borrower submits an application. The Secretary is required to offer such loans to a borrower who has defaulted so that the borrower may resolve the default. Further amends section 428C(b) by requiring lenders of consolidation loans to have an eligible borrower certify, if all of his or her loans are held by a single holder, that he or she has notified that holder of his or her interest in receiving a consolidation loan and strikes language that required borrowers with a single holder to consolidate with that holder. Further amends section 428C(b) by striking an outdated references to a minimum loan balance required for consolidation. Further amends section 428C(b) by inserting a new subparagraph (F) in paragraph (1) that requires the consolidating lender to provide a borrower with a clear and conspicuous notice of the effects of consolidation on a borrower's total interest to be paid, fees and length of repayment; the effects of consolidation on a borrower's underlying loan benefits; the ability of the borrower to pre- pay the loan, pay on a shorter schedule, change repayment plans, and information making clear how borrower benefit programs may vary among lenders and loan holders; the tax benefits for which the borrower might be eligible; the consequences of default; and that by applying for the consolidation loan, the borrower is not obligated to take the loan.

Amends section 428(b) to require the repayment period to begin the day after 6 months after the date the student ceases to carry at least on-half the normal full-time academic workload as determined by the institution.

Establishes the effective date for the amendments under subsection (a)(2)(A) of this section of H.R. 609 as July 1, 2006.

Amends sections 455(a) and 455(g) to align consolidation loans under part D with the requirements of this section.

Amends section 428C(f)(2) by adding at the end, a new subparagraph stating that for consolidation loans based on applications received on or after the date of enactment, if 90 percent of more of the total principal outstanding on the loans held, directly or indirectly, by any holder is comprised of principal owed on consolidation loans, the rebate described in paragraph (1) for such holder is equal to 1.30 percent of the principal plus accrued unpaid interest on such loans.

Section 2118. Deferment of student loans for military service

Amends section 428(b) by inserting a new clause (iii) in subparagraph (M) of paragraph (1) to provide loan deferments for up to three years for individuals serving on active duty or performing National Guard duty during a war or other military operation or emergency.

Amends section 455(f) by inserting a new subparagraph (C) in paragraph (2) to provide loan deferments for up to three years for individuals serving on active duty or performing National Guard duty during a war or other military operation or emergency.

Amends section 464(c) by inserting a new clause (iii) in subparagraph (A) of paragraph (2) to provide loan deferments for up to three years for individuals serving on active duty or performing National Guard duty during a war or other military operation or emergency.

Amends section 481 by inserting a new subsection (d) that defines the terms "Active Duty," "Military Operation," "National Emergency," "Serving on Active Duty," and "Qualifying National Guard Duty."

States that nothing in these amendments authorizes the refunding of any repayment on a loan.

Establishes the effective date for these amendments as applying to loans disbursed on or after July 1, 1993.

Section 2119. Loan forgiveness for service in areas of national need

Rewrites section 428K to amend the Loan Forgiveness for Child Care Providers program. Renames the program the Loan Forgiveness for Service in Areas of National Need program. Outlines the purposes of the section. Authorizes the Secretary to assume the obligation to repay a qualified loan amount for a loan made, insured, or guaranteed under this part or part D (excluding PLUS and consolidated loans) by a borrower who has been employed full-time for at least five consecutive complete school, academic, or calendar years in an area of national need, and is not in default on a loan for which the borrower seeks forgiveness. Forgiveness is awarded on a first-come, first-served basis subject to the availability of appropriations. Identifies the areas of national need as being early childhood educators, nurses, foreign language specialists, librarians, highly qualified teachers of bilingual education in low-income communities, first responders in low-income communities, child welfare workers, and speech-language pathologists. Provides the Secretary the authority to designate the areas of national need. Establishes the qualified loan amount as being not more than $5,000. Prohibits a borrower from receiving a benefit for the same service under both this section and subtitle D of title I of the National and Community Service Act of 1990. Prohibits a borrower from receiving a reduction of loan obligations under both this section and sections 428J or 460. Defines the terms "Child Care Facility," "Critical Foreign Language," "Early Childhood Educator," "Eligible Preschool Program," "Low-Income Community," "Nurse," and "Speech-Language Pathologist." Authorizes such sums as may be necessary for fiscal years 2006–2011.

Section 2120. Unsubsidized Stafford loans

Amends section 428H(d) to increase the maximum annual loan limits for unsubsidized loans for graduate students from $10,000 to $12,000.

States that this amendment will apply to loans made on or after July 1, 2007.

Section 2121. Elimination of termination dates from Taxpayer-Teacher Protection Act of 2004

Amends section 438(b) as amended by the Taxpayer-Teacher Protection Act of 2004 to eliminate the termination dates for special allowance payments. Further amends section 438(b) by inserting a new clause (vi) in subparagraph (B) of paragraph (2) to require the quarterly rate of the special allowance to be the rate determined under subparagraphs (A), (E), (F), (G), (H), or (I) for a holder of loans that were made or purchased on or after October 1, 2005, or

for a holder of loans that were not earning a quarterly rate of special allowance determined in this subsection as of October 1, 2005.

Amends section 3(b) of the Taxpayer-Teacher Protection Act of 2004 by striking paragraph (3) with regards to the effective date for new borrowers to be eligible for loan forgiveness.

Amends section 428J(a) by including a cross-reference to a new subsection (g)(3).

Amends section 428J(c) by inserting a new subparagraph (C) in paragraph (3). The new subparagraph (C) includes elementary or secondary school teachers who primarily teach reading. To qualify, such teachers must meet the requirements of subsection (b) of this section, have obtained a separate reading instruction credential from the State in which the teacher is employed and be certified by the chief administrative officer of the public or non-profit private elementary or secondary school in which the borrower is employed to teach reading as being proficient in teaching the essential components of reading instruction and as having such credential.

Amends section 428J(g) by inserting a new paragraph (3) to establish guidelines for private school teachers to qualify under this section for the loan forgiveness.

Amends section 460(a) by inserting a cross-reference to a new subsection (g)(3).

Amends section 460(g) by inserting a new paragraph (3) to establish guidelines for private school teachers to qualify under this section.

Section 2122. Loan fees from lenders

Amends section 438(d)(2) to add a new subparagraph (2) to establish that 1 percent must be deducted off of any loan for which the first disbursement is made on or after July 1, 2006.

Section 2123. Additional administrative provisions

Amends section 428(b) to require 100 percent insurance on "exempt claims." Further amends section 428(b) by changing the insurance rate from 98 percent to 96 percent in the case of a loan for which the first disbursement of principal is made or on after July 1, 2006.

Amends section 428(c) by inserting a new subparagraph (G) in paragraph (1) to require 100 percent reinsurance on "exempt claims" and define "exempt claims" under this new subparagraph. Further amends section 428(c) to eliminate the requirement that forbearance agreements be documented in writing. Further amends section 428(c) by inserting a new paragraph (10) that requires forbearance agreements to be recorded and confirmed with the borrower. Further amends section 428(c) by inserting a heading for clause (i) in paragraph (2)(A) and inserting a new clause (ii) to require the guaranty agreements to include requirements establishing procedures to preclude consolidation lending from being an excessive proportion of guaranty agency recoveries on defaulted loans. Further amends section 428(c) by amending a cross-reference by re-designating certain subparagraphs as clauses, and by adding new subparagraphs (B) and (C). The new subparagraphs require guaranty agencies, beginning October 1, 2006, to not charge collection costs that are more than 18.5 percent of the outstanding prin-

cipal and interest of a defaulted loan that is paid off through consolidation; return to the Secretary a portion of the collection charge equal to 8.5 percent of the outstanding principal and interest of such defaulted loan; and, beginning October 1, 2009, to return to the Secretary the entire amount charged with respect to each defaulted loan that is paid off with excess consolidation proceeds. The new subparagraphs also define the term "excess consolidation proceeds." Further amends section 428(c)(6)(B) to add a subclause (II) in clause (ii) that changes 24 percent to 20 percent after October 1, 2006.

Amends section 428I which outlines the rules for exceptional performance. States that the Secretary is required to designate eligible lenders and servicers that meet certain performance measures for exceptional performance, and to notify the guaranty agencies of the lenders and servicers receiving the designation. Outlines the performance measures eligible lenders and servicers must meet to receive the designation. Requires each guaranty agency to provide the Secretary with other information in its possession regarding lenders and servicers requesting the exceptional performance designation from the Secretary. Outlines the basis for the Secretary's decision. States that any lender or servicer designated for exceptional performance as of the day before the date of enactment of the Higher Education Budget Reconciliation Act of 2005 shall continue to be so designated and subject to the requirements of this section as in effect on that day until the performance standards described in this section are established. Prohibits the Secretary from designating any additional lenders or servicers until the new performance standards are established. Requires guaranty agencies to pay, to each eligible lender or servicer, 98 percent of the unpaid principal and interest of all loans for which claims are submitted for payment by that eligible lender or servicer for the one year period following the receipt by the guaranty agency of the notification of designation under this section, or until the guaranty agency receives notice from the Secretary that the designation of the lender or servicer has been revoked. Requires the Secretary to revoke the exceptional performance designation if a lender or servicer fails to meet the performance standards, gained the designation through fraud, or is failing to operate in accordance with regulations. States that this section does not limit the ability of guaranty agencies to require the submission of claims documentation evidencing servicing performed on loans, except that the guaranty agency may not require greater documentation than that required for lenders and servicers not receiving the exceptional performance designation. States that loans reimbursed under this section will not be subject to additional review by the Secretary or repurchase by the guaranty agency unless a determination is made by the Secretary that the lender or servicer engaged in fraud or other purposeful misconduct in obtaining the exceptional performance designation. Grants the Secretary the authority to terminate the exceptional performance designation of lenders and servicers if he or she determines that the termination would be in the best interests of the United States. Defines the terms "Eligible Loan" and "Servicer." Establishes the effective date of these amendments as July 1, 2006. Makes additional technical amendments.

Amends section 428A(a) by striking the authority of the Secretary to waive the prohibition on inducements under certain circumstances within the Voluntary Flexible Agreements (VFA).

Amends section 428A(c) by striking the existing paragraph (3) and inserting a new paragraph (3) that requires the Secretary to publish notification in the Federal Register of any new agreements and allow public comment on the proposed agreement prior to final approval.

Amends section 428B(a)(1) by adding at the end, a new subparagraph which requires parents convicted of or who have plead guilty to a crime involving fraud in obtaining funds under this title complete repayment of the funds to the Secretary before they are eligible to receive additional funds.

Amends section 428F(a) to strike the requirement for 12 months of consecutive payments and insert a requirement for nine payments made within 20 days of the due date during 10 consecutive months. Further amends section 428F(a) by inserting a new subparagraph (C) of paragraph (1) to codify the collection costs permissible for rehabilitated loans at up to 18.5 percent of the outstanding principal and interest of the loan.

Amends section 428F by inserting a new subsection (c) that requires, where appropriate, each program described under subsection (b) of section 428F to make available financial and economic education materials for the borrower.

Amends section 432(k) to require the Secretary to provide financial and economic education and counseling.

Amends section 430A(a) to require loan holders to report loan information to all national credit bureaus.

Amends section 432(l) to include the anticipated graduation date.

Amends section 432 by striking subsection (n) with regards to Default Reduction Management.

Amends section 435(d) by amending paragraph (2) to establish new requirements for institutions to become an eligible lender in the FFEL program. Establishes that an eligible institution is permitted to use a portion of the proceeds from special allowance payments, interest payments from borrowers, interest subsidies from the Department, and any proceeds from the sale or other disposition of loans for need based aid and reasonable, direct administrative expenses. Requires an institution to ensure that the proceeds received under this paragraph are used to supplement, and not supplant, non-Federal funds that would otherwise be used for need-based grant programs. Prohibits schools from acting as PLUS lenders and as lenders to undergraduate students.

Amends section 437(a) to state that a borrower who has been certified as permanently and totally disabled by the Department of Veteran Affairs or the Social Security Administration will not be required to present further documentation.

Amends section 437(c) to include a parent's eligibility within the false certification section.

Amends section 439(d) by striking paragraph (3) with regards to the perfection of security interests in student loans.

Amends section 428(a) by inserting a new subclause (III) of clause (v) of subparagraph (A) of paragraph (3) to prohibit a lender from receiving interest on a loan disbursed through an escrow

agent for any period that precedes the date that is 3 days before the first disbursement of the loan.

Further amends section 428(c) by requiring a guaranty agency to file a claim for reimbursement with respect to losses under this subsection within 30 days after the agency discharges its insurance obligation on the loan rather than 45 days.

Amends section 428(i) by amending from 21 days to 10 the timeline for lenders to make payments into the escrow account prior to the date of the disbursement of the installment to the borrowers.

Amends section 428G(e) by striking the reference that limits the applicability of this subsection to foreign institutions.

Amends section 428H(e) by striking paragraph (6) and inserting a new paragraph (6) to prohibit a lender from receiving interest on a loan under this section for any period that precedes the dates described in section 428(a)(3)(A)(v).

Amends section 438(b) to require the daily interest to be computed using the interest rate described in section 3902(a) of title 31, United States Code.

Makes technical amendments.

Section 2124. Funds for administrative expenses

Amends section 458(a) by adding a paragraph (1) that authorizes $820,000,000 in fiscal year 2006 to be used for administrative costs under this part and part B and account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsections (b) and (c). Further amends section 458(a) in paragraph (2) to authorize for fiscal years 2007 through 2011 such sum as may be necessary for administrative costs under this part and part B. Further amends section 458(a) in paragraph (3) to authorize for fiscal years 2007 through 2011, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for account maintenance fees payable to guaranty agencies under part B and calculated in accordance with (b).

Amends section 458(b) by establishing that the calculation basis will be 0.10 percent of the original principal amount of outstanding loans on which insurance was issued under part B.

Amends section 458(c) by requiring that no funds may be expended under this section unless the Secretary of Education includes an annual budget justification to Congress.

Section 2125. Significantly simplifying the student aid application process

Amends section 479(b) by striking clause (i) of subparagraph (A) of paragraph (1) and inserting a new clause (i) to redefine the requirements a dependent student must meet to be eligible to file the simplified needs test. Further amends section 479(b) by striking clause (i) of subparagraph (B) of paragraph (1) to redefine the requirements an independent student must meet to be eligible to file the simplified needs test.

Amends section 479(c) by striking subparagraph (A) of paragraph (1) and inserting a new subparagraph (A) to redefine the characteristics a dependent student must meet in order to be considered as having an expected family contribution of zero. Further amends

section 479(c) by striking subparagraph (A) of paragraph (2) and inserting a new subparagraph (A) to redefine the characteristics an independent student must meet in order to be considered as having an expected family contribution of zero.

Amends section 479 by inserting new subsections (d) and (e) to define the term "Means-Tested Federal Benefit Program" and require the Secretary to regularly evaluate the impact of the eligibility guidelines in this section to ensure that the simplified needs test continues to be targeted to the maximum number of low- and moderate-income students.

Amends section 483(a) by striking paragraphs (1), (2), and (5) and redesignating certain paragraphs. Further amends section 483(a) by inserting new paragraphs (1) through (8). Paragraph (1) requires the Secretary to cooperate with student financial assistance organizations to produce, distribute, and process free of charge common financial reporting forms to be used for determining financial need and eligibility. The forms should be in both paper and electronic format and should be referred to as "Free Application for Federal Student Aid" or "FAFSA." Paragraph (2) requires the Secretary to permit applicants to complete such forms in the years prior to enrollment in order to obtain a non-binding estimate of the family contribution, and requires the Secretary to evaluate the differences between the estimates and the actual determinations two years after this paragraph is implemented and submit a report to the authorizing committees of Congress on the results of the evaluation. Paragraph (3) requires the Secretary to develop a common paper form and an EZ FAFSA for students with an expected family contribution of zero. Outlines what is to be included in the EZ FAFSA. Requires the Secretary to encourage applicants to use the electronic FAFSA forms that the Secretary must maintain. Outlines how the Secretary must maintain the electronic forms. Requires the Secretary to report annually to Congress on the impact of the digital divide on students completing applications for title IV aid and steps being taken to eliminate the divide. Paragraph (4) requires the Secretary to develop a common electronic form. Outlines what is to be included on the form. Requires the Secretary to develop a simplified electronic application for students with an expected family contribution of zero. Outlines what is to be included on the simplified form. Requires the Secretary to ensure that electronic data collection protects applicants' privacy and permits the Secretary to allow electronic forms to be submitted without a signature if the signature is subsequently submitted by the applicant. Paragraph (5) requires the Secretary to develop a streamlined reapplication process. The Secretary is also required to continue reducing the data elements on the FAFSA and report on this to Congress. Paragraph (6) requires the Secretary, in consultation with Sate agencies, to include on the forms such State- specific data items as the Secretary determines are necessary. Requires the Secretary to conduct an annual review. Requires the Secretary to encourage States to take steps to encourage the use of simplified application forms. Requires the Secretary to annually publish in the Federal Register a notice requiring State agencies to inform the Secretary if the State is unable to utilize the simplified application forms and the State-specific data that the State agency requires for

delivery of State need-based aid. Requires State notification to the Secretary regarding the use of application forms. Requires the Secretary, if the State does not provide proper notice, to permit residents of the State to complete simplified forms and not require them to complete any data previously required by that State. Paragraph (7) prohibits the Secretary from charging students or parents for the use of the FAFSA in any of its forms. Requires the use of the FAFSA for determining need for aid under most title IV programs. Requires organizations that charge students and parents to assist them with the filing of a FAFSA to provide several notices regarding the nature of the FAFSA. Paragraph (8) requires the Secretary to initiate the processing of forms under this section as early as practicable prior to January 1 of the student's planned year of enrollment.

Amends section 482(a) to require proposed modifications, updates, and notices to be published in the Federal Register by March 1.

Amends section 483 by inserting a new subsection (e) to require the Secretary to utilize savings accrued by moving more applicants to the electronic form to improve access to the electronic forms for students with an expected family contribution of zero.

Amends section 480(d) by striking paragraph (2) and inserting a new paragraph (2) with regards to include in the definition of "Independent Student" any student who is an orphan, in foster care, or a ward of the court, or was in foster care or a ward of the court until the individual reached the age of 18.

Section 2126. Additional need analysis amendments.

Amends section 475(g) to increase the dependent student work protection allowance from $2,200 to $3,000 beginning July 1, 2006.

Amends 478(b) to clarify that for each academic year after academic year 2006–07, the Secretary shall publish a revised income protection allowance that is developed by increasing the dollar amount contained in the section by a percentage equal to the estimated percentage increase in the Consumer Price Index.

Amends section 478(h) by striking an incorrect cross-reference and clarifying what expenses are allowable under the employment expense allowance.

Amends section 479A(a) by inserting a new heading for the subsection and a new paragraph (1). Further amends section 479A(a) by inserting a new paragraph (2). Further amends section 479A(a) to include a student's status as a ward of the court before turning 18, a homeless or unaccompanied youth under section 725 of the McKinney-Vento Act, and an individual who was adopted at or after age 13 as special circumstances under the new paragraph (2). Further amends section 479A(a) by inserting new paragraphs (3) and (4) as technical amendments.

Amends section 480(d) to treat active duty members of the military as independent students for purposes of need analysis.

Amends section 480(e) by inserting a new paragraph (5) to exclude distributions from a qualified tuition program established under section 529 of the Internal Revenue Code of 1986 that is not included in gross income calculations under section 529.

Amends section 480(f) with regards to the definition of assets by including qualified tuition programs established under section 529 of the Internal Revenue Code of 1986. Further amends section 480(f) by inserting a new paragraph (2) to clarify that qualified tuition programs under section 529 of the Internal Revenue Code of 1986 will not be treated as an asset for a dependent student under section 475. The new paragraph (2) also clarifies how the value of a qualified tuition program will be calculated for the purposes of determining the assets of parents or independent students.

Amends section 480(j) by striking "; Tuition Prepayment Plans" from the heading of the subsection, striking paragraph (2), and inserting language in paragraph (3) to exclude distributions from a qualified tuition program under section 529 of the Internal Revenue Code of 1986 that are not includable in gross income calculations from counting as a resource. Further amends section 480(j) by inserting a new paragraph (3) that excludes assistance not received under this title from both estimated financial assistance and cost of attendance, if that assistance is designated by the State providing that assistance to offset a specific component of the cost of attendance. This new paragraph also states that if the assistance is excluded from either estimated financial assistance or cost of attendance, it must be excluded from both.

Further amends section 480(f) by inserting a new subparagraph (C) in paragraph (3) that exempts small businesses with 100 or fewer full-time or full-time equivalent employees that is owned or controlled by the family.

Section 2127. Definition of eligible program

Amends section 481(b) by inserting a new paragraph (3) to include within the definition of eligible program an instructional program that utilizes direct assessment of student learning or recognizes the direct assessment of student learning by others in lieu of credit hours or clock hours as the measure of student learning. This eligibility determination must be made by the Secretary for institutions being deemed eligible for the first time. Requires the Secretary to provide an annual report to Congress identifying the programs made eligible under this paragraph.

Section 2128. Distance education

Amends section 481(b) by inserting a new paragraph (4) to provide a definition of distance education as an eligible program for title IV purposes.

Amends section 484(l) by striking the one year or longer program of study requirement for a telecommunication course to not be considered a correspondence course; and, by striking the requirement that less than 50 percent of an institution's courses be telecommunications or correspondence courses in order for telecommunications courses to not be considered correspondence courses. Further amends section 484(l) by excluding institutions described in the Carl D. Perkins Vocational and Technical Education Act of 1998.

Section 2129. Student eligibility

Amends section 484(a) by inserting a new paragraph (6) that requires students who have plead guilty or no contest to a crime involving fraud in obtaining funds under this title, to have fully repaid the funds to the Secretary or to the holder of a loan before being considered eligible.

Amends section 484(b) to include incarcerated parents among those not eligible for Federal loans. Further amends section 484(b) by prohibiting a student who is subject to an involuntary civil commitment upon completion of a period of incarceration for a sexual offense (as determined by the Secretary) from being eligible for a loan under this title.

Amends section 484(j) to clarify that students from the freely associated states will only be eligible for Pell Grants.

Amends section 484(q) to include a specific reference to the Internal Revenue Code of 1986 to define what information the Secretary will have access to.

Amends section 484(r) by striking paragraph (1) and inserting a new paragraph (1) to clarify that only those students enrolled and receiving student aid under title IV at the time of the conviction will lose student aid eligibility.

Section 2130. Institutional refunds

Amends section 484B(a) to clarify that LEAP funds are excluded from the requirements of this section. Further amends section 484B(a) to allow for multiple leaves of absence. Further amends section 484B(a) to provide a cross-reference to subsection (d) to determine how the percentage of the enrollment period or payment period that has been completed will be calculated. Further amends section 484B(a) to require the institution to contact a student who is eligible for a late disbursement or post-withdrawal disbursement and obtain confirmation that the loan funds are still required by the student, explain to the student his or her obligation to repay the funds, and document in his or her file the result of such contact and the final determination.

Amends section 484B(b) to provide an institution with 45 days from the date of the determination that a student has withdrawn to return the loan funds. Further amends section 484B(b) to clarify the rule that protects 50 percent of a student's grant funds. Further amends section 484B(b) by stating that students do not have to return amounts of $50 or less.

Amends section 484B(d) by making technical amendments. Further amends section 484B(d) by amending subparagraph B of paragraph (2) to mean the clock hours scheduled to be completed by the student in the period as of the last date of attendance, not to exceed 150 percent of the hours completed by the student in the period.

Section 2131. College access initiative

Amends part G by inserting a new section 485D to create a college access initiative. This new section will require the Secretary to direct each guaranty agency to gather information on programs and student aid available in the State in which the agency is designated. The information must be made available to the public free

of charge and be reported to the Secretary to establish a directory of programs through web sites, publications, and other means determined by the Secretary. The new section requires each guaranty agency to establish a plan to gather and disseminate the information required. The new section outlines the information required from the guarantors and the activities the guarantors must undertake. The new section permits guarantors to utilize funds from operating funds pursuant to section 422B and, if any funds remain, from earnings on the restricted accounts under section 422(h)(4). The new section requires the Secretary and guaranty agencies to publicize the availability of the information within 270 days of enactment of this Act, particularly to traditionally underrepresented populations.

Section 2132. Cancellation of student loan indebtedness for survivors of victims of the September 11, 2001, attacks

Defines the terms "Eligible Public Servant," "Eligible Victim," "Eligible Parent," "Secretary," and "Federal Student Loan."

Requires the Secretary to provide for the discharge or cancellation of the Federal student loan indebtedness of the spouse of an eligible public servant, the portion of a Federal consolidation loan incurred on behalf of the eligible victim that was used jointly by the eligible victim and his or her spouse, the portion of the consolidation loan indebtedness of an eligible parent that was incurred on behalf of an eligible victim, and the PLUS loan indebtedness of an eligible parent that was incurred on behalf of an eligible victim.

Outlines the methods to be used to cancel or discharge eligible loans.

Requires the Secretary to establish procedures for the filing of applications and to publicize the availability of loan discharge or cancellation.

States that funds available for the purposes of making payments to lenders in accordance with section 437(a) shall be available for making payments to lenders as required by this section.

States that the provisions of this section shall be applied to loans on which amounts were owed on September 11, 2001.

Section 2133. Independent evaluation of distance education program

Requires the Secretary of Education to enter into an agreement with the National Academy of Sciences to conduct an evaluation on the quality of distance education programs, as compared to campus-based education programs. The evaluation shall: identify the elements by which the quality of distance education as compared to campus- based education programs can be assessed; identify the success of distance education and campus-based education with respect to student achievement; and identify the types of students who most benefit from distance education programs and campus-based education programs. Requires an interim report to be submitted to the Secretary of Education, Committee on Health, Education, Labor and Pensions, and Committee on Education and the Workforce not later than December 31, 2007 and a final report on December 31, 2009.

Section 2134. Disbursement of student loans

Amends section 422(d) of the Higher Education Amendments of 1998 to establish an effective date for the amendments of July 1, 2006.

Part 2—Higher Education Relief

Section 2141. References

States that references in this part to "the Act" are references to the Higher Education Act of 1965.

Section 2142. Waivers and modifications

Authorizes the Secretary of Education to waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV or any student eligibility provisions in the Act as she deems necessary in connection with the Gulf hurricane disaster to ensure that: the calculation of expected family contribution under section 474 of the Act is modified to reflect any changes in financial condition of an affected students and his or her family resulting from a Gulf hurricane disaster; and institutions of higher education, systems of education, or consortia of institutions that are located in an area affected by a Gulf hurricane disaster, or that are serving affected students, are eligible, notwithstanding section 486(d) of the Act, to apply for participation in the distance education demonstration program.

Section 2143. Cancellation of institutional repayment by colleges and universities affected by a gulf hurricane disaster

Requires the Secretary of Education to cancel any obligation of an affected institution to return or repay any funds the institution received before the date of enactment of this Act for, or on behalf of, students under subpart 1 or 3 of part A or parts B, C, D, E of title IV of the Act for any cancelled enrollment period.

Section 2144. Cancellation of student loans for cancelled enrollment periods

Requires the Secretary of Education to discharge all loan amounts under parts B and D of title IV of the Act and cancel any loan made under part E of title IV, disbursed to, or on behalf of, an affected student for a cancelled enrollment period. Further requires the Secretary of Education to reimburse affected institutions for any amounts discharged under subsection (a) with respect to a loan under part E of title IV and to reimburse lenders for the purpose of discharging any loan amounts disbursed to, or on behalf of, an affected student under part B of title IV. Limits the amount discharged for a loan made under section 428C or a Federal Direct Consolidation Loan to the extent that such loan amount was used to repay a loan to an affected student for a cancelled enrollment period.

Section 2145. Temporary deferment of student loan repayment

Permits an affected individual that is a borrower of a qualified student loan or a qualified parent loan to be granted a deferment, not in excess of 6 months, during which periodic installments of

principal need not be paid and interest shall accrue and be paid by the Secretary in the case of loan made under sections 428, 428B, 428C, or 428H of the Act or shall accrue and be paid by the Secretary to the Perkins loan fund held by the institution of higher education that made the loan in the case of loan made under part E of title IV, or shall not accrue in the case of a Federal Direct Loan.

Section 2146. No affect on grant and loan limits

States that notwithstanding any provision of title IV of the Act, or any regulation issued thereunder, no grant or loan funds received by an affected student under title IV for a cancelled enrollment period shall be counted against such affected student's annual or aggregate grant or loan limits for the receipt of grants or loans under that title.

Section 2147. Teacher loan relief

Permits the Secretary of Education to waive the requirements of sections 428J(b)(1) and 460(b)(1)(A) of the Act that the 5 years of qualifying service be consecutive academic years for any teacher whose employment was interrupted if the teacher was employed in qualifying service at the time of a Gulf hurricane disaster, in a school located in an area affected by a Gulf hurricane disaster and the teacher resumes qualifying service not later than the beginning of academic year 2006–2007 in that school or any other school in which employment is qualifying service under such section.

Section 2148. Expanding information dissemination regarding eligibility for Pell grants

States that the Secretary of Education will make special efforts, in conjunction with State efforts, to notify affected students and, if applicable, their parents, who qualify for means-tested Federal benefit programs, of their potential eligibility for a maximum Pell Grant, and shall disseminate such informational materials as the Secretary of Education deems appropriate.

Defines "means-tested" federal benefit program.

Section 2149. Procedures

States that sections 482(c) and 492 of the Act shall not apply to any waivers, modifications or actions initiated by the Secretary of Education under this part.

Section 2150. Termination of authority

States that the authority of the Secretary of Education to issue waivers and modifications under this part shall expire at the conclusion of the 2005–2006 academic year, but the expiration of such authority shall not affect the continuing validity of any such waivers or modifications after such academic year.

Section 2151. Definitions

Defines "affected individual," "affected institution," "affected state," "affected student," "area affected by a Gulf hurricane disaster," "cancelled enrollment period," "Gulf hurricane disaster," "in-

stitution of higher education," "qualified student loan," "qualified parent loan."

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. The Committee Print amends the Higher Education Act of 1965 by providing increase access for students to a higher education. The bill does not prevent legislative branch employees from receiving services provided under this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. The Committee Print reauthorizes spending programs under the Higher Education Act. As such, the bill does not contain any unfunded mandates.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Roll Call #1, Amendment #7 offered by Mr. Bishop regarding tax table updates in Pell Grants was defeated:

On amendment #7 offered by Mr. Bishop, roll call #1, the following members voted "No": Mr. Boehner, Mr. Petri, Mr. McKeon, Mr. Castle, Mr. Johnson, Mr. Souder, Mr. Norwood, Mr. Ehlers, Mrs. Biggert, Mr. Tiberi, Mr. Keller, Mr. Osborne, Mr. Wilson, Mr. Porter, Mr. Kline, Mrs. Musgrave, Mr. Inglis, Ms. McMorris, Mr. Marchant, Mr. Price, Mr. Fortuño, Mr. Boustany, Mrs. Foxx, Mrs. Drake, and Mr. Kuhl. Total 25

The following members voted "Aye:" Mr. Miller, Mr. Kildee, Mr. Owens, Mr. Payne, Mr. Andrews, Mr. Scott, Ms. Woolsey, Mr. Hinojosa, Mrs. McCarthy, Mr. Tierney, Mr. Kind, Mr. Kucinich, Mr. Wu, Mr. Holt, Mrs. Davis, Ms. McCollum, Mr. Davis, Mr. Grijalva, Mr. Van Hollen, Mr. Ryan, Mr. Bishop, and Mr. Barrow. Total 22

Pursuant to Unanimous Consent agreement, Mr. Jindal is recorded as "No."

Roll Call #2, Amendment #2 offered by Mr. Miller, and Amendment in the Nature of a Substitute was defeated:

On amendment #2 offered by Mr. Miller, the following members voted "No:" Mr. Boehner, Mr. Petri, Mr. McKeon, Mr. Castle, Mr. Johnson, Mr. Souder, Mr. Norwood, Mr. Ehlers, Mrs. Biggert, Mr.

Platts, Mr. Tiberi, Mr. Keller, Mr. Osborne, Mr. Wilson, Mr. Porter, Mr. Kline, Mrs. Musgrave, Mr. Inglis, Ms. McMorris, Mr. Marchant, Mr. Price, Mr. Fortuño, Mr. Jindal, Mr. Boustany, Mrs. Foxx, Mrs. Drake, and Mr. Kuhl. Total 27

The following members voted "Aye:" Mr. Miller, Mr. Kildee, Mr. Owens, Mr. Payne, Mr. Andrews, Mr. Scott, Ms. Woolsey, Mr. Hinojosa, Mrs. McCarthy, Mr. Tierney, Mr. Kucinich, Mr. Wu, Mr. Holt, Mrs. Davis, Ms. McCollum, Mr. Davis, Mr. Van Hollen, Mr. Ryan, Mr. Bishop, and Mr. Barrow. Total 20

Pursuant to Unanimous Consent agreement, Mr. Kind and Mr. Grijalva are recorded as "Aye."

Roll Call #3, Amendment #3 offered by Mr. Petri regarding direct lending was defeated:

On amendment #3 offered by Mr. Petri, the following members voted "No:" Mr. Boehner, Mr. McKeon, Mr. Castle, Mr. Johnson, Mr. Souder, Mr. Norwood, Mr. Ehlers, Mrs. Biggert, Mr. Platts, Mr. Tiberi, Mr. Keller, Mr. Osborne, Mr. Wilson, Mr. Porter, Mr. Kline, Mrs. Musgrave, Mr. Inglis, Ms. McMorris, Mr. Marchant, Mr. Price, Mr. Jindal, Mr. Boustany, Mrs. Foxx, Mrs. Drake, Mr. Kuhl, Mr. Andrews, and Mr. Hinojosa. Total 27

The following members voted "Aye:" Mr. Petri, Mr. Miller, Mr. Kildee, Mr. Owens, Mr. Payne, Mr. Scott, Mrs. McCarthy, Mr. Tierney, Mr. Kucinich, Mr. Wu, Mr. Holt, Mrs. Davis, Ms. McCollum, Mr. Davis, Mr. Van Hollen, Mr. Bishop, and Mr. Barrow. Total 17

Pursuant to Unanimous Consent agreement, Mr. Fortuño is recorded as "No" and Mr. Kind, Mr. Grijalva, and Mr. Ryan are recorded as "Aye."

Roll Call #4, Amendment #4 offered by Mr. Van Hollen regarding the Default Fees was defeated:

On Amendment #4 offered by Mr. Van Hollen, the following members voted "No:" Mr. Boehner, Mr. Petri, Mr. McKeon, Mr. Castle, Mr. Johnson, Mr. Souder, Mr. Norwood, Mr. Ehlers, Mrs. Biggert, Mr. Platts, Mr. Tiberi, Mr. Keller, Mr. Osborne, Mr. Wilson, Mr. Porter, Mr. Kline, Mrs. Musgrave, Mr. Inglis, Ms. McMorris, Mr. Marchant, Mr. Price, Mr. Jindal, Mr. Boustany, Mrs. Foxx, Mrs. Drake, Mr. Kuhl. Total 26

The following members voted "Aye:" Mr. Miller, Mr. Kildee, Mr. Owens, Mr. Payne, Mr. Andrews, Mr. Scott, Ms. Woolsey, Mr. Hinojosa, Mrs. McCarthy, Mr. Tierney, Mr. Kucinich, Mr. Wu, Mr. Holt, Mrs. Davis, Ms. McCollum, Mr. Davis, Mr. Van Hollen, Mr. Bishop, and Mr. Barrow. Total 19

Pursuant to Unanimous Consent agreement, Mr. Fortuño is recorded as "No" and Mr. Kind, Mr. Grijalva, and Mr. Ryan are recorded as "Aye."

Roll Call #5, Amendment #6 offered by Mrs. Davis regarding subsequent reduction was defeated:

On Amendment #6 offered by Mrs. Davis, the following members voted "No:" Mr. Boehner, Mr. McKeon, Mr. Castle, Mr. Johnson, Mr. Souder, Mr. Norwood, Mr. Ehlers, Mrs. Biggert, Mr. Platts, Mr. Tiberi, Mr. Keller, Mr. Osborne, Mr. Wilson, Mr. Porter, Mr. Kline, Mrs. Musgrave, Mr. Inglis, Mr. Marchant, Mr. Price, Mr. Jindal, Mr. Boustany, Mrs. Foxx, Mrs. Drake, and Mr. Kuhl. Total 24

The following members voted "Aye:" Mr. Petri, Mr. Miller, Mr. Kildee, Mr. Owens, Mr. Payne, Mr. Andrews, Mr. Scott, Ms. Woolsey, Mr. Hinojosa, Mrs. McCarthy, Mr. Tierney, Mr. Kucinich, Mr. Wu, Mr. Holt, Mrs. Davis, Ms. McCollum, Mr. Davis, Mr. Van Hollen, Mr. Bishop, and Mr. Barrow. Total 20

Pursuant to Unanimous Consent agreement, Mr. Fortuño and Mrs. McMorris are recorded as "No" and Mr. Kind, Mr. Grijalva, and Mr. Ryan are recorded as "Aye."

Roll Call #6, Motion by Mr. Petri for transmittal to the Budget Committee was adopted:

On the motion to transmit to the Budget Committee, the following members voted "Aye:" Mr. Boehner, Mr. Petri, Mr. McKeon, Mr. Castle, Mr. Johnson, Mr. Souder, Mr. Ehlers, Mrs. Biggert, Mr. Platts, Mr. Tiberi, Mr. Keller, Mr. Wilson, Mr. Porter, Mr. Kline, Mrs. Musgrave, Mr. Inglis, Mr. Marchant, Mr. Price, Mr. Jindal, Mr. Boustany, Mrs. Foxx, and Mr. Kuhl. Total 22

The following members voted "No:" Mr. Miller, Mr. Kildee, Mr. Owens, Mr. Payne, Mr. Andrews, Mr. Scott, Ms. Woolsey, Mr. Hinojosa, Mrs. McCarthy, Mr. Tierney, Mr. Kucinich, Mr. Wu, Mr. Holt, Mrs. Davis, Ms. McCollum, Mr. Davis, Mr. Van Hollen, Mr. Bishop, and Mr. Barrow. Total 19

Pursuant to Unanimous Consent agreement, Mr. Norwood, Mrs. McMorris, Mr. Fortuño, and Mrs. Drake are recorded as "Aye;" Mr. Kind, Mr. Grijalva, and Mr. Ryan are recorded as "No."

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c) of House Rule XIII, the goal of the Committee Print is to reauthorize and improve programs authorized under the Higher Education Act. The Committee expects the Department of Education to comply with these provisions and implement the changes to the law in accordance with these stated goals.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the Committee Print. The Committee believes that the amendments, made by this bill to the Social Security Act, are within Congress' authority under Article I, section 8, clause 1 of the Constitution.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee will receive a cost estimate for the Committee Print for the Director of the Congressional Budget Office, which will be transmitted.

COMMITTEE ESTIMATE

Clauses 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out the Committee Print. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, will be transmitted (new matter is printed in italic and existing law in which no change is proposed is shown in roman).

HIGHER EDUCATION ACT OF 1965

* * * * * * *

TITLE I—GENERAL PROVISIONS

PART A—DEFINITIONS

* * * * * * *

SEC. 102. DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.

(a) DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.—

(1) * * *

* * * * * * *

(3) LIMITATIONS BASED ON COURSE OF STUDY OR ENROLLMENT.—An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) offers more than 50 percent of such institution's courses by correspondence *(excluding courses offered by telecommunications as defined in section 484(l)(4))*, unless the institution is an institution that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act;

(B) enrolls 50 percent or more of the institution's students in correspondence courses *(excluding courses offered by telecommunications as defined in section 484(l)(4))*, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2- or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

* * * * * * *

TITLE IV—STUDENT ASSISTANCE

* * * * * * *

PART B—FEDERAL FAMILY EDUCATION LOAN PROGRAM

SEC. 421. STATEMENT OF PURPOSE; NONDISCRIMINATION; AND APPROPRIATIONS AUTHORIZED.

(a) * * *

(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part—

(1) * * *

* * * * * * *

(5) there are authorized to be appropriated such sums as may be necessary for the purpose of paying ⟦an administrative cost allowance⟧ *a loan processing and issuance fee* in accordance with section 428(f) to guaranty agencies.

* * * * * * *

SEC. 424. SCOPE AND DURATION OF FEDERAL LOAN INSURANCE PROGRAM.

(a) LIMITATIONS ON AMOUNTS OF LOANS COVERED BY FEDERAL INSURANCE.—The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 435) to students covered by Federal loan insurance under this part shall not exceed $2,000,000,000 for the period from July 1, 1976, to September 30, 1976, and for each of the succeeding fiscal years ending prior to October 1, ⟦2004⟧ *2012*. Thereafter, Federal loan insurance pursuant to this part may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this part, to continue or complete their educational program; but no insurance may be granted for any loan made or installment paid after September 30, ⟦2008⟧ *2016*.

* * * * * * *

SEC. 425. LIMITATIONS ON INDIVIDUAL FEDERALLY INSURED LOANS AND ON FEDERAL LOAN INSURANCE.

(a) ANNUAL AND AGGREGATE LIMITS.—

(1) ANNUAL LIMITS.—(A) The total of loans made to a student in any academic year or its equivalent (as determined by the

Secretary) which may be covered by Federal loan insurance under this part may not exceed—

(i) in the case of a student at an eligible institution who has not successfully completed the first year of a program of undergraduate education—

(I) [$2,625] *$3,500*, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 481); and

* * * * * * *

(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

(I) [$3,500] *$4,500*; or

* * * * * * *

SEC. 427A. APPLICABLE INTEREST RATES.

(a) * * *

* * * * * * *

(k) INTEREST RATES FOR NEW LOANS ON OR AFTER OCTOBER 1, 1998[, AND BEFORE JULY 1, 2006].—

(1) IN GENERAL.—Notwithstanding subsection (h) and subject to paragraph (2) of this subsection, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 428B or 428C) for which the first disbursement is made on or after October 1, 1998[, and before July 1, 2006,] the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(A) * * *

* * * * * * *

(2) IN SCHOOL AND GRACE PERIOD RULES.—Notwithstanding subsection (h), with respect to any loan under this part (other than a loan made pursuant to section 428B or 428C) for which the first disbursement is made on or after October 1, 1998[, and before July 1, 2006,] the applicable rate of interest for interest which accrues—

(A) * * *

* * * * * * *

(3) PLUS LOANS.—Notwithstanding subsection (h), with respect to any loan under section 428B for which the first disbursement is made on or after October 1, 1998[, and before July 1, 2006,] the applicable rate of interest shall be determined under paragraph (1)—

(A) * * *

* * * * * * *

(4) CONSOLIDATION LOANS *BEFORE JULY 1, 2006*.—With respect to any consolidation loan under section 428C for which the application is received by an eligible lender on or after October 1, 1998, and before July 1, 2006, the applicable rate of

interest shall be at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(A) * * *

* * * * * * *

(5) CONSOLIDATION LOANS ON OR AFTER JULY 1, 2006.—

(A) BORROWER ELECTION.—With respect to any consolidation loan under section 428C for which the application is received by an eligible lender on or after July 1, 2006, the applicable rate of interest shall, at the election of the borrower at the time of application for the loan, be either at the rate determined under subparagraph (B) or the rate determined under subparagraph (C).

(B) VARIABLE RATE.—Except as provided in subparagraph (D), the rate determined under this subparagraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and, for such 12-month period, not be more than—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 2.3 percent,

except that such rate shall not exceed 8.25 percent.

(C) FIXED RATE.—Except as provided in subparagraph (D), the rate determined under this subparagraph shall be determined for the duration of the term of the loan on the July 1 that is or precedes the date on which the application is received by an eligible lender, and shall be, for such duration, not more than—

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to the June 1 immediately preceding such July 1; plus

(ii) 3.3 percent,

except that such rate shall not exceed 8.25 percent.

(D) CONSOLIDATION OF PLUS LOANS.—In the case of any such consolidation loan that is used to repay loans each of which was made under section 428B or was a Federal Direct PLUS Loan (or both), the rates determined under clauses (B) and (C) shall be determined—

(i) by substituting "3.1 percent" for "2.3 percent";

(ii) by substituting "4.1 percent" for "3.3 percent"; and

(iii) by substituting "9.0 percent" for "8.25 percent".

[(5)**]** *(6)* CONSULTATION.—The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

[(l) INTEREST RATES FOR NEW LOANS ON OR AFTER JULY 1, 2006.—

[(1) IN GENERAL.—Notwithstanding subsection (h), with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 428B or 428C) for which the first disbursement is made on or after July 1, 2006,

the applicable rate of interest shall be 6.8 percent on the unpaid principal balance of the loan.

[(2) PLUS LOANS.—Notwithstanding subsection (h), with respect to any loan under section 428B for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 7.9 percent on the unpaid principal balance of the loan.

[(3) CONSOLIDATION LOANS.—With respect to any consolidation loan under section 428C for which the application is received by an eligible lender on or after July 1, 2006, the applicable rate of interest shall be at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

[(A) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of 1 percent; or

[(B) 8.25 percent.]

[(m)] *(l)* LESSER RATES PERMITTED.—Nothing in this section or section 428C shall be construed to prohibit a lender from charging a borrower interest at a rate less than the rate which is applicable under this part.

[(n)] *(m)* DEFINITIONS.—For the purpose of subsections (a) and (d) of this section—

(1) * * *

* * * * * * *

SEC. 428. FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS.

(a) FEDERAL INTEREST SUBSIDIES.—

(1) * * *

(2) ADDITIONAL REQUIREMENTS TO RECEIVE SUBSIDY.—(A) Each student qualifying for a portion of an interest payment under paragraph (1) shall—

(i) have provided to the lender a statement from the eligible institution, at which the student has been accepted for enrollment, or at which the student is in attendance, which—

(I) * * *

(II) sets forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G; [and]

* * * * * * *

(iii) have provided to the lender at the time of application for a loan made, insured, or guaranteed under this part, the student's driver's number, if any.

* * * * * * *

(3) AMOUNT OF INTEREST SUBSIDY.—(A)(i) * * *

* * * * * * *

(v) A lender may not receive interest on a loan for any period that precedes the date that is—

(I) in the case of a loan disbursed by check, 10 days before the first disbursement of the loan; [or]

(II) in the case of a loan disbursed by electronic funds transfer, 3 days before the first disbursement of the loan[.]*; or*

(III) in the case of a loan disbursed through an escrow agent, 3 days before the first disbursement of the loan.

* * * * * * *

(5) DURATION OF AUTHORITY TO MAKE INTEREST SUBSIDIZED LOANS.—The period referred to in subparagraph (B) of paragraph (1) of this subsection shall begin on the date of enactment of this Act and end at the close of September 30, [2004] *2012*, except that, in the case of a loan made or insured under a student loan or loan insurance program to enable a student who has obtained a prior loan made or insured under such program to continue his or her education program, such period shall end at the close of September 30, [2008] *2016*.

* * * * * * *

(b) INSURANCE PROGRAM AGREEMENTS TO QUALIFY LOANS FOR INTEREST SUBSIDIES.—

(1) REQUIREMENTS OF INSURANCE PROGRAM.—Any State or any nonprofit private institution or organization may enter into an agreement with the Secretary for the purpose of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) if the Secretary determines that the student loan insurance program—

(A) authorizes the insurance in any academic year, as defined in section 481(a)(2), or its equivalent (as determined under regulations of the Secretary) for any student who is carrying at an eligible institution or in a program of study abroad approved for credit by the eligible home institution at which such student is enrolled at least one-half the normal full-time academic workload (as determined by the institution) in any amount up to a maximum of—

(i) in the case of a student at an eligible institution who has not successfully completed the first year of a program of undergraduate education—

(I) [$2,625] *$3,500*, if such student is enrolled in a program whose length is at least one academic year in length; and

* * * * * * *

(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

(I) [$3,500] *$4,500*; or

* * * * * * *

(G) insures 98 percent of the unpaid principal of loans insured under the program, except that such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to section 428(j) or 439(q) *and 100 percent of the unpaid principal amount of*

exempt claims as defined in subsection (c)(1)(G), except, for any loan for which the first disbursement of principal is made on or after July 1, 2006, the preceding provisions of this subparagraph shall be applied by substituting "96 percent" for "98 percent";

[(H) provides for collection of a single insurance premium equal to not more than 1.0 percent of the principal amount of the loan, by deduction proportionately from each installment payment of the proceeds of the loan to the borrower, and insures that the proceeds of the premium will not be used for incentive payments to lenders;]

(H) provides—

(i) for loans for which the first disbursement of principal is made before July, 1, 2006, for the collection of a single insurance premium equal to not more than 1.0 percent of the principal amount of the loan, by deduction proportionately from each installment payment of the proceeds of the loan to the borrower, and ensures that the proceeds of the premium will not be used for incentive payments to lenders; or

(ii) for loans for which the first disbursement of principal is made on or after July 1, 2006, for the collection and deposit into the Federal Student Loan Reserve Fund under section 422A of a Federal default fee of 1.0 percent of the principal amount of such loan, which shall be deducted proportionately from each installment payment of the proceeds of the loan to the borrower prior to payment to the borrower, and ensures that the proceeds of the Federal default fee will not be used for incentive payments to lenders;

* * * * * * *

(M) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid by the Secretary, during any period—

(i) * * *

* * * * * * *

(ii) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment, except that no borrower who provides evidence of eligibility for unemployment benefits shall be required to provide additional paperwork for a deferment under this clause; [or]

(iii) not in excess of 3 years during which the borrower—

(I) is serving on active duty during a war or other military operation or national emergency; or

(II) is performing qualifying National Guard duty during a war or other military operation or national emergency; or

[(iii)] *(iv)* not in excess of 3 years for any reason which the lender determines, in accordance with regulations prescribed by the Secretary under section

435(o), has caused or will cause the borrower to have an economic hardship;

(N) provides that funds borrowed by a student—

(i) are disbursed to the institution *(including an eligible foreign institution, except as provided in clause (ii))* by check or other means that is payable to, and requires the endorsement or other certification by, such student; or

(ii) in the case of a student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled [or at an eligible foreign institution], are, at the request of the student, disbursed directly to the student by the means described in clause (i), unless such student requests that the check be endorsed, or the funds transfer authorized, pursuant to an authorized power-of-attorney;

* * * * * * *

(7) REPAYMENT PERIOD.—(A) In the case of a loan made under section 427 or 428, the repayment period shall exclude any period of authorized deferment or forbearance and [shall begin—

[(i) the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); or

[(ii) on an earlier date if the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier date.] *shall begin the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).*

* * * * * * *

(9) REPAYMENT PLANS.—

(A) DESIGN AND SELECTION.—In accordance with regulations promulgated by the Secretary, the lender shall offer a borrower of a loan made under this part the plans described in this subparagraph for repayment of such loan, including principal and interest thereon. No plan may require a borrower to repay a loan in less than 5 years unless the borrower, during the 6 months immediately preceding the start of the repayment period, specifically requests that repayment be made over of a shorter period. The borrower may choose from—

(i) * * *

(ii) a graduated repayment plan paid over a fixed period of time, not to exceed 10 years*, and the Secretary may not restrict the proportions or ratios by which such payments may be graduated with the informed agreement of the borrower*;

(iii) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed 10 years, except that the

borrower's scheduled payments shall not be less than the amount of interest due; [and]

(iv) a delayed repayment plan under which the borrower makes scheduled payments for not more than 2 years that are annually not less than the amount of interest due or $600, whichever is greater, and then makes payments in accordance with clause (i), (ii), or (iii); and

[(iv)] *(v)* for new borrowers on or after the date of enactment of the Higher Education Amendments of 1998 who accumulate (after such date) outstanding loans under this part totaling more than $30,000, an extended repayment plan, with a fixed annual or graduated repayment amount paid over an extended period of time, not to exceed 25 years, except that the borrower shall repay annually a minimum amount determined in accordance with paragraph (1)(L)(i).

* * * * * * *

(c) GUARANTY AGREEMENTS FOR REIMBURSING LOSSES.—

(1) AUTHORITY TO ENTER INTO AGREEMENTS.—(A) The Secretary may enter into a guaranty agreement with any guaranty agency, whereby the Secretary shall undertake to reimburse it, under such terms and conditions as the Secretary may establish, with respect to losses (resulting from the default of the student borrower) on the unpaid balance of the principal and accrued interest of any insured loan. The guaranty agency shall, be deemed to have a contractual right against the United States, during the life of such loan, to receive reimbursement according to the provisions of this subsection. Upon receipt of an accurate and complete request by a guaranty agency for reimbursement with respect to such losses, the Secretary shall pay promptly and without administrative delay. Except as provided in subparagraph (B) of this paragraph and in paragraph (7), the amount to be paid a guaranty agency as reimbursement under this subsection shall be equal to 95 percent of the amount expended by it in discharge of its insurance obligation incurred under its loan insurance program. A guaranty agency shall file a claim for reimbursement with respect to losses under this subsection within [45 days] *30 days* after the guaranty agency discharges its insurance obligation on the loan.

* * * * * * *

(G)(i) Notwithstanding any other provisions of this section, in the case of exempt claims, the Secretary shall apply the provisions of—

(I) the fourth sentence of subparagraph (A) by substituting "100 percent" for "95 percent";

(II) subparagraph (B)(i) by substituting "100 percent" for "85 percent"; and

(III) subparagraph (B)(ii) by substituting "100 percent" for "75 percent".

(ii) For purposes of clause (i) of this subparagraph, the term "exempt claims" means claims with respect to loans for which

it is determined that the borrower (or the student on whose behalf a parent has borrowed), without the lender's or the institution's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the borrower or the student to be ineligible for all or a portion of the loan or for interest benefits thereon.

[(G)] *(H)* Notwithstanding any other provision of this section, the Secretary shall exclude a loan made pursuant to a lender-of-last-resort program when making reimbursement payment calculations under subparagraphs (B) and (C).

(2) CONTENTS OF GUARANTY AGREEMENTS.—The guaranty agreement—

(A) shall set forth such administrative and fiscal procedures as may be necessary to protect the United States from the risk of unreasonable loss thereunder, to ensure proper and efficient administration of the loan insurance program, and to assure that due diligence will be exercised in the collection of loans insured under the program, including *(i)* a requirement that each beneficiary of insurance on the loan submit proof that the institution was contacted and other reasonable attempts were made to locate the borrower (when the location of the borrower is unknown) and proof that contact was made with the borrower (when the location is known) *and (ii) requirements establishing procedures to preclude consolidation lending from being an excessive proportion of guaranty agency recoveries on defaulted loans under this part*;

* * * * * * *

(D) shall provide that if, after the Secretary has made payment under the guaranty agreement pursuant to paragraph (1) of this subsection with respect to any loan, any payments are made in discharge of the obligation incurred by the borrower with respect to such loan (including any payments of interest accruing on such loan after such payment by the Secretary), there shall be paid over to the Secretary (for deposit in the fund established by section 431) such proportion of the amounts of such payments as is determined (in accordance with [paragraph (6)] *paragraph (6)(A)*) to represent his equitable share thereof, but (i) shall provide for subrogation of the United States to the rights of any insurance beneficiary only to the extent required for the purpose of paragraph (8); and (ii) except as the Secretary may otherwise by or pursuant to regulation provide, amounts so paid by a borrower on such a loan shall be first applied in reduction of principal owing on such loan;

* * * * * * *

(3) FORBEARANCE.—A guaranty agreement under this subsection—

(A) shall contain provisions providing that—

(i) upon request, a lender shall grant a borrower forbearance, renewable at 12-month intervals, on terms agreed to [in writing] by the parties to the loan with

the approval of the insurer *and documented in accordance with paragraph (10)*, and otherwise consistent with the regulations of the Secretary, if the borrower—

(I) * * *

* * * * * * *

(6) SECRETARY'S EQUITABLE SHARE.—*(A)* For the purpose of paragraph (2)(D), the Secretary's equitable share of payments made by the borrower shall be that portion of the payments remaining after the guaranty agency with which the Secretary has an agreement under this subsection has deducted from such payments—

[(A)**]** *(i)* a percentage amount equal to the complement of the reinsurance percentage in effect when payment under the guaranty agreement was made with respect to the loan; and

[(B)**]** *(ii)* an amount equal to 24 percent of such payments for use in accordance with section 422B, except that, beginning on October 1, 2003, this subparagraph shall be applied by substituting "23 percent" for "24 percent".

(B) A guaranty agency shall—

(i) on or after October 1, 2006—

(I) not charge the borrower collection costs in an amount in excess of 18.5 percent of the outstanding principal and interest of a defaulted loan that is paid off through consolidation by the borrower under this title; and

(II) remit to the Secretary a portion of the collection charge under subclause (I) equal to 8.5 percent of the outstanding principal and interest of such defaulted loan; and

(ii) an amount equal to 24 percent of such payments for use in accordance with section 422B, except that—

(I) beginning on October 1, 2003, and ending on October 1, 2006, this clause shall be applied by substituting "23 percent" for "24 percent"; and

(II) beginning on October 1, 2006, this clause shall be applied by substituting "20 percent" for "24 percent".

(C) For purposes of subparagraph (B), the term "excess consolidation proceeds" means, with respect to any guaranty agency for any Federal fiscal year beginning on or after October 1, 2009, the proceeds of consolidation of defaulted loans under this title that exceed 45 percent of the agency's total collections on defaulted loans in such Federal fiscal year.

* * * * * * *

(10) DOCUMENTATION OF FORBEARANCE AGREEMENTS.—For the purposes of paragraph (3), the terms of forbearance agreed to by the parties shall be documented by confirming the agreement of the borrower by notice to the borrower from the lender, and by recording the terms in the borrower's file.

* * * * * * *

(i) MULTIPLE DISBURSEMENT OF LOANS.—

(1) ESCROW ACCOUNTS ADMINISTERED BY ESCROW AGENT.—Any guaranty agency or eligible lender (hereafter in this subsection referred to as the "escrow agent") may enter into an agreement with any other eligible lender that is not an eligible institution or an agency or instrumentality of the State (hereafter in this subsection referred to as the "lender") for the purpose of authorizing disbursements of the proceeds of a loan to a student. Such agreement shall provide that the lender will pay the proceeds of such loans into an escrow account to be administered by the escrow agent in accordance with the provisions of paragraph (2) of this subsection. Such agreement may allow the lender to make payments into the escrow account in amounts that do not exceed the sum of the amounts required for disbursement of initial or subsequent installments to borrowers and to make such payments not more than [21 days] *10 days* prior to the date of the disbursement of such installment to such borrowers. Such agreement shall require the lender to notify promptly the eligible institution when funds are escrowed under this subsection for a student at such institution.

* * * * * * *

SEC. 428A. VOLUNTARY FLEXIBLE AGREEMENTS WITH GUARANTY AGENCIES.

(a) VOLUNTARY AGREEMENTS.—

(1) AUTHORITY.—Subject to paragraph (2), the Secretary may enter into a voluntary, flexible agreement with a guaranty agency under this section, in lieu of agreements with a guaranty agency under subsections (b) and (c) of section 428. The Secretary may waive or modify any requirement under such subsections, except that the Secretary may not waive—

(A) any statutory requirement pertaining to the terms and conditions attached to student loans or default claim payments made to lenders; [or]

(B) the prohibitions on inducements contained in section 428(b)(3) [unless the Secretary determines that such a waiver is consistent with the purposes of this section and is limited to activities of the guaranty agency within the State or States for which the guaranty agency serves as the designated guarantor.]*; or*

(C) the Federal default fee required by section 428(b)(1)(H) and the second sentence of section 428H(h).

[(2) SPECIAL RULE.—If the Secretary grants a waiver pursuant to paragraph (1)(B), any guaranty agency doing business within the affected State or States may request, and the Secretary shall grant, an identical waiver to such guaranty agency under the same terms and conditions (including service area limitations) as govern the original waiver.]

[(3)] *(2)* ELIGIBILITY.—During fiscal years 1999, 2000, and 2001, the Secretary may enter into a voluntary, flexible agreement with not more than 6 guaranty agencies that had 1 or more agreements with the Secretary under subsections (b) and (c) of section 428 as of the day before the date of enactment

of the Higher Education Amendments of 1998. Beginning in fiscal year 2002, any guaranty agency or consortium thereof may enter into a voluntary flexible agreement with the Secretary.

[(4)] *(3)* REPORT REQUIRED.—Not later than September 30, 2001, the Secretary shall report to the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives regarding the impact that the voluntary flexible agreements have had upon program integrity, program and cost efficiencies, and the availability and delivery of student financial aid. Such report shall include—

(A) * * *

(B) a list of participating guaranty agencies and the specific statutory or regulatory waivers provided to each guaranty agency [and any waivers provided to other guaranty agencies under paragraph (2)];

* * * * * * *

(c) PUBLIC NOTICE.—

(1) * * *

* * * * * * *

[(3) WAIVER NOTICE.—The Secretary shall notify the Chairperson and the Ranking Minority Member of the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives not later than 30 days prior to the granting of a waiver pursuant to subsection (a)(2) to a guaranty agency that is not a party to a voluntary flexible agreement.]

(3) NOTICE TO INTERESTED PARTIES.—Once the Secretary reaches a tentative agreement in principle under this section, the Secretary shall publish in the Federal Register a notice that invites interested parties to comment on the proposed agreement. The notice shall state how to obtain a copy of the tentative agreement in principle and shall give interested parties no less than 30 days to provide comments. The Secretary may consider such comments prior to providing the notices pursuant to paragraph (2).

* * * * * * *

SEC. 428B. FEDERAL PLUS LOANS.

(a) AUTHORITY TO BORROW.—

(1) AUTHORITY AND ELIGIBILITY.—Parents of a dependent student shall be eligible to borrow funds under this section in amounts specified in subsection (b), if—

(A) the parents do not have an adverse credit history as determined pursuant to regulations promulgated by the Secretary; [and]

(B) in the case of a parent who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, such parent has completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud; and

[(B)] *(C)* the parents meet such other eligibility criteria as the Secretary may establish by regulation, after consultation with guaranty agencies, eligible lenders, and other organizations involved in student financial assistance.

* * * * * * *

SEC. 428C. FEDERAL CONSOLIDATION LOANS.

(a) AGREEMENTS WITH ELIGIBLE LENDERS.—

(1) * * *

* * * * * * *

(3) DEFINITION OF ELIGIBLE BORROWER.—(A) For the purpose of this section, the term "eligible borrower" means a borrower who—

(i) * * *

(ii) at the time of application for a consolidation loan—

(I) is in repayment status *as determined under section 428(b)(7)(A)*;

* * * * * * *

(B)(i) An individual's status as an eligible borrower under this section *or under section 455(g)* terminates *under both sections* upon receipt of a consolidation loan under this section *or under section 455(g)*, except that—

(I) an individual who receives eligible student loans after the date of receipt of the consolidation loan may receive a subsequent consolidation loan;

* * * * * * *

(III) loans received following the making of the consolidation loan may be added during the 180-day period following the making of the consolidation loan; [and]

(IV) loans received prior to the date of the first consolidation loan may be added to a subsequent consolidation loan[.]*; and*

(V) an individual may obtain a subsequent consolidation loan under section 455(g) only for the purposes of obtaining an income contingent repayment plan, and only if the loan has been submitted to the guaranty agency for default aversion.

(ii) Loans made under this section shall, to the extent used to pay off the outstanding principal balance on loans made under this title, excluding capitalized interest, be counted against the applicable limitations on aggregate indebtedness contained in sections 425(a)(2), 428(b)(1)(B), 428H(d), 455, and 464(a)(2)(B).

[(C)(i) A married couple, each of whom has eligible student loans, may be treated as if such couple were an individual borrowing under subparagraphs (A) and (B) if such couple agrees to be held jointly and severally liable for the repayment of a consolidation loan, without regard to the amounts of the respective loan obligations that are to be consolidated, and without regard to any subsequent change that may occur in such couple's marital status.

[(ii) Only one spouse in a married couple applying for a consolidation loan under this subparagraph need meet any of the requirements of subsection (b) of this section, except that each spouse shall—

[(I) individually make the initial certification that no other application is pending in accordance with subsection (b)(1)(A); and

[(II) agree to notify the holder concerning any change of address in accordance with subsection (b)(4).]

* * * * * * *

(b) CONTENTS OF AGREEMENTS, CERTIFICATES OF INSURANCE, AND LOAN NOTES.—

(1) AGREEMENTS WITH LENDERS.—Any lender described in subparagraph (A), (B), or (C) of subsection (a)(1) who wishes to make consolidation loans under this section shall enter into an agreement with the Secretary or a guaranty agency which provides—

(A) that, in the case of all lenders described in subsection (a)(1), the lender will make a consolidation loan to an eligible borrower (on request of that borrower) only if the borrower certifies that the borrower has no other application pending for a loan [under this section and (i) the lender holds an outstanding loan of that borrower which is selected by the borrower for consolidation under this section, except that this clause shall not apply in the case of a borrower with multiple holders of loans under this part, or (ii) the borrower certifies that the borrower has sought and has been unable to obtain a consolidation loan with income-sensitive repayment terms from the holders of the outstanding loans of that borrower (which are so selected for consolidation);] *and that, if all the borrower's loans under this part are held by a single holder, the borrower has notified such holder that the borrower is seeking to obtain a consolidation loan under this section;*

* * * * * * *

(C) that each consolidation loan will be made, notwithstanding any other provision of this part limiting the annual or aggregate principal amount for all insured loans made to a borrower, in an amount [(i) which is not less than the minimum amount required for eligibility of the borrower under subsection (a)(3), and (ii)] which is equal to the sum of the unpaid principal and accrued unpaid interest and late charges of all eligible student loans received by the eligible borrower which are selected by the borrower for consolidation;

* * * * * * *

(E) that the lender shall offer an income-sensitive repayment schedule, established by the lender in accordance with the regulations promulgated by the Secretary, to the borrower of any consolidation loan made by the lender on or after July 1, 1994; [and]

(F) that the lender of the consolidation loan shall, upon application for such loan, provide the borrower with a clear and conspicuous notice of at least the following information:

(i) the effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(ii) the effects of consolidation on a borrower's underlying loan benefits, including loan forgiveness, cancellation, deferment, and reduced interest rates on those underlying loans;

(iii) the ability of the borrower to prepay the loan, pay on a shorter schedule, and to change repayment plans;

(iv) that borrower benefit programs may vary among different loan holders, and a description of how the borrower benefits may vary among different loan holders;

(v) the tax benefits for which borrowers may be eligible;

(vi) the consequences of default; and

(vii) that by making the application the applicant is not obligated to agree to take the consolidation loan; and

[(F)**]** *(G)* such other terms and conditions as the Secretary or the guaranty agency may specifically require of the lender to carry out this section.

* * * * * * *

(5) DIRECT LOANS.—**[**In the event that a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from such a lender, the Secretary shall offer any such borrower who applies for it, a direct consolidation loan.**]** *In the event that a lender with an agreement under subsection (a)(1) of this section denies a consolidation loan application submitted to it by an eligible borrower under this section, or denies an application submitted to it by such a borrower for a consolidation loan with income-sensitive repayment terms, the Secretary shall offer any such borrower who applies for it, a Federal Direct Consolidation loan. The Secretary shall offer such a loan to a borrower who has defaulted, for the purpose of resolving the default.* Such direct consolidation loan shall, as requested by the borrower, be repaid either pursuant to income contingent repayment under part D of this title or pursuant to any other repayment provision under this section. The Secretary shall not offer such loans if, in the Secretary's judgment, the Department of Education does not have the necessary origination and servicing arrangements in place for such loans.

* * * * * * *

(c) PAYMENT OF PRINCIPAL AND INTEREST.—

(1) INTEREST RATE.—(A) Notwithstanding subparagraphs (B) and (C), with respect to any loan made under this section for which the application is received by an eligible lender—

(i) * * *

(ii) on or after July 1, 2006, the applicable interest rate shall be determined under [section 427A(l)(3)] *section 427A(k)(5)*.

* * * * * * *

(e) TERMINATION OF AUTHORITY.—The authority to make loans under this section expires at the close of September 30, [2004] *2012*. Nothing in this section shall be construed to authorize the Secretary to promulgate rules or regulations governing the terms or conditions of the agreements and certificates under subsection (b). Loans made under this section which are insured by the Secretary shall be considered to be new loans made to students for the purpose of section 424(a).

(f) INTEREST PAYMENT REBATE FEE.—

(1) * * *

(2) [SPECIAL RULE.—] *SPECIAL RULES.—(A)* For consolidation loans based on applications received during the period from October 1, 1998 through January 31, 1999, inclusive, the rebate described in paragraph (1) shall be equal to 0.62 percent of the principal plus accrued unpaid interest on such loan.

(B) For consolidation loans based on applications received on or after July 1, 2006, if 90 percent or more of the total principal and accrued unpaid interest outstanding on the loans held, directly or indirectly, by any holder is comprised of principal and accrued unpaid interest owed on consolidation loans, the rebate described in paragraph (1) for such holder shall be equal to 1.30 percent of the principal plus accrued unpaid interest on such loans.

* * * * * * *

SEC. 428F. DEFAULT REDUCTION PROGRAM.

(a) OTHER REPAYMENT INCENTIVES.—

(1) SALE OF LOAN.—

(A) Each guaranty agency shall enter into an agreement with the Secretary which shall provide that upon securing [consecutive payments for 12 months] *9 payments made within 20 days of the due date during 10 consecutive months* of amounts owed on a loan for which the Secretary has made a payment under paragraph (1) of section 428(c), the guaranty agency (pursuant to an agreement with the Secretary) or the Secretary shall, if practicable, sell the loan to an eligible lender. Such loan shall not be sold to an eligible lender who has been found by the guaranty agency or the Secretary to have substantially failed to exercise the due diligence required of lenders under this part. Neither the guaranty agency nor the Secretary shall demand from a borrower as monthly payment amounts referred to in this paragraph more than is reasonable and affordable based upon the borrower's total financial circumstances.

* * * * * * *

(C) A guaranty agency may charge the borrower and retain collection costs in an amount not to exceed 18.5 percent

of the outstanding principal and interest at the time of sale of a loan rehabilitated under subparagraph (A).

[(C)] *(D)* A loan which does not meet the requirements of subparagraph (A) may also be eligible for sale under this paragraph upon a determination that the loan was in default due to clerical or data processing error and would not, in the absence of such error, be in a delinquent status.

* * * * * * *

(c) FINANCIAL AND ECONOMIC LITERACY.—Where appropriate, each program described under subsection (b) shall include making financial and economic education materials available to the borrower.

SEC. 428G. REQUIREMENTS FOR DISBURSEMENT OF STUDENT LOANS.

(a) * * *

* * * * * * *

(e) EXCLUSION OF CONSOLIDATION AND FOREIGN STUDY LOANS.—The provisions of this section shall not apply in the case of a loan made under section 428C[, made to a student to cover the cost of attendance at an eligible institution outside the United States,] or made to a student to cover the cost of attendance in a program of study abroad approved by the home eligible institution if the home eligible institution has a cohort default rate (as calculated under section 435(m)) of less than 5 percent.

* * * * * * *

SEC. 428H. UNSUBSIDIZED STAFFORD LOANS FOR MIDDLE-INCOME BORROWERS.

(a) * * *

* * * * * * *

(d) LOAN LIMITS.—

(1) * * *

(2) ANNUAL LIMITS FOR INDEPENDENT, GRADUATE, AND PROFESSIONAL STUDENTS.—The maximum annual amount of loans under this section an independent student (or a student whose parents are unable to borrow under section 428B or the Federal Direct PLUS Loan Program) may borrow in any academic year (as defined in section 481(a)(2)) or its equivalent shall be the amount determined under paragraph (1), plus—

(A) * * *

* * * * * * *

(C) in the case of such a student who is a graduate or professional student attending an eligible institution, [$10,000] *$12,000*; and

* * * * * * *

(e) PAYMENT OF PRINCIPAL AND INTEREST.—

(1) * * *

* * * * * * *

[(6) REPAYMENT PERIOD.—For purposes of calculating the repayment period under section 428(b)(9), such period shall commence at the time the first payment of principal is due from the borrower.]

(6) TIME LIMITS ON BILLING INTEREST.—A lender may not receive interest on a loan under this section from a borrower for any period that precedes the dates described in section 428(a)(3)(A)(v).

* * * * * * *

(h) INSURANCE PREMIUM.—Each State or nonprofit private institution or organization having an agreement with the Secretary under section 428(b)(1) may charge a borrower under this section an insurance premium equal to not more than 1.0 percent of the principal amount of the loan, if such premium will not be used for incentive payments to lenders. *Effective for loans for which the first disbursement of principal is made on or after July 1, 2006, in lieu of the insurance premium authorized under the preceding sentence, each State or nonprofit private institution or organization having an agreement with the Secretary under section 428(b)(1) shall collect and deposit into the Federal Student Loan Reserve Fund under section 422A a Federal default fee of 1.0 percent of the principal amount of the loan, obtained by deduction proportionately from each installment payment of the proceeds of the loan to the borrower. The Federal default fee shall not be used for incentive payments to lenders.*

[SEC. 428I. SPECIAL INSURANCE AND REINSURANCE RULES.

[(a) DESIGNATION OF LENDERS, SERVICERS, AND GUARANTY AGENCIES.—

[(1) AUTHORITY.—Whenever the Secretary determines that an eligible lender, servicer, or guaranty agency has a compliance performance rating that equals or exceeds 97 percent, the Secretary shall designate the eligible lender, servicer, or guaranty agency, as the case may be, for exceptional performance. The Secretary shall notify each appropriate guaranty agency of the eligible lenders and servicers designated under this section.

[(2) COMPLIANCE PERFORMANCE RATING.—For purposes of paragraph (1), a compliance performance rating is determined with respect to compliance with due diligence in the collection of loans under this part for each year for which the determination is made. Such rating is equal to the percent of all due diligence requirements applicable to each loan, on average, as established by the Secretary by regulation, with respect to—

[(A) loans serviced during the period by the eligible lender or servicer; or

[(B) loans on which loan collection was attempted by the guaranty agency.

[(b) PAYMENT TO LENDERS AND SERVICERS.—

[(1) 100 PERCENT PAYMENT RULE.—Each guaranty agency shall pay each eligible lender or servicer (as agent for an eligible lender) designated under subsection (a) 100 percent of the unpaid principal and interest of all loans for which claims are submitted for payment by that eligible lender or servicer for the one-year period following the receipt by the guaranty agency of the notification of designation under this section or until the guaranty agency receives notice from the Secretary that the designation of the lender or servicer under subsection (a) has been revoked.

[(2) REVOCATION AUTHORITY.—The Secretary shall revoke the designation of a lender or servicer under subsection (a) if any quarterly audit required under subsection (c)(5) is not received by the Secretary by the date established by the Secretary or if the audit indicates the lender or servicer failed to maintain 97 percent or higher compliance with program regulations, as reflected in the performance of not less than 97 percent of all due diligence requirements applicable to each loan, on average, as established by the Secretary for the purpose of this section, for 2 consecutive months or 90 percent for 1 month.

[(3) DOCUMENTATION.—Nothing in this section shall restrict or limit the authority of guaranty agencies to require the submission of claims documentation evidencing servicing performed on loans, except that the guaranty agency may not require greater documentation than that required for lenders and servicers not designated under subsection (a).

[(4) PAYMENTS TO GUARANTY AGENCIES.—The Secretary shall pay to each guaranty agency designated under subsection (a) the appropriate percentage under this subsection for the 1-year period following the receipt by the guaranty agency of the notification of designation under subsection (a).

[(c) SUPERVISION OF DESIGNATED LENDERS AND SERVICERS.—

[(1) AUDITS FOR LENDERS AND SERVICERS.—Each eligible lender or servicer desiring a designation under subsection (a) shall have a financial and compliance audit of the loan portfolio of such eligible lender or servicer conducted annually by a qualified independent organization from a list of qualified organizations promulgated by the Secretary in accordance with standards established by the Comptroller General and the Secretary. The standards shall measure the lender's or servicer's compliance with the due diligence standards and shall include a defined statistical sampling technique designed to measure the performance rating of the eligible lender or servicer for the purpose of this section. Each eligible lender or servicer shall submit the audit required by this section to the Secretary and to each appropriate guaranty agency.

[(2) ADDITIONAL INFORMATION ON LENDERS AND SERVICERS.—Each appropriate guaranty agency shall provide the Secretary with such other information in its possession regarding an eligible lender or servicer desiring designation as may relate to the Secretary's determination under subsection (a), including but not limited to any information suggesting that the application of a lender or servicer for designation under subsection (a) should not be approved.

[(3) SECRETARY'S DETERMINATIONS.—The Secretary shall make the determination under subsection (a) based upon the audits submitted under this section, such other information as provided by any guaranty agency under paragraph (2), and any information in the possession of the Secretary or submitted by any other agency or office of the Federal Government. If the results of the audit are not persuasively rebutted by such other information, the Secretary shall inform the eligible lender or servicer and the appropriate guaranty agency that its applica-

tion for designation as an exceptional lender or servicer has been approved.

[(4) COST OF AUDIT.—Each eligible lender or servicer shall pay for all the costs of the audits required under this section.

[(5) COMPLIANCE AUDIT.—In order to maintain its status as an exceptional eligible lender or servicer, the lender or servicer shall undergo a quarterly compliance audit at the end of each quarter (other than the quarter in which status as an exceptional lender or servicer is established through a financial and compliance audit, as described in subsection (c)(1)), and submit the results of such audit to the Secretary and such appropriate guaranty agency. The compliance audit will review compliance with due diligence requirements for the period since the last audit.

[(6) LOSS OF DESIGNATION.—If the audit performed pursuant to paragraph (5) fails to meet the standards for designation as an exceptional lender or servicer under subsection (a)(1), the lender or servicer shall lose its designation as an exceptional lender or servicer. A lender or servicer receiving a compliance audit not meeting the standard for designation as an exceptional lender or servicer may reapply for designation under subsection (a) at any time.

[(7) DUE DILIGENCE STANDARDS.—Due diligence standards used for determining compliance under paragraph (5) shall be promulgated by the Secretary after consultation with lenders, guaranty agencies and servicers and shall consist of a list of specific elements for the Federal regulations selected to provide an indication of systems degradation.

[(8) ADDITIONAL REVOCATION AUTHORITY.—Notwithstanding any other provision of this section, designation under subsection (a) may be revoked at any time by the Secretary if the Secretary determines that the eligible lender or servicer has failed to maintain an overall level of regulatory compliance consistent with the audit submitted by the eligible lender or servicer under this section or if the Secretary believes the lender or servicer may have engaged in fraud in securing designation under subsection (a) or is failing to service loans in accordance with program regulations.

[(d) SUPERVISION OF DESIGNATED GUARANTY AGENCIES.—

[(1) AUDIT OF GUARANTY AGENCIES.—Each guaranty agency desiring a designation under subsection (a) shall have a financial and compliance audit of the defaulted loan portfolio of such guaranty agency conducted annually by a qualified independent organization or person from a list of qualified organizations or persons promulgated by the Secretary in accordance with standards established by the Comptroller General and the Secretary. The standards shall include defined statistical sampling techniques designed to measure the performance rating of the guaranty agency for the purpose of this section. Each guaranty agency shall submit the audit required by this paragraph to the Secretary.

[(2) QUARTERLY SAMPLE AUDITS.—The Secretary may require quarterly sample audits as a means of determining continued

qualification of the guaranty agency for designation as an exceptional guaranty agency.

[(3) SECRETARY'S DETERMINATIONS.—The Secretary shall make the determination under subsection (a) based upon the audits submitted under this section and other information in his possession. If the results of the audit are not persuasively rebutted by such other information, the Secretary shall inform the guaranty agency that its application for designation as an exceptional guaranty agency has been approved.

[(4) COSTS OF AUDITS.—Each guaranty agency shall pay for all of the costs of the audits regulated by this section.

[(5) REVOCATION FOR FRAUD.—The Secretary may revoke the designation of a guaranty agency under subsection (a) at any time if the Secretary has reason to believe the guaranty agency secured its designation under subsection (a) through fraud or fails to comply with applicable regulations.

[(6) REVOCATION BASED ON PERFORMANCE.—Designation as an exceptional guaranty agency may be revoked at any time by the Secretary upon 30 days notice and an opportunity for a hearing before the Secretary upon a finding by the Secretary that the guaranty agency has failed to maintain an acceptable overall level of regulatory compliance.

[(e) SPECIAL RULE.—Reimbursements made by the Secretary on loans submitted for claim by an eligible lender or loan servicer designated for exceptional performance under this section shall not be subject to additional review by the Secretary or repurchase by the guaranty agency for any reason other than a determination by the Secretary that the eligible lender, loan servicer, or guaranty agency engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance.

[(f) LIMITATION.—Nothing in this section shall be construed to affect the processing of claims on student loans of eligible lenders not subject to this paragraph.

[(g) CLAIMS.—A lender, servicer, or guaranty agency designated under subsection (a) failing to service loans or otherwise comply with applicable program regulations shall be considered in violation of section 3729 of title 31, United States Code,.

[(h) EVALUATION.—Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit to the Chairman of the Senate Labor and Human Resources Committee and the House Committee on Education and Labor, an evaluation of the provisions of this section including, but not limited to, the following:

[(1) The effectiveness of due diligence performed by lenders and servicers receiving designation as exceptional lenders or servicers from the perspective of securing maximum collections from borrowers.

[(2) A quantification of the dollar volume of claims that were paid to exceptional lenders and servicers that would not have been paid under applicable program provisions prior to the enactment of this section.

[(3) An assessment of the impact of this section on the financial condition of guaranty agencies.

[(4) An assessment of the savings to lenders, servicers, and guaranty agencies resulting from designation as exceptional performance.

[(5) An identification of specific administration steps that lenders, servicers, and guaranty agencies do not have to perform as a result of designation as exceptional lenders, servicers, or guaranty agencies.

[(6) A recommendation for program modifications applicable to all program participants based on the findings of the evaluation.

[(7) A recommendation for modifications to this section and whether the program should be continued.

[(i) TERMINATION.—After receipt of the study authorized in subsection (h), the Secretary may terminate such program if he determines such termination to be in the fiscal interest of the United States.

[(j) DEFINITIONS.—For the purpose of this section—

[(1) the term "due diligence requirements" means the activities required to be performed by lenders on delinquent loans pursuant to regulations issued by the Secretary;

[(2) the term "eligible loan" means a loan made, insured or guaranteed under part B of title IV;

[(3) the term "servicer" means an entity servicing and collecting student loans which—

[(A) has substantial experience in servicing and collecting consumer loans or student loans;

[(B) has an independent financial audit annually which is furnished to the Secretary and any other parties designated by the Secretary;

[(C) has business systems which are capable of meeting the requirements of part B of title IV;

[(D) has adequate personnel who are knowledgeable about the student loan programs authorized by part B of title IV; and

[(E) does not have any owner, majority shareholder, director, or officer of the entity who has been convicted of a felony.]

SEC. 428I. SPECIAL INSURANCE AND REINSURANCE RULES FOR EXCEPTIONAL PERFORMANCE.

(a) DESIGNATION OF LENDERS AND SERVICERS.—

(1) IN GENERAL.—Whenever the Secretary determines that an eligible lender or servicer meets the performance measures required by paragraph (2), the Secretary shall designate that eligible lender or servicer, as the case may be, for exceptional performance. The Secretary shall notify each appropriate guaranty agency of the eligible lenders and servicers designated under this section.

(2) PERFORMANCE MEASURES.—

(A) In determining whether to award a lender or servicer the exceptional performance designation, the Secretary shall require that the lender or servicer be performing at or above the 95 percentile of the industry, and demonstrate improved performance against the lender's or servicer's av-

erage of the last 3 years on the factors described in subparagraph (B).

(B) The factors on which the Secretary shall require improvement shall include—

(i) delinquency rates;

(ii) the rate at which delinquent accounts are restored to good standing;

(iii) default rates;

(iv) the rate of rejected claims; and

(v) any other such measures as determined by the Secretary.

(C) In addition, the Secretary shall not make any award of such a designation unless the consequence of the designation is cost-neutral to the Federal Government.

(3) ADDITIONAL INFORMATION ON LENDERS AND SERVICERS.—Each appropriate guaranty agency shall provide the Secretary with such other information in its possession regarding an eligible lender or servicer desiring designation as may relate to the Secretary's determination under paragraph (1), including but not limited to any information suggesting that the application of a lender or servicer for designation should not be approved.

(4) DETERMINATIONS BY THE SECRETARY.—

(A) The Secretary shall designate an eligible lender or servicer for exceptional performance if the eligible lender or servicer meets the performance measures required by paragraph (2).

(B) The Secretary shall make the determination under paragraph (1) based upon the documentation submitted by the eligible lender or servicer as specified in regulation, such other information as provided by any guaranty agency under paragraph (3), and any information in the possession of the Secretary or submitted by any other agency or office of the Federal Government.

(C) The Secretary shall inform the eligible lender or servicer and the appropriate guaranty agency that its application for designation as an exceptional performance lender or servicer has been approved or disapproved.

(5) TRANSITION.—

(A) Any eligible lender or servicer designated for exceptional performance as of the day before the date of enactment of the Higher Education Budget Reconciliation Act of 2005 shall continue to be so designated, and subject to the requirements of this section as in effect on that day (including revocation), until the performance standards described in paragraph (2) are established.

(B) The Secretary shall not designate any additional eligible lenders or servicers for exceptional performance until those performance standards are established.

(b) PAYMENT TO LENDERS AND SERVICERS.—A guaranty agency shall pay, to each eligible lender or servicer (as agent for an eligible lender) designated under subsection (a), 98 percent of the unpaid principal and interest of all loans for which claims are submitted for payment by that eligible lender or servicer for the one-year period following the receipt by the guaranty agency of the notification

of designation under this section, or until the guaranty agency receives notice from the Secretary that the designation of the lender or servicer under subsection (a)(2) has been revoked.

(c) REVOCATION AUTHORITY.—

(1) The Secretary shall revoke the designation of a lender or a servicer under subsection (a) if the Secretary determines that the lender or servicer has failed to meet the performance standards required by subsection (a)(2).

(2) Notwithstanding any other provision of this section, a designation under subsection (a) may be revoked at any time by the Secretary, in the Secretary's discretion, if the Secretary determines that the eligible lender or servicer has failed to meet the criteria and performance standards established by the Secretary in regulation, or if the Secretary believes the lender or servicer may have engaged in fraud in securing designation under subsection (a), or is failing to service loans in accordance with program regulations.

(d) DOCUMENTATION.—Nothing in this section shall restrict or limit the authority of guaranty agencies to require the submission of claims documentation evidencing servicing performed on loans, except that the guaranty agency may not require greater documentation than that required for lenders and servicers not designated under subsection (a).

(e) SPECIAL RULE.—Reimbursements made by the Secretary on loans submitted for claim by an eligible lender or loan servicer designated for exceptional performance under this section shall not be subject to additional review by the Secretary or repurchase by the guaranty agency for any reason other than a determination by the Secretary that the eligible lender or loan servicer engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance.

(f) LIMITATION.—Nothing in this section shall be construed to affect the processing of claims on student loans of eligible lenders not subject to this section.

(g) CLAIMS.—A lender or servicer designated under subsection (a) failing to service loans or otherwise comply with applicable program regulations shall be considered in violation of section 3729 of title 31, United States Code.

(h) TERMINATION.—The Secretary may terminate the designation of lenders and servicers under this section if he determines that termination would be in the fiscal interest of the United States.

(i) DEFINITIONS.—As used in this section—

(1) the term "eligible loan" means a loan made, insured, or guaranteed under this part; and

(2) the term "servicer" means an entity servicing and collecting student loans that—

(A) has substantial experience in servicing and collecting consumer loans or student loans;

(B) has an independent financial audit annually which is furnished to the Secretary and any other parties designated by the Secretary;

(C) has business systems which are capable of meeting the requirements of this part;

(D) has adequate personnel who are knowledgeable about the student loan programs authorized by this part; and

(E) does not have any owner, majority shareholder, director, or officer of the entity who has been convicted of a felony.

SEC. 428J. LOAN FORGIVENESS FOR TEACHERS.

(a) * * *

(b) PROGRAM AUTHORIZED.—The Secretary shall carry out a program, through the holder of the loan, of assuming the obligation to repay a qualified loan amount for a loan made under section 428 or 428H, in accordance with subsection (c), for any new borrower on or after October 1, 1998, who—

(1) has been employed as a full-time teacher for 5 consecutive complete school years—

(A) * * *

(B) if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 9101 of the Elementary Secondary Education Act of 1965*, or meets the requirements of subsection (g)(3)*; and

* * * * * * *

(c) QUALIFIED LOANS AMOUNT.—

(1) * * *

* * * * * * *

(3) ADDITIONAL AMOUNTS FOR TEACHERS IN MATHEMATICS, SCIENCE, OR SPECIAL EDUCATION.—Notwithstanding the amount specified in paragraph (1), the aggregate amount that the Secretary shall repay under this section shall be not more than $17,500 in the case of—

(A) a secondary school teacher—

(i) * * *

(ii) whose qualifying employment for purposes of such subsection is teaching mathematics or science on a full-time basis; **[**and**]**

(B) an elementary school or secondary school teacher—

(i) * * *

* * * * * * *

(iii) who, as certified by the chief administrative officer of the public or non-profit private elementary school or secondary school in which the borrower is employed, is teaching children with disabilities that correspond with the borrower's special education training and has demonstrated knowledge and teaching skills in the content areas of the elementary school or secondary school curriculum that the borrower is teaching**[**.**]***; and*

(C) an elementary or secondary school teacher who primarily teaches reading—

(i) who meets the requirements of subsection (b);

(ii) who has obtained a separate reading instruction credential from the State in which the teacher is employed; and

(iii) who is certified by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is employed to teach reading—

(I) as being proficient in teaching the essential components of reading instruction as defined in section 1208 of the Elementary and Secondary Education Act of 1965; and

(II) as having such credential.

* * * * * * *

(g) ADDITIONAL ELIGIBILITY PROVISIONS.—

(1) * * *

* * * * * * *

(3) PRIVATE SCHOOL TEACHERS.—An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (a)(1)(B), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher must be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965, and the score achieved by such teacher on each test must equal or exceed the average passing score of those 5 States.

* * * * * * *

[SEC. 428K. LOAN FORGIVENESS FOR CHILD CARE PROVIDERS.

[(a) PURPOSE.—It is the purpose of this section—

[(1) to bring more highly trained individuals into the early child care profession; and

[(2) to keep more highly trained child care providers in the early child care field for longer periods of time.

[(b) DEFINITIONS.—In this section:

[(1) CHILD CARE FACILITY.—The term "child care facility" means a facility, including a home, that—

[(A) provides child care services; and

[(B) meets applicable State or local government licensing, certification, approval, or registration requirements, if any.

[(2) CHILD CARE SERVICES.—The term "child care services" means activities and services provided for the education and care of children from birth through age 5 by an individual who has a degree in early childhood education.

[(3) DEGREE.—The term "degree" means an associate's or bachelor's degree awarded by an institution of higher education.

[(4) EARLY CHILDHOOD EDUCATION.—The term "early childhood education" means education in the areas of early child

education, child care, or any other educational area related to child care that the Secretary determines appropriate.

[(5) INSTITUTION OF HIGHER EDUCATION.—Notwithstanding section 102, the term "institution of higher education" has the meaning given the term in section 101.

[(c) DEMONSTRATION PROGRAM.—

[(1) IN GENERAL.—The Secretary may carry out a demonstration program of assuming the obligation to repay, pursuant to subsection (d), a loan made, insured, or guaranteed under this part or part D (excluding loans made under sections 428B and 428C or comparable loans made under part D) for any new borrower after the date of enactment of the Higher Education Amendments of 1998, who—

[(A) completes a degree in early childhood education;

[(B) obtains employment in a child care facility; and

[(C) has worked full time for the 2 consecutive years preceding the year for which the determination is made as a child care provider in a low-income community.

[(2) LOW-INCOME COMMUNITY.—For the purposes of this subsection, the term "low-income community" means a community in which 70 percent of households within the community earn less than 85 percent of the State median household income.

[(3) AWARD BASIS; PRIORITY.—

[(A) AWARD BASIS.—Subject to subparagraph (B), loan repayment under this section shall be on a first-come, first-served basis and subject to the availability of appropriations.

[(B) PRIORITY.—The Secretary shall give priority in providing loan repayment under this section for a fiscal year to student borrowers who received loan repayment under this section for the preceding fiscal year.

[(4) REGULATIONS.—The Secretary is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section.

[(d) LOAN REPAYMENT.—

[(1) IN GENERAL.—The Secretary shall assume the obligation to repay—

[(A) after the second consecutive year of employment described in subparagraphs (B) and (C) of subsection (c)(1), 20 percent of the total amount of all loans made after date of enactment of the Higher Education Amendments of 1998, to a student under this part or part D;

[(B) after the third consecutive year of such employment, 20 percent of the total amount of all such loans; and

[(C) after each of the fourth and fifth consecutive years of such employment, 30 percent of the total amount of all such loans.

[(2) CONSTRUCTION.—Nothing in this section shall be construed to authorize the refunding of any repayment of a loan made under this part or part D.

[(3) INTEREST.—If a portion of a loan is repaid by the Secretary under this section for any year, the proportionate amount of interest on such loan which accrues for such year shall be repaid by the Secretary.

[(4) SPECIAL RULE.—In the case where a student borrower who is not participating in loan repayment pursuant to this section returns to an institution of higher education after graduation from an institution of higher education for the purpose of obtaining a degree in early childhood education, the Secretary is authorized to assume the obligation to repay the total amount of loans made under this part or part D incurred for a maximum of two academic years in returning to an institution of higher education for the purpose of obtaining a degree in early childhood education. Such loans shall only be repaid for borrowers who qualify for loan repayment pursuant to the provisions of this section, and shall be repaid in accordance with the provisions of paragraph (1).

[(5) INELIGIBILITY OF NATIONAL SERVICE AWARD RECIPIENTS.—No student borrower may, for the same volunteer service, receive a benefit under both this section and subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.).

[(e) REPAYMENT TO ELIGIBLE LENDERS.—The Secretary shall pay to each eligible lender or holder for each fiscal year an amount equal to the aggregate amount of loans which are subject to repayment pursuant to this section for such year.

[(f) APPLICATION FOR REPAYMENT.—

[(1) IN GENERAL.—Each eligible individual desiring loan repayment under this section shall submit a complete and accurate application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[(2) CONDITIONS.—An eligible individual may apply for loan repayment under this section after completing each year of qualifying employment. The borrower shall receive forbearance while engaged in qualifying employment unless the borrower is in deferment while so engaged.

[(g) EVALUATION.—

[(1) IN GENERAL.—The Secretary shall conduct, by grant or contract, an independent national evaluation of the impact of the demonstration program assisted under this section on the field of early childhood education.

[(2) COMPETITIVE BASIS.—The grant or contract described in subsection (b) shall be awarded on a competitive basis.

[(3) CONTENTS.—The evaluation described in this subsection shall—

[(A) determine the number of individuals who were encouraged by the demonstration program assisted under this section to pursue early childhood education;

[(B) determine the number of individuals who remain employed in a child care facility as a result of participation in the program;

[(C) identify the barriers to the effectiveness of the program;

[(D) assess the cost-effectiveness of the program in improving the quality of—

[(i) early childhood education; and

[(ii) child care services;

[(E) identify the reasons why participants in the program have chosen to take part in the program;

[(F) identify the number of individuals participating in the program who received an associate's degree and the number of such individuals who received a bachelor's degree; and

[(G) identify the number of years each individual participates in the program.

[(4) INTERIM AND FINAL EVALUATION REPORTS.—The Secretary shall prepare and submit to the President and the Congress such interim reports regarding the evaluation described in this subsection as the Secretary deems appropriate, and shall prepare and so submit a final report regarding the evaluation by January 1, 2002.

[(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1999, and such sums as may be necessary for each of the 4 succeeding fiscal years.]

SEC. 428K. LOAN FORGIVENESS FOR SERVICE IN AREAS OF NATIONAL NEED.

(a) PURPOSES.—The purposes of this section are—

(1) to encourage highly trained individuals to enter and continue in service in areas of national need; and

(2) to reduce the burden of student debt for Americans who dedicate their careers to service in areas of national need.

(b) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to carry out a program of assuming the obligation to repay, pursuant to subsections (c)(2) and (d), a qualified loan amount for a loan made, insured, or guaranteed under this part or part D (other than loans made under section 428B and 428C and comparable loans made under part D), for any new borrower after the date of enactment of the Higher Education Budget Reconciliation Act of 2005, who—

(A) has been employed full-time for at least 5 consecutive complete school, academic, or calendar years, as appropriate, in an area of national need described in subsection (c); and

(B) is not in default on a loan for which the borrower seeks forgiveness.

(2) AWARD BASIS.—Loan repayment under this section shall be on a first-come, first-served basis pursuant to the designation under subsection (c) and subject to the availability of appropriations.

(3) REGULATIONS.—The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

(c) AREAS OF NATIONAL NEED.—

(1) STATUTORY CATEGORIES.—For purposes of this section, an individual shall be treated as employed in an area of national need if the individual is employed full-time and is any of the following:

(A) EARLY CHILDHOOD EDUCATORS.—An individual who is employed as an early childhood educator in an eligible

preschool program or child care facility in a low-income community, and who is involved directly in the care, development and education of infants, toddlers, or young children through age five.

(B) NURSES.—An individual who is employed—

(i) as a nurse in a clinical setting; or

(ii) as a member of the nursing faculty at an accredited school of nursing (as those terms are defined in section 801 of the Public Health Service Act (42 U.S.C. 296)).

(C) FOREIGN LANGUAGE SPECIALISTS.—An individual who has obtained a baccalaureate degree in a critical foreign language and is employed—

(i) in an elementary or secondary school as a teacher of a critical foreign language; or

(ii) in an agency of the United States Government in a position that regularly requires the use of such critical foreign language.

(D) LIBRARIANS.—An individual who is employed as a librarian in—

(i) a public library that serves a geographic area within which the public schools have a combined average of 30 percent or more of their total student enrollments composed of children counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965; or

(ii) an elementary or secondary school which is in the school district of a local educational agency which is eligible in such year for assistance pursuant to title I of the Elementary and Secondary Education Act of 1965, and which for the purpose of this paragraph and for that year has been determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 exceeds 30 percent of the total enrollment of that school.

(E) HIGHLY QUALIFIED TEACHERS: BILINGUAL EDUCATION AND LOW-INCOME COMMUNITIES.—An individual who—

(i) is highly qualified as such term is defined in section 9101 of the Elementary and Secondary Education Act of 1965; and

(ii)(I) is employed as a teacher of bilingual education; or

(II) is employed as a teacher for service in a public or nonprofit private elementary or secondary school which is in the school district of a local educational agency which is eligible in such year for assistance pursuant to title I of the Elementary and Secondary Education Act of 1965, and which for the purpose of this paragraph and for that year has been determined by the Secretary (pursuant to regulations and after

consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 exceeds 40 percent of the total enrollment of that school.

(F) FIRST RESPONDERS IN LOW-INCOME COMMUNITIES.—An individual who—

(i) is employed as a firefighter, police officer, or emergency medical technician; and

(ii) serves as such in a low-income community.

(G) CHILD WELFARE WORKERS.—An individual who—

(i) has obtained a degree in social work or a related field with a focus on serving children and families; and

(ii) is employed in public or private child welfare services.

(H) SPEECH-LANGUAGE PATHOLOGISTS.—An individual who is a speech-language pathologist, who is employed in an eligible preschool program or an elementary or secondary school, and who has, at a minimum, a graduate degree in speech-language pathology, or communication sciences and disorders.

(I) ADDITIONAL AREAS OF NATIONAL NEED.—An individual who is employed in an area designated by the Secretary under paragraph (2) and has completed a baccalaureate or advanced degree related to such area.

(2) DESIGNATION OF ADDITIONAL AREAS OF NATIONAL NEED.—After consultation with appropriate Federal, State, and community-based agencies and organizations, the Secretary shall designate additional areas of national need in which an individual may be employed full-time to be eligible for loan repayment under this section. In making such designations, the Secretary shall take into account the extent to which—

(A) the national interest in the area is compelling;

(B) the area suffers from a critical lack of qualified personnel; and

(C) other Federal programs support the area concerned.

(d) QUALIFIED LOAN AMOUNT.—Subject to the availability of appropriations, the Secretary shall repay not more than $5,000 in the aggregate of the loan obligation on a loan made under section 428 or 428H that is outstanding after the completion of the fifth consecutive school, academic, or calendar year, as appropriate, described in subsection (b)(1).

(e) CONSTRUCTION.—Nothing in this section shall be construed to authorize the refunding of any repayment of a loan made under section 428 or 428H.

(f) INELIGIBILITY OF NATIONAL SERVICE AWARD RECIPIENTS.—No student borrower may, for the same service, receive a benefit under both this section and subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.).

(g) INELIGIBILITY FOR DOUBLE BENEFITS.—No borrower may receive a reduction of loan obligations under both this section and section 428J or 460.

(h) DEFINITIONS.—In this section

(1) CHILD CARE FACILITY.—The term "child care facility" means a facility, including a home, that—

(A) provides for the education and care of children from birth through age 5; and

(B) meets any applicable State or local government licensing, certification, approval, or registration requirements.

(2) CRITICAL FOREIGN LANGUAGE.—The term "critical foreign language" includes the languages of Arabic, Korean, Japanese, Chinese, Pashto, Persian-Farsi, Serbian-Croatian, Russian, Portuguese, and any other language identified by the Secretary of Education, in consultation with the Defense Language Institute, the Foreign Service Institute, and the National Security Education Program, as a critical foreign language need.

(3) EARLY CHILDHOOD EDUCATOR.—The term "early childhood educator" means an early childhood educator employed in an eligible preschool program who has completed a baccalaureate or advanced degree in early childhood development, early childhood education, or in a field related to early childhood education.

(4) ELIGIBLE PRESCHOOL PROGRAM.—The term "eligible preschool program" means a program that provides for the care, development, and education of infants, toddlers, or young children through age 5, meets any applicable State or local government licensing, certification, approval, and registration requirements, and is operated by—

(A) a public or private school that may be supported, sponsored, supervised, or administered by a local educational agency;

(B) a Head Start agency serving as a grantee designated under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) a nonprofit or community based organization; or

(D) a child care program, including a home.

(5) LOW-INCOME COMMUNITY.—In this subsection, the term "low-income community" means a community in which 70 percent of households earn less than 85 percent of the State median household income.

(6) NURSE.—The term "nurse" means a nurse who meets all of the following:

(A) The nurse graduated from—

(i) an accredited school of nursing (as those terms are defined in section 801 of the Public Health Service Act (42 U.S.C. 296));

(ii) a nursing center; or

(iii) an academic health center that provides nurse training.

(B) The nurse holds a valid and unrestricted license to practice nursing in the State in which the nurse practices in a clinical setting.

(C) The nurse holds one or more of the following:

(i) A graduate degree in nursing, or an equivalent degree.

(ii) A nursing degree from a collegiate school of nursing (as defined in section 801 of the Public Health Service Act (42 U.S.C. 296)).

(iii) A nursing degree from an associate degree school of nursing (as defined in section 801 of the Public Health Service Act (42 U.S.C. 296)).

(iv) A nursing degree from a diploma school of nursing (as defined in section 801 of the Public Health Service Act (42 U.S.C. 296)).

(7) SPEECH-LANGUAGE PATHOLOGIST.—The term "speech-language pathologist" means a speech-language pathologist who meets all of the following:

(A) the speech-language pathologist has received, at a minimum, a graduate degree in speech-language pathology or communication sciences and disorders from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 496(a) of this Act; and

(B) the speech-language pathologist meets or exceeds the qualifications described in section 1861(ll)(3) of the Social Security Act (42 U.S.C. 1395x(3)).

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.

* * * * * * *

SEC. 430A. REPORTS TO CREDIT BUREAUS AND INSTITUTIONS OF HIGHER EDUCATION.

(a) AGREEMENTS TO EXCHANGE INFORMATION.—For the purpose of promoting responsible repayment of loans covered by Federal loan insurance pursuant to this part or covered by a guaranty agreement pursuant to section 428, the Secretary, each guaranty agency, eligible lender, and subsequent holder shall enter into [agreements with credit bureau organizations] *an agreement with each national credit bureau organization (as described in section 603(p) of the Fair Credit Reporting Act)* to exchange information concerning student borrowers, in accordance with the requirements of this section. For the purpose of assisting such organizations in complying with the Fair Credit Reporting Act, such agreements may provide for timely response by the Secretary (concerning loans covered by Federal loan insurance), by a guaranty agency, eligible lender, or subsequent holder (concerning loans covered by a guaranty agreement), or to requests from such organizations for responses to objections raised by borrowers. Subject to the requirements of subsection (c), such agreements shall require the Secretary, the guaranty agency, eligible lender, or subsequent holder, as appropriate, to disclose to such organizations, with respect to any loan under this part that has not been repaid by the borrower—

(1) * * *

* * * * * * *

SEC. 432. LEGAL POWERS AND RESPONSIBILITIES.

(a) * * *

* * * * * * *

(k) PROGRAM OF ASSISTANCE FOR BORROWERS.—

(1) IN GENERAL.—The Secretary shall undertake a program to encourage corporations and other private and public employers, including the Federal Government, to assist borrowers in repaying loans received under this title, including providing employers with options for payroll deduction of loan payments [and offering loan repayment matching provisions as part of employee benefit packages.], *offering loan repayment matching provisions as part of employee benefit packages, and providing employees with financial and economic education and counseling.*

* * * * * * *

(l) UNIFORM ADMINISTRATIVE AND CLAIMS PROCEDURES.—

(1) IN GENERAL.—The Secretary shall, by regulation developed in consultation with guaranty agencies, lenders, institutions of higher education, secondary markets, students, third party servicers and other organizations involved in providing loans under this part, prescribe standardized forms and procedures regarding—

(A) * * *

* * * * * * *

(H) borrower status change *and anticipated graduation date*; and

* * * * * * *

(m) COMMON FORMS AND FORMATS.—

(1) COMMON GUARANTEED STUDENT LOAN APPLICATION FORM AND PROMISSORY NOTE.—

(A) * * *

(B) REQUIREMENTS.—The forms prescribed by the Secretary shall—

(i) use clear, concise, and simple language to facilitate understanding of loan terms and conditions by applicants; *and*

(ii) be formatted to require the applicant to clearly indicate a choice of lender[; and].

* * * * * * *

[(n) DEFAULT REDUCTION MANAGEMENT.—

[(1) AUTHORIZATION.—There are authorized to be appropriated $25,000,000 for fiscal year 1999 and each of the four succeeding fiscal years, for the Secretary to expend for default reduction management activities for the purposes of establishing a performance measure that will reduce defaults by 5 percent relative to the prior fiscal year. Such funds shall be in addition to, and not in lieu of, other appropriations made for such purposes.

[(2) ALLOWABLE ACTIVITIES.—Allowable activities for which such funds shall be expended by the Secretary shall include the following: (A) program reviews; (B) audits; (C) debt man-

agement programs; (D) training activities; and (E) such other management improvement activities approved by the Secretary.

[(3) PLAN FOR USE REQUIRED.—The Secretary shall submit a plan, for inclusion in the materials accompanying the President's budget each fiscal year, detailing the expenditure of funds authorized by this section to accomplish the 5 percent reduction in defaults. At the conclusion of the fiscal year, the Secretary shall report the Secretary's findings and activities concerning the expenditure of funds and whether the performance measure was met. If the performance measure was not met, the Secretary shall report the following:

[(A) why the goal was not met, including an indication of any managerial deficiencies or of any legal obstacles;

[(B) plans and a schedule for achieving the established performance goal;

[(C) recommended legislative or regulatory changes necessary to achieve the goal; and

[(D) if the performance standard or goal is impractical or infeasible, why that is the case and what action is recommended, including whether the goal should be changed or the program altered or eliminated.

This report shall be submitted to the Appropriations Committees of the House of Representatives and the Senate and to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.]

[(o)] *(n)* CONSEQUENCES OF GUARANTY AGENCY INSOLVENCY.—In the event that the Secretary has determined that a guaranty agency is unable to meet its insurance obligations under this part, the holder of loans insured by the guaranty agency may submit insurance claims directly to the Secretary and the Secretary shall pay to the holder the full insurance obligation of the guaranty agency, in accordance with insurance requirements no more stringent than those of the guaranty agency. Such arrangements shall continue until the Secretary is satisfied that the insurance obligations have been transferred to another guarantor who can meet those obligations or a successor will assume the outstanding insurance obligations.

[(p)] *(o)* REPORTING REQUIREMENT.—All officers and directors, and those employees and paid consultants of eligible institutions, eligible lenders, guaranty agencies, loan servicing agencies, accrediting agencies or associations, State licensing agencies or boards, and entities acting as secondary markets (including the Student Loan Marketing Association), who are engaged in making decisions as to the administration of any program or funds under this title or as to the eligibility of any entity or individual to participate under this title, shall report to the Secretary, in such manner and at such time as the Secretary shall require, on any financial interest which such individual may hold in any other entity participating in any program assisted under this title.

* * * * * * *

SEC. 435. DEFINITIONS FOR STUDENT LOAN INSURANCE PROGRAM.

As used in this part:

(a) * * *

* * * * * * *

(d) ELIGIBLE LENDER.—

(1) * * *

[(2) ADDITIONAL REQUIREMENTS OF ELIGIBLE INSTITUTIONS.—To be an eligible lender under this part, an eligible institution—

[(A) shall employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending such institution;

[(B) shall not be a home study school;

[(C) shall make loans to not more than 50 percent of the undergraduate students at the institution;

[(D) shall not make a loan, other than a loan to a graduate or professional student, unless the borrower has previously received a loan from the school or has been denied a loan by an eligible lender;

[(E) shall not have a cohort default rate (as defined in section 435(m)) greater than 15 percent; and

[(F) shall use the proceeds from special allowance payments and interest payments from borrowers for need-based grant programs, except for reasonable reimbursement for direct administrative expenses;

except that the requirements of subparagraphs (C) and (D) shall not apply with respect to loans made, and loan commitments made, after the date of enactment of the Higher Education Amendments of 1986 and prior to July 1, 1987.]

(2) REQUIREMENTS FOR ELIGIBLE INSTITUTIONS.—

(A) IN GENERAL.—To be an eligible lender under this part, an eligible institution—

(i) shall employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending such institution;

(ii) shall not be a home study school;

(iii) shall not—

(I) make a loan to any undergraduate student;

(II) make a loan other than a loan under section 428 or 428H to a graduate or professional student; or

(III) make a loan to a borrower who is not enrolled at that institution;

(iv) shall award any contract for financing, servicing, or administration of loans under this title on a competitive basis;

(v) shall offer loans that carry an origination fee or an interest rate, or both, that are less than such fee or rate authorized under the provisions of this title;

(vi) shall not have a cohort default rate (as defined in section 435(m)) greater than 10 percent;

(vii) shall, for any year for which the institution engages in activities as an eligible lender, provide for a

compliance audit conducted in accordance with section 428(b)(1)(U)(iii)(I), and the regulations thereunder, and submit the results of such audit to the Secretary; and

(viii) shall use any proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the Department of Education, and any proceeds from the sale or other disposition of loans, for need-based grant programs.

(B) ADMINISTRATIVE EXPENSES.—An eligible lender under subparagraph (A) shall be permitted to use a portion of the proceeds described in subparagraph (A)(viii) for reasonable and direct administrative expenses.

(C) SUPPLEMENT, NOT SUPPLANT.—An eligible lender under subparagraph (A) shall ensure that the proceeds described in subparagraph (A)(viii) are used to supplement, and not to supplant, non-Federal funds that would otherwise be used for need-based grant programs.

* * * * * * *

SEC. 437. REPAYMENT BY THE SECRETARY OF LOANS OF BANKRUPT, DECEASED, OR DISABLED BORROWERS; TREATMENT OF BORROWERS ATTENDING CLOSED SCHOOLS OR FALSELY CERTIFIED AS ELIGIBLE TO BORROW.

(a) REPAYMENT IN FULL FOR DEATH AND DISABILITY.—If a student borrower who has received a loan described in subparagraph (A) or (B) of section 428(a)(1) dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), then the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan. *In making such determination of permanent and total disability, the Secretary shall not require a borrower who has been certified as permanently and totally disabled by the Department of Veterans Affairs or the Social Security Administration to present further documentation of disability for purposes of this title.*

* * * * * * *

(c) DISCHARGE.—

(1) IN GENERAL.—If a borrower who received, on or after January 1, 1986, a loan made, insured, or guaranteed under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student is enrolled due to the closure of the institution or if such student's eligibility *or parent's eligibility* to borrow under this part was falsely certified by the eligible institution, or if the institution failed to make a refund of loan proceeds which the institution owed to such student's lender, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan and shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals or settle the loan obligation pursuant to the financial responsibility authority under subpart 3 of part H. In the case of a discharge based upon a failure to refund, the amount of the discharge shall not exceed that portion of the loan which should have been refunded. The Secretary shall re-

port to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate annually as to the dollar amount of loan discharges attributable to failures to make refunds.

* * * * * * *

SEC. 438. SPECIAL ALLOWANCES.

(a) * * *

(b) COMPUTATION AND PAYMENT.—

(1) * * *

(2) RATE OF SPECIAL ALLOWANCE.—(A) * * *

(B)(i) * * *

* * * * * * *

(iv) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance for holders of loans which are financed with funds obtained by the holder from the issuance of obligations originally issued on or after October 1, 1993, or refunded after September 30, 2004, [and before January 1, 2006,] the income from which is excluded from gross income under the Internal Revenue Code of 1986, shall be the quarterly rate of the special allowance established under subparagraph (A), (E), (F), (G), (H), or (I) as the case may be. Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interest or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds.

(v) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, or paragraph (4), as the case may be, for a holder of loans that—

(I) * * *

(II) are—

(aa) financed by such an obligation that, after September 30, 2004, [and before January 1, 2006,] has matured or been retired or defeased;

(bb) refinanced after September 30, 2004, [and before January 1, 2006,] with funds obtained from a source other than funds described in subclause (I) of this clause; or

(cc) sold or transferred to any other holder after September 30, 2004[, and before January 1, 2006].

(vi) Notwithstanding clauses (i), (ii), and (v), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, as the case may be, for a holder of loans—

(I) that were made or purchased on or after October 1, 2005; or

(II) that were not earning a quarterly rate of special allowance determined under clauses (i) or (ii) of subpara-

graph (B) of this paragraph (20 U.S.C. 1087–1(b)(2)(b)) as of October 1, 2005.

* * * * * * *

(I) LOANS DISBURSED ON OR AFTER JANUARY 1, 2000.—

(i) * * *

[(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan—

[(I) for which the first disbursement is made on or after January 1, 2000, and before July 1, 2006, and for which the applicable rate of interest is described in section 427A(k)(2); or

[(II) for which the first disbursement is made on or after July 1, 2006, and for which the applicable rate of interest is described in section 427A(l)(1), but only with respect to (aa) periods prior to the beginning of the repayment period of the loan; or (bb) during the periods in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 427(a)(2)(C) or 428(b)(1)(M);

clause (i)(III) of this subparagraph shall be applied by substituting "1.74 percent" for "2.34 percent".**]**

(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan for which the first disbursement is made on or after January 1, 2000, and for which the applicable interest rate is described in section 427A(k)(2), clause (i)(III) of this subparagraph shall be applied by substituting "1.74 percent" for "2.34 percent".

(iii) PLUS LOANS.—In the case of any loan for which the first disbursement is made on or after January 1, 2000, and for which the applicable rate of interest is described in section 427A(k)(3) **[**or (l)(2)**]**, clause (i)(III) of this subparagraph shall be applied by substituting "2.64 percent" for "2.34 percent"**[**, subject to clause (v) of this subparagraph**]**.

(iv) CONSOLIDATION LOANS.—In the case of any consolidation loan for which the application is received by an eligible lender on or after January 1, 2000, and for which the applicable interest rate is determined under section 427A(k)(4) **[**or (l)(3)**]** *or (k)(5)*, clause (i)(III) of this subparagraph shall be applied by substituting "2.64 percent" for "2.34 percent"**[**, subject to clause (vi) of this subparagraph**]**.

[(v) LIMITATION ON SPECIAL ALLOWANCES FOR PLUS LOANS BEFORE JULY 1, 2006.—In the case of PLUS loans made under section 428B and first disbursed on or after January 1, 2000, and before July 1, 2006, for which the interest rate is determined under section 427A(k)(3), a special allowance shall not be paid for such loan during any 12-month period beginning on July 1 and ending on June 30 unless, on the June 1 preceding such July 1—

[(I) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to

such June 1 (as determined by the Secretary for purposes of such section); plus

[(II) 3.1 percent,

exceeds 9.0 percent.

[(vi) LIMITATION ON SPECIAL ALLOWANCES FOR CONSOLIDATION LOANS.—In the case of consolidation loans made under section 428C and for which the application is received on or after January 1, 2000, for which the interest rate is determined under section 427A(k)(4) or (l)(3), a special allowance shall not be paid for such loan during any 3-month period ending March 31, June 30, September 30, or December 31 unless—

[(I) the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period; plus

[(II) 2.64 percent,

exceeds the rate determined under section 427A(k)(4) or (l)(3), whichever is applicable.

[(vii) LIMITATION ON SPECIAL ALLOWANCES FOR PLUS LOANS ON OR AFTER JULY 1, 2006.—In the case of PLUS loans made under section 428B and first disbursed on or after July 1, 2006, for which the interest rate is determined under section 427A(l)(2), a special allowance shall not be paid for such loan during any 12-month period beginning on July 1 and ending on June 30 unless—

[(I) the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial), as published by the Board of Governors of the Federal Reserve System in Publication H–15 (or its successor), for the last calendar week ending on or before such July 1; plus

[(II) 2.64 percent,

exceeds 9.0 percent.]

(v) RECAPTURE OF EXCESS INTEREST.—

(I) EXCESS CREDITED.—With respect to a loan on which the applicable interest rate is determined under section 427A(k) and for which the first disbursement of principal is made on or after July 1, 2006, if the applicable interest rate for any 3-month period exceeds the special allowance support level applicable to such loan under this subparagraph for such period, then an adjustment shall be made by calculating the excess interest in the amount computed under subclause (II) of this clause, and by crediting the excess interest to the Government not less often than annually.

(II) CALCULATION OF EXCESS.—The amount of any adjustment of interest on a loan to be made

under this subsection for any quarter shall be equal to—

(aa) the applicable interest rate minus the special allowance support level determined under this subparagraph; multiplied by

(bb) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

(cc) four.

(III) SPECIAL ALLOWANCE SUPPORT LEVEL.—For purposes of this clause, the term "special allowance support level" means, for any loan, a number expressed as a percentage equal to the sum of the rates determined under subclauses (I) and (III) of clause (i), and applying any substitution rules applicable to such loan under clauses (ii), (iii), and (iv) in determining such sum.

* * * * * * *

(4) PENALTY FOR LATE PAYMENT.—(A) * * *

(B) Such daily interest [shall be computed at the daily equivalent rate of the sum of the special allowance rate computed pursuant to paragraph (2) and the interest rate applicable to the loan] *described in subparagraph (A) shall be computed using the interest rate described in section 3902(a) of title 31, United States Code,* and shall be paid for the later of (i) the 31st day after the receipt of such request for payment from the holder, or (ii) the 31st day after the final day of the period or periods covered by such request, and shall be paid for each succeeding day until, and including, the date on which the Secretary authorizes payment.

* * * * * * *

(c) ORIGINATION FEES FROM STUDENTS.—

(1) DEDUCTION FROM INTEREST AND SPECIAL ALLOWANCE SUBSIDIES.—(A) Notwithstanding subsection (b), the Secretary shall collect the amount the lender is authorized to charge as an origination fee in accordance with paragraph (2) of this subsection *and the amount the lender is authorized to collect as a consolidation loan offset charge in accordance with paragraph (9) of this subsection—*

(i) * * *

* * * * * * *

(B) If the Secretary collects the origination fee *and the consolidation loan offset charge* under this subsection through the reduction of interest and special allowance, and the total amount of interest and special allowance payable under section 428(a)(3)(A) and subsection (b) of this section, respectively, is less than the amount the lender was authorized to charge borrowers for origination fees *and consolidation loan offset charges* in that quarter, the Secretary shall deduct the excess amount from the subsequent quarters' payments until the total amount has been deducted.

(2) [AMOUNT OF ORIGINATION FEES.—] *AMOUNT OF ORIGINATION FEES.—*

(A) IN GENERAL.—Subject to paragraph (6) of this subsection, with respect to any loan (including loans made under section 428H, but excluding loans made under sections 428C and 439(o)) for which a completed note or other written evidence of the loan was sent or delivered to the borrower for signing on or after 10 days after the date of enactment of the Postsecondary Student Assistance Amendments of 1981, each eligible lender under this part is authorized to charge the borrower an origination fee in an amount not to exceed 3.0 percent of the principal amount of the loan, to be deducted proportionately from each installment payment of the proceeds of the loan prior to payment to the borrower. Except as provided in paragraph (8), a lender that charges an origination fee under this paragraph shall assess the same fee to all student borrowers.

(B) SUBSEQUENT REDUCTIONS.—Subparagraph (A) shall be applied to loans made under this part (other than loans made under sections 428C and 439(o))—

(i) by substituting "2.0 percent" for "3.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2007;

(ii) by substituting "1.5 percent" for "3.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

(iii) by substituting "1.0 percent" for "3.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

(iv) by substituting "0.5 percent" for "3.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

(v) by substituting "0.0 percent" for "3.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.

(3) RELATION TO APPLICABLE INTEREST.—Such origination fee *and consolidation loan offset charge* shall not be taken into account for purposes of determining compliance with section 427A.

(4) DISCLOSURE REQUIRED.—The lender shall disclose to the borrower the amount and method of calculating the origination fee *and consolidation loan offset charge*.

(5) PROHIBITION ON DEPARTMENT COMPELLING ORIGINATION FEE COLLECTIONS BY LENDERS.—Nothing in this subsection shall be construed to permit the Secretary to require any lender that is making loans that are insured or guaranteed under this part, but for which no amount will be payable for interest under section 428(a)(3)(A) or for special allowances under subsection (b) of this section, to collect any origination fee *or con-*

solidation loan offset charge or to submit the sums collected as origination fees *or consolidation loan offset charges* to the United States. The Secretary shall, not later than January 1, 1987, return to any such lender any such sums collected before the enactment of this paragraph, together with interest thereon.

* * * * * * *

(7) DISTRIBUTION OF ORIGINATION FEES.—All origination fees *and consolidation loan offset charges* collected pursuant to this section on loans authorized under section [428A or] 428B shall be paid to the Secretary by the lender and deposited in the fund authorized under section 431 of this part.

* * * * * * *

(9) CONSOLIDATION LOAN OFFSET CHARGE.—For any loan under section 428C, the lender is authorized to collect a consolidation loan offset charge in an amount not to exceed 1.0 percent of the principal amount of the loan. Such amount may be added to the principal amount of the loan for repayment by the borrower.

(d) LOAN FEES FROM LENDERS.—

(1) * * *

[(2) AMOUNT OF LOAN FEES.—With respect to any loan under this part for which the first disbursement was made on or after October 1, 1993, the amount of the loan fee which shall be deducted under paragraph (1) shall be equal to 0.50 percent of the principal amount of the loan.]

(2) AMOUNT OF LOAN FEES.—The amount of the loan fee which shall be deducted under paragraph (1) shall be equal to—

(A) 0.50 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after October 1, 1993, and before July 1, 2006; and

(B) 1.0 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after July 1, 2006.

* * * * * * *

SEC. 439. STUDENT LOAN MARKETING ASSOCIATION.

(a) * * *

* * * * * * *

(d) AUTHORITY OF ASSOCIATION.—

(1) * * *

* * * * * * *

[(3) PERFECTION OF SECURITY INTERESTS IN STUDENT LOANS.—Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security interest in insured student loans created on behalf of the Association or any eligible lender as defined in section 435(a) may be perfected either through the taking of possession of such loans or by the filing of notice of

such security interest in such loans in the manner provided by such State law for perfection of security interests in accounts.]

[(4)] *(3)* FORM OF SECURITIES.—Securities issued pursuant to the offering of participations or pooled interests under paragraph (1) of this subsection may be in the form of debt obligations, or trust certificates of beneficial ownership, or both. Student loans set aside pursuant to the offering of participations or pooled interests shall at all times be adequate to ensure the timely principal and interest payments on such securities.

[(5)] *(4)* RESTRICTIONS ON FACILITIES AND HOUSING ACTIVITIES.—Not less than 75 percent of the aggregate dollar amount of obligations bought, sold, held, insured, underwritten, and otherwise supported in accordance with the authority contained in paragraph (1)(C) shall be obligations which are listed by a nationally recognized statistical rating organization at a rating below the second highest rating of such organization.

* * * * * * *

PART C—FEDERAL WORK-STUDY PROGRAMS

* * * * * * *

SEC. 455. TERMS AND CONDITIONS OF LOANS.

(a) IN GENERAL.—

(1) PARALLEL TERMS, CONDITIONS, BENEFITS, AND AMOUNTS.—Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers under sections 428, 428B, *428C,* and 428H of this title.

(2) DESIGNATION OF LOANS.—Loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under—

(A) * * *

(B) section 428B shall be known as "Federal Direct PLUS Loans"; [and]

(C) section 428C shall be known as "Federal Direct Consolidation Loans"; and

[(C)] *(D)* section 428H shall be known as "Federal Direct Unsubsidized Stafford Loans".

* * * * * * *

(b) INTEREST RATE.—

(1) * * *

* * * * * * *

(6) INTEREST RATE PROVISION FOR NEW LOANS ON OR AFTER OCTOBER 1, 1998[, AND BEFORE JULY 1, 2006].—

(A) RATES FOR FDSL AND FDUSL.—Notwithstanding the preceding paragraphs of this subsection, for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after October 1, 1998[, and before July 1, 2006,] the applicable rate of interest shall, during any 12-month period begin-

ning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

(i) * * *

* * * * * * *

(B) IN SCHOOL AND GRACE PERIOD RULES.—Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after October 1, 1998[, and before July 1, 2006,] the applicable rate of interest for interest which accrues—

(i) * * *

* * * * * * *

(C) PLUS LOANS.—Notwithstanding the preceding paragraphs of this subsection, with respect to Federal Direct PLUS Loan for which the first disbursement is made on or after October 1, 1998[, and before July 1, 2006,] the applicable rate of interest shall be determined under subparagraph (A)—

(i) * * *

* * * * * * *

(D) CONSOLIDATION LOANS *BEFORE JULY 1, 2006*.—Notwithstanding the preceding paragraphs of this subsection, any Federal Direct Consolidation loan for which the application is received on or after February 1, 1999, and before July 1, 2006, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

(i) * * *

* * * * * * *

(E) CONSOLIDATION LOANS ON OR AFTER JULY 1, 2006.—

(i) BORROWER ELECTION.—Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct Consolidation Loan for which the application is received by the Secretary on or after July 1, 2006, the applicable rate of interest shall, at the election of the borrower at the time of application for the loan, be either at the rate determined under clause (ii) or the rate determined under clause (iii).

(ii) VARIABLE RATE.—Except as provided in clause (iv), the rate determined under this clause shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and, for such 12-month period, be equal to—

(I) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(II) 2.3 percent,

except that such rate shall not exceed 8.25 percent.

(iii) FIXED RATE.—Except as provided in clause (iv), the rate determined under this clause shall be determined for the duration of the term of the loan on the

July 1 that is or precedes the date on which the application is received by the Secretary, and shall be, for such duration, equal to—

(I) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to the June 1 immediately preceding such July 1; plus

(II) 3.3 percent,

except that such rate shall not exceed 8.25 percent.

(iv) CONSOLIDATION OF PLUS LOANS.—In the case of any such Federal Direct Consolidation Loan that is used to repay loans each of which was made under section 428B or was a Federal Direct PLUS Loan (or both), the rates determined under clauses (ii) and (iii) shall be determined—

(I) by substituting "3.1 percent" for "2.3 percent";

(II) by substituting "4.1 percent" for "3.3 percent"; and

(III) by substituting "9.0 percent" for "8.25 percent".

[(E)] *(F)* TEMPORARY RULES FOR CONSOLIDATION LOANS.—Notwithstanding the preceding paragraphs of this subsection, any Federal Direct Consolidation loan for which the application is received on or after October 1, 1998, and before February 1, 1999, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to—

(i) * * *

* * * * * * *

[(7) INTEREST RATE PROVISION FOR NEW LOANS ON OR AFTER JULY 1, 2006.—

[(A) RATES FOR FDSL AND FDUSL.—Notwithstanding the preceding paragraphs of this subsection, for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 6.8 percent on the unpaid principal balance of the loan.

[(B) PLUS LOANS.—Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct PLUS loan for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 7.9 percent on the unpaid principal balance of the loan.

[(C) CONSOLIDATION LOANS.—Notwithstanding the preceding paragraphs of this subsection, any Federal Direct Consolidation loan for which the application is received on or after July 1, 2006, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

[(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

[(ii) 8.25 percent.]

[(8)] *(7)* REPAYMENT INCENTIVES.—

(A) * * *

* * * * * * *

[(9)] *(8)* PUBLICATION.—The Secretary shall determine the applicable rates of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

[(c) LOAN FEE.—The Secretary shall charge the borrower of a loan made under this part an origination fee of 4.0 percent of the principal amount of loan.]

(c) LOAN FEE.—

(1) IN GENERAL.—The Secretary shall charge the borrower of a loan made under this part an origination fee of 4.0 percent of the principal amount of loan.

(2) SUBSEQUENT REDUCTION.—Paragraph (1) shall be applied to loans made under this part, other than Federal Direct Consolidation loans and Federal Direct PLUS loans—

(A) by substituting "not more or less than 3.0 percent" for "4.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2007;

(B) by substituting "not more or less than 2.5 percent" for "4.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

(C) by substituting "not more or less than 2.0 percent" for "4.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

(D) by substituting "not more or less than 1.5 percent" for "4.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

(E) by substituting "not more or less than 1.0 percent" for "4.0 percent" with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.

(3) WAIVERS AND REPAYMENT INCENTIVES PROHIBITED.—Beginning with loans made on or after July 1, 2006, the Secretary is prohibited—

(A) from waiving any amount of the loan fee prescribed under this section as part of a repayment incentive in section 455(b)(7); and

(B) from providing any repayment incentive before the borrower enters repayment.

(4) CONSOLIDATION LOAN OFFSET CHARGES.—For any Federal Direct Consolidation Loan, the Secretary shall collect a consolidation loan offset charge in an amount not more or less than 1.0 percent of the principal amount of the loan. Such amount may be added to the principal amount of the loan for repayment by the borrower. Such amount is not subject to the requirements of paragraph (3) of this subsection.

(d) REPAYMENT PLANS.—

(1) DESIGN AND SELECTION.—Consistent with criteria established by the Secretary, the Secretary shall offer a borrower of

a loan made under this part a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part. The borrower may choose—

[(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, consistent with subsection (a)(1) of this section;

[(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L);

[(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over a fixed or extended period of time, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and]

(A) a standard repayment plan, consistent with subsection (a)(1) of this section and with section 428(b)(9)(A)(i);

(B) a graduated repayment plan, consistent with section 428(b)(9)(A)(ii);

(C) an extended repayment plan, consistent with section 428(b)(9)(A)(v), except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L);

(D) a delayed repayment plan under which the borrower makes scheduled payments for not more than 2 years that are annually not less than the amount of interest due or $600, whichever is greater, and then makes payments in accordance with subparagraph (A), (B), or (C); and

[(D)] *(E)* an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan.

* * * * * * *

(f) DEFERMENT.—

(1) * * *

(2) ELIGIBILITY.—A borrower of a loan made under this part shall be eligible for a deferment during any period—

(A) * * *

* * * * * * *

(C) not in excess of 3 years during which the borrower—

(i) is serving on active duty during a war or other military operation or national emergency; or

(ii) is performing qualifying National Guard duty during a war or other military operation or national emergency; or

[(C)] *(D)* not in excess of 3 years during which the Secretary determines, in accordance with regulations prescribed under section 435(o), that the borrower has experienced or will experience an economic hardship.

* * * * * * *

(g) FEDERAL DIRECT CONSOLIDATION LOANS.—A borrower of a loan made under this part may consolidate such loan with the loans described in section 428C(a)(4). [Loans made under this subsection shall be known as "Federal Direct Consolidation Loans".] *To be eligible for a consolidation loan under this part, a borrower must meet the eligibility criteria set forth in section 428C(a)(3). The Secretary, upon application for such a loan, shall comply with the requirements applicable to a lender under section 428C(b)(1)(F).*

* * * * * * *

[SEC. 458. FUNDS FOR ADMINISTRATIVE EXPENSES.

[(a) ADMINISTRATIVE EXPENSES.—

[(1) IN GENERAL.—Each fiscal year there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for—

[(A) administrative costs under this part and part B, including the costs of the direct student loan programs under this part; and

[(B) account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsections (b) and (c),

not to exceed (from such funds not otherwise appropriated) $617,000,000 in fiscal year 1999, $735,000,000 in fiscal year 2000, $770,000,000 in fiscal year 2001, $780,000,000 in fiscal year 2002, and $795,000,000 in fiscal year 2003.

[(2) ACCOUNT MAINTENANCE FEES.—Account maintenance fees under paragraph (1)(B) shall be paid quarterly and deposited in the Agency Operating Fund established under section 422B.

[(3) CARRYOVER.—The Secretary may carry over funds made available under this section to a subsequent fiscal year.

[(b) CALCULATION BASIS.—Except as provided in subsection (c), account maintenance fees payable to guaranty agencies under paragraph (1)(B) shall be calculated—

[(1) for fiscal years 1999 and 2000, on the basis of 0.12 percent of the original principal amount of outstanding loans on which insurance was issued under part B; and

[(2) for fiscal years 2001, 2002, and 2003, on the basis of 0.10 percent of the original principal amount of outstanding loans on which insurance was issued under part B.

[(c) SPECIAL RULES.—

[(1) FEE CAP.—The total amount of account maintenance fees payable under this section—

[(A) for fiscal year 1999, shall not exceed $177,000,000;

[(B) for fiscal year 2000, shall not exceed $180,000,000;

[(C) for fiscal year 2001, shall not exceed $170,000,000;

[(D) for fiscal year 2002, shall not exceed $180,000,000; and

[(E) for fiscal year 2003, shall not exceed $195,000,000.

[(2) INSUFFICIENT FUNDING.—

[(A) IN GENERAL.—If the amounts set forth in paragraph (1) are insufficient to pay the account maintenance fees payable to guaranty agencies pursuant to subsection (b) for a fiscal year, the Secretary shall pay the insufficiency by requiring guaranty agencies to transfer funds from the Federal Student Loan Reserve Funds under section 422A to the Agency Operating Funds under section 422B.

[(B) ENTITLEMENT.—A guaranty agency shall be deemed to have a contractual right against the United States to receive payments according to the provisions of subparagraph (A).

[(d) BUDGET JUSTIFICATION.—No funds may be expended under this section unless the Secretary includes in the Department of Education's annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year, and the projection of activities and costs for each remaining year for which administrative expenses under this section are made available.]

SEC. 458. FUNDS FOR ADMINISTRATIVE EXPENSES.

(a) ADMINISTRATIVE EXPENSES.—

(1) MANDATORY FUNDS FOR FISCAL YEAR 2006.—For fiscal year 2006, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for—

(A) administrative costs under this part and part B, including the costs of the direct student loan programs under this part; and

(B) account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsections (b) and (c),

not to exceed (from such funds not otherwise appropriated) $820,000,000 in fiscal year 2006.

(2) AUTHORIZATION FOR ADMINISTRATIVE COSTS BEGINNING IN FISCAL YEAR 2007.—For each of the fiscal years 2007 through 2011, there are authorized to be appropriated such sums as may be necessary for administrative costs under this part and part B, including the costs of the direct student loan programs under this part.

(3) CONTINUING MANDATORY FUNDS FOR ACCOUNT MAINTENANCE FEES.—For each of the fiscal years 2007 through 2011, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsection (b).

(4) ACCOUNT MAINENANCE FEES.—Account maintenance fees under paragraph (3) shall be paid quarterly and deposited in the Agency Operating Fund established under section 422B.

(5) CARRYOVER.—The Secretary may carry over funds made available under this section to a subsequent fiscal year.

(b) CALCULATION BASIS.—Account maintenance fees payable to guaranty agencies under subsection (a)(3) shall not exceed the basis

of 0.10 percent of the original principal amount of outstanding loans on which insurance was issued under part B.

(c) BUDGET JUSTIFICATION.—No funds may be expended under this section unless the Secretary includes in the Department of Education's annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year, and the projection of activities and costs for each remaining year for which administrative expenses under this section are made available.

* * * * * * *

SEC. 460. LOAN CANCELLATION FOR TEACHERS.

(a) * * *

(b) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary shall carry out a program of canceling the obligation to repay a qualified loan amount in accordance with subsection (c) for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans made under this part for any new borrower on or after October 1, 1998, who—

(A) has been employed as a full-time teacher for 5 consecutive complete school years—

(i) * * *

(ii) if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965*, or meets the requirements of subsection (g)(3)*; and

* * * * * * *

(c) QUALIFIED LOAN AMOUNTS.—

(1) * * *

* * * * * * *

(3) ADDITIONAL AMOUNTS FOR TEACHERS IN MATHEMATICS, SCIENCE, OR SPECIAL EDUCATION.—Notwithstanding the amount specified in paragraph (1), the aggregate amount that the Secretary shall cancel under this section shall be not more than $17,500 in the case of—

(A) a secondary school teacher—

(i) * * *

(ii) whose qualifying employment for purposes of such subsection is teaching mathematics or science on a full-time basis; **[**and**]**

(B) an elementary school or secondary school teacher—

(i) * * *

* * * * * * *

(iii) who, as certified by the chief administrative officer of the public or non-profit private elementary school or secondary school in which the borrower is employed, is teaching children with disabilities that correspond with the borrower's special education training and has demonstrated knowledge and teaching

skills in the content areas of the elementary school or secondary school curriculum that the borrower is teaching[.]*; and*

(C) an elementary or secondary school teacher who primarily teaches reading—

(i) who meets the requirements of subsection (b);

(ii) who has obtained a separate reading instruction credential from the State in which the teacher is employed; and

(iii) who is certified by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is employed to teach reading—

(I) as being proficient in teaching the essential components of reading instruction as defined in section 1208 of the Elementary and Secondary Education Act of 1965; and

(II) as having such credential.

* * * * * * *

(g) ADDITIONAL ELIGIBILITY PROVISIONS.—

(1) * * *

* * * * * * *

(3) PRIVATE SCHOOL TEACHERS.—An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (a)(1)(A)(ii), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher must be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965, and the score achieved by such teacher on each test must equal or exceed the average passing score of those 5 States.

* * * * * * *

SEC. 464. TERMS OF LOANS.

(a) * * *

* * * * * * *

(c) CONTENTS OF LOAN AGREEMENT.—(1) * * *

(2)(A) No repayment of principal of, or interest on, any loan from a student loan fund assisted under this part shall be required during any period—

(i) * * *

* * * * * * *

(iii) not in excess of 3 years during which the borrower—

(I) is serving on active duty during a war or other military operation or national emergency; or

(II) is performing qualifying National Guard duty during a war or other military operation or national emergency;

[(iii)] *(iv)* not in excess of 3 years for any reason which the lender determines, in accordance with regulations prescribed by the Secretary under section 435(o), has caused or will cause the borrower to have an economic hardship; or

[(iv)] *(v)* during which the borrower is engaged in service described in section 465(a)(2);

* * * * * * *

SEC. 475. FAMILY CONTRIBUTION FOR DEPENDENT STUDENTS.

(a) * * *

* * * * * * *

(g) STUDENT CONTRIBUTION FROM AVAILABLE INCOME.—

(1) * * *

(2) ADJUSTMENT TO STUDENT INCOME.—The adjustment to student income is equal to the sum of—

(A) * * *

* * * * * * *

(D) an income protection allowance of [$2,200] *$3,000* (or a successor amount prescribed by the Secretary under section 478);

* * * * * * *

SEC. 478. REGULATIONS; UPDATED TABLES.

(a) * * *

(b) INCOME PROTECTION ALLOWANCE.—

(1) * * *

* * * * * * *

(3) REVISED AMOUNTS AFTER INCREASE.—Notwithstanding paragraph (2), for each academic year after academic year 2006–2007, the Secretary shall publish in the Federal Register a revised income protection allowance for the purpose of section 475(g)(2)(D). Such revised allowance shall be developed by increasing the dollar amount contained in such section by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2005 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.

* * * * * * *

(h) EMPLOYMENT EXPENSE ALLOWANCE.—For each award year after award year 1993–1994, the Secretary shall publish in the Federal Register a revised table of employment expense allowances for the purpose of sections 475(c)(5), 476(b)(4), and 477(b)(5). Such revised table shall be developed by increasing the dollar amount specified in sections 475(c)(5)(A), 475(c)(5)(B), 476(b)(4)(A), [476(b)(4)(B),] 477(b)(5)(A), and 477(b)(5)(B) to reflect increases in the amount and percent of the Bureau of Labor Statistics budget of the marginal costs for [meals away from home, apparel and upkeep, transportation, and housekeeping services] *food away from home, apparel, transportation, and household furnishings and operations* for a two-worker versus one-worker family.

SEC. 479. SIMPLIFIED NEEDS TESTS.

(a) * * *

(b) SIMPLIFIED NEEDS TEST.—

(1) ELIGIBILITY.—An applicant is eligible to file a simplified form containing the elements required by paragraph (2) if—

(A) in the case of an applicant who is a dependent student—

[(i) the student's parents file or are eligible to file a form described in paragraph (3) or certify that they are not required to file an income tax return and the student files or is eligible to file such a form or certifies that the student is not required to file an income tax return; and]

(i) the student's parents file, or are eligible to file, a form described in paragraph (3) or certify that they are not required to file an income tax return, and the student files, or is eligible to file, such a form or certifies that the student is not required to file an income tax return, or the student's parents, or the student, received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and

* * * * * * *

(B) in the case of an applicant who is an independent student—

[(i) the student (and the student's spouse, if any) files or is eligible to file a form described in paragraph (3) or certifies that the student (and the student's spouse, if any) is not required to file an income tax return; and]

(i) the student (and the student's spouse, if any) files, or is eligible to file, a form described in paragraph (3) or certifies that the student (and the student's spouse, if any) is not required to file an income tax return, or the student (and the student's spouse, if any) received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and

* * * * * * *

(3) QUALIFYING FORMS.—[A student or family files a form described in this subsection, or subsection (c), as the case may be, if the student or family, respectively, files] *In the case of an independent student, the student, or in the case of a dependent student, the parent, files a form described in this subsection, or subsection (c), as the case may be, if the student or parent, as appropriate, files—*

(A) * * *

* * * * * * *

(c) ZERO EXPECTED FAMILY CONTRIBUTION.—The Secretary shall consider an applicant to have an expected family contribution equal to zero if—

(1) in the case of a dependent student—

[(A) the student's parents file, or are eligible to file, a form described in subsection (b)(3), or certify that the parents are not required to file an income tax return and the student files, or is eligible to file, such a form, or certifies that the student is not required to file an income tax return; and]

(A) the student's parents file, or are eligible to file, a form described in subsection (b)(3) or certify that they are not required to file an income tax return, and the student files, or is eligible to file, such a form or certifies that the student is not required to file an income tax return, or the student's parents, or the student, received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined in subsection (d); and

* * * * * * *

(2) in the case of an independent student with dependents other than a spouse—

[(A) the student (and the student's spouse, if any) files, or is eligible to file, a form described in subsection (b)(3), or certifies that the student (and the student's spouse, if any) is not required to file an income tax return; and]

(A) the student (and the student's spouse, if any) files, or is eligible to file, a form described in subsection (b)(3) or certifies that the student (and the student's spouse, if any) is not required to file an income tax return, or the student (and the student's spouse, if any) received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined in subsection (d); and

* * * * * * *

(d) DEFINITION OF MEANS-TESTED FEDERAL BENEFIT PROGRAM.—For the purposes of this section, the term "means-tested Federal benefit program" means a mandatory spending program of the Federal Government, other than a program under this title, in which eligibility for the program's benefits, or the amount of such benefits, or both, are determined on the basis of income or resources of the individual or family seeking the benefit, and may include such programs as the supplemental security income program under title XVI of the Social Security Act, the food stamp program under the Food Stamp Act of 1977, the free and reduced price school lunch program established under the Richard B. Russell National School Lunch Act, the temporary assistance to needy families program established under part A of title IV of the Social Security Act, and the women, infants and children program established under Section 17 of the Child Nutrition Act of 1966, and other programs identified by the Secretary.

(e) REPORTING REQUIREMENTS.—The Secretary shall regularly evaluate the impact of the eligibility guidelines in subsections (b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A) and (c)(2)(A) of this section. In particular, the Secretary shall evaluate whether using receipt of benefits under a means-tested Federal benefit program (as defined in subsection (d)) for eligibility continues to target the Simplified

Needs Test, to the greatest extent possible, for use by low- and moderate-income students and their families.

SEC. 479A. DISCRETION OF STUDENT FINANCIAL AID ADMINISTRATORS.

[(a) IN GENERAL.—] *(a) AUTHORITY TO MAKE ADJUSTMENTS.—*

(1) ADJUSTMENTS FOR SPECIAL CIRCUMSTANCES.—Nothing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances. However, this authority shall not be construed to permit aid administrators to deviate from the contributions expected in the absence of special circumstances.

(2) SPECIAL CIRCUMSTANCES DEFINED.—Special circumstances may include tuition expenses at an elementary or secondary school, medical or dental expenses not covered by insurance, unusually high child care costs, recent unemployment of a family member, the number of parents enrolled at least half-time in a degree, certificate, or other program leading to a recognized educational credential at an institution with a program participation agreement under section 487, *a student's status as a ward of the court at any time prior to attaining 18 years of age, a student's status as an individual who was adopted at or after age 13, a student's status as a homeless or unaccompanied youth (as defined in section 725 of the McKinney-Vento Homeless Assistance Act),* or other changes in a family's income, a family's assets, or a student's status. Special circumstances shall be conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students.

(3) DOCUMENTATION AND USE OF SUPPLEMENTARY INFORMATION.—Adequate documentation for such adjustments shall substantiate such special circumstances of individual students. In addition, nothing in this title shall be interpreted as limiting the authority of the student financial aid administrator in such cases to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this title.

(4) FEES FOR SUPPLEMENTARY INFORMATION PROHIBITED.—No student or parent shall be charged a fee for collecting, processing, or delivering such supplementary information.

* * * * * * *

SEC. 480. DEFINITIONS.

As used in this part:

(a) * * *

* * * * * * *

(d) INDEPENDENT STUDENT.—The term "independent", when used with respect to a student, means any individual who—

(1) * * *

[(2) is an orphan or ward of the court or was a ward of the court until the individual reached the age of 18;]

(2) is an orphan, in foster care, or a ward of the court, or was in foster care or a ward of the court until the individual reached the age of 18;

(3) is a veteran of the Armed Forces of the United States (as defined in subsection (c)(1)) *or is currently serving on active duty in the Armed Forces for other than training purposes*;

* * * * * * *

(e) EXCLUDABLE INCOME.—The term "excludable income" means—

(1) * * *

* * * * * * *

(3) child support payments made by the student or parent; [and]

(4) payments made and services provided under part E of title IV of the Social Security Act[.]*; and*

(5) any part of any distribution from a qualified tuition program established under section 529 of the Internal Revenue Code of 1986 that is not includable in gross income under such section 529.

(f) ASSETS.—(1) The term "assets" means cash on hand, including the amount in checking and savings accounts, time deposits, money market funds, trusts, stocks, bonds, other securities, mutual funds, tax shelters, *qualified tuition programs established under section 529 of the Internal Revenue Code of 1986 (26 U.S.C. 529), except as provided in paragraph (2),* and the net value of real estate, income producing property, and business and farm assets.

(2) A qualified tuition program shall not be considered an asset of a dependent student under section 475 of this part. The value of a qualified tuition program for purposes of determining the assets of parents or independent students shall be—

(A) the refund value of any tuition credits or certificates purchased under section 529 of the Internal Revenue Code of 1986 (26 U.S.C. 529) on behalf of a beneficiary; or

(B) the current balance of any account which is established under such section for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

[(2)] *(3)* With respect to determinations of need under this title, other than for subpart 4 of part A, the term "assets" shall not include the net value of—

(A) the family's principal place of residence; [or]

(B) a family farm on which the family resides[.]*; or*

(C) a small business with not more than 100 full-time or full-time equivalent employees (or any part of such a small business) that is owned and controlled by the family.

* * * * * * *

(j) OTHER FINANCIAL ASSISTANCE[; TUITION PREPAYMENT PLANS].—(1) For purposes of determining a student's eligibility for funds under this title, estimated financial assistance not received under this title shall include all scholarships, grants, loans, or

other assistance known to the institution at the time the determination of the student's need is made, including veterans' education benefits as defined in subsection (c), and national service educational awards or post-service benefits under title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.).

[(2)(A) Except as provided in subparagraph (B), for purposes of determining a student's eligibility for funds under this title, tuition prepayment plans shall reduce the cost of attendance (as determined under section 472) by the amount of the prepayment, and shall not be considered estimated financial assistance.

[(B) If the institutional expense covered by the prepayment must be part of the student's cost of attendance for accounting purposes, the prepayment shall be considered estimated financial assistance.**]**

[(3)**]** *(2)* Notwithstanding paragraph (1), a tax credit taken under section 25A of the Internal Revenue Code of 1986*, or a distribution that is not includable in gross income under section 529 of such Code,* shall not be treated as estimated financial assistance for purposes of section 471(3).

(3) Notwithstanding paragraph (1) and section 472, assistance not received under this title may be excluded from both estimated financial assistance and cost of attendance, if that assistance is provided by a State and is designated by such State to offset a specific component of the cost of attendance. If that assistance is excluded from either estimated financial assistance or cost of attendance, it shall be excluded from both.

* * * * * * *

PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

SEC. 481. DEFINITIONS.

(a) * * *

(b) ELIGIBLE PROGRAM.—(1) * * *

* * * * * * *

(3) For purposes of this title, an eligible program includes an instructional program that utilizes direct assessment of student learning, or recognizes the direct assessment of student learning, in lieu of credit hours or clock hours as the measure of student learning. In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to be eligible. The Secretary shall provide an annual report to Congress identifying the programs made eligible under this paragraph.

(4) An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for the purposes of this title if the program is offered by an institution, other than a foreign institution, that has been evaluated and determined (before or after the date of enactment of this paragraph) to have the capability to effectively deliver distance education programs by an accrediting agency or association that—

(A) is recognized by the Secretary under subpart 2 of Part H; and

(B) has evaluation of distance education programs within the scope of its recognition, as described in section 496(n)(3).

* * * * * * *

(d) DEFINITIONS FOR MILITARY DEFERMENTS.—For purposes of parts B, D, and E of this title:

(1) ACTIVE DUTY.—The term "active duty" has the meaning given such term in section 101(d)(1) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

(2) MILITARY OPERATION.—The term "military operation" means a contingency operation as such term is defined in section 101(a)(13) of title 10, United States Code.

(3) NATIONAL EMERGENCY.—The term "national emergency" means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(4) SERVING ON ACTIVE DUTY.—The term "serving on active duty during a war or other military operation or national emergency" means service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10, United States Code, or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

(5) QUALIFYING NATIONAL GUARD DUTY.—The term "qualifying National Guard duty during a war or other military operation or national emergency" means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, in connection with a war, other military operation, or a national emergency declared by the President and supported by Federal funds.

SEC. 482. MASTER CALENDAR.

(a) SECRETARY REQUIRED TO COMPLY WITH SCHEDULE.—To assure adequate notification and timely delivery of student aid funds under this title, the Secretary shall adhere to the following calendar dates in the year preceding the award year:

(1) Development and distribution of Federal and multiple data entry forms—

(A) * * *

[(B) by March 1: proposed modifications and updates pursuant to section 478 published in the Federal Register;]

(B) by March 1: proposed modifications, updates, and notices pursuant to sections 478, 479(c)(2)(C), and 483(a)(6) published in the Federal Register;

* * * * * * *

SEC. 483. FORMS AND REGULATIONS.

(a) COMMON FINANCIAL AID FORM DEVELOPMENT AND PROCESSING.—

[(1) SINGLE FORM REQUIRED.—The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall produce, distribute, and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student for financial assistance under parts A through E of this title (other than under subpart 4 of part A). The Secretary shall include on the form developed under this subsection such data items as the Secretary determines are appropriate for inclusion. Such items shall be selected in consultation with States to assist in the awarding of State financial assistance. In no case shall the number of such data items be less than the number included on the form on the date of enactment of the Higher Education Amendments of 1998. Such form shall satisfy the requirements of section 401(d) of this title.

[(2) CHARGES TO STUDENTS AND PARENTS FOR USE OF FORM PROHIBITED.—The common financial reporting form prescribed by the Secretary under paragraph (1) shall be produced, distributed, and processed by the Secretary and no parent or student shall be charged a fee for the collection, processing, or delivery of financial aid through the use of such form. The need and eligibility of a student for financial assistance under parts A through E of this title (other than under subpart 4 of part A) may only be determined by using the form developed by the Secretary pursuant to paragraph (1) of this subsection. No student may receive assistance under parts A through E of this title (other than under subpart 4 of part A), except by use of the form developed by the Secretary pursuant to this section. No data collected on a form for which a fee is charged shall be used to complete the form prescribed under paragraph (1).]

(1) IN GENERAL.—The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance under parts A through E (other than subpart 4 of part A). These forms shall be made available to applicants in both paper and electronic formats and shall be referred to as the "Free Application for Federal Student Aid" or the "FAFSA" .

(2) EARLY ESTIMATES.—

(A) IN GENERAL.—The Secretary shall permit applicants to complete such forms as described in this subsection in

the 4 years prior to enrollment in order to obtain a non-binding estimate of the family contribution, as defined in section 473. The estimate shall clearly and conspicuously indicate that it is only an estimate of family contribution, and may not reflect the actual family contribution of the applicant that shall be used to determine the grant, loan, or work assistance that the applicant may receive under this title when enrolled in a program of postsecondary education. Such applicants shall be permitted to update information submitted on forms described in this subsection using the process required under paragraph (5)(A).

(B) EVALUATION.—Two years after the early estimates are implemented under this paragraph and from data gathered from the early estimates, the Secretary shall evaluate the differences between initial, non-binding early estimates and the final financial aid award made available under this title.

(C) REPORT.—The Secretary shall provide a report to the authorizing committees on the results of the evaluation.

(3) PAPER FORMAT.—

(A) IN GENERAL.—The Secretary shall produce, distribute, and process common forms in paper format to meet the requirements of paragraph (1). The Secretary shall develop a common paper form for applicants who do not meet the requirements of subparagraph (B).

(B) EZ FAFSA.—

(i) IN GENERAL.—The Secretary shall develop and use a simplified paper application form, to be known as the "EZ FAFSA", to be used for applicants meeting the requirements of section 479(c).

(ii) REDUCED DATA REQUIREMENTS.—The form under this subparagraph shall permit an applicant to submit, for financial assistance purposes, only the data elements required to make a determination of whether the applicant meets the requirements under section 479(c).

(iii) STATE DATA.—The Secretary shall include on the form under this subparagraph such data items as may be necessary to award State financial assistance, as provided under paragraph (6), except that the Secretary shall not include a State's data if that State does not permit its applicants for State assistance to use the form under this subparagraph.

(iv) FREE AVAILABILITY AND PROCESSING.—The provisions of paragraph (7) shall apply to the form under this subparagraph, and the data collected by means of the form under this subparagraph shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (9).

(v) TESTING.—The Secretary shall conduct appropriate field testing on the form under this subparagraph.

(C) PROMOTING THE USE OF ELECTRONIC FAFSA.—

(i) IN GENERAL.—The Secretary shall—

(I) develop a form that uses skip logic to simplify the application process for applicants; and

(II) make all efforts to encourage applicants to utilize the electronic forms described in paragraph (4).

(ii) MAINTENANCE OF THE FAFSA IN A PRINTABLE ELECTRONIC FILE.—The Secretary shall maintain a version of the paper forms described in subparagraphs (A) and (B) in a printable electronic file that is easily portable. The printable electronic file will be made easily accessible and downloadable to students on the same website used to provide students with the electronic application forms described in paragraph (4) of this subsection. The Secretary shall enable students to submit a form created under this subparagraph that is downloaded and printed from an electronic file format in order to meet the filing requirements of this section and in order to receive aid from programs under this title.

(iii) REPORTING REQUIREMENT.—The Secretary shall report annually to Congress on the impact of the digital divide on students completing applications for title IV aid described under this paragraph and paragraph (4). The Secretary will also report on the steps taken to eliminate the digital divide and phase out the paper form described in subparagraph (A) of this paragraph. The Secretary's report will specifically address the impact of the digital divide on the following student populations: dependent students, independent students without dependents, and independent students with dependents other than a spouse.

(4) ELECTRONIC FORMAT.—

(A) IN GENERAL.—The Secretary shall produce, distribute, and process common forms in electronic format to meet the requirements of paragraph (1). The Secretary shall develop common electronic forms for applicants who do not meet the requirements of subparagraph (C) of this paragraph.

(B) STATE DATA.—The Secretary shall include on the common electronic forms space for information that needs to be submitted from the applicant to be eligible for State financial assistance, as provided under paragraph (6), except the Secretary shall not require applicants to complete data required by any State other than the applicant's State of residence.

(C) SIMPLIFIED APPLICATIONS: FAFSA ON THE WEB.—

(i) IN GENERAL.—The Secretary shall develop and use a simplified electronic application form to be used by applicants meeting the requirements under subsection (c) of section 479 and an additional, separate simplified electronic application form to be used by applicants meeting the requirements under subsection (b) of section 479.

(ii) REDUCED DATA REQUIREMENTS.—The simplified electronic application forms shall permit an applicant to submit for financial assistance purposes only the data elements required to make a determination of whether the applicant meets the requirements under subsection (b) or (c) of section 479.

(iii) STATE DATA.—The Secretary shall include on the simplified electronic application forms such data items as may be necessary to award state financial assistance, as provided under paragraph (6), except that the Secretary shall not require applicants to complete data required by any State other than the applicant's State of residence.

(iv) AVAILABILITY AND PROCESSING.—The data collected by means of the simplified electronic application forms shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (9).

(v) TESTING.—The Secretary shall conduct appropriate field testing on the forms developed under this subparagraph.

(D) USE OF FORMS.—Nothing in this subsection shall be construed to prohibit the use of the forms developed by the Secretary pursuant to this paragraph by an eligible institution, eligible lender, guaranty agency, State grant agency, private computer software provider, a consortium thereof, or such other entities as the Secretary may designate.

(E) PRIVACY.—The Secretary shall ensure that data collection under this paragraph complies with section 552a of title 5, United States Code, and that any entity using the electronic version of the forms developed by the Secretary pursuant to this paragraph shall maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of the information, and to protect against security threats, or unauthorized uses or disclosures of the information provided on the electronic version of the forms. Data collected by such electronic version of the forms shall be used only for the application, award, and administration of aid awarded under this title, State aid, or aid awarded by eligible institutions or such entities as the Secretary may designate. No data collected by such electronic version of the forms shall be used for making final aid awards under this title until such data have been processed by the Secretary or a contractor or designee of the Secretary, and an expected family contribution has been calculated by the Secretary, except as may be permitted under this title.

(F) SIGNATURE.—Notwithstanding any other provision of this Act, the Secretary may permit an electronic form under this paragraph to be submitted with an electronic signature.

(5) STREAMLINING.—

(A) STREAMLINED REAPPLICATION PROCESS.—

(i) IN GENERAL.—The Secretary shall develop streamlined reapplication forms and processes, including both paper and electronic reapplication processes, consistent with the requirements of this subsection, for an applicant who applies for financial assistance under this title—

(I) in the academic year succeeding the year in which such applicant first applied for financial assistance under this title; or

(II) in any succeeding academic years.

(ii) MECHANISMS FOR REAPPLICATION.—The Secretary shall develop appropriate mechanisms to support reapplication.

(iii) IDENTIFICATION OF UPDATED DATA.—The Secretary shall determine, in cooperation with States, institutions of higher education, agencies, and organizations involved in student financial assistance, the data elements that can be updated from the previous academic year's application.

(iv) REDUCED DATA AUTHORIZED.—Nothing in this title shall be construed as limiting the authority of the Secretary to reduce the number of data elements required of reapplicants.

(v) ZERO FAMILY CONTRIBUTION.—Applicants determined to have a zero family contribution pursuant to section 479(c) shall not be required to provide any financial data in a reapplication form, except that which is necessary to determine eligibility under such section.

(B) REDUCTION OF DATA ELEMENTS.—

(i) REDUCTION ENCOURAGED.—Of the number of data elements on the FAFSA on the date of enactment of the Higher Education Budget Reconciliation Act of 2005 (including questions on the FAFSA for the purposes described in paragraph (6)), the Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall continue to reduce the number of such data elements following the date of enactment. Reductions of data elements under paragraph (3)(B), (4)(C), or (5)(A)(iv) shall not be counted towards the reduction referred to in this paragraph unless those data elements are reduced for all applicants.

(ii) REPORT.—The Secretary shall annually report to the House of Representatives and the Senate on the progress made of reducing data elements.

(6) STATE REQUIREMENTS.—

(A) IN GENERAL.—The Secretary shall include on the forms developed under this subsection, such State-specific data items as the Secretary determines are necessary to meet State requirements for State need-based financial aid under section 415C, except as provided in paragraphs (3)(B)(iii) and (4)(C)(iii) of this subsection. Such items shall be selected in consultation with State agencies in order to assist in the awarding of State financial assistance in ac-

cordance with the terms of this subsection, except as provided in paragraphs (3)(B)(iii) and (4)(C)(iii) of this subsection. The number of such data items shall not be less than the number included on the form on October 7, 1998, unless a State notifies the Secretary that the State no longer requires those data items for the distribution of State need-based financial aid.

(B) ANNUAL REVIEW.—The Secretary shall conduct an annual review process to determine which forms and data items the States require to award State need-based financial aid and other application requirements that the States may impose.

(C) STATE USE OF SIMPLIFIED FORMS.—The Secretary shall encourage States to take such steps as necessary to encourage the use of simplified application forms, including those described in paragraphs (3)(B) and (4)(C), to meet the requirements under subsection (b) or (c) of section 479.

(D) FEDERAL REGISTER NOTICE.—The Secretary shall publish on an annual basis a notice in the Federal Register requiring State agencies to inform the Secretary—

(i) if the State agency is unable to permit applicants to utilize the simplified application forms described in paragraphs (3)(B) and (4)(C); and

(ii) of the State-specific data that the State agency requires for delivery of State need-based financial aid.

(E) STATE NOTIFICATION TO THE SECRETARY.—

(i) IN GENERAL.—Each State agency shall notify the Secretary—

(I) whether the State permits an applicant to file a form described in paragraph (3)(B) or paragraph (4)(C) of this subsection for purposes of determining eligibility for State need-based financial aid; and

(II) the State-specific data that the State agency requires for delivery of State need-based financial aid.

(ii) ACCEPTANCE OF FORMS.—In the event that a State does not permit an applicant to file a form described in paragraph (3)(B) or paragraph (4)(C) of this subsection for purposes of determining eligibility for State need-based financial aid—

(I) the State shall notify the Secretary if the State is not permitted to do so because of either State law or because of agency policy; and

(II) the notification under subclause (I) shall include an estimate of the program cost to permit applicants to complete simplified application forms under paragraphs (3)(B) and paragraph (4)(C) of this subsection.

(iii) LACK OF NOTIFICATION BY THE STATE.—If a State does not notify the Secretary pursuant to clause (i), the Secretary shall—

(I) permit residents of that State to complete simplified application forms under paragraphs (3)(B) and paragraph (4)(C) of this subsection; and

(II) not require any resident of that State to complete any data previously required by that State under this section.

(7) CHARGES TO STUDENTS AND PARENTS FOR USE OF FORMS PROHIBITED.—

(A) FEES PROHIBITED.—The FAFSA, in whatever form (including the EZ–FAFSA, paper, electronic, simplified, or reapplication), shall be produced, distributed, and processed by the Secretary and no parent or student shall be charged a fee by any entity for the collection, processing, or delivery of financial aid through the use of the FAFSA. The need and eligibility of a student for financial assistance under parts A through E of this title (other than under subpart 4 of part A) may only be determined by using the FAFSA developed by the Secretary pursuant to this subsection. No student may receive assistance under parts A through E of this title (other than under subpart 4 of part A), except by use of the FAFSA developed by the Secretary pursuant to this subsection. No data collected on a form, worksheet, or other document for which a fee is charged shall be used to complete the FAFSA.

(B) NOTICE.—Any entity that provides to students or parents, or charges students or parents for, any value-added services with respect to or in connection with the FAFSA, such as completion of the FAFSA, submission of the FAFSA, or tracking of the FAFSA for a student, shall provide to students and parents clear and conspicuous notice that—

(i) the FAFSA is a free Federal student aid application;

(ii) the FAFSA can be completed without professional assistance; and

(iii) includes the current Internet address for the FAFSA on the Department's web site.

(8) APPLICATION PROCESSING CYCLE.—The Secretary shall enable students to submit a form created under this subsection in order to meet the filing requirements of this section and in order to receive aid from programs under this title and shall initiate the processing of applications under this subsection as early as practicable prior to January 1 of the student's planned year of enrollment.

[(3)**]** *(9)* DISTRIBUTION OF DATA.—Institutions of higher education, guaranty agencies, and States shall receive, without charge, the data collected by the Secretary using the form developed pursuant to this section for the purposes of processing loan applications and determining need and eligibility for institutional and S±tate financial aid awards. Entities designated by institutions of higher education, guaranty agencies, or States to receive such data shall be subject to all the requirements of this section, unless such requirements are waived by the Secretary.

[(4)] *(10)* CONTRACTS FOR COLLECTION AND PROCESSING.—(A) The Secretary shall, to the extent practicable, enter into not less than 5 contracts with States, institutions of higher education, or private organizations for the purposes of the timely collection and processing of the form developed pursuant to paragraph (1) and the timely delivery of the data submitted on such form. The Secretary shall use such contracts to assist States and institutions of higher education with the collection of additional data required to award State or institutional financial assistance, except that the Secretary shall not include these additional data items on the common financial reporting form developed pursuant to this section. The Secretary shall include in each such contract a requirement that—

(i) * * *

* * * * * * *

[(5) ELECTRONIC FORMS.—(A) The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, including private computer software providers, shall develop an electronic version of the form described in paragraph (1). As permitted by the Secretary, such an electronic version shall not require a signature to be collected at the time such version is submitted, if a signature is subsequently submitted by the applicant. The Secretary shall prescribe such version not later than 120 days after the date of enactment of the Higher Education Amendments of 1998.

[(B) Nothing in this section shall be construed to prohibit the use of the form developed by the Secretary pursuant to subparagraph (A) by an eligible institution, eligible lender, guaranty agency, State grant agency, private computer software providers, a consortium thereof, or such other entities as the Secretary may designate.

[(C) No fee shall be charged to students in connection with the use of the electronic version of the form, or of any other electronic forms used in conjunction with such form in applying for Federal or State student financial assistance.

[(D) The Secretary shall ensure that data collection complies with section 552a of title 5, United States Code, and that any entity using the electronic version of the form developed by the Secretary pursuant to subparagraph (A) shall maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of the information, and to protect against security threats, or unauthorized uses or disclosures of the information provided on the electronic version of the form. Data collected by such version of the form shall be used only for the application, award, and administration of aid awarded under this title, State aid, or aid awarded by eligible institutions or such entities as the Secretary may designate. No data collected by such version of the form shall be used for making final aid awards under this title until such data have been processed by the Secretary or a contractor or designee of the Secretary.]

[(6)] *(11)* THIRD PARTY SERVICERS AND PRIVATE SOFTWARE PROVIDERS.—To the extent practicable and in a timely manner,

the Secretary shall provide, to private organizations and consortia that develop software used by eligible institutions for the administration of funds under this title, all the necessary specifications that the organizations and consortia must meet for the software the organizations and consortia develop, produce, and distribute (including any diskette, modem, or network communications) which are so used. The specifications shall contain record layouts for required data. The Secretary shall develop in advance of each processing cycle an annual schedule for providing such specifications. The Secretary, to the extent practicable, shall use means of providing such specifications, including conferences and other meetings, outreach, and technical support mechanisms (such as training and printed reference materials). The Secretary shall, from time to time, solicit from such organizations and consortia means of improving the support provided by the Secretary.

[(7)**]** *(12)* PARENT'S SOCIAL SECURITY NUMBER AND BIRTH DATE.—The Secretary is authorized to include on the form developed under this subsection space for the social security number and birth date of parents of dependent students seeking financial assistance under this title.

* * * * * * *

(f) ADDRESSING THE DIGITAL DIVIDE.—The Secretary shall utilize savings accrued by moving more applicants to the electronic forms described in subsection (a)(4) to improve access to the electronic forms described in subsection (a)(4) for applicants meeting the requirements of section 479(c).

SEC. 484. STUDENT ELIGIBILITY.

(a) IN GENERAL.—In order to receive any grant, loan, or work assistance under this title, a student must—

(1) * * *

* * * * * * *

(5) be a citizen or national of the United States, a permanent resident of the United States, able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, a citizen of any one of the Freely Associated States**[**.**]***; and*

(6) if the student has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, have completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud.

(b) ELIGIBILITY FOR STUDENT LOANS.—(1) * * *

* * * * * * *

(5) Notwithstanding any other provision of this subsection, no incarcerated student *or parent (on behalf of a student)* is eligible to receive a loan under this title*, and no student who is subject to an involuntary civil commitment upon completion of a period of incar-*

ceration for a sexual offense (as determined under regulations of the Secretary) is eligible to receive a loan under this title.

* * * * * * *

(j) ASSISTANCE UNDER SUBPARTS 1 AND 3 OF PART A, AND PART C.—Notwithstanding any other provision of law, a student shall be eligible until September 30, 2004, for assistance under subparts 1 and 3 of part A, and part C, *and shall be eligible only for assistance under subpart 1 of part A thereafter,* if the student is otherwise qualified and—

(1) * * *

* * * * * * *

(l) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

(1) RELATION TO CORRESPONDENCE COURSES.—

(A) IN GENERAL.—A student enrolled in a course of instruction at an institution of higher education that is offered in whole or in part through telecommunications and leads to a recognized certificate [for a program of study of 1 year or longer], or a recognized associate, baccalaureate, or graduate degree, conferred by such institution, shall not be considered to be enrolled in correspondence courses [unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of the total amount of all courses at the institution].

[(B) REQUIREMENT.—An institution of higher education referred to in subparagraph (A) is an institution of higher education—

[(i) that is not an institute or school described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act; and

[(ii) for which at least 50 percent of the programs of study offered by the institution lead to the award of a recognized associate, baccalaureate, or graduate degree.]

(B) EXCEPTION.—Subparagraph (A) does not apply to an institution or school described in section 3(3)(C) of the Carl D. Perkins Vocational and Technical Education Act of 1998.

* * * * * * *

(q) VERIFICATION OF INCOME DATA.—

[(1) CONFIRMATION WITH IRS.—The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the adjusted gross income, Federal income taxes paid, filing status, and exemptions reported by applicants (including parents) under this title on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.]

(1) CONFIRMATION WITH IRS.—The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the information specified in section 6103(l)(13) of the Internal Revenue Code of 1986

reported by applicants (including parents) under this title on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.

* * * * * * *

(r) SUSPENSION OF ELIGIBILITY FOR DRUG-RELATED OFFENSES.—

[(1) IN GENERAL.—A student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this title during the period beginning on the date of such conviction and ending after the interval specified in the following table:**]**

(1) IN GENERAL.—A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following table:

If convicted of an offense involving:

The possession of a controlled substance:	**Ineligibility period is:**
First offense	1 year
Second offense	2 years
Third offense	Indefinite.

The sale of a controlled substance:	**Ineligibility period is:**
First offense	2 years
Second offense	Indefinite.

* * * * * * *

SEC. 484B. INSTITUTIONAL REFUNDS.

(a) RETURN OF TITLE IV FUNDS.—

(1) IN GENERAL.—If a recipient of assistance under this title withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the amount of grant or loan assistance (other than assistance received under *subpart 4 of part A or* part C) to be returned to the title IV programs is calculated according to paragraph (3) and returned in accordance with subsection (b).

(2) LEAVE OF ABSENCE.—

(A) LEAVE NOT TREATED AS WITHDRAWAL.—In the case of a student who **[**takes a leave**]** *takes one or more leaves* of absence from an institution for not more than a total of 180 days in any 12-month period, the institution may consider the student as not having withdrawn from the institution during the leave of absence, and not calculate the amount of grant and loan assistance provided under this title that is to be returned in accordance with this section if—

(i) * * *

* * * * * * *

(3) CALCULATION OF AMOUNT OF TITLE IV ASSISTANCE EARNED.—

(A) * * *

(B) PERCENTAGE EARNED.—For purposes of subparagraph (A)(i), the percentage of grant or loan assistance under this title that has been earned by the student is—

(i) * * *

(ii) 100 percent, if the day the student withdrew occurs after the student has completed *(as determined in accordance with subsection (d))* 60 percent of the payment period or period of enrollment.

* * * * * * *

(4) DIFFERENCES BETWEEN AMOUNTS EARNED AND AMOUNTS RECEIVED.—

[(A) IN GENERAL.—If the student has received less grant or loan assistance than the amount earned as calculated under subparagraph (A) of paragraph (3), the institution of higher education shall comply with the procedures for late disbursement specified by the Secretary in regulations.**]**

(A) IN GENERAL.—After determining the eligibility of the student for a late disbursement or post-withdrawal disbursement (as required in regulations prescribed by the Secretary), the institution of higher education shall contact the borrower and obtain confirmation that the loan funds are still required by the borrower. In making such contact, the institution shall explain to the borrower the borrower's obligation to repay the funds following any such disbursement. The institution shall document in the borrower's file the result of such contact and the final determination made concerning such disbursement.

* * * * * * *

(b) RETURN OF TITLE IV PROGRAM FUNDS.—

(1) RESPONSIBILITY OF THE INSTITUTION.—The institution shall return *no later than 45 days from the determination of withdrawal*, in the order specified in paragraph (3), the lesser of—

(A) * * *

* * * * * * *

(2) RESPONSIBILITY OF THE STUDENT.—

(A) * * *

* * * * * * *

[(C) REQUIREMENT.—Notwithstanding subparagraphs (A) and (B), a student shall not be required to return 50 percent of the grant assistance received by the student under this title, for a payment period or period of enrollment, that is the responsibility of the student to repay under this section.**]**

(C) GRANT OVERPAYMENT REQUIREMENTS.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), a student shall only be required to return grant assistance in the amount (if any) by which—

(I) the amount to be returned by the student (as determined under subparagraphs (A) and (B)), exceeds

(II) 50 percent of the total grant assistance received by the student under this title for the payment period or period of enrollment.

(ii) MINIMUM.—A student shall not be required to return amounts of $50 or less.

* * * * * * *

(d) PERCENTAGE OF THE PAYMENT PERIOD OR PERIOD OF ENROLLMENT COMPLETED.—For purposes of subsection [(a)(3)(B)(i)] *(a)(3)(B)*, the percentage of the payment period or period of enrollment for which assistance was awarded that was completed, is determined—

(1) * * *

* * * * * * *

SEC. 485D. COLLEGE ACCESS INITIATIVE.

(a) STATE-BY-STATE INFORMATION.—The Secretary shall direct each guaranty agency with which the Secretary has an agreement under section 428(c) to provide to the Secretary the information necessary for the development of web links and access for students and families to a comprehensive listing of the postsecondary education opportunities, programs, publications, Internet Web sites, and other services available in the States for which such agency serves as the designated guarantor.

(b) GUARANTY AGENCY ACTIVITIES.—

(1) PLAN AND ACTIVITY REQUIRED.—Each guaranty agency with which the Secretary has an agreement under section 428(c) shall develop a plan and undertake the activity necessary to gather the information required under subsection (a) and to make such information available to the public and to the Secretary in a form and manner as prescribed by the Secretary.

(2) ACTIVITIES.—Each guaranty agency shall undertake such activities as are necessary to promote access to postsecondary education for students through providing information on college planning, career preparation, and paying for college. The guaranty agency shall publicize such information and coordinate such activities with other entities that either provide or distribute such information in the States for which such guaranty agency serves as the designated guarantor.

(3) FUNDING.—The activities required by this section may be funded from the guaranty agency's operating account established pursuant to section 422B and, to the extent funds remain, from earnings on the restricted account established pursuant to section 422(h)(4).

(c) ACCESS TO INFORMATION.—

(1) SECRETARY'S RESPONSIBILITY.—The Secretary shall ensure the availability of the information provided by the guaranty agencies in accordance with this section to students, parents, and other interested individuals, through web links or other methods prescribed by the Secretary.

(2) GUARANTY AGENCY RESPONSIBILITY.—The guaranty agencies shall ensure that the information required by this section

is available without charge in printed format for students and parents requesting such information.

(3) PUBLICITY.—Within 270 days after the date of enactment of the Higher Education Budget Reconciliation Act of 2005, the Secretary and guaranty agencies shall publicize the availability of the information required by this section, with special emphasis on ensuring that populations that are traditionally underrepresented in postsecondary education are made aware of the availability of such information.

* * * * * * *

SECTION 3 OF THE TAXPAYER-TEACHER PROTECTION ACT OF 2004

SEC. 3. LOAN FORGIVENESS FOR TEACHERS.

(a) * * *

* * * * * * *

(b) ADDITIONAL AMOUNTS ELIGIBLE TO BE REPAID.—

(1) * * *

* * * * * * *

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply only with respect to eligible individuals who are new borrowers (as such term is defined in 103 of the Higher Education Act of 1965 (20 U.S.C. 1003)) on or after October 1, 1998**[**, and before October 1, 2005**]**.

* * * * * * *

SECTION 422 OF THE HIGHER EDUCATION AMENDMENTS OF 1998

SEC. 422. REQUIREMENTS FOR DISBURSEMENTS OF STUDENT LOANS.

(a) * * *

* * * * * * *

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall be effective during the period beginning on October 1, 1998, and ending on September 30, 2002. *Such amendments shall also be effective on and after July 1, 2006.*

* * * * * * *

MINORITY VIEWS

Committee Print of Amendments to the Higher Education Act on the Committee's Instructions pursuant to the Conference Report on H. Con. Res. 95, the Budget Resolution for Fiscal Year 2006

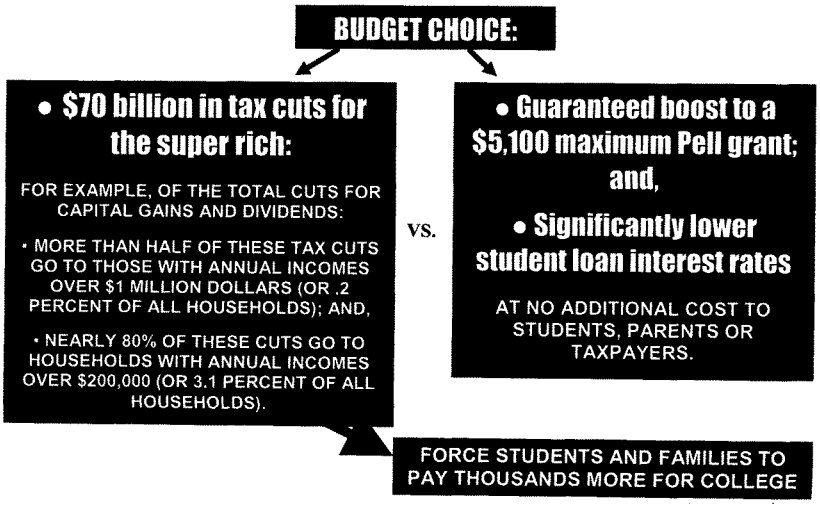
Introduction

The Republican committee print of amendments to the Higher Education Act cuts $14.3 billion from the federal student aid programs. This Republican raid on student aid represents the largest single cut to the federal student aid programs ever. As a result of these cuts, the typical student borrower could be forced to pay an additional $5,800 for his or her college loans.

Last year, students attending public colleges and universities fell nearly $13 billion short when paying for college, even after adding up their savings, work, student aid, and family support. As a result, more and more students are forced to work long hours (half of all working students are working 25 or more hours per week—long enough to hurt their academic performance); take on huge debt burdens (an estimated 40 percent of student borrowers graduate with unmanageable debt); or, forgo college altogether.

The weakened economy, huge tax cuts for the super rich, and massive federal budget cuts have hurt state budgets, driving up tuition prices for students—more than 75 percent of whom attend public institutions.

According to the Congressional Advisory Committee on Student Financial Assistance, *financial barriers* will prevent 4.4 million high school graduates from attending a four-year public college over the next decade, and prevent another two million high school graduates from attending any college at all.



The Raid on Student Aid will widen the college participation gap, just when we need to close the gap. Closing the current college participation gap between minority and white students could add $250 billion to the national gross domestic product and $85 billion in tax revenue to strengthen our economy and improve the quality of life for all Americans.

The Raid on Student Aid also undermines America's competitiveness in the global economy. **By 2020, the U.S. is expected to experience a shortage of up to 12 million college-educated workers**, directly threatening the nation's ability to compete in the global economy. The investment in increasing access to affordable higher education opportunities has been critical in making the U.S. the world economic leader it is today. Whether the U.S. retains its preeminence in the increasingly competitive global economy will depend more and more on having a highly-skilled workforce – and higher education is the critical tool for building that workforce.

Rather than boosting affordable college opportunities and investing in the economy, the Republican bill actually makes students and families pay even more for their college education. **The Republican bill cuts $14.3 billion from the federal student aid programs. This Republican raid on student aid represents the largest single cut to the programs ever.** Due to these shortcomings, we oppose the Committee passage of this legislation.

The Republican Bill Makes College More Expensive by Repealing Current Law Setting the Maximum Student Loan Interest Rate at 6.8 percent *(beginning in July 2006)*

In 2002, Congress passed legislation to lower the interest rates for student and parent borrowers, starting in July of 2006. Representatives Boehner and McKeon supported and voted for this legislation. This legislation ensured that student loan interest rates would not rise above 6.8 percent (today the current cap on student loan interest rates is set at 8.25 percent). It also ensured that the parent borrower interest rates would not rise above 7.9 percent (today the current cap on parent loan interest rates is set at 9.0 percent). The Republican raid on student aid goes back on these promises, and repeals the scheduled July 2006 decrease in the maximum rates to 6.8 percent for students and 7.9 percent for parents. As a result of this change alone, the typical student borrower, with $17,500 in debt, would be forced to pay as much as $2,600 more for his or her loans than they would under current law.

Democrats offered an amendment that would have maintained Congress' bipartisan promise to ensure that student loan interest rates do not rise above 6.8 percent and that parent loan interest rates do not rise above 7.9 percent (for all non-consolidation loans), at no additional cost to taxpayers or students. Republicans rejected this amendment.

The Republican Bill Makes Student Borrowers Pay Billions More for Consolidation Loans

While the Republican bill allows students to choose a fixed or variable interest rate on consolidation—it raises the interest rate on fixed consolidation loans by 1.0 percent (to 91-day Treasury bill + 3.3 percent, capped at 8.25 percent) and forces all student borrowers who consolidate their loans to pay a new 1.0 percent fee on fixed consolidation loans.

As a result of this change alone, the typical student borrower will have to pay $2,800 more for his or her college loans when they consolidate, than under current law.

Democrats offered an amendment that would have allowed student borrowers to choose a fixed or variable interest rate when consolidating their loans—without raising costs to borrowers or costing taxpayers an additional dime. Republicans rejected this amendment.

According to the Congressional Budget Office analysis, just the new 1 percent tax on consolidation borrowers will cost student and parent borrowers nearly $2 billion through 2010.

The Republican Bill Raises Student Loan Fees

While the Republican bill provides for a gradual phase out of the 3 percent origination fee charged to student and parent borrowers, it doubles the current 1.5 percent origination fee for Direct Loan borrowers in 2006. In the second year of the bill, the origination fees for Direct Loan borrowers are 1 percent higher than current practice, and in the third year, .5 percent higher than current practice.

Currently, the Secretary of Education charges a 3% origination fee and offers a 1.5% reduction in this fee to borrowers who make 12 on-time repayments on their loans—which results in a 1.5% origination fee.

While in the long run the bill reduces origination fees for borrowers in the Direct Loan program, it actually raises these fees between 2005 and 2009. As a result, Direct Loan borrowers will have to pay up to an additional $1.2 billion more for their loans through 2010.

While we strongly support elimination of these student taxes, which Democratic members have been urging for years, we cannot support legislation that raises fees, and the cost of college, for students, before eliminating them.

The bill requires lenders to charge student and parent borrowers a 1% insurance tax on their loans. Under current law, lenders do not have to charge this fee and most lenders currently waive this tax, but the Republican bill requires student and parent borrowers to pay this tax. As a result, the typical student borrower will be forced to pay an additional $175 for his or her college loans.

According the Congressional Budget Office analysis, the provision to force borrowers to pay the 1% insurance fee will raise nearly $1.5 billion through 2010.

Democrats offered two amendments to lower student loan taxes, but Republicans rejected these amendments.

Eliminating Critical Borrower Benefits that Encourage On-Time Repayment and Lower Interest Rates

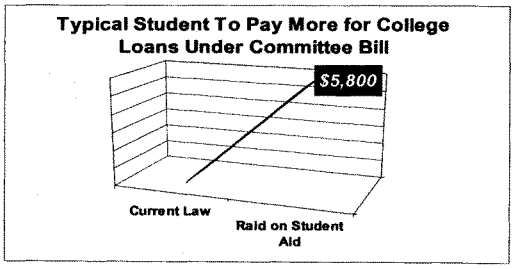
The Republican bill eliminates the Secretary of Education's authority to provide on-time repayment benefits, such as lower interest rates, to student borrowers in the Direct Loan program. *(It is through this benefit that the Secretary of Education is able to offer borrowers in the DL program a reduced 1.5% origination fee).* Yet, private banks that participate in the guaranteed loan program (also known as the Federal Family Education Loan Program) currently offer similar benefits to their student borrowers.

The Republican bill also eliminates the in-school consolidation benefit for borrowers in the Direct Loan program who are still in school to consolidate their loans at a lower interest rate (.6 percent lower) and to retain their 6 month grace period, where interest does not accrue and no payments are due.

Democrats offered an amendment to restore the on-time repayment benefit provision under current law and to allow students to consolidate their loans while in school. Republicans rejected this amendment.

The Republican Bill Forces Students and Families to Pay for New Tax Cuts for the Super Rich

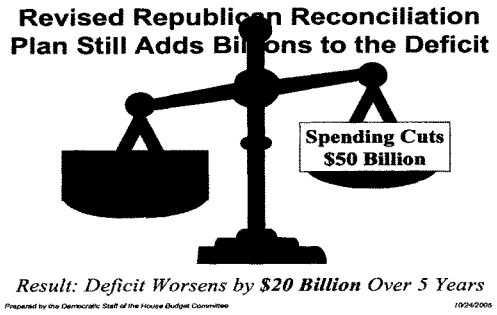
The bill saves $14.3 billion by: raising interest rates on student consolidation loans; raising the interest rate cap on student and parent loans; raising student and parent loan fees or taxes; eliminating borrower benefits that lower the cost of borrowing; cutting critical student aid delivery funds; and, eliminating some of the excessive subsidies paid to student lenders. This Republican raid on student aid represents the single largest cuts to the nation's federal student aid programs ever. As a result of these cuts the typical student borrower could be forced to pay up to $5,800 more for his or her college loans, than compared to current law.



After widespread criticism from Democrats, students and editorial writers, the Majority finally agreed to reduce excessive subsidies to large lending institutions. But instead of recycling those dollars into low-interest loans and additional grants for students already struggling to pay for college, the Majority plans to use the $14.3 billion in cuts—to lender subsidies and student aid—to pay for new tax cuts for the super rich. They believed for years it was acceptable to spend billions in excessive subsidies on profitable banks, but now they refuse to spend this money on students.

The Majority claims that these cuts must be made in the budget reconciliation process to reduce the federal deficit—yet with the new tax cuts for the super rich the budget reconciliation actually *increases* the federal deficit by $20 billion over 5 years.

This budget scheme forces low- and middle-income students and families, who are already struggling to pay for college, to pay for new tax cuts for the super rich.



We should be doing more, not less, to increase affordable college opportunities not just because it is the right thing to do but because it is critical to the economic prosperity and well-being of our nation.

Since the passage of the Higher Education Act in 1965, Federal grants, loans and work-study have helped to send millions of students to college, many of whom would not have gone to college without the help.

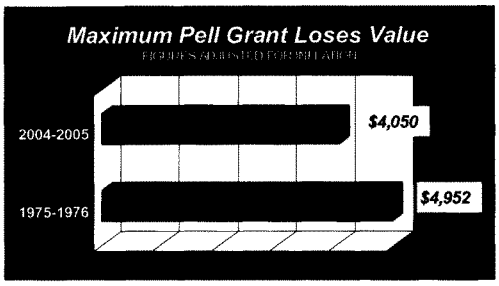
This investment has been critical in making the U.S. the world economic leader it is today. The Republican raid on student aid undermines America's competitiveness in the global economy.

Whether the U.S. retains its preeminence in the increasingly competitive global economy will depend more and more on having a highly-skilled workforce – and higher education is the critical tool for building that workforce. **By 2020, the U.S. is expected to experience a shortage of up to 12 million college-educated workers,** directly threatening the nation's ability to compete in the global economy.

This raid on student aid misses a golden opportunity to re-direct billions of dollars in savings by recycling the excessive subsidies paid to student lenders into additional grant aid for students—without any additional costs to taxpayers. Seizing this opportunity is an essential step towards ensuring that all college qualified students receive an affordable top quality higher education and that the U.S. is competitive in the global economy.

The Republican Bill Fails to Provide a Real Increase to the Maximum Pell Grant Scholarship

The declining buying power of Pell grant scholarships and rising tuition prices are forcing millions of students to assume high debt, work long hours or even forgo college. The Committee has missed another opportunity to restore the original buying power of Pell grant scholarships. **Last year the maximum Pell grant scholarship was worth $900 less, in inflation-adjusted terms, than it was in 1975-76.**



Not only does the Republican bill fail to restore the Pell grants to the level of its original value, but it fails to make good on the Republican promise of an actual $5,100 maximum Pell grant scholarship. **Instead, the Republican higher education plan freezes the actual maximum Pell grant award.** The bill only provides a $200 increase to the maximum authorization level through 2013—a level that is not binding and does not determine the actual maximum award that students receive.

Democrats offered an amendment that would have provided a guaranteed boost, with mandatory funds, to a $5,100 maximum Pell grant by 2010—without raising the deficit or raising costs on students or families. Republicans rejected this modest Pell grant scholarship increase.

In Addition, the Republican Bill Places Billions in Student Grant and Loan Funds at Risk by Eliminating the Delivery, or Administrative Funds, Used to Process and Disburse Federal Aid to Students and Families

In addition to the cuts to student and parent borrowers, the **Republican bill put billions of dollars in student aid at risk by cutting all of the critical funds used to carry out and administer the student aid programs.**

The Republican bill cuts all of the mandatory funds currently used to annually:

- Disburse $117 billion in student aid grants and loans to nearly 10 million students and parents;
- Process more than 13 million federal financial aid applications;
- Oversee the participation of more than 6,200 schools, 3,500 lenders, dozens of guaranty agencies, accrediting agencies, and state agencies; and,
- Collect/manage $105 billion in outstanding direct loans.

According to CBO, these cuts raise $2.2 billion through 2010.

Republicans will argue that these $2.2 billion in critical funds will now be funded through the appropriations process. But this is at best a budget gimmick and at worst a misguided budget trick that will destabilize student aid delivery for millions of students and families.

The Republican bill will force these critical student aid delivery funds to compete against funding for programs such as IDEA, No Child Left Behind and child care. It reneges on the promise that all students and families who seeks student loans will be able to get them because it allows the program's administrative support to be limited or cut.

These cuts will jeopardize the Department of Education's ability to administer the student aid programs—which have a long history of fraud and abuse—safely and soundly.

The Republican Bill Requires Lenders to Rebate Billions in Excessive Student and Parent Interest Rates—But Instead of Giving Students and Parents Their Money Back, Republicans Use the Money to Pay for New Tax Cuts for the Super Rich

Under current law, banks in the guaranteed student loan program are guaranteed a fair market return when they lend to students and parents. This fair market return is calculated on a different basis than the interest rates that students and parents pay on their loans. Often the interest rates that student and parent borrowers pay to lenders are more than the fair market return. When this happens, lenders receive this windfall, or additional interest payments made by students and parents, as profit.

Under current law, lenders keep this windfall profit. Yet, when student and parent borrower interest rates are such that they pay less than fair market return to lenders, the federal government pays lenders the difference to ensure that they receive fair market return on the loans.

The Republican bill changes current law, so that when lenders earn more than fair market return they must rebate these windfall profits, or excessive interest payments made by students and parents. While the Republican bill eliminates this 'lender yield floor', it fails to require the lenders to rebate these excess interest payments to the students and parent borrowers who are paying too much. **Instead, it funnels billions in excessive interest payments made by parents and students to pay for new tax cuts for the wealthiest households.**

According to the Congressional Budget Office analysis, these excess interest payments made by student and parent borrowers total several billion dollars through 2010.

The Republican Bill Closes the 9.5 Percent Loan Loophole

Last year, led by Reps. Kildee and Van Hollen, Congress voted to partially close the loophole which allowed student lenders to collect a guaranteed 9.5 percent rate of return on certain student loans. This rate of return is 4 percent higher (and was 6 percent higher last year) than the return which lenders receive on regular student loans. However, this partial closure still allowed lenders to "recycle," or use the interest payments and the excessive subsides paid on their outstanding 9.5 percent loans to make new loans which also receive the 9.5 percent rate of return. The Government Accountability Office estimated that recycling alone is responsible for up to 40 percent of the current loan volume which is guaranteed this 9.5 percent rate of return.

At the urging of Committee Democrats, the Republican bill completely closes the 9.5 percent loophole which generated billions of dollars in excessive profits to lenders.

According to the Congressional Budget Office, the closure of this loophole will generate $1.8 billion dollars in savings through 2010—money which should be reinvested into student aid. Unfortunately, the Majority is using these savings to pay for $70 billion in new tax cuts, most of which go to the super rich.

Conclusion

American students and families need more affordable college opportunities. Significantly boosting these opportunities is critical to the success of the American economy and the nation's ability to maintain and grow our competitive edge in the global economy.

Not only does this bill fail on this account, but it actually makes the largest single cut to the student aid programs ever. As a result, students will be forced to pay thousands of dollars more for college.

This Republican raid on student aid squanders a rare chance to re-deploy billions of dollars, saved from cuts to excessive lender subsidies, toward boosting grant aid and lowering the cost of borrowing to students.

Rather than advance this partisan legislation, which is opposed by students, colleges, and consumer groups alike, we should be focused on increasing affordable college opportunities to all Americans.

The reauthorization of the Higher Education Act offered the Committee an opportunity to ensure college access to all Americans. Unfortunately, the Majority chose to pass up this golden opportunity and instead, is making college students and families pay for the irresponsible budget management of the Congress.

Democratic Amendments offered in Full Committee Markup of the Committee Print of Amendments to the Higher Education Act on the Committee's Instructions pursuant to the Conference Report on H. Con. Res. 95, the Budget Resolution for Fiscal Year 2006

Mr. Miller, Mr. Kildee, Mr. Kind, Mr. Van Hollen, Mr. Barrow and Mr. Kucinich offered an amendment that would maintain Congress' promise to lower the student loan interest rate caps to 6.8 percent in 2006, offered student borrowers the choice of a variable or low fixed interest rate on their consolidation loans—without raising interest rates or fees, and provide a guaranteed boost to a $5,100 maximum Pell grant scholarship. Republicans rejected the amendment.

Mr. Van Hollen offered an amendment to strike the provision that forces students to pay the 1 percent insurance fee (or $1.5 billion more for their loans through 2010) on their student loans. Republicans rejected the amendment.

Mrs. Davis offered an amendment to reduce fees for student borrowers. The amendment was defeated.

Mr. Holt and Mr. Bishop offered an amendment to grant rebates to students who will have their Pell awards reduced or eliminated this fall, due to the recent student aid reduction from the Bush administration. Republicans rejected the amendment.

GEORGE MILLER

DALE E. KILDEE

DANNY K. DAVIS

LYNN WOOLSEY

BETTY McCOLLUM

RAUL M. GRIJALVA

RON KIND

RUSH HOLT

CHRIS VANHOLLEN

CAROLYN McCARTHY

DENNIS KUCINICH

BOBBY SCOTT

DONALD M. PAYNE

TIM RYAN

RUBEN HINOJOSA

MAJOR OWENS

DAVID WU

TIM BISHOP

SUSAN A. DAVIS

ROBERT ANDREWS

JOHN F. TIERNEY

PURPOSE

The purpose of this legislation is to provide additional resources to the Pension Benefit Guaranty Corporation ("PBGC") to ensure that it is on sound financial footing, while at the same time helping the Committee on Education and the Workforce satisfy the instructions to reduce direct spending given to it in the FY2006 budget resolution.[1] This legislation amends the current flat-rate PBGC premium structure—which has remained unchanged since 1991—to better reflect the cost of plan termination insurance that the PBGC provides to qualified defined benefit pension plans. Further, it requires plans to pay a termination premium to the PBGC for assuming the liabilities of underfunded pension plans which are terminated under distress termination procedures. Reforming the premium structure will help to improve the financial status of the PBGC, which in turn will ultimately better protect workers and retirees receiving PBGC-guaranteed benefits now and into the future. At the same time, these reforms represent a fiscally responsible means to achieve necessary cost savings.

COMMITTEE ACTION

On June 9, 2005, Committee on Education and the Workforce Chairman John A. Boehner, Subcommittee on Employer-Employee Relations Chairman Sam Johnson and Vice Chairman John Kline, and Committee on Ways and Means Chairman Bill Thomas introduced H.R. 2830, the "Pension Protection Act of 2005." H.R. 2830 represents the culmination of legislative activity, begun in the 106th Congress and continuing through the 109th Congress, intended to fix outdated pension laws that threaten the fiscal well-being of taxpayers, workers, and retirees, and to improve the pension security of all American workers. This legislation continues part of that effort.

106th Congress

In the 106th Congress, the Committee on Education and the Workforce (the "Committee") began a comprehensive review of the federal law governing private pensions, the Employee Retirement Income Security Act ("ERISA"), and its relevance to the needs of participants, beneficiaries, and employers in the 21st century.

On March 11, 1999, Representatives Rob Portman and Benjamin Cardin introduced H.R. 1102, the "Comprehensive Retirement Security and Pension Reform Act of 1999." The bill was jointly referred to the Committee on Education and Workforce and the Committee on Ways and Means. On June 29, 1999, the Subcommittee on Employer-Employee Relations held a hearing entitled "Enhancing Retirement Security: A Hearing on H.R. 1102, the 'Comprehensive Retirement Security and Pension Reform Act of 1999.'" Testimony was received from the bill's sponsors, Representatives Portman and Cardin.

[1] See H. Con. Res. 95. H. Con. Res. 95 set forth the budget for the federal government for fiscal year 2006, and, additionally, instructed a number of committees of the House of Representatives to submit to the Committee on the Budget recommendations for slowing the growth in mandatory spending.

On July 14, 1999, the Committee discharged the Subcommittee on Employer-Employee Relations from consideration of the bill, approved H.R. 1102, and ordered it favorably reported to the House of Representatives by voice vote. On July 19, 2000, the House of Representatives passed the bill by a vote of 401 yeas to 25 nays.[2] The Senate did not complete consideration of H.R. 1102 prior to the adjournment of the 106th Congress.

On February 15, 2000, the Subcommittee on Employer-Employee Relations continued its examination of issues arising under ERISA at a hearing entitled "The Evolving Pension and Investment World After 25 Years of ERISA." The following individuals testified before the Subcommittee: Professor John H. Langbein, Chancellor Kent Professor of Law and Legal History, Yale Law School; Michael S. Gordon, Esq., Law Offices of Michael S. Gordon; Dr. John B. Shoven, Charles R. Schwab Professor of Economics, Stanford University; and Dr. Teresa Ghilarducci, Associate Professor of Economics, University of Notre Dame.

On March 9 and 10, 2000, the Subcommittee on Employer-Employee Relations held two days of hearings entitled "More Secure Retirement for Workers: Proposals for ERISA Reform." Testifying on March 9 were: W. Allen Reed, President, General Motors Investment Management Company, testifying on behalf of the Committee on Investment of Employee Benefit Assets (CIEBA) of the Financial Executives Institute; Daniel P. O'Connell, Corporate Director for Employee Benefits and HR Systems, United Technologies Corporation, testifying on behalf of the ERISA Industry Committee (ERIC); Damon Silvers, Esq., Associate General Counsel, AFL–CIO; Professor Joseph A. Grundfest, William A. Franke Professor of Law and Business, Stanford Law School, and co-founder of Financial Engines, Inc.; Eula Ossofsky, President, Board of Directors, Older Women's League; and Margaret Raymond, Esq., Assistant General Counsel, Fidelity Investments, testifying on behalf of the Investment Company Institute. During the second day of hearings on March 10, the Subcommittee heard testimony from Kenneth S. Cohen, Esq., Senior Vice President and Deputy General Counsel, Massachusetts Mutual Life Insurance Company, testifying on behalf of the American Council of Life Insurers; Marc E. Lackritz, President, Securities Industry Association; David Certner, Senior Coordinator, Department of Federal Affairs, American Association of Retired Persons; Louis Colosimo, Managing Director, Morgan Stanley Dean Witter & Company, Inc., testifying on behalf of the Bond Market Association; John Hotz, Deputy Director, Pension Rights Center; and Deedra Walkey, Esq., Assistant General Counsel, Frank Russell Company.

On March 16, 2000, the Subcommittee on Employer-Employee Relations held a hearing entitled "The Wealth Through the Workplace Act: Worker Ownership in Today's Economy." The hearing fo-

[2] Fifteen provisions of Title VI of H.R. 1102 subsequently were included in H.R. 2488, the "Taxpayer Refund and Relief Act of 1999," which passed the House and Senate on August 5, 1999, but was vetoed by then-President Clinton. The following year, twenty-two ERISA provisions from H.R. 1102 were included in the "Retirement Savings and Pension Coverage Act of 2000," which was included in H.R. 2614, the "Taxpayer Relief Act of 2000." The conference report on H.R. 2614 was adopted by the House on October 26, 2000, by a vote of 237 yeas, 174 nays, and one present. The conference report was not adopted by the Senate prior to adjournment of the 106th Congress.

cused on H.R. 3462, introduced by then-Subcommittee Chairman John A. Boehner, which made stock options more readily available to ERISA participants. Testifying before the Subcommittee were: Jane F. Greenman, Esq., Deputy General Counsel (Human Resources), Honeywell, Inc., testifying on behalf of the American Benefits Counsel; Tim Byland, Senior Sales Executive, INTERVU, Inc.; and Patrick Von Bargen, Executive Director, National Commission on Entrepreneurship.

On April 4, 2000, the Subcommittee on Employer-Employee Relations continued its examination of ERISA reform in a hearing entitled "Modernizing ERISA to Promote Retirement Security." The following individuals testified at the hearing: the Honorable Leslie Kramerich, Acting Assistant Secretary of Labor for Pension and Welfare Benefits, U.S. Department of Labor; and David M. Strauss, Executive Director, Pension Benefit Guaranty Corporation.

On June 26, 2000, Subcommittee Chairman Boehner introduced H.R. 4747, the Retirement Security Advice Act of 2000. On July 19, 2000, the Subcommittee on Employer-Employee Relations ordered H.R. 4747 favorably reported, as amended, by voice vote. There was no further action taken on the legislation prior to the conclusion of the 106th Congress.

Concluding its legislative activity for the 106th Congress, the Subcommittee on Employer-Employee Relations held a hearing on September 14, 2000 entitled "How to Improve Pension Coverage for American Workers." The Subcommittee heard testimony from Theodore Groom, Esq., Groom Law; Michael Calabrese, Director, Public Assets Program, New America Foundation; and Ed Tinsley, III, President and CEO, K-Bob's Steakhouse.

107th Congress

Building upon the activity of the previous Congress, the Committee continued its efforts to examine and improve upon the private pension system. On March 14, 2001, Representatives Portman and Cardin introduced H.R. 10, which was very similar to the House-passed H.R. 1102 of the previous Congress. The Subcommittee on Employer-Employee Relations held a legislative hearing on the bill on April 5, 2001. At the hearing, entitled "Enhancing Retirement Security: A Hearing on H.R. 10, The 'Comprehensive Retirement Security and Pension Reform Act of 2001,'" testimony was received from the bill's sponsors, Representatives Portman and Cardin; Nanci S. Palmintere, Director of Tax, Licensing and Customs, Intel Corporation, testifying on behalf of the American Benefits Council; Richard Turner, Esq., Associate General Counsel, American General Financial Group, testifying on behalf of the American Council of Life Insurers; Judith Mazo, Senior Vice President, Segal Co., testifying on behalf of the Building and Construction Trades Department, AFL–CIO and the National Coordinating Committee for Multiemployer Plans; and Karen Ferguson, Director, Pension Rights Center.

On April 26, 2001, the Committee on Education and the Workforce approved H.R. 10, as amended, by voice vote and ordered the bill favorably reported to the House of Representatives. On May 5, 2001, the House of Representatives passed H.R. 10 by a vote of 407 yeas to 24 nays. On May 16, 2001, the provisions of H.R. 10 were

included in H.R. 1836, the "Economic Growth and Tax Relief Reconciliation Act," and passed by the House of Representatives on a vote of 230 yeas to 197 nays. The House passed the conference report on the measure on May 26, 2001, by a vote of vote of 240 yeas to 154 nays. On December 5, 2001, the Senate adopted the conference report, as amended, by a vote of 90 yeas and nine nays. On December 11, 2001, the House agreed to the Senate amendments by a roll call vote of 369 yeas and 33 nays. The President signed the bill into law on December 21, 2001; it became public law 107–90.

On June 21, 2001, Committee on Education and the Workforce Chairman Boehner introduced H.R. 2269, the "Retirement Security Advice Act of 2001," a bill to promote the provision of retirement investment advice to workers regarding the management of their retirement income assets. The bill was referred to the Committee on Education and the Workforce and the Committee on Ways and Means.

On July 17, 2001, the Subcommittee on Employer-Employee Relations held a hearing on H.R. 2269. Testifying before the Subcommittee were the Honorable Ann L. Combs, Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor; Betty Shepard, Human Resources Administrator, Mohawk Industries, Inc.; Damon Silvers, Esq., Associate General Counsel, AFL–CIO; Richard A. Hiller, Vice President, Western Division, TIAA–CREF; Joseph Perkins, Immediate Past Present, American Association for Retired Persons; and Jon Breyfogle, Principal, Groom Law Group, testifying on behalf of the American Council of Life Insurers.

On August 2, 2001, the Subcommittee on Employer-Employee Relations approved H.R. 2269, without amendment, by voice vote and ordered the bill favorably reported to the full Committee. On October 3, 2001, the Committee approved H.R. 2269, as amended, and ordered the bill favorably reported to the House of Representatives by a roll call vote of 29 yeas to 17 nays. The Committee on Ways and Means considered and marked up the bill on November 7, 2001, and reported it to the House on November 13, 2001. The bill, as amended, passed the House of Representatives on November 15, 2001 by a roll call vote of 280 yeas to 144 nays. The Senate did not consider the measure prior to the adjournment of the 107th Congress.

On February 6 and 7, 2002, the Committee held two days of hearings entitled "The Enron Collapse and Its Implications for Worker Retirement Security." On February 6, the sole witness was U.S. Secretary of Labor Elaine Chao. On the second day, the witnesses were Thomas O. Padgett, Senior Lab Analyst, EOTT; Cindy K. Olson, Executive Vice President, Human Resources and Community Relations and Building Services, Enron Corporation; Mikie Rath, Benefits Manager, Enron Corporation; Scott Peterson, Global Practice Leader for Defined Contribution Services, Hewitt Associates; and Dr. Teresa Ghilarducci, Associate Professor, Department of Economics, University of Notre Dame.

The Subcommittee on Employer-Employee Relations held a hearing on February 13, 2002 entitled "Enron and Beyond: Enhancing Worker Retirement Security." The Subcommittee heard testimony from Jack L. VanDerhei, Ph.D., CEBS, Professor, Department of

Risk, Insurance, and Healthcare Management, Fox School of Business and Management, Temple University, testifying on behalf of the Employee Benefit Research Institute; Douglas Kruse, Ph.D., Professor, School of Management and Labor Relations, Rutgers University; Norman Stein, Douglas Arant Professor of Law, University of Alabama School of Law; and Rebecca Miller, CPA, Partner, McGladrey & Pullen, LLP.

On February 14, 2002, Chairman Boehner and Subcommittee on Employer-Employee Relations Chairman Sam Johnson introduced H.R. 3762, the "Pension Security Act."

On February 27, 2002, the Subcommittee on Employer-Employee Relations held a hearing entitled "Enron and Beyond: Legislative Solutions." The witnesses were Dave Evans, Vice President, Retirement and Financial Services, Independent Insurance Agents of America; Angela Reynolds, Director, International Pension and Benefits, NCR Corporation; Erik Olsen, Member, Board of Directors, American Association of Retired Persons; Dr. John H. Warner, Jr., Corporate Executive Vice President, Science Applications International Corp., testifying on behalf of the Profit Sharing Council of America; Richard Ferlauto, Director of Pensions and Benefits, American Federation of State County, and Municipal Employees (AFSCME), testifying on behalf of AFSCME and AFL-CIO; and John M. Vine, Esq., Partner, Covington and Burling, testifying on behalf of the ERISA Industry Committee.

On March 20, 2002, the Committee on the Education and the Workforce approved H.R. 3762, as amended, and ordered the bill favorably reported to the House of Representatives by a roll call vote of 28 yeas to 19 nays. On April 11, 2003 the House passed H.R. 3762 by a recorded vote of 255 yeas to 163 nays. No further action was taken on the measure prior to the adjournment of the 107th Congress.

108th Congress

Building on the success of corporate reform and the foundation of the pension reform principles established during the 107th Congress, the Subcommittee on Employer-Employee Relations held a hearing on Feburary 13, 2003, entitled "The Pension Security Act: New Pension Protections to Safeguard the Retirement Savings of American Workers." Testifying before the Subcommittee were the Honorable Ann L. Combs, Assistant Secretary, Employee Benefits Security Administration, United States Department of Labor; Ed Rosic, Esq., Vice President and Managing Assistant General Counsel, Marriott International, Inc., testifying on behalf of the American Benefits Council; Nell Minow, Editor, The Corporate Library, testifying on behalf of Robert Monks, Lens Governance Advisors; and Scott Sleyster, Senior Vice President and President of Retirement Services and Guaranteed Products, Prudential Financial.

On February 27, 2003, Chairman Boehner and Subcommittee on Employer-Employee Relations Chairman Sam Johnson introduced H.R. 1000, the "Pension Security Act of 2003." This bill incorporated the provisions of H.R. 2269 from the previous Congress, and contained a number of ERISA provisions from H.R. 10 in the 107th Congress that were dropped prior to that bill's final passage.

On March 5, 2003, the Committee on Education and the Workforce approved H.R. 1000, as amended, and ordered the bill favorably reported to the House of Representatives by a roll call vote of 29 yeas to 19 nays. On May 14, 2003, the House of Representatives passed H.R. 1000 by a roll call vote of 271 yeas to 157 nays. The Senate did not complete consideration of the bill before the adjournment of the 108th Congress.

On June 4, 2003, as part of a series of hearings that would focus on the challenges that faced the future of defined benefit plans and highlight obstacles in federal law that discourage employers from offering these plans, the Subcommittee on Employer-Employee Relations held a hearing entitled "Strengthening Pension Security: Examining the Health and Future of the Defined Benefit Plan." The Subcommittee heard testimony from Dr. Jack Van Derhei, Professor, Fox School of Business Management, Temple University, testifying on behalf of the Employee Benefits Research Institute; Dr. John Leary, Esq., Partner, O'Donoghue and O'Donoghue; Ron Gebhardtsbauer, Senior Pension Fellow, American Academy of Actuaries; and J. Mark Iwry, Esq., Non-Resident Senior Fellow, The Brookings Institution.

On July 15, 2003, the Subcommittee on Employer-Employee Relations and the Ways and Means Subcommittee on Select Revenue Measures held a joint hearing entitled "Examining Pension Security and Defined Benefit Plans: The Bush Administration's Proposal to Replace the 30-Year Treasury Rate." The following witnesses testified on the Bush Administration's proposal to replace the discontinued 30-year Treasury interest rate that was used as the benchmark for defined benefit pension plan funding: The Honorable Ann Combs, Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor; The Honorable Peter Fisher, Under Secretary for Domestic Finance, U.S. Department of Treasury; Kenneth Porter, Director of Corporate Insurance and Global Benefits Financial Planning, DuPont Company; Ashton Phelps, Publisher, The Times-Picayune; Kenneth Steiner, Resource Actuary, Watson Wyatt Worldwide; and Christian Weller, Economist, Economic Policy Institute.

On September 4, 2003, the Committee on Education and the Workforce held the third in a series of hearings to examine the future of defined benefit pension plans entitled "Strengthening Pension Security and Defined Benefit Plans: Examining the Financial Health of the Pension Benefit Guaranty Corporation." The witnesses included David Walker, Comptroller General, General Accounting Office, and Steven Kandarian, Executive Director, Pension Benefit Guaranty Corporation.

On September 17, 2003, Chairman Boehner, joined by Senior Democrat Member George Miller, Subcommittee on Employer-Employee Relations Chairman Sam Johnson, Committee on Ways and Means Chairman Bill Thomas, Ways and Means Committee Senior Democrat Member Charles Rangel, and Representative Rob Portman introduced H.R. 3108, the "Pension Funding Equity Act of 2003." On October 8, 2003, the House passed the bill, as amended, by a vote of 397 yeas and two nays. On January 28, 2004, the Senate approved an amended version of H.R. 3108 by a roll call vote of 86 yeas and nine nays. The House adopted the conference report

on the bill on April 2, 2004, by a vote of 336 yeas and 69 nays. On April 8, 2004, the Senate adopted the conference report by a vote of 78 yeas and 19 nays. On April 10, 2004 President Bush signed the bill into law; it became public law 108–218.

Immediately following House passage of H.R. 3108, Chairman Boehner and Subcommittee Chairman Sam Johnson announced that the Committee would proceed with its work to implement permanent, long-term solutions to the pension underfunding crisis. On October 29, 2003, the Committee held a hearing entitled "The Pension Underfunding Crisis: How Effective Have Reforms Been?" Testifying before the Committee were Barbara Bovbjerg, Director of Education, Workforce, and Income Security Issues, General Accounting Office; Robert Krinsky, Chairman, Segal Company; Michael S. Gordon, Esq., General Counsel, National Retiree Legislative Network, testifying on behalf of the American Benefits Council; J. Mark Iwry, Esq., Non-Resident Senior Fellow, Brookings Institution; and David John, Research Fellow, Thomas A. Roe Institute for Economic Policy Studies, Heritage Foundation.

On February 25, 2004, the Committee held a hearing entitled "Strengthening Pension Security for All Americans: Are Workers Prepared for a Safe and Secure Retirement?" Testifying before the Committee were Ben Stein, Honorary Chairperson, National Retirement Planning Coalition; Dan McCaw, Chairman and CEO, Mercer Human Resource Consulting; C. Robert Henrikson, President, U.S. Insurance and Financial Services, MetLife; and Peter R. Orszag, Joseph A. Pechman Senior Fellow, Brookings Institution.

On March 18, 2004, the Subcommittee on Employer-Employee Relations held a hearing entitled, "Reforming and Strengthening Defined Benefit Plans: Examining the Health of the Multiemployer Pension System." Testifying before the Subcommittee were Barbara Bovbjerg, Director of Education, Workforce, and Income Security Issues, General Accounting Office; John McDevitt, Senior Vice President, United Parcel Service; Scott Weicht, Executive Vice President, Adolfson and Peterson Construction, testifying on behalf of the Associated General Contractors; and Randy G. DeFrehn, Executive Director, National Coordinating Committee for Multiemployer Plans.

On April 29, 2004, the Subcommittee on Employer-Employee Relations held a hearing entitled "Examining Long-Term Solutions to Reform and Strengthen the Defined Benefit Pension System." Testifying before the Subcommittee were Kenneth A. Kent, Academy Vice President, Pension Issues, American Academy of Actuaries; Greg Heaslip, Vice President, Benefits, PepsiCo, Inc.; J. Mark Iwry, Esq., Non-Resident Senior Fellow, the Brookings Institution; Timothy Lynch, President and CEO, Motor Freight Carriers Association; John S. "Rocky" Miller, Esq., Partner, Cox, Castle & Nicholson, L.L.P.; and Teresa Ghilarducci, Ph.D., Associate Professor of Economics and Director of the Monsignor Higgins Labor Research Center, University of Notre Dame.

On July 7, 2004, the Committee held its eighth hearing in the 108th Congress, focusing on issues relating to cash balance pension plans. The hearing was entitled "Examining Cash Balance Pension Plans: Separating Myth from Fact." The Committee heard testimony from James Delaplane, Jr., Esq., Attorney, American Bene-

fits Council; Ellen Collier, Director of Benefits, Eaton Corporation; Dr. Robert Clark, Professor, College of Management, North Carolina State University; Robert Hill, Esq., Partner, Hill & Robbins; and Nancy Pfotenhauer, President, Independent Women's Forum.

109th Congress

In the 109th Congress, the Committee continued its efforts to focus on comprehensive reform of the defined benefit pension system. On March 2, 2005, the Committee held a hearing entitled "The Retirement Security Crisis: The Administration's Proposal for Pension Reform and Its Implications for Workers and Taxpayers." Testifying before the Committee were the Honorable Ann L. Combs, Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor; the Honorable Mark Warshawsky, Assistant Secretary for Economic Policy, U.S. Department of Treasury; Bradley Belt, Executive Director, Pension Benefit Guaranty Corporation; Kenneth Porter, Director of Corporate Insurance and Global Benefits Financial Planning, the DuPont Company, testifying on behalf of the American Benefits Council; Norman Stein, Douglas Arant Professor, University of Alabama School of Law; and Dr. Janemarie Mulvey, Chief Economist, Employment Policy Foundation.

On June 9, 2005, Chairmen Boehner, Employer-Employee Relations Subcommittee Chairman Sam Johnson, Employer-Employee Relations Vice-Chairman John Kline and Committee on Ways and Means Chairman Bill Thomas introduced H.R. 2830, the "Pension Protection Act of 2005." On that same day, Chairman Boehner also introduced H.R. 2831, the "Pension Preservation and Portability Act of 2005."

On June 15, 2005, the Committee held a legislative hearing on H.R. 2830. Testifying before the Committee were Lynn Franzoi, Vice President for Human Resources, Fox Entertainment Group, testifying on behalf of the U.S. Chamber of Commerce; Bart Pushaw, Actuary, Milliman, Inc.; Dr. Teresa Ghilarducci, Professor of Economics, University of Notre Dame; Timothy Lynch, President and CEO, Motor Freight Carriers Association; Judy Mazo, Senior Vice President/Director of Research, The Segal Company; and Andy Scoggin, Vice President for Labor Relations, Albertsons, Inc.

On June 22, 2005, the Subcommittee on Employer-Employee Relations approved H.R. 2830, as amended, and ordered the bill favorably reported to the full Committee, by voice vote. On June 30, 2005, the full Committee approved H.R. 2830, as amended, and ordered the bill favorably reported to the House of Representatives by a roll call vote of 27 yeas, 0 nays, and 22 present. H.R. 2830, as amended and reported to the House, included several provisions contained within H.R. 2831.

On October 26, 2005, pursuant to the instructions to report to the House of Representatives Committee on the Budget recommendations for reducing direct spending contained in H. Con. Res. 95,[3] the Committee considered this legislation as part of the reconciliation process. The Committee ordered this legislation, as amended, reported to the Committee on the Budget by voice vote.

[3] See footnote 1, supra.

SUMMARY

The legislation increases the flat-rate premium paid to the PBGC for each plan participant from the current $19 to $30, and indexes the premium annually to reflect the growth of worker wages since 1991 and into the future.

The legislation also provides the PBGC with the discretion to increase the per-participant, flat-rate premium for a subsequent plan year if the PBGC determines that such increase for the year is necessary to achieve actuarial soundness of the plan termination insurance program. However, the PBGC may only increase the flat-rate premium up to 20 percent of the dollar amount of the premium in effect for the preceding plan year (after adjustment for inflation). PBGC must determine such increase is necessary within 120 days of the first day of each calendar year for any increase to take effect for the succeeding plan year, and provide Congress with its proposal as to the reasons why such increase is necessary to achieve actuarial soundness of the single employer insurance program. The PBGC shall include all methodologies and assumptions used in the proposal. Congress has the authority to disapprove of any PBGC premium increase within 60 days of session following the date on which the proposal is received by Congress.

Additionally, the legislation includes a plan termination premium, payable to the PBGC of a rate equal to $1250 multiplied by the number of individuals who were participants in the plan immediately before the termination date, if a plan is terminated as a result of a distress termination initiated by a plan sponsor or by the PBGC.[4] The termination premium is due to the PBGC by the former plan sponsor for the three consecutive plan years following the plan termination date and must be paid within 30 days after the beginning of the first applicable plan year that such premium takes effect. If a plan is terminated under title 11 of the United States Code, the termination premium will not be due until the former plan sponsor emerges from bankruptcy reorganization. The termination premium applies to cases commenced under title 11, United States Code or under any similar law of a State or political subdivision of a State, after October 26, 2005.

Finally, the legislation provides that any amendments it makes do not take effect if comprehensive pension reform legislation is enacted prior to January 1, 2006.

COMMITTEE VIEWS

Two important steps are essential to improving the financial condition of the PBGC and ensuring its long-term solvency: (1) reforming funding rules to ensure pensions are more adequately and consistently funded; and (2) increasing premiums paid by employers to the PBGC in a responsible fashion. Comprehensive pension reform legislation in the form of H.R. 2830, the "Pension Protection Act of 2005," which is expected to be voted on by the House later this fall, would take both of these steps. The budget reconciliation process presents an opportunity to accomplish the latter of the two.

[4] See ERISA § 4041(c)(2)(B)(ii) and (iii).

It is the strong view of the Committee that the benefits of comprehensive reform, which include proposals to strengthen the PBGC, far outweigh the benefits of increases in PBGC premiums alone. Ensuring employers fund their plans appropriately will prove more helpful to the overall defined benefit system than additional premiums paid to the PBGC. However, Congress has not raised premiums since 1991, so a reasonable increase is both prudent and necessary.

BACKGROUND AND THE NEED FOR LEGISLATION

The minimum funding requirements under the Employee Retirement Income Security Act ("ERISA") permit an employer to fund defined benefit plan benefits over a certain period of time, but do not require a plan to be fully funded. As a result, pension plans may be terminated when plan assets are not sufficient to provide all benefits accrued by employees under the plan. This type of termination is generally referred to as a "distress termination."[5] In order to protect plan participants from losing retirement benefits if a plan terminates without sufficient assets to pay vested, accrued benefits, the PBGC, a corporation within the Department of Labor, was created in 1974 under ERISA to provide an insurance program for the payment of benefits from certain terminated pension plans maintained by private employers.[6]

The PBGC is funded by premiums paid by plan sponsors, assets from terminated plans, amounts recovered by employers who terminate underfunded plan, and investment earnings. All covered single employer plans are required to pay a flat-rate premium that is statutorily set at $19 per participant annually.[7]

The Committee believes that the role of the PBGC in protecting the retirement benefits of over 34 million Americans participating in single employer defined benefit plans is crucial.[8] However, the current system does not contain appropriate funding rules to ensure that pension plans are adequately funded. Over the past few years, the terminations of severely underfunded pension plans have threatened the retirement security of the participants and beneficiaries who earned these benefits. Furthermore, the recent terminations of several notable and chronically underfunded pension plans has placed an increasing financial strain on the PBGC single employer pension insurance program, and has threatened its long-term viability.

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[5] *See* ERISA § 4041(b)–(c). A "distress termination" is the termination of an underfunded plan initiated either by the request of the plan sponsor or an involuntary termination initiated by the PBGC. The PBGC may institute proceedings to terminate a plan if, among other things, the plan will be unable to pay benefits when due or the possible long-term loss to the PBGC with respect to the plan may reasonably be expected to increase if the plan is not terminated. ERISA also allows a sponsoring employer to terminate a pension plan by a "standard termination." A standard termination is a termination of a fully-funded defined benefit pension plan. Plan sponsors may terminate a fully-funded plan by purchasing a group annuity contract from an insurance company under which the insurance company agrees to pay all accrued benefits, or by payment of lump sum benefits if permissible.

[6] *See* ERISA § 4021(b)(13). Plans sponsored by professional service employers, such as physicians and lawyers, with 25 or fewer employees are not covered by the PBGC single-employer insurance program.

[7] *See* ERISA § 4006(a)(3). In addition, underfunded plans are subject to an additional premium know as the "variable rate premium." This premium is based on the level of plan underfunding, which is calculated by multiplying $9 for every $1000 of plan underfunding.

[8] The PBGC currently guarantees payment of basic pension benefits of participants in approximately 29,000 defined benefit plans.

Recent statistical evidence suggests that PBGC's long-term financial health may be in jeopardy. In March 2005, the Executive Director of the PBGC, Bradley D. Belt, testified on the financial condition of the PBGC:

> The pension insurance programs administered by the PBGC have come under severe pressure in recent years due to an unprecedented wave of pension plan terminations with substantial levels of underfunding. This was starkly evident in 2004, as the PBGC's single employer insurance program posted its largest year-end shortfall in the agency's 30-year history. Losses from completed and probable pension plan terminations totals $14.7 billion for the year, and the program ended with a deficit of $23.3 billion. That is why the Government Accountability Office has once again placed the PBGC's single employer insurance program on its list of "high risk" government programs in need of attention.[9]

The latest plan sponsor filings with the PBGC reveal an unprecedented and systematic pension underfunding problem within the defined benefit pension system. On June 7, 2005, the PBGC issued a press release stating that companies with underfunded pension plans reported a record shortfall of $353.7 billion in their filings with the PBGC, which represents a 27 percent increase from the previous year. The 2004 reports, filed with the PBGC by April 15, 2005, were submitted by 1,108 pension plans covering approximately 15 million workers and retirees. In total, the filings indicated that underfunded plans had only $786.8 billion in assets to cover more than $1.14 trillion in liabilities, for an average funded ratio of approximately 69 percent.

It is important to note that the PBGC has acknowledged that it has the adequate resources to continue paying benefits into the future; however, its financial condition will continue to deteriorate without comprehensive reforms made to the entire defined benefit pension system. Mr. Belt specifically testified on the current financial condition of the PBGC as well as its ability to pay benefits in the future:

> Notwithstanding our record deficit, I want to make clear that the PBGC has sufficient assets on hand to continue paying benefits for a number of years. However, with $62 billion in liabilities and only $39 billion in assets as of the end of the past fiscal year, the single employer program lacks the resources to fully satisfy its benefit obligations.[10]

Ann Combs, Assistant Secretary of the Employee Benefits Security Division, U.S. Department of Labor, testified this year on the need for funding reform changes:

> The increasing PBGC deficit and high levels of plan underfunding are themselves a cause for concern. More importantly, they are symptomatic of serious structural prob-

[9] Hearing on "The Retirement Security Crisis: The Administration's Proposal for Pension Reform and Its Implications for Workers and Taxpayers," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, March 2, 2005.

[10] Id.

> lems in the private defined benefit system. It is important to strengthen the defined benefit pension system now.[11]

It is the view of the Committee that a PBGC flat-rate premium increase is appropriate; however, comprehensive funding rule changes are needed in order to address the systematic pension underfunding crisis that continues to threaten the financial security of millions of participants and ultimately determines plan solvency. That said, the budget resolution for FY2006 requires the Committee to report significant savings from the PBGC premiums charged to single employer plan sponsors, notwithstanding the Committee's preference that such savings be accomplished through comprehensive funding reforms.

The PBGC is required through statutory mandates to maintain premiums at the lowest levels consistent with carrying out the agency's statutory obligations.[12] However, as stated above, these premiums have not been increased in over fourteen years and are simply not adequate for the payment of guaranteed benefits. This legislation responsibly increases flat-rate premiums paid by plan sponsors maintaining certain qualified defined benefit pension plans in order to assist the PBGC in continuing to provide benefits to participants and beneficiaries in terminated pension plans.

Since the PBGC is not a private insurance company, it cannot charge different premium rates to plan sponsors based on the level of plan underfunding which increases the risk that the plan will terminate. In light of that fact, the legislation provides the PBGC with the discretion to increase the flat-rate premium each year in order to ensure its ability to pay guaranteed benefits to participants and beneficiaries in terminated plans in which the liabilities have been assumed by the PBGC. The Committee believes that it is important for Congress to retain the ultimate decision to implement any premium increase. Accordingly, the legislation reserves to Congress the right to reject a proposed discretionary PBGC increase if the agency does not prove that such increase is necessary to achieve actuarial soundness of the single-employer insurance program in the year such increase is requested.

As noted above, the legislation also establishes a new premium to be paid by former plan sponsors who initiate and complete a distress termination. The distress terminations of several notable pension plans with significant underfunding in a bankruptcy reorganization proceeding continues to have negative effects on the participants and beneficiaries in such plans, as well as the remaining employers that sponsor defined benefit plans and pay premiums to the PBGC. At a hearing on pension reform before the full Committee, Mr. Belt testified on the impact of distress terminations:

> The termination of underfunded pension plans can have harsh consequences for workers and retirees . . . other companies that sponsor defined benefit plans also pay the price through higher premiums when underfunded plans terminate. Not only will healthy companies be subsidizing

[11] Hearing on "The Retirement Security Crisis: The Administration's Proposal for Pension Reform and Its Implications for Workers and Taxpayers," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, March 2, 2005, Serial No. 109–3.

[12] *See* ERISA § 4002(a)(3).

> the weak companies with chronically underfunded plans, they may also face the prospect of having to compete against a rival firm that has shifted a significant portion of its labor costs onto the government.[13]

For these reasons, in addition to the flat-rate premium increase, the Committee believes that a termination premium for former plan sponsors who initiate and complete a distress termination while in bankruptcy is appropriate. The bankruptcy courts should not be used as a mechanism for eliminating the burden of an underfunded pension plan; therefore, an additional premium paid to the PBGC to recognize the agency's assumption of unfunded plan liabilities is reasonable. The Committee believes that a retroactive provision that includes a termination premium for plans that have already commenced or completed bankruptcy reorganization is an unforeseen penalty that is inappropriate to impose. However, the Committee does believe that plan sponsors that have not filed a petition for bankruptcy reorganization must take into account the cost of the termination premium that will be imposed subsequent to an emergence from bankruptcy.

As stated above, the Committee believes that comprehensive pension reform ultimately determines plan solvency and the health and future of the defined benefit pension system. Therefore, it is the Committee's intent that any of the amendments made by this legislation will not take effect if comprehensive pension reform is enacted prior to January 1, 2006.

PROVISIONS OF THE LEGISLATION

Beginning in 2006, the legislation increases the flat-rate premiums paid to the PBGC from $19 to $30 per participant annually, and adjusts the premium for years after 2006 based on increases in average wages as defined under the Social Security Act.[14] In addition, for plan years beginning in 2007, PBGC is given the discretion to increase flat-rate premiums up to 20 percent of the preceding plan year's applicable premium (after adjustment for inflation). The PBGC must transmit any proposal to increase premiums to Congress and to the Comptroller General no later than 120 calendar days after the beginning of the preceding calendar year. Congress may disapprove of such increase, by a joint resolution, within 60 days of session after the receipt of the proposal.

In addition, the legislation includes a new termination premium charged to former plan sponsors of a plan that has terminated as a result of a distress or involuntary termination. The premium charged to former plan sponsors is $1250 per participant, multiplied by the number of individuals who were participants in the plan immediately before the plan's termination date. The premium is due for three consecutive plan years following plan termination; however, if a plan is terminated under bankruptcy reorganization

[13] Hearing on "The Retirement Security Crisis: The Administration's Proposal for Pension Reform and Its Implications for Workers and Taxpayers," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, March 2, 2005, Serial No. 109–3.

[14] In general, if the premium amount as indexed is not a multiple of $1, the amount is rounded to the nearest $1; if the amount is a multiple of $.50, the amount is rounded to the next highest dollar.

or a petition seeking reorganization under bankruptcy, the premium is due for the three consecutive years following the date of the discharge of the company. The premium is required to be paid to the PBGC within 30 days after the beginning of the first plan year the premium is in effect.

Finally, the legislation provides that amendments it makes shall not take effect if comprehensive pension reform legislation is passed before January 1, 2006.

CONCLUSION

Improving the long-term financial status of the PBGC will help ensure that plan participants and beneficiaries continue to receive their hard-earned pension benefits. The comprehensive funding requirements included in the Pension Protection Act require employers to adequately and consistently fund their pension plans. Coupled with the necessary increases in the flat-rate premiums paid by plan sponsors, the bill's comprehensive funding rule changes are needed to improve the overall heath and future of the employer-sponsored, voluntary pension system, which will ultimately protect participants' benefits as well as American taxpayers from a possible multi-billion dollar bailout of the PBGC. This legislation represents but one important element in those comprehensive reforms.

SECTION-BY-SECTION

TITLE II: IMPROVEMENT IN PBGC GUARANTEE PROVISIONS

Subtitle C: Pensions

Section 2201. Increases in PBGC premiums

Flat Rate Premium. The legislation provides for an increase in the PBGC yearly flat-rate insurance premium paid by plans to the PBGC from $19 to $30. The effective date of this provision shall apply to plans beginning after December 31, 2005. For plan years beginning after 2006, such premiums shall be adjusted annually, based on the national average wage index (as defined in section 209(k)(1) of the Social Security Act), rounded to the next higher multiple of $1 where such amount is a multiple of $.50.

For plan years beginning after 2006, the legislation provides PBGC with the ability to add an additional discretionary increase of an amount up to 20 percent of the premium charged to plan sponsors for the preceding plan year (after adjustment for the wage inflation), if the PBGC believes such an increase is necessary to achieve actuarial soundness. In order for the PBGC to increase premiums, it must transmit to the House of the Congress and to the Comptroller General its proposal for the increase in the premium rate for plan years commencing with or during such calendar year no later than 120 calendar days after the beginning of the preceding calendar year. Such increase shall take effect unless a joint resolution disapproving such increase has been enacted within 60 days of session after the receipt of the proposal by Congress (as provided in section 802 of chapter 8 of title 5 of the United States Code, relating to Congressional review of agency rulemaking). A copy of the proposal must be provided to the House Committee on Education and the Workforce, the House Committee on Ways and

Means, the Senate Committee on Health, Education, Labor, and Pensions, and the Senate Committee on Finance. The proposal must include PBGC's methodologies and actuarial assumptions used to determine that such increase is necessary to achieve actuarial soundness of the corporation.

Termination Premium. The legislation includes a new termination premium of $1250 multiplied by the number of individuals who were participants in the plan immediately before the plan termination date. The termination premium is charged to former plan sponsors that have terminated their defined benefit plans under a distress or involuntary termination. The premium is charged for the three consecutive plan years following the date of the former plan sponsor's discharge from bankruptcy reorganization under title 11 of the United States Code, and is due within 30 days following the first day of the plan year that the termination premium is applied to the former plan sponsor. This provision applies to cases commenced under title 11, United States Code, or under any similar law of a State or political subdivision of a State, after October 26, 2005.

Special Rule. The legislation provides that the amendments made therein shall not take effect if, after the date of enactment of its enactment and before January 1, 2006, a federal law is enacted which: (1) provides for decreases in federal outlays which in the aggregate are less than the decreases in federal outlays by reason of the amendments made by the legislation; and (2) specifically provides that such decreases are to be in lieu of the decreases in federal outlays by reason of the amendments made by this section.

EXPLANATION OF AMENDMENTS

The provisions of the Amendment in the Nature of a Substitute adopted by the Committee are explained in this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This Committee Print allows amends the Employee Retirement Income Security Act (ERISA) to provide for pension security. Since ERISA excludes governmental plans, the bill does not apply to legislative branch employees. As public employees, legislative branch employees are eligible to participate in the Federal Employee Retirement System.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded

Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This Committee print amends the voluntary pension system provided under the Employee Retirement Income Security Act (ERISA). As such, the bill does not contain any unfunded mandates.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee will receive a cost estimate for the Committee Print for the Director of the Congressional Budget Office, which will be transmitted.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House Rule XIII, the goals of the Committee Print to amend the Employee Retirement Income Security Act (ERISA). The Committee expects the Department of Labor and the Pension Benefit Guaranty Corporation to implement the changes to the law in accordance with these stated goals.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the committee print. The Employee Retirement Income Security Act (ERISA) has been determined by the federal courts to be within Congress' Constitutional authority. In *Commercial Mortgage Insurance, Inc.* v. *Citizens National Bank of Dallas,* 526 F. Supp. 510 (N.D. Tex. 1981), the court held that Congress legitimately concluded that employee benefit plans so affected interstate commerce as to be within the scope of Congressional powers under Article 1, Section 8, Clause 3 of the Constitution of the United States. In *Murphy* v. *WalMart Associates' Group Health Plan,* 928 F. Supp. 700 (E.D. Tex 1996), the court upheld the preemption provisions of ERISA. Because H.R. 2269 modifies but does not extend the federal regulation of pensions, the Committee believes that the Act falls within the same scope of Congressional authority as ERISA.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out the Committee Print. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 4006 OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PREMIUM RATES

SEC. 4006. (a)(1) * * *

(2) The corporation shall maintain separate schedules of premium rates, and bases for the application of those rates, for—

(A) * * *

* * * * * * *

(E) reimbursements of uncollectible withdrawal liability under section 4222.

The corporation may revise such schedules whenever it determines that revised schedules are necessary. Except as provided in *paragraph (3)(G) of this subsection or* section 4022A(f), in order to place a revised schedule described in subparagraph (A) or (B) in effect, the corporation shall proceed in accordance with subsection (b)(1), and such schedule shall apply only to plan years beginning more than 30 days after the date on which a joint resolution approving such revised schedule is enacted.

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—

(i) in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of **[**$19**]** *$30* plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

* * * * * * *

(F) For each plan year beginning after 2006, there shall be substituted for the $30 dollar amount in subparagraph (A)(i) the amount equal to the product derived by multiplying the premium rate, as in effect under this paragraph immediately prior to such plan year for basic benefits guaranteed by the corporation under section 4022 for single-employer plans, by the ratio of—

(i) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

(ii) the national average wage index (as so defined) for the first of the 3 calendar years preceding the calendar year in which the plan year begins,

with such product, if not a multiple of $1, being rounded to the next higher multiple of $1 where such product is a multiple of $0.50 but not of $1, and to the nearest multiple of $1 in any other case.

(G)(i) The corporation may increase under this subparagraph, effective for plan years commencing with or during any calendar year after 2006, the premium rate otherwise in effect under this section for basic benefits guaranteed by it under section 4022 for single-employer plans if the corporation determines that such increase is necessary to achieve actuarial soundness in the plan termination insurance program under this title.

(ii) The amount of any premium rate described in clause (i), as increased under this subparagraph for plan years commencing with or during any calendar year, may not exceed by more than 20 percent the amount of the premium rate, in effect under this paragraph for plan years commencing with or during such calendar year for basic benefits guaranteed by the corporation under section 4022 for single-employer plans, as determined for plan years commencing with or during such calendar year without regard to this subparagraph.

(iii) The preceding provisions of this subparagraph shall apply in connection with plan years commencing with or during any calendar year only if—

(I) the corporation transmits to each House of the Congress and to the Comptroller General its proposal for the increase in the premium rate for plan years commencing with or during such calendar year, subject to Congressional review under chapter 8 of title 5 of the United States Code (relating to Congressional review of agency rulemaking) not later than 120 calendar days after the beginning of the preceding calendar year, and

(II) a joint resolution disapproving such increase has not been enacted as provided in section 802 of such title, within the 60-day period described in section 802(a) of such title.

The proposal transmitted by the corporation shall include a description of the methodologies and assumptions used in formulating its proposal. At the time of the transmittal of any such proposal to each House of the Congress pursuant to subclause (I), the corporation shall transmit a copy of such proposal to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate. Any such proposal shall, for purposes of chapter 8 of such title 5, be treated as a rule which is a major rule.

* * * * * * *

(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

(A) IN GENERAL.—If there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) or section 4042, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to $1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

(B) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—If the plan is terminated under 4041(c)(2)(B)(ii) or under section 4042 and, as of the termination date, a person who is (as of such date) a contributing

sponsor of the plan or a member of such sponsor's controlled group has filed or has had filed against such person a petition seeking reorganization in a case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State (or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) shall not apply to such plan until the date of the discharge of such person in such case.

(C) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A)—

(i) IN GENERAL.—The term "applicable 12-month period" means—

(I) the 12-month period beginning with the first month following the month in which the termination date occurs, and

(II) each of the first two 12-month periods immediately following the period described in subclause (I).

(ii) PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—In any case in which the requirements of subparagraph (B) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the 12-month period described in clause (i)(I) shall be the 12-month period beginning with the first month following the month which includes the earliest date as of which each such person is discharged in the case described in such clause in connection with such person.

(D) COORDINATION WITH SECTION 4007.—

(i) Notwithstanding section 4007—

(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.

(b)(1) In order to place a revised schedule (other than a schedule described in subsection (a)(2)(C), (D), or (E) *or a proposal for a premium rate increase under subsection (a)(3)(G)*) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

* * * * * * *

MINORITY VIEWS

Subtitle C—Pensions:

The defined benefit pension system, which protects the retirement security of over 44 million workers, retirees, and their families, is at a critical moment. The number of defined benefit plans has declined precipitously from over 100,000 in 1985 to under 32,000 in 2004.[1] Approximately 1200 plans have terminated and shifted unfunded liabilities onto the PBGC leaving it with a $23–27.5 billion deficit.[2] The PBGC estimates that it faces additional possible liabilities of $100 billion; the Congressional Budget Office believes the market value of PBGC's liabilities could be as high as $146 billion.[3] The PBGC reports that total pension underfunding by pension plans exceeds $450 billion.[4]

Given these dynamics, the challenge for the Congress is how to address pension underfunding in a way that does not lead to additional pension plan terminations, or jeopardize the retirement security of the 44 million individuals who depend on these retirement plans.

Congress was first alerted to the severity of this problem in 2002 when the PBGC first reported its shift from a $10 billion surplus to an $11 billion deficit in less than 2 years.[5] Throughout this period, Democratic members of the Committee repeatedly called for action by the Bush Administration and the Majority to act on pension reform. Unfortunately, years passed before they took the crisis seriously; since those warnings, pension underfunding has doubled, and the problem now puts taxpayers and employees at risk for billions of dollars.

When the Administration finally responded to the pension crisis, it proposed a measure that would have given a jolt to already struggling pension plans by increasing contributions by $430 billion over 7 years: such an action would create a strong disincentive for many employers to continue to offer plans.[6] We want to encourage employers to stay in the system, not force them out.

Chairman Boehner introduced pension funding reform legislation, H.R. 2830 on July 9, 2005, and the bill was ordered reported out of the Full Committee within three weeks. During the Committee's one hearing on the bill both the employer and worker representative witnesses expressed serious reservations regarding the bill's effects on employers, workers, and the defined benefit system. Democratic members repeatedly asked Chairman Boehner to share with the Minority any analysis his office had undertaken in preparation of the bill, but no information was provided. Democratic members also asked the Administration for its analysis of the effects of H.R. 2830, but no information was provided.

During the markup, the majority represented to the committee that H.R. 2830 would improve the financial condition of the PBGC and private pensions. Committee Democrats voted present on final

passage of the bill in large part because we were not provided information on the economic effects of the bill.

However, contrary to these assertions the PBGC recently submitted to the Committee its analysis of H.R. 2830 and concluded that the bill would actually reduce employer pension funding contributions and increase the PBGC's future deficit more than either the Administration's proposal or current law. The Congressional Budget Office (CBO) sent a comparable letter to Chairman Boehner estimating that H.R. 2830 would increase PBGC's deficit by an additional $9 billion over current law. (Attached below.) The Committee bill, according to the CBO hastens PBGC's deficits. CBO concluded, "H.R. 2830 would increase PBGC's 10 year net costs by $9 billion, or by about 14 percent compared with what it would be under current policy." The bottom line of these two studies is that this Committee voted last spring to actually worsen—not improve—pension underfunding and staggering PBGC's deficits. (Analyses attached.)

We agree that legislation is needed to improve the financial solvency of the PBGC, and voted to support the Chairman's mark on those changes. However, we remain concerned about the Majority's broader bill, H.R. 2830, to amend the defined benefit pension plan funding rules. We believe that bill is flawed in several critical areas:

- *Fails to reform pension underfunding.*
- *Does not make pension plan underfunding data public*—Participants would only receive a summary of certain information and only the key Committees in Congress would receive the full information on a confidential basis.
- *Does not ensure fair treatment between executives and rank and file workers*—Workers' benefits are reduced if the employer funded the plan below 80%, however executive benefits are only affected if the plan is funded below 60%.
- *Does not discourage or prevent future terminations*—The bill does nothing to prevent future underfunded pension plan terminations. Employers could still use the bankruptcy code to completely escape their pension obligations. The bill does not encourage or require employers to consider alternatives to termination. (However, the new termination exit fee to be added as part of budget reconciliation could discourage future terminations.)
- *Does not encourage employers to maintain defined benefit plans*—The defined benefit system is currently in a weakened state. Forcing plans to significantly increase funding will encourage more plans to exit the defined benefit system.

We need to get pension reform right. We have already lost precious time since our side issued warnings over three years ago that reform was urgent. Now more airlines and other employers are considering dumping their pensions, and we have done nothing to protect workers and retirees who face catastrophic losses to their nest egg. These premium increases will serve no purpose if we fail to pass real pension reform. Millions of Americans are feeling jittery about their nest egg, with good reason. They are looking for us to take decisive action on their behalf to sure up pensions. So far this Committee has not done the job.

ENDNOTES

[1] PBGC Annual Report, 2004.
[2] PBGC Annual Report, 2004; PBGC letter to the Honorable George Miller dated July 29, 2005.
[3] Congressional Budget Office, The Risk Exposure of the Pension Benefit Guaranty Corporation, September 2005.
[4] PBGC Annual Report, 2004.
[5] PBGC Annual Report, 2002.
[6] PBGC letter to the Honorable George Miller dated July 29, 2005.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 17, 2005.

Hon. JOHN BOEHNER,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Knowing of your interest, the Congressional Budget Office (CBO) has estimated the effect on the 10-year net costs of the Pension Benefit Guaranty Corporation (PBGC) of enacting the Administration's pension reform proposal and H.R. 2830, the Pension Protection Act of 2005.

These estimates differ significantly from CBO's estimates of the cash-basis budgetary effect of the proposals. The largest source of difference is that the estimate of net costs includes two items that are not included in the budget estimate: the cost of market risk and the present value of benefit payments outside the budget window for plans terminated in the next 10 years.

The Administration's pension reform proposal would increase PBGC's 10-year net costs by $7 billion, or by about 11 percent compared with what it would be under current policy. H.R. 2830 would increase PBGC's 10-year net costs by $9 billion, or by about 14 percent compared with what it would be under current policy.

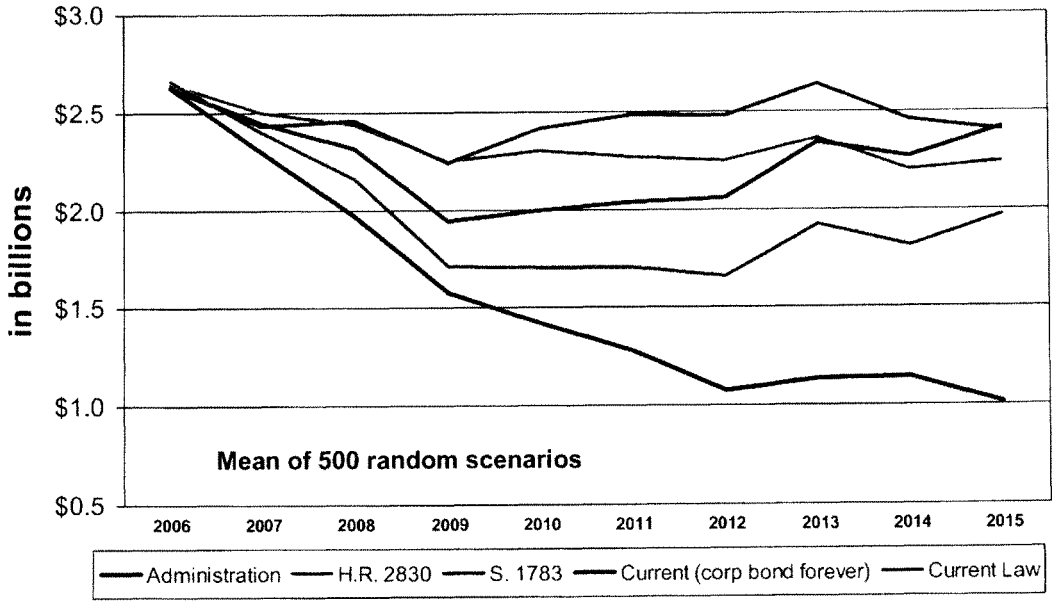
The largest effects on overall net costs from both proposals are due to (1) extending the use of corporate interest rates rather than reverting to Treasury interest rates for discounting future pension obligations and (2) lengthening the period over which underfunding is amortized—both of which increase PBGC's net costs. The largest reductions in net costs result from the increases in the fixed-rate premium.

If you wish further information about this legislation, we would be pleased to provide it. The staff contacts are Wendy Kiska and Marvin Phaup.

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

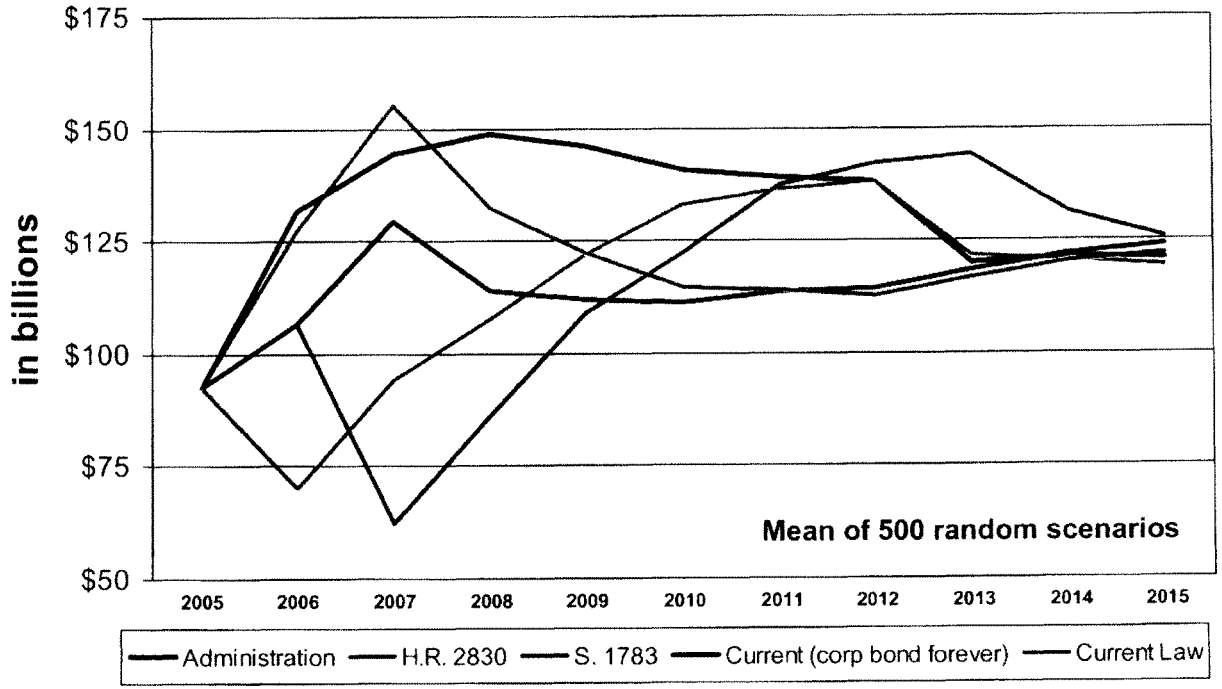
Claims against the pension insurance program



Present value of aggregate claims 2006-2015

$ in billions	25% percentile	75% percentile	Mean	Mean as a percentage of current law
Current Law	$7.0	$19.7	$14.8	100%
Administration's Proposal	$5.7	$15.7	$11.9	80%
Current Law - corporate bond forever	$8.1	$22.2	$16.6	112%
H.R. 2830	$8.4	$22.7	$17.3	117%
S. 1783	$8.8	$23.4	$18.1	122%

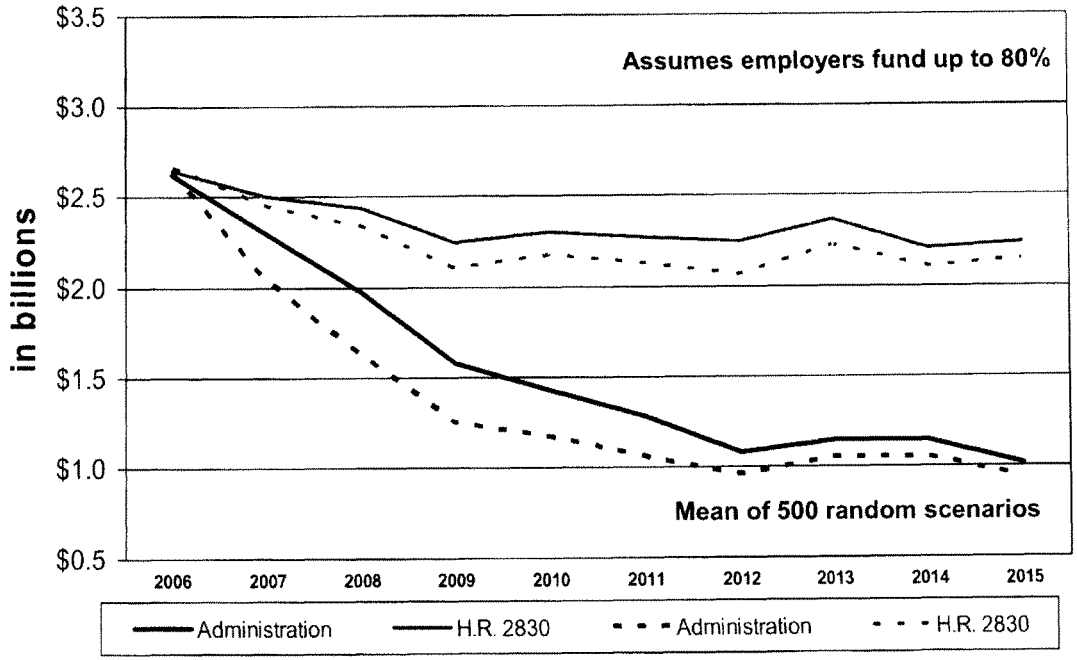
Aggregate Required Contributions



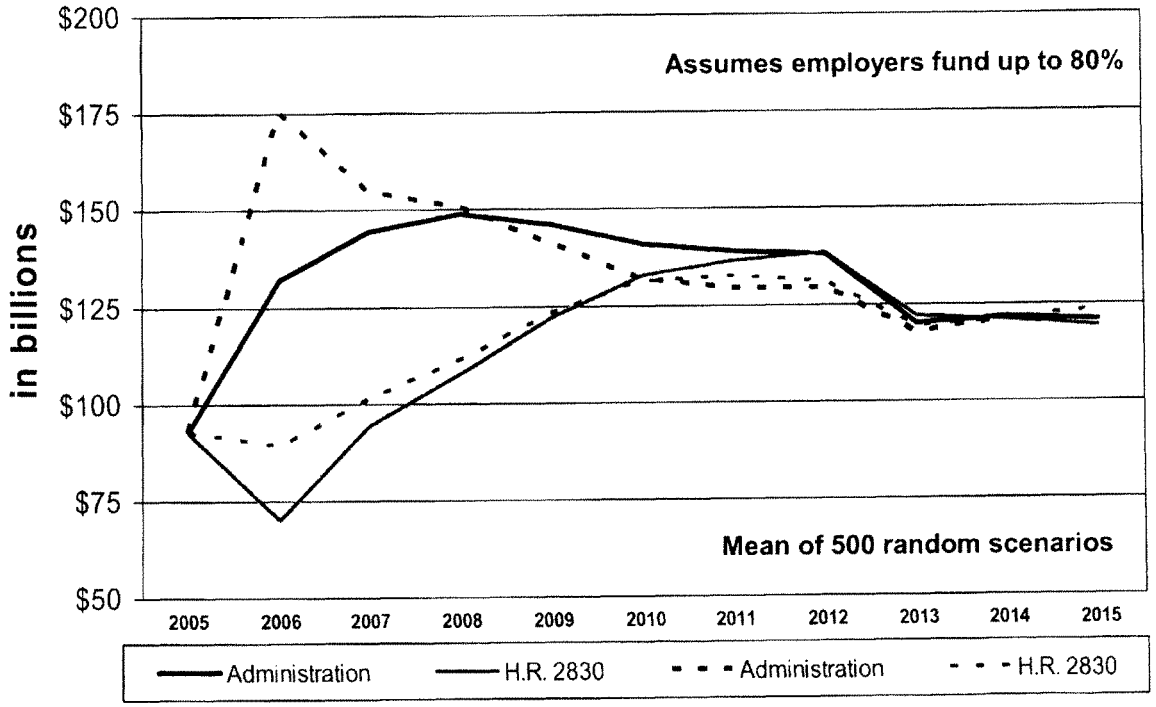
Present value of aggregate required contributions 2006-2015

$ in billions	25% percentile	75% percentile	Mean	Mean as a percentage of current law
Current Law	$645	$1,155	$913	100%
Administration's Proposal	$721	$1,242	$1,004	110%
Current Law - corporate bond forever	$601	$1,083	$849	93%
H.R. 2830	$596	$1,059	$844	92%
S. 1783	$573	$1,059	$842	92%

Projected claims assuming all employers contribute enough to avoid all benefit restrictions



Contributions needed to avoid all benefit restrictions



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JOHN F. TIERNEY

Congress of the United States
Washington, DC 20515

October 31, 2005

The Honorable Jim Nussle, Chairman
Committee on the Budget
309 Cannon House Office Building
Washington, DC 20515

Dear Chairman Nussle,

On Friday, the House Committee on Education and the Workforce transmitted reconciliation instructions to the Budget Committee. Included in these instructions is the Family Education Reimbursement Act (FERA) which was defeated in Committee on a 26 to 21 vote. We are opposed to this part of the package, as reported to the Budget Committee.

We applaud Chairman Boehner for his efforts to meet the Budget reconciliation requirements and, specifically, to provide funding for the education of children affected by the hurricanes in the Gulf Coast. However, we, along with a majority of members of the Committee, do not agree that implementing private school vouchers through the FERA is the best way to meet this goal.

We hope that the Budget Committee will take into consideration our concerns as it continues its work on the Budget Reconciliation package.

Sincerely,

TOM OSBORNE
Member of Congress

JUDY BIGGERT
Member of Congress

TODD PLATTS
Member of Congress

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U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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November 1, 2005

The Honorable Jim Nussle
Chairman
Committee on the Budget
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nussle:

Pursuant to section 201(a) of the Concurrent Resolution on the Budget, I hereby transmit to the Committee on the Budget these recommendations which have been approved by vote of the Committee on Energy and Commerce. The reports contain the appropriate accompanying material, including addition, supplemental, or dissenting views. This submission is for the purpose of complying with reconciliation directives included in H. Con. Res. 95, the fiscal year 2006 budget resolution and is consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

Sincerely,

Joe Barton
Chairman

JB/res

PURPOSE AND SUMMARY

The Digital Television Transition Act of 2005, which is Subtitle D of Title III of the Committee Print implementing the Committee's reconciliation instructions, expedites the digital television (DTV) transition while helping consumers to continue to use their analog televisions, and frees spectrum for public safety and commercial use. The bill does so by (1) setting December 31, 2008, as the firm deadline for the end of analog broadcasts by full-power television broadcast stations; (2) requiring each full-power television broadcast station to return one of the two six-megahertz channels the station currently uses for analog and digital broadcasts; (3) clearing 24 megahertz of spectrum in the 700 megahertz (MHz) band for use by public safety officials; and, (4) auctioning 60 megahertz of spectrum in the 700 MHz band for the provision of wireless broadband and other commercial services.

BACKGROUND AND NEED FOR LEGISLATION

To facilitate the DTV transition, Congress authorized the Federal Communications Commission (the Commission) in 1996 to give each full-power television broadcast station an extra channel of spectrum to broadcast in digital format while continuing to broadcast in analog format on its original channel. Each broadcaster was supposed to eventually return either the original or additional channel and broadcast exclusively in digital format on the remaining channel. (*see* Public Law No. 104–104, sec. 201)

In 1997, Congress earmarked for public safety use 24 MHz of the spectrum the broadcasters are supposed to return. Congress designated the rest of the spectrum to be auctioned for advanced commercial applications, such as wireless broadband services. Congress set December 31, 2006 as the deadline for broadcasters to return the spectrum and to cease broadcasting in analog format. (*see* Public Law No. 105–33, sec. 3002–04)

A loophole, however, allows broadcasters in a market to delay the return of the spectrum until more than 85 percent of television households in that market have at least one television with access to digital broadcast channels using a digital television receiver, a digital-to-analog converter box, or cable or satellite service. (*see id.,* sec. 3003) Experts forecast that it may take many more years to meet the 85-percent test nationwide.

The Digital Television Transition Act of 2005 would eliminate the 85–percent test and set a firm deadline of December 31, 2008. Doing so would close the loophole, making possible the nationwide clearing necessary to complete the DTV transition and free the spectrum for public safety use. Some police officers, firefighters, and rescue personnel already have equipment to communicate over the spectrum the broadcasters are supposed to return, and are anxiously awaiting the availability of the channels. Many more public safety officials cannot purchase equipment or begin planning without a date certain for the availability of the spectrum. Five years to the day before September 11, 2001, an advisory committee report to the Commission noted that public safety officials desperately need more spectrum to better communicate with each other in times of emergency. The National Commission on Terrorist

Attacks Upon the United States (9/11 Commission) has specifically recognized the importance of clearing for public safety use the spectrum in the 700 MHz band, especially following the terrorist attacks on the World Trade Center and the Pentagon.

The certainty of a nationwide firm deadline for the end of the DTV transition will also enable consumers, industry, and government to take the necessary steps to make the transition as smooth as possible. Under existing law, once a market meets the 85–percent penetration test, the remaining 15 percent of households in the market would lose access to television broadcast programming unless those households obtain a digital television receiver, a digital-to-analog converter box, or cable or satellite service. (*see* 47 U.S.C. 309(j)(14) (2004)) Determining when the 85–percent test in current law has been met in a particular market would be extremely difficult for the Commission to accomplish. Moreover, because no one can predict precisely when any market will meet the 85–percent test, and because different markets will meet the test at different times, consumers, industry, and government cannot adequately plan on either a local or nationwide basis.

With a firm deadline, government, industry, and consumer groups can develop concrete plans for consumer education. Manufacturers can build large quantities of low-cost digital-to-analog converter boxes for consumers who wish to continue using their analog televisions with over-the-air antennas. Clearing the spectrum on a unified, nationwide basis will also enable the government to maximize the revenue from the auction.

The firm deadline will have little impact on most television households. Of the 108.41 million U.S. television households in June 2004, the Commission reports that 92.3 million, representing 85.14 percent, subscribed to a multichannel video programming distribution (MVPD) service, such as those offered by a cable or satellite operator. (*See* Media Bureau Staff Report Concerning Over-the-Air Broadcast Television Viewers, MB Docket No. 04–210, at para. 7 (Feb. 28, 2005)) The number of MVPD households has slowly but generally increased in recent years, (*see id.*), suggesting that the number will be even higher by December 31, 2008. These households do not depend on over-the-air transmissions of broadcast programming. Allowing cable and satellite operators to offer digital broadcasts in both digital and analog-viewable formats will enable these households to continue using analog televisions if they wish to do so, without requiring television stations to continue to broadcast both digital and analog signals over the air.

Only 14.86 percent of U.S. households, or 16.11 million, relied exclusively on over-the-air transmission as of June 2004 according to the Commission. (*see Id.*) As the MVPD penetration number increases, the number of exclusively over-the-air households will drop. Some of the exclusively over-the-air homes will also likely purchase digital televisions that enable them to watch digital over-the-air broadcasts. Indeed, in 2006, the sale of digital over-the-air television receivers will eclipse the sale of analog over-the-air television receivers 23.97 million to 14.76 million, an almost 2 to 1 margin, according to the Consumer Electronics Association (CEA). CEA estimates that consumers will buy approximately 97.59 million digital over-the-air receivers from 2006 to year-end 2008. Thus,

by December 31, 2008, CEA projects that exclusively over-the-air households will represent only 6.8 percent of television households. The number of analog televisions in those homes, and the number of analog televisions in cable and satellite homes used to watch broadcast programming over the air will be 24.42 million combined. CEA based those projections on a 2005 survey it designed asking consumers what types of televisions they have, what they use televisions for, how many of the televisions are connected to cable or satellite service, and what the consumers plan to do in the future.

To help consumers who wish to continue receiving broadcast programming over the air using those unconnected, analog-only televisions, the bill authorizes the National Telecommunications and Information Administration (NTIA) to create a digital-to-analog converter box assistance program. Under the program, the NTIA may use up to $990 million of the spectrum auction revenues for the distribution of up to two $40 coupons per U.S. household. Consumers may use the coupons toward the purchase of eligible digital-to-analog converter-boxes. The NTIA may use up to $160 million of the $990 for administrative costs. Basic digital-to-analog converter boxes are expected to cost in the neighborhood of $60 by the start of 2008. Such boxes, and over-the-air digital televisions in general, can work with the same types of antennas consumers currently use for analog over-the-air broadcasts.

The National Association of Broadcasters (NAB) contends, based on a less recent 2004 study commissioned by NAB, that there are 73 million unconnected analog televisions. This estimate does not appear to take into account, however, that many unconnected televisions are spare or retired sets that are never turned on, or are used exclusively with VCRs, DVD players, or video game systems. It also assumes that there are 21 million exclusively over-the-air analog households, a figure that exceeds the Commission estimate by nearly 5 million. Nor does the NAB estimate appear to take into account the projected purchases of digital television receivers or the growth in MVPD households. Although the Government Accountability Office (GAO) has cited the 73 million figure, the GAO admitted in a May 26, 2005, hearing before this Committee's Subcommittee on Telecommunications and the Internet that the GAO was relying on the same survey data that NAB had purchased, and had not conducted its own study. Having evaluated the Commission, CEA, and NAB data, the Congressional Budget Office (CBO) has informed the Committee that the legislation's converter-box program is adequately funded to meet the projected demand for coupons, which CBO estimates to be approximately 20 million. Even if NTIA spends the full $160 million on administrative costs, the remaining $830 million of the $990 million in converter-box program proceeds will fund 20,750,000 coupons. And each additional $40 the NTIA does not spend on administration is another coupon it can make available to consumers.

In addition to generating the revenue necessary to fund the converter-box program, setting a firm deadline will also bring consumers and the economy the benefits of the DTV transition faster. DTV offers sharper and wider pictures, and CD-quality sound. Even consumers with analog televisions connected to a converter box or cable or satellite service will receive better service than they

did before the transition. Once the transition is complete, broadcasters can redirect their resources away from operating two stations-one analog and one digital-and toward producing programming that capitalizes on the advanced features of digital transmissions. Manufacturers can also increase the production of televisions and other consumer electronics equipment that takes advantage of these features, which will also drive down prices. The cleared spectrum can be used to bring cutting-edge wireless services to public safety officials and consumers. This spectrum travels greater distances at lower costs, and more-easily penetrates buildings and foliage. Consequently, the 700 MHz band is ideal to sustain mobile broadband services not only to urban areas, but especially to rural areas, which currently have very few cost-effective broadband options. The increase in DTV programming, services, and equipment, and the provision of products and services that use the cleared spectrum, will improve America's global competitiveness and result in significant investment and innovation, boosting the U.S. economy and creating new jobs.

HEARINGS

The Subcommittee on Telecommunications and the Internet held 3 hearings on the digital television transition during the first session of the 109th Congress. The Subcommittee received testimony in an oversight hearing on February 17, 2005, regarding the expected costs of digital-to-analog converter boxes and various potential digital-to-analog converter-box programs. Testifying were: Jong Kim, Vice President, Public Affairs and Communications, LG Electronics USA, Inc.; Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accountability Office; Michael S. Willner, President and Chief Executive Officer, Insight Communications; and, K. James Yager, Chief Executive Officer, Barrington Broadcasting Co., LLC.

The Subcommittee received testimony in an oversight hearing on March 10, 2005, regarding consumer education efforts for the DTV transition. Testifying were: Lavada E. DeSalles, Member, Board of Directors, American Association of Retired Persons; Manuel Mirabal, Founder and Co-Chair, Hispanic Technology and Telecommunications Partnership; David H. Arland, Vice President, Communications and Government Affairs, Thomson Connectivity Business Unit; and, Leonard H. Roberts, Chairman and Chief Executive Officer, Radio Shack Corporation.

The Subcommittee received testimony in a legislative hearing on May 26, 2005, regarding a staff draft of DTV transition legislation. Testifying were: Rick Chessen, Chair, DTV Task Force, Federal Communications Commission; Mark L. Goldstein, Director, Physical Infrastructure Team, Government Accountability Office; Gary Shapiro, President and Chief Executive Officer, Consumer Electronics Association; K. James Yager, Chief Executive Officer, Barrington Broadcasting Company, LLC; Kyle E. McSlarrow, President and Chief Executive Officer, National Cable & Telecommunications Association; Manuel Abud, Vice President and General Manager, Telemundo Los Angeles; W. Alan McCollough, Chairman and Chief Executive Officer, Circuit City Stores, Inc.; Patrick Knorr, Vice Chairman, Sunflower Broadband; Steve Souder, Director, Mont-

gomery County, Maryland, 911 Emergency Communications Center; Gene Kimmelman, Senior Director of Public Policy, Consumers Union; and, Peter Pitsch, Communications Policy Director, Intel Government Affairs.

COMMITTEE CONSIDERATION

On Tuesday, October 26, 2005, the Committee met in open markup session and approved the Committee Print entitled Digital Television Transaction Act of 2004, amended, by a record vote of 33 yeas and 17 nays. A motion by Mr. Barton to transmit the recommendations of the Committee, and all appropriate accompanying material including additional, supplemental, or dissenting views, to the House Committee on the Budget, in order to comply with the reconciliation directive included in section 201(a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H. Con. Res. 95, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974, was agreed to by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the recorded votes taken on amendments offered to the measure, including the names of those Members voting for and against. A motion by Mr. Barton to transmit the recommendations of the Committee, and all appropriate accompanying material including additional, supplemental, or dissenting views, to the House Committee on the Budget, in order to comply with the reconciliation directive included in section 201(a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H. Con. Res. 95, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974, was agreed to by a voice vote.

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 67

Bill: Committee Print, Digital Television Transition Act of 2005.

AMENDMENT: A substitute amendment by Mr. Dingell, No. 1, to (1) set a hard deadline of April 7, 2009 for the cessation of analog broadcasting; (2) provide for the sale of returned spectrum, and the use of auction proceeds for public safety purposes, the digital conversion of translator stations, the New York City repeater program, the U.S./Mexican boarder community converter box distribution program, and the rural and low-income broadband deployment fund; (3) provide a program for the distribution of vouchers for up to 2 free converter boxes per household; (4) require the labeling of analog-only televisions; (5) require a digital television consumer education campaign; and, (6) expedite the digital tuner mandate.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez			
Mr. Ferguson		X		Mr. Inslee			
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

10/26/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 68

Bill: Committee Print, Digital Television Transition Act of 2005.

AMENDMENT: An amendment by Mr. Markey, No. 3, to provide a program for the distribution of vouchers for up to 2 free converter boxes per household.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 24 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella				Mr. Strickland	X		
Mr. Blunt				Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez			
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy							
Mr. Burgess		X					
Ms. Blackburn		X					

10/26/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 69

Bill: Committee Print, Digital Television Transition Act of 2005.

AMENDMENT: An amendment by Mr. Stupak, No. 5, to provide $5.8 billion for a grant program to implement interoperability and modernization (including equipment upgrades) for the communications needs of public safety, fire, emergency, law enforcement, and crisis management by state and local government agencies and instrumentalities and nonprofit organizations.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 24 yeas to 24 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield				Mr. Gordon	X		
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green			
Mr. Fossella				Mr. Strickland	X		
Mr. Blunt				Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts				Mr. Davis	X		
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry				Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers		X		Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick							
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

10/26/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 70

Bill: Committee Print, Digital Television Transition Act of 2005.

AMENDMENT: An amendment by Mr. Upton, No. 6, to provide $500 million for a grant program for public safety agencies in the acquisition or, deployment of, or training for the use of interoperable communications systems.

DISPOSITION: **AGREED TO**, by a roll call vote of 42 yeas to 0 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell	X		
Mr. Hall	X			Mr. Waxman	X		
Mr. Bilirakis	X			Mr. Markey	X		
Mr. Upton	X			Mr. Boucher	X		
Mr. Stearns	X			Mr. Towns	X		
Mr. Gillmor				Mr. Pallone			
Mr. Deal	X			Mr. Brown			
Mr. Whitfield				Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin	X			Ms. Eshoo	X		
Mr. Shimkus	X			Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg				Mr. Wynn	X		
Mr. Pickering	X			Mr. Green	X		
Mr. Fossella	X			Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer				Ms. Capps	X		
Mr. Radanovich	X			Mr. Doyle	X		
Mr. Bass	X			Mr. Allen	X		
Mr. Pitts				Mr. Davis			
Ms. Bono	X			Ms. Schakowsky	X		
Mr. Walden	X			Ms. Solis	X		
Mr. Terry	X			Mr. Gonzalez	X		
Mr. Ferguson	X			Mr. Inslee	X		
Mr. Rogers				Ms. Baldwin	X		
Mr. Otter				Mr. Ross	X		
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn							

10/26/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 71

Bill: Committee Print, Digital Television Transition Act of 2005.

AMENDMENT: An amendment by Mr. Boucher, No. 7, to (1) require network affiliate stations to carry the broadcast of their parent network in high-definition format; (2) require cable and satellite operators to insert on-screen notices when high-definition programming has been voluntarily downgraded to standard-definition format; and, (3) require the Federal Communications Commission to promulgate rules to implement.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 16 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns		X		Mr. Towns		X	
Mr. Gillmor		X		Mr. Pallone			
Mr. Deal		X		Mr. Brown			
Mr. Whitfield				Mr. Gordon			
Mr. Norwood		X		Mr. Rush		X	
Ms. Cubin				Ms. Eshoo		X	
Mr. Shimkus		X		Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel		X	
Mr. Shadegg		X		Mr. Wynn		X	
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette	X		
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers				Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess							
Ms. Blackburn		X					

10/26/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 72

Bill: Committee Print, Digital Television Transition Act of 2005.

AMENDMENT: An amendment by Mr. Buyer, No. 10, to strike the converter box subsidy program.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 10 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton				Mr. Dingell		X	
Mr. Hall		X		Mr. Waxman		X	
Mr. Bilirakis		X		Mr. Markey		X	
Mr. Upton		X		Mr. Boucher		X	
Mr. Stearns				Mr. Towns			
Mr. Gillmor		X		Mr. Pallone			
Mr. Deal	X			Mr. Brown			
Mr. Whitfield				Mr. Gordon			
Mr. Norwood	X			Mr. Rush		X	
Ms. Cubin				Ms. Eshoo		X	
Mr. Shimkus		X		Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel		X	
Mr. Shadegg				Mr. Wynn			
Mr. Pickering		X		Mr. Green		X	
Mr. Fossella				Mr. Strickland			
Mr. Blunt				Ms. DeGette		X	
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich		X		Mr. Doyle		X	
Mr. Bass	X			Mr. Allen			
Mr. Pitts		X		Mr. Davis			
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden		X		Ms. Solis			
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson		X		Mr. Inslee		X	
Mr. Rogers				Ms. Baldwin		X	
Mr. Otter	X			Mr. Ross		X	
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy		X					
Mr. Burgess							
Ms. Blackburn	X						

10/26/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 73

Bill: Committee Print, Digital Television Transition Act of 2005.

AMENDMENT: A substitute amendment by Mr. Markey, No. 12a, to the amendment by Ms. Bono, No. 12, to set energy requirements for digital-to-analog converter box at no more than 8 watts while operation in on mode and 2 watts in passive standby mode, and to require such devices to automatically switch from on mode to standby mode after 4 hours of inactivity with other user interfaces.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 17 yeas to 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher	X		
Mr. Stearns				Mr. Towns			
Mr. Gillmor		X		Mr. Pallone			
Mr. Deal		X		Mr. Brown			
Mr. Whitfield				Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Blunt				Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen			
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers				Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

10/26/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 74

Bill: Committee Print, Digital Television Transition Act of 2005.

AMENDMENT: An amendment by Ms. Bono, No. 12, to set a maximum energy consumption for passive standby mode of a digital-to-analog converter box to be no more than 9 watts and to preempt sate law, rule or regulation that relates to the energy output, usage, or consumption standards of a converter box

DISPOSITION: **AGREED TO**, by a roll call vote of 25 yeas to 18 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman		X	
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher		X	
Mr. Stearns	X			Mr. Towns			
Mr. Gillmor	X			Mr. Pallone			
Mr. Deal	X			Mr. Brown			
Mr. Whitfield				Mr. Gordon			
Mr. Norwood				Mr. Rush		X	
Ms. Cubin				Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel		X	
Mr. Shadegg	X			Mr. Wynn		X	
Mr. Pickering	X			Mr. Green		X	
Mr. Fossella	X			Mr. Strickland			
Mr. Blunt				Ms. DeGette			
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle		X	
Mr. Bass	X			Mr. Allen			
Mr. Pitts	X			Mr. Davis			
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X			Mr. Inslee		X	
Mr. Rogers				Ms. Baldwin		X	
Mr. Otter				Mr. Ross		X	
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

10/26/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 75

Bill: Committee Print, Digital Television Transition Act of 2005.

MOTION: Motion by Mr. Barton to agree to the Committee Print, as amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 33 yeas to 17 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell			
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher		X	
Mr. Stearns	X			Mr. Towns	X		
Mr. Gillmor	X			Mr. Pallone		X	
Mr. Deal				Mr. Brown		X	
Mr. Whitfield				Mr. Gordon		X	
Mr. Norwood	X			Mr. Rush			
Ms. Cubin	X			Ms. Eshoo	X		
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg	X			Mr. Wynn	X		
Mr. Pickering	X			Mr. Green		X	
Mr. Fossella	X			Mr. Strickland			
Mr. Buyer	X			Ms. DeGette		X	
Mr. Radanovich	X			Ms. Capps		X	
Mr. Bass	X			Mr. Doyle		X	
Mr. Pitts	X			Mr. Allen		X	
Ms. Bono	X			Mr. Davis		X	
Mr. Walden	X			Ms. Schakowsky		X	
Mr. Terry	X			Ms. Solis		X	
Mr. Ferguson	X			Mr. Gonzalez		X	
Mr. Rogers	X			Mr. Inslee	X		
Mr. Otter	X			Ms. Baldwin		X	
Ms. Myrick	X			Mr. Ross			
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						
Mr. Barrett	X						

10/26/2005

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held and oversight hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goals of the Digital Television Transition Act of 2005 are to expedite the benefits of digital television for American consumers while preserving their ability to continue using their analog televisions, to clear spectrum for critical public safety and commercial uses, to improve America's global competitiveness, to spur investment and innovation, and to stimulate economic growth and create new jobs.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own estimate prepared by the Director of the Congressional Budget Office concerning new budget authority. This estimate is done to comply with the reconciliation directive included in section 201 (a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H. Con. Res. 95, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 31, 2005.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation recommendations of the House Committee on Energy and Commerce.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Tom Bradley.

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Reconciliation Recommendations of the House Committee on Energy and Commerce

Summary: This legislation would make a variety of changes to the Medicaid program, provide funding for health and energy relief in areas affected by Hurricanes Katrina and Rita, and modify the terms of the Federal Communications Commission's (FCC's) authority to auction licenses for use of the electromagnetic spectrum. CBO estimates that enacting this legislation would increase direct spending by $2.8 billion in 2006, but would reduce direct spending by about $17 billion over the 2006–2010 period and about $53 billion over the 2006–2015 period. Enacting the legislation would not affect federal revenues.

Subtitle A would reduce net Medicaid outlays in a number of ways, most substantially by allowing states to reduce benefits and impose additional cost-sharing requirements and premiums on certain enrollees, reducing payments for prescription drugs, and tightening the rules relating to asset transfers prior to eligibility for Medicaid long-term care services. Those savings would be partly offset by an expansion of home- and community-based services and other benefit expansions. Subtitle B would provide a temporary increase in the federal matching rates for Alabama, Louisiana, and Mississippi and establish other policies directed at areas affected by Hurricane Katrina. Subtitle C would provide increased funding for the Low-Income Home Energy Assistance Program (LIHEAP). Subtitle D would amend existing law regarding the FCC's authority to auction licenses to use the electromagnetic spectrum. It would set a firm date for television broadcasters to switch from analog to digital signals, and would allow the Department of Commerce to spend some of the resulting auction proceeds for programs to assist consumers and others in making that transition.

Subtitles A, B, and C of the legislation contain no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Subtitle D contains both intergovernmental and private-sector mandates. CBO estimates that any resulting costs to state, local, or tribal governments would be small and would not exceed the threshold established by UMRA ($62 million in 2005, adjusted annually for inflation). Subtitles A and B would have a significant effect on state Medicaid programs, and CBO estimates that, as a result, states would realize savings of $12 billion over the 2006–2010 period. In addition, subtitle C would provide $1 billion in additional grant funds to states for low-income energy assistance.

The Digital Television Transition Act of 2005 (subtitle D) would impose private-sector mandates on television broadcasters, manufacturers, certain retailers, cable companies, and satellite carriers.

Because CBO does not have sufficient information about the existing practices of the broadcast industry, we cannot determine whether the aggregate direct cost to comply with those mandates would exceed the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of the legislation is shown in Table 1. The effects of this legislation fall within budget functions 370 (commerce and housing credit), 550 (health), 600 (income security), and 950 (undistributed offsetting receipts).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF THE RECONCILIATION RECOMMENDATIONS OF THE HOUSE COMMITTEE ON ENERGY AND COMMERCE

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Medicaid:												
Estimated Budget Authority	−350	−1,592	−2,350	−3,288	−4,297	−5,236	−6,184	−7,172	−8,150	−9,113	−11,877	−47,731
Estimated Outlays	−440	−1,562	−2,320	−3,258	−4,297	−5,236	−6,184	−7,172	−8,150	−9,113	−11,877	−47,731
Katrina Health Care Relief:												
Estimated Budget Authority	2,545	(1)	(1)	1	6	(1)	(1)	(1)	(1)	(1)	2,553	2,553
Estimated Outlays	2,515	45	(1)	−1	−6	(1)	(1)	(1)	(1)	(1)	2,553	2,553
Katrina and Rita Energy Relief:												
Estimated Budget Authority	1,000	0	0	0	0	0	0	0	0	0	1,000	1,000
Estimated Outlays	750	230	20	0	0	0	0	0	0	0	1,000	1,000
Digital Television Transition:												
Estimated Budget Authority	7	1,294	1,914	−11,547	−145	−150	−150	−150	−150	−150	−8,477	−9,227
Estimated Outlays	7	1,294	1,914	−11,997	40	5	−40	−150	−150	−150	−8,742	−9,227
Total Changes:												
Estimated Budget Authority	3,202	−298	−436	−14,833	−4,436	−5,386	−6,334	−7,321	−8,301	−9,263	−16,801	−53,405
Estimated Outlays	2,832	7	−386	−15,256	−4,263	−5,231	−6,224	−7,322	−8,300	−9,263	−17,066	−53,405

(1) = between −$500,000 and $500,000.

Notes.—Components may not sum to totals because of rounding.

Basis of estimate

For this estimate, CBO assumes that the reconciliation legislation will be enacted by the end of December 2005.

Subtitle A—Medicaid

The legislation would reduce federal Medicaid spending by an estimated $440 million in 2006, $11.9 billion over the 2006–2010 period, and $47.7 billion over the 2006–2015 period. Those savings would be achieved mostly by allowing states to trim benefits for certain enrollees, letting states impose higher cost-sharing requirements and premiums on certain enrollees, lowering payments for outpatient prescription drugs, and increasing penalties for individuals who transfer assets for less than fair market value in order to qualify for nursing home care. (The figures in this estimate represent the federal share of Medicaid and SCHIP spending unless noted otherwise.) The estimated effects of subtitle A are shown in detail in Table 2.

Chapter 1: Prescription Drugs. The provisions of this chapter would limit payments for outpatient prescription drugs, increase the rebates that Medicaid receives from drug manufacturers, and restrict states' ability to limit access to certain drugs. CBO estimates that those provisions would reduce Medicaid spending by $25 million in 2006, $2.1 billion over the 2006–2010 period, and $7.7 billion over the 2006–2015 period.

Limits on Pharmacy Reimbursement. The legislation would replace Medicaid's current payment system for outpatient prescription drugs, which is largely based on average wholesale price, with a new system based on retail average manufacturer price (RAMP). The RAMP would be the average price that manufacturers receive for sales to all retail pharmacies other than mail order pharmacies. The legislation would limit federal Medicaid payments for prescription drugs to 106 percent of RAMP for a single-source drug and 120 percent of the volume-weighted RAMP for a multiple-source drug. (The volume-weighted average would be calculated across all therapeutically equivalent and bio-equivalent forms of a drug.) The legislation also would allow the Department of Health and Human Services (HHS) to increase those payment limits based on surveys of retail prices for prescription drugs. Those limits would apply only to a drug's ingredient costs. States would continue to determine dispensing fees, except that the legislation would require dispensing fees for multiple-source drugs to be at least $8 per prescription. Those provisions would take effect on January 1, 2007.

TABLE 2.—ESTIMATED BUDGETARY EFFECTS OF SUBTITLE A—MEDICAID

	Outlays in millions of dollars, by fiscal year—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Chapter 1: Prescription Drugs:												
Limits on Pharmacy Reimbursement	0	−300	−425	−525	−650	−775	−900	−1,050	−1,200	−1,375	−1,900	−7,200
Rebates on Physician-Administered Drugs	−5	−10	−15	−20	−20	−20	−15	−15	−15	−20	−70	−155
Include Authorized Generics in Best Price	−20	−40	−45	−55	−60	−70	−80	−95	−110	−125	−220	−700
Expand Eligibility for 340B Program	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Limit Use of Prior Authorization	0	20	30	35	40	45	50	55	60	70	125	405
Chapter 2: Asset Transfers:												
Revisions to Penalty Period	−140	−290	−290	−350	−420	−450	−470	−490	−520	−560	−1,490	−3,980
Home Equity Provisions	−30	−90	−140	−150	−170	−180	−200	−220	−240	−270	−580	−1,690
Treatment of Large Annuities	−20	−50	−70	−70	−70	−80	−80	−80	−90	−90	−280	−700
Require States to Use "Income First" Rule	−10	−20	−20	−20	−20	−20	−20	−20	−20	−20	−90	−190
Clarify Treatment of CCRC Fees	−10	−10	−20	−20	−20	−20	−20	−30	−30	−30	−80	−210
Chapter 3: Cost Sharing and Benefits:												
Increase Cost Sharing and Premiums	−70	−250	−420	−630	−880	−1,150	−1,400	−1,590	−1,720	−1,860	−2,250	−9,970
Alternative Benefit Packages	−150	−470	−780	−1,090	−1,450	−1,850	−2,310	−2,830	−3,420	−3,890	−3,940	−18,240
Additional Cost Sharing for Drugs	0	−30	−50	−70	−110	−150	−190	−220	−250	−280	−260	−1,350
Non-Emergency Care Provisions	10	20	10	0	−40	−50	−60	−70	−70	−80	0	−330
Non-Emergency Medical Transportation	15	5	−15	−30	−30	−30	−35	−35	−40	−40	−55	−235
Exemption for Women with Certain Cancers	(1)	(1)	1	1	1	1	1	1	2	2	3	11
Chapter 4: Benefit Expansions:												
Home- and Community-Based Services	0	50	155	270	340	350	375	405	435	460	815	2,840
Self-Directed Services Provisions	5	15	30	40	40	45	50	50	55	60	130	390
Long-Term Care Partnership Programs	0	0	0	5	5	5	10	15	15	15	10	70
Health Opportunity Accounts	5	10	15	15	15	25	35	40	50	55	60	265
Chapter 5: Other Provisions:												
Restrictions on Provider Taxes	−5	−15	−15	−190	−390	−430	−460	−500	−530	−580	−615	−3,115
Third-Party Recovery	−20	−70	−110	−140	−140	−150	−160	−170	−170	−190	−480	−1,320
Targeted Case Management Services	−30	−100	−180	−230	−220	−230	−250	−260	−280	−290	−760	−2,070
Additional Funding for the Territories	20	28	29	31	32	33	35	37	38	40	140	323
Medicaid Transformation Grants	0	50	50	0	0	0	0	0	0	0	100	100
Require Evidence of Citizenship	−5	−20	−45	−70	−80	−85	−95	−105	−110	−120	−220	−735
Payment for Emergency Services	0	−10	−15	−15	−20	−20	−20	−20	−20	−25	−60	−165
Modify Calculation of FMAPs	15	15	15	20	20	20	25	25	30	30	85	215
Non-Application to Katrina Evacuees	5	0	0	0	0	0	0	0	0	0	5	5
Total Changes in Subtitle A	−440	−1,562	−2,320	−3,258	−4,297	−5,236	−6,184	−7,172	−8,150	−9,113	−11,877	−47,731
Memorandum:												
Projected Medicaid Spending Under Current Law (in billions of dollars)	190.7	202.3	220.5	239.3	260.0	282.1	304.9	330.1	357.6	387.7	1,112.8	2,775.2

(1) = between −$500,000 and $500,000.

Notes.—Components may not sum to totals because of rounding. Changes in budget authority would be identical to changes in estimated outlays for all provisions except those affecting non-emergency care. CCRC = continuing care retirement community; FMAP =federal medical assistance percentage.

Based on data on average manufacturer prices (which manufacturers currently submit to HHS under Medicaid's drug rebate program) and prescription drug spending by Medicaid, as well as other data on national drug sales, CBO estimates that this provision would reduce Medicaid spending by $1.9 billion over the 2006–2010 period and by $7.2 billion over the 2006–2015 period. Those savings reflect CBO's expectation that states would raise dispensing fees to mitigate the effect of the new payment limits on pharmacies and preserve the widespread participation of pharmacies in Medicaid. The estimate also accounts for lower rebates from drug manufacturers resulting from increased use of cheaper generic drugs.

Other Provisions. The chapter also contains provisions that would: require states to collect rebates from drug manufacturers on certain drugs administered by physicians; expand the definition of the "best price"—which HHS uses in calculating the rebate that manufacturers of brand-name drugs must pay to Medicaid—to include the prices of authorized generics; allow certain children's hospitals to purchase prescription drugs at discounted prices (under section 340B of the Public Health Service Act); and make it more difficult for states to require physicians to obtain permission before prescribing drugs to treat depression and other psychiatric conditions. CBO estimates that those provisions would reduce net Medicaid spending by a total of $165 million over the 2006–2010 period and $450 million over the 2006–2015 period.

Chapter 2: Asset Transfers. The provisions of this chapter would reduce Medicaid spending by an estimated $2.5 billion over the 2006–2010 period and $6.8 billion over the 2006–2015 period, primarily by increasing penalties on individuals who transfer assets for less than fair market value in order to qualify for nursing home care and by making individuals with more than $500,000 in home equity ineligible for nursing home benefits.

Revisions to Penalty Period. Medicaid currently imposes a period of ineligibility for nursing home benefits on individuals who transfer assets for less than fair market value. The penalty period is based on the value of any assets transferred during the three years prior to application-known as the look-back period-and starts on the date the assets were transferred. Those rules have relatively little effect because any penalty period usually has expired by the time an individual applies for Medicaid.

Under this legislation, the penalty period would start when an individual becomes eligible for Medicaid and the look-back period would be extended from three years to five years. The legislation also would codify certain protections against undue hardship for individuals who transfer assets. Those changes would apply only to asset transfers that occur after enactment, so the effect of the longer look-back period would not be felt until January 1, 2009.

CBO estimates that those provisions would reduce Medicaid spending by $140 million in 2006, by $1.5 billion over five years, and by $4.0 billion over 10 years by deterring some individuals from transferring assets and thus delaying or preventing them from receiving nursing home benefits.

Treatment of Home Equity. Under current law, the value of an individual's home is not included when determining eligibility for Medicaid. The legislation would make individuals with more than

$500,000 in home equity ineligible for nursing home benefits. That dollar figure would be adjusted annually for inflation starting in 2011. The prohibition would not apply if an individual's spouse, minor child, or disabled child (regardless of age) lives in the house. This provision would apply to individuals who apply for Medicaid after January 1, 2006. CBO estimates that this provision would reduce Medicaid spending by $580 million over the 2006–2010 period and by $1.7 billion over the 2006–2015 period.

Other Savings. The legislation also would: require Medicaid applicants with annuities to name the state as remainder beneficiary to the extent of Medicaid's expenditures for that individual; require states to use the same method to calculate income allowances for spouses of Medicaid nursing home residents who still live in the community; and clarify that deposits paid to continuing care retirement communities are counted when determining Medicaid eligibility. CBO estimates that those provisions would reduce Medicaid spending by $40 million in 2006, $450 million over five years, and $1.1 billion over 10 years.

Chapter 3: Cost Sharing and Benefits. This chapter contains a number of provisions that would decrease direct spending, most notably by allowing states greater flexibility in imposing cost-sharing requirements and premiums than they have under current law, and by permitting states to restrict benefits for certain enrollees. Other provisions would give states additional flexibility in setting cost-sharing limits for prescription drugs and emergency room care. In aggregate, we estimate that the provisions of this chapter would decrease Medicaid outlays by $195 million in fiscal year 2006, by $6.5 billion over the 2006–2010 period, and by $30.1 billion over the 2006–2015 period.

Increase Cost Sharing and Premiums. Current Medicaid law permits states to impose nominal cost-sharing requirements on benefits for certain beneficiaries other than children and pregnant women and narrowly limits states' ability to charge premiums. Since 1982, Medicaid regulations have limited the nominal cost-sharing amount for most services to $3 and have prohibited providers from denying services to individuals who do not pay. Although some states have permission from the Centers for Medicaid and Medicare Services (CMS) to impose premiums and cost-sharing requirements on higher-income enrollees through waivers of Medicaid law, the majority of Medicaid enrollees do not pay any cost sharing.

The legislation would permit states to subject a broader range of enrollees to cost-sharing and premium requirements. Those proposed increases in cost sharing and premiums would apply to all Medicaid beneficiaries with some exceptions, mainly children and pregnant women with family incomes below the federal poverty level. Moreover, cost sharing would not apply to preventive services for all children, pregnancy-related services, and certain other services that are exempt from cost sharing under current law. Under the legislation, states also could increase the amounts that states may charge for cost sharing. For individuals under the federal poverty level, states could increase nominal copays from $3 to $5 in fiscal year 2008, and increase that amount by medical inflation in subsequent years. There would be no limit on the amount of nomi-

nal copays for individuals with income above the federal poverty level. However, regardless of family income, aggregate cost sharing and premiums for all Medicaid individuals in a family could not exceed 5 percent of family income. Additionally, states could allow providers to deny services for lack of payment and condition benefits on prepayment of premiums.

CBO based its estimate on analysis of current state premium and cost-sharing policies, income data from the Current Population Survey, and Medicaid administrative data, and assumed that states would adopt new cost-sharing measures over a 10–year period. CBO estimates that the proposed changes in cost-sharing policy would decrease Medicaid spending by $70 million in fiscal year 2006, by $2.3 billion over the 2006–2010 period, and by $10.0 billion over the 2006–2015 period. Those savings reflect CBO's expectation of reduced utilization of services due to higher cost-sharing requirements and decreased participation in Medicaid by individuals who would be required to pay premiums.

Alternative Benefit Packages. Under current law, state Medicaid programs generally must offer the same set of benefits to all enrollees, regardless of income or eligibility category. States also must provide benefits not otherwise covered by the state's Medicaid plan to children to treat medical conditions diagnosed under the program. Some states offer reduced benefit packages under current law to certain enrollees with family incomes above the federal poverty level under waivers granted by CMS.

The legislation would allow states to scale back Medicaid benefits provided to certain groups of enrollees. States could offer reduced benefit packages only to enrollees who are in eligibility categories the state established before the date of enactment, not to new categories of enrollees. Additionally, states could not reduce benefits for certain categories of children and pregnant women that the federal government requires state Medicaid programs to cover, individuals eligible for both Medicare and Medicaid, and certain other aged and disabled enrollees who receive long-term care services, or are medically frail or have special medical needs.

The provision would require that states choosing to restrict benefits offer packages of benefits that meet certain minimum standards. The package of benefits would have to include certain basic services, such as physician and hospital coverage, and with some exceptions, would be required to be actuarially equivalent to coverage provided under a so-called benchmark benefit package. The benchmark benefit packages would be the standard Blue Cross/Blue Shield preferred-provider option in the Federal Employees Health Benefit program, a health benefit plan that is offered and generally available to state employees, and the benefits offered by the health maintenance organization with the largest commercial enrollment in the state. The legislation would allow states to offer less than actuarially equivalent benefits for certain services such as prescription drugs and mental health services and would permit payment of wrap-around coverage for other health insurance.

CBO expects that some states would be interested in providing scaled-back coverage to certain categories of individuals, primarily families with income over the poverty level and some disabled beneficiaries, and assumes that implementation would occur over a

10-year period. Based on Medicaid administrative data, and analysis of state experiences with providing limited benefit packages to poor families, CBO estimates that this provision would decrease federal spending by $150 million in fiscal year 2006, by $3.9 billion over five years, and by $18.2 billion over 10 years.

Other Provisions. Other provisions of this chapter would allow states to require cost sharing by enrollees—including those who otherwise are exempt from cost-sharing rules-for certain prescription drugs that are not preferred drugs within a class, and for nonemergency care provided in a hospital. The chapter also would provide liability protection to emergency room providers, appropriate additional funds for state development of alternative delivery networks, and loosen rules governing state provision of nonemergency transportation. Those provisions would increase federal outlays by $25 million in 2006, and would decrease spending by $312 million over the 2006–2010 period and by $1.9 billion over the 2006–2015 period, CBO estimates.

Chapter 4: Benefit Expansions. The provisions of this chapter would: allow states to expand benefits for certain individuals requiring long-term care in the community; encourage the purchase of certain kinds of long-term care insurance by allowing individuals who purchase such insurance to protect more of their assets if they eventually need nursing home care under Medicaid; and permit states to conduct demonstration projects that establish Medicaid-funded individual accounts that beneficiaries would use to pay for certain services. CBO estimates that those provisions would increase Medicaid spending by $10 million in fiscal year 2006, by $1.0 billion over the 2006–2010 period, and by $3.6 billion over the 2006–2015 period.

Home- and Community-Based Services. This provision would allow states to offer certain long-term care services to aged and disabled individuals, including those with developmental disabilities and mental retardation, who otherwise would require the level of care provided in an institution. Those services, known as home- and community-based services, could include respite care, adult day health care, and other kinds of assistance, at the option of a state. Under current law, states may provide one or more of those services to a limited number of beneficiaries with permission from CMS to waive provisions of Medicaid law. The legislation would ease certain restrictions of this process and allow states to expand coverage more easily. Based on administrative data and information from the Survey of Income and Program Participation on health insurance and disability, CBO estimates this provision would increase Medicaid spending by $815 million over the 2006–2010 period and by $2.8 billion over the 2006–2015 period.

Other Provisions. The legislation would allow states to directly provide limited Medicaid funding to certain enrollees needing long-term care in the community and would establish a demonstration program—health opportunity accounts—to allow certain families with children to pay for some of their Medicaid costs with funds provided by their state. The legislation also would repeal a moratorium on the number of states that may operate Long-Term Care Partnership Programs, which allow individuals who purchase certain kinds of long-term care insurance to protect more of their as-

sets if they later need nursing home care under Medicaid. Four states currently operate those programs, and CBO anticipates that about a third of the remaining states would do so under the legislation. CBO estimates those provisions would increase Medicaid spending by $5 million in 2006, by $200 million over five years, and by $725 million over 10 years.

Chapter 5: Other Provisions. The provisions of this chapter with the largest budgetary impact would restrict states' ability to use revenues from taxes on health care providers as the state share of program spending, make it easier for states to avoid overpayments for Medicaid recipients who also have private health insurance, and limit coverage of targeted case management services. Overall, we estimate that enacting this chapter would reduce Medicaid spending by $1.8 billion over five years and by $6.8 billion over 10 years.

Restrictions on Provider Taxes. Many states finance part of their share of Medicaid spending by imposing taxes on health care providers. States typically impose taxes on a particular type of provider and use the revenues to increase payment rates to those same providers. In the process, states collect federal Medicaid funds for those higher payments. Federal law generally requires states to tax all providers in a class, so states typically tax classes of providers (such as hospitals or nursing homes) of which a relatively large share receive significant Medicaid payments and stand to benefit from the higher payment rates that result from the provider tax. However, the law allows states to impose taxes only on those managed care organizations (MCOs) that serve Medicaid recipients. Because that exception makes it easier for states to impose provider taxes on MCOs, several states have already imposed such taxes, and more are planning to do so.

The legislation would require any taxes on MCOs to apply to all such organizations, including those that do not enroll Medicaid recipients. This provision would take effect upon enactment but would not apply fully to states with existing taxes on MCOs until 2010. CBO anticipates that states ultimately would eliminate their taxes on MCOs under the legislation. Using CMS data on provider taxes, we estimate that the resulting savings would reduce Medicaid spending by $615 million over the 2006–2010 period and by $3.1 billion over the 2006–2015 period.

Third-Party Recovery. The legislation would strengthen Medicaid's status as payer of last resort relative to private health insurance by specifying that pharmacy benefit managers and self-insured plans are liable third parties, requiring insurers to submit eligibility and claims data for Medicaid recipients to states on a regular basis, and requiring insurers to pay claims for Medicaid recipients that are submitted within three years of the date of service. Those provisions would take effect on January 1, 2006. CBO estimates that the legislation would improve states' abilities to identify liable third parties and would increase the amounts that Medicaid recovers from insurers for recipients who also have private health insurance, thereby reducing Medicaid spending by $480 million over the 2006–2010 period and by $1.3 billion over the 2006–2015 period.

Targeted Case Management Services. Medicaid allows states to cover case management services that help recipients obtain access to medical, social, and other services and permits states to target those services to specific populations, such as disabled adults. However, current law provides little guidance on the specific types of services that Medicaid will cover, and some states have billed the program for services that are core elements of other programs, such as juvenile justice and foster care. The legislation would clarify that case management services must help recipients gain access to needed medical, social, educational, and other services and would specify that Medicaid will not cover services that are normally provided under other programs (including certain activities provided by foster care programs). This provision would take effect on January 1, 2006.

CBO estimates that this provision would reduce Medicaid spending on case management services by about 10 percent, yielding savings of $1.1 billion over the 2006–2010 period and $3.0 billion over the 2006–2015 period. Based on information provided by CMS, we anticipate that some of the case management services previously covered by Medicaid would be billed instead to the federal foster care program, raising spending by $350 million over the 2006–2010 period and $940 million over the 2006–2015 period. Together, those reductions in spending for Medicaid and increases in spending for foster care would reduce federal spending by $760 million over the 2006–2010 period and by $2.1 billion over the 2006–2015 period, CBO estimates.

Other Provisions. The remaining provisions in this chapter would: increase funding for Medicaid programs in the United States' territories; provide funds to states that make their Medicaid programs more effective and efficient; require recipients to document their U.S. citizenship; limit the amounts that MCOs must pay to certain providers of emergency services furnished to enrollees in Medicaid managed care plans; and exclude some employer pension contributions from the calculation of the federal government's share of Medicaid spending—known as the federal medical assistance percentage (FMAP). On net, CBO estimates that those provisions would increase Medicaid outlays by $45 million over the 2006–2010 period and reduce spending by $262 million over the 2006–2015 period.

Subtitle B—Katrina Health Care Relief

The legislation would increase the federal government's share of Medicaid spending to 100 percent for individuals who lived in Louisiana, Mississippi, and parts of Alabama during the week prior to August 28, 2005. Under current law, the federal government pays about 70 percent of Medicaid costs in Alabama and Louisiana and 76 percent of costs in Mississippi. The legislation also would provide full federal funding for children from those areas who are enrolled in the State Children's Health Insurance Program (SCHIP). The full federal funding would apply to services provided between August 28, 2005, and May 15, 2006. CBO estimates that these changes would increase Medicaid and SCHIP spending by $2.5 billion in 2006 (see Table 3). The acceleration of SCHIP spending

would result in small offsetting reductions in spending in later years.

The legislation would appropriate $90 million in 2006 in additional funding for high-risk pools that states operate for individuals who cannot otherwise obtain health insurance. We estimate that appropriation would increase direct spending by $45 million in both 2006 and 2007.

Subtitle C—Katrina and Rita Energy Relief

Section 3301 of the legislation would appropriate $1 billion for fiscal year 2006 for the Low Income Home Energy Assistance Program. Those funds would supplement the regular appropriation for the program. CBO estimates that LIHEAP outlays would increase by $750 million in fiscal year 2006 and by $1.0 billion over the 2006–2008 period as a result of this additional funding.

TABLE 3.—ESTIMATED BUDGETARY EFFECTS OF SUBTITLE B—KATRINA HEALTH CARE RELIEF

	Outlays in millions of dollars, by fiscal year—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Temporary FMAP Increases for Katrina Areas	2,470	(1)	(1)	−1	−6	(1)	(1)	(1)	(1)	(1)	2,463	2,463
State High-Risk Insurance Pools	45	45	0	0	0	0	0	0	0	0	90	90
Total Changes in Subtitle B	2,515	45	(1)	−1	−6	(1)	(1)	(1)	(1)	(1)	2,553	2,553

(1) = between −$500,000 and $500,000.

Notes.—Components may not sum to totals because of rounding. FMAP = federal medical assistance percentage.

Subtitle D—Digital Television Transition

The Digital Television Transition Act of 2005 (subtitle D of this legislation) would amend existing law regarding the FCC's authority to auction licenses to use the electromagnetic spectrum, resulting in additional auction proceeds of $10 billion over the 2006–2010 period and $10.8 billion over the 2006–2015 period, CBO estimates. Under the legislation, the Department of Commerce would spend about $1 billion of those proceeds to assist consumers and others affected by the transition from analog to digital television broadcasts and another $500 million for grants to public safety agencies for communications systems. The legislation also would direct the FCC to complete various regulatory proceedings; exempt low-power television stations from certain requirements; and require television broadcasters, manufacturers, and other firms to carry out certain activities related to the digital transition. The budgetary impact of those provisions is detailed in Table 5 and discussed below.

TABLE 5.—ESTIMATED BUDGETARY EFFECTS OF SUBTITLE D—DIGITAL TELEVISION

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Spectrum Auction Proceeds:												
Estimated Budget Authority	0	1,250	1,550	−12,650	−150	−150	−150	−150	−150	−150	−10,000	−10,750
Estimated Outlays	0	1,250	1,550	−12,650	−150	−150	−150	−150	−150	−150	−10,000	−10,750
Converter Box Subsidies:												
Estimated Budget Authority	5	30	350	600	5	0	0	0	0	0	990	990
Estimated Outlays	5	30	350	600	5	0	0	0	0	0	990	990
Interoperability Grants:												
Estimated Budget Authority	0	0	0	500	0	0	0	0	0	0	500	500
Estimated Outlays	0	0	0	50	185	155	110	0	0	0	235	500
NYC Television Reimbursement:												
Estimated Budget Authority	2	14	14	0	0	0	0	0	0	0	30	30
Estimated Outlays	2	14	14	0	0	0	0	0	0	0	30	30
Low-Power Transition Assistance:												
Estimated Budget Authority	0	0	0	3	0	0	0	0	0	0	3	3
Estimated Outlays	0	0	0	3	0	0	0	0	0	0	3	3
Total Estimated Changes:												
Estimated Budget Authority	7	1,294	1,914	−11,547	−145	−150	−150	−150	−150	−150	−8,477	−9,227
Estimated Outlays	7	1,294	1,914	−11,997	40	5	−40	−150	−150	−150	−8,742	−9,227
Memorandum:												
Proceeds from Spectrum Auctions Under Current Law:												
Estimated Budget Authority	0	−7,605	−7,650	0	0	0	0	0	0	0	−15,255	−15,255
Estimated Outlays	0	−7,605	−7,650	0	0	0	0	0	0	0	−15,255	−15,255

([1]) = between −$500,000 and $500,000.
Notes.—Components may not sum to totals because of rounding.

Changes in Spectrum Auction Authority. This legislation would permanently extend the FCC's authority to auction licenses to use the electromagnetic spectrum, which currently expires at the end of fiscal year 2007. It also would change the statutory requirements for the return and subsequent auction of licenses for frequencies now used for television channels 52 through 69. The legislation would require the existing licensees to terminate broadcasts on December 31, 2008; under current law, those licenses do not have to be returned until at least 85 percent of households are able to receive television signals in a digital format. Under this legislation, the FCC would be required to auction licenses for use of 60 megahertz of the returned spectrum by January 7, 2008.

Spectrum Auction Proceeds Under Current Law. The proposed changes would significantly increase the quantity and quality of spectrum to be auctioned in the next few years. CBO expects that, under current law, the FCC will auction 90 megahertz for advanced wireless services in 2006 or 2007 and that proceeds from that and other smaller auctions will yield about $15 billion in receipts to the Treasury (recorded in the budget as offsets to outlays) in 2007 and 2008. CBO considers it unlikely that the television licenses would be auctioned under current law because the wireless industry has shown little interest in these frequencies while there is so much uncertainty about when the spectrum would be cleared for alternative uses. In fact, recent efforts to auction encumbered television licenses have yielded very little money.

Additional Auction Proceeds Under the Legislation. By imposing a firm date for both clearing channels 52–69 and auctioning the licenses for use of that spectrum, the legislation would have the effect of making available over a three-year period (2006 through 2008) a large quantity (150 megahertz) of high-quality spectrum that could be used for various wireless applications, including voice, video, data, and broadband services.

CBO estimates that the proceeds from the auction of the 60 megahertz now used by broadcasters would most likely total between $10 billion and $15 billion, with an expected value of about $12.5 billion. But offering the wireless industry a total of 150 megahertz within a two- or three-year time period would probably result in lower bids in the 90 megahertz auction than will take place under current law. CBO estimates that increasing the total supply of spectrum would result in a $2.5 billion reduction in receipts from the auctions being held under current law. Hence, we estimate that enacting the legislation would increase net receipts from spectrum auctions by $10 billion. (As a result, CBO expects that proceeds from all auctions over the next five years would total $25 billion.)

Estimates of spectrum values are very uncertain, largely because they depend on market factors that differ among firms, technologies, and regions, all of which can vary over time. CBO's estimates of the potential proceeds from such auctions are based on a variety of methods and considerations, including assessments of potential cash flows for various applications, historical trends in auction bids, and information provided by numerous industry experts.

Proceeds from spectrum auctions are recorded in the budget after the licenses are granted to the winning bidder. Based on past expe-

rience as to the duration of large auctions and the licensing process, CBO estimates that the $12.5 billion would be recorded on the budget in fiscal year 2009.

Finally, CBO expects that extending the FCC's auction authority would increase direct spending for auction-related expenses; generate additional offsetting receipts from auctions of other spectrum licenses; and change the timing of some auctions that might occur in 2007 if the commission anticipated that its auction authority was going to expire. CBO estimates that those changes would reduce the net proceeds from auctions by about $300 million in 2008; but would increase offsetting receipts by $150 million a year over the 2009–2015 period.

Spending of Auction Proceeds. Under the legislation, some of the proceeds from the auction of licenses for the use of the returned television spectrum would be deposited in four new funds established for specified purposes. From those funds, a total of $1.5 billion would be made available for spending by the Department of Commerce:

- Assisting consumers to obtain necessary hardware (converter boxes) for converting analog television signals to digital television signals—$990 million;
- Providing grants to public safety agencies for interoperable communications systems—$500 million;
- Reimbursing television stations in New York City for certain costs associated with the digital transition—$30 million; and
- Helping low-power television stations convert to digital technology—$3 million.

Converter box program. The legislation would allow households to apply for up to two coupons valued at $40 each that could be applied toward the purchase of certain kinds of set-top boxes that convert digital broadcast signals into a signal that can be viewed on an analog television set. The coupons would be issued from January 1, 2008, through January 31, 2009; each coupon would be valid for three months, meaning that the program would terminate on April 30, 2009. Funding for the converter box program would be derived from the proceeds of the auction of the returned analog licenses, but the department could borrow up to $990 million from the Treasury in advance of the auction to begin implementing the program. Any borrowed funds would have to be repaid out of the auction proceeds. Finally, the legislation would cap administrative costs for the program at $160 million.

CBO expects that implementing the coupon program would take 18 months to two years because of the regulatory and contractual complexity of creating a new subsidy program. Key elements of the program would include: developing regulations and contracts; determining which converter boxes would be eligible for the subsidy; printing and distributing application forms; certifying participating retailers; issuing coupons to eligible households; processing and validating retailers' invoices; handling complaints from consumers and retailers; and auditing program results. Thus, we assume that the department would begin developing the program in 2006 in order to have it up and running by January 2008. Outlays for redeemed coupons would be concentrated in fiscal years 2008 and 2009.

Other programs. Funding for the other three programs also would be derived from auction proceeds, but the department would be authorized to borrow up to $30 million in advance to cover certain costs incurred by television stations in New York City for digital broadcasts prior to the completion of the Freedom Tower. Thus, we expect that spending for that program would begin in 2006 but expenditures for the interoperability grants and low-power television assistance would not begin until auction proceeds became available in fiscal year 2009. CBO estimates that outlays for these programs will follow historical patterns for similar activities.

Estimated impact on state, local, and tribal governments: Subtitles A, B, and C of the legislation contain no intergovernmental mandates as defined in UMRA, but subtitle D contains such mandates. CBO estimates that the costs of complying with those mandates would not exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation). Provisions of subtitles A and B would have a significant effect on the way states operate the Medicaid program, and CBO estimates that, as a result, states would realize savings of $12 billion over the 2006–2010 period. Most of those savings would result from limits on reimbursements to pharmacies, revisions to asset-transfer rules, increased cost sharing, and higher federal reimbursements to states affected by Hurricane Katrina. Subtitle C also would provide an additional $1 billion to states for energy assistance to people affected by Hurricanes Katrina and Rita.

Subtitle D contains intergovernmental mandates because it would impose certain requirements on television stations—more than 40 percent of which are owned by state and local entities—and would preempt energy efficiency standards in at least two states. CBO estimates that the net costs, if any, to publicly owned television stations would be small.

Subtitle D would require public television stations to stop broadcasting their analog signals by December 31, 2008, earlier than is likely under current law. Most publicly owned television stations have already made the transition to digital television and would realize savings of up to $100,000 per station in electricity costs when they turn off their analog signals. Subtitle D also would require those stations, during the 2008 calendar year, to air two 60-second public service announcements each day about the transition to digital service.

Costs to produce and distribute a 60-second public service announcement are typically quite small, and we estimate that the net impact on public television stations would not be significant.

Section 159 would preempt energy efficiency standards for convertor boxes in both California and New York and prohibit other state or local governments from passing laws that would regulate the energy consumption of the boxes. This provision would probably not impose any costs on state or local governments.

Other provisions of subtitle D would benefit state and local governments by creating a $500 million grant program to assist public safety entities in acquiring and deploying certain types of communications systems.

Estimated impact on the private sector: The legislation contains several private-sector mandates, as defined in UMRA, on television

broadcasters, manufacturers, certain retailers, cable companies, and satellite carriers. Specifically, subtitle D would impose mandates by requiring:

- Broadcast stations to cease analog television service on December 31, 2008;
- Manufacturers, retailers, broadcasters, and cable and satellite service providers to undertake specific measures to educate consumers about the transition from analog to digital broadcasting;
- Television manufacturers to include digital tuners in all sets with screens sized between 13 inches and 24 inches sold in the United States, effective March 1, 2007; and
- Cable companies and satellite carriers to carry certain video streams in a form that can be received by analog and digital televisions.

Because CBO does not have sufficient information about the existing practices of the broadcast industry, we cannot determine whether the aggregate direct cost to comply with those mandates would exceed the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Termination of broadcast television analog licenses

Current law requires all television broadcasters to give up their analog spectrum on December 31, 2006. TV broadcasters can receive an unlimited extension of this deadline for several reasons; most notably, an extension may be granted to broadcasters until at least 85 percent of households in their service areas are capable of receiving a digital signal. Most experts agree that the 2006 deadline for vacating the analog channels will not be met by broadcasters in most markets under the current rules. Section 3403 would impose a mandate by requiring the FCC to terminate all licenses for broadcasting analog signals and requiring broadcast stations to cease analog television service on December 31, 2008, with no extensions. Because nearly all television broadcasters are already broadcasting digital signals, the direct cost of the mandate would be minimal.

Consumer education measures

Section 3409 would impose mandates on manufacturers, retailers, broadcasters, and providers of cable and satellite services to undertake specific measures to educate consumers about the transition from analog to digital broadcasting. The provisions of this section would require:

- Manufacturers and retail distributors of analog television receivers to display certain language warning consumers about the transition to digital;
- Multichannel video program distributors to include notices in the bills they send to their subscribers during 2008; and
- Television broadcasters to air two public service announcements daily during 2008.

This section would require manufacturers, within six months of enactment, to place a label with specific warning language on each television apparatus shipped in interstate commerce or manufac-

tured in the United States that is not capable of receiving a digital broadcast signal. In addition, manufacturers would have to include a warning notice on the outside of the retail packaging such products. The labels and notices would include information warning consumers about the deadline on all analog broadcasts, and the need for the analog product to be connected to a converter box or cable or satellite service to receive digital signals. The legislation contains specific language to be used for labels and warning notices. As currently sold, the screens of televisions usually come with stickers attached and retail packaging usually contains some printing. According to industry sources, the direct cost of modifying such labeling to include the warning language would be small.

The legislation also would require retail distributors of television equipment not capable of receiving a digital broadcast to place signs containing the warning language in their establishments in the vicinity of the displays of such products. Retail distributors vending such products by mail, catalog, or electronic means would have to display the warning language along with the language describing the product. Based on information from the U.S. Census, more than 100,000 retail establishments sell televisions. According to industry sources, signs can be printed for up to about $5 each. The number of signs for each establishment would depend on its size and the product placement of analog televisions. The incremental cost to other retail vendors to provide the warning language for products sold by mail, catalog, or electronic means would be small. Consequently, CBO expects the direct cost to comply with this mandate would be small relative to UMRA's threshold for private-sector mandates.

In addition, this section would require distributors of multichannel video programs, who are primarily cable companies and satellite carriers, to include a notice warning consumers about the transition to digital broadcasts in the bills they send to their subscribers during 2008. Information from the industry indicates that those additional notices would most likely not increase the cost of postage for mailing out such bills, CBO expects that the direct cost to comply with this mandate would be small.

Lastly, this section would require television broadcasters to air at least two public service announcements daily, one during the 8 a.m. to 9 a.m. hour and one during the 8 p.m. to 9 p.m. hour, for one year beginning January 1, 2008. The cost of this mandate would be the cost of making the announcement and the lost net income from airing the announcements instead of what broadcasters would otherwise air. The cost to broadcasters could be substantial, depending on how this requirement would affect advertising revenue. According to some industry experts, broadcasters air a large number of public service announcements under current law and the industry could minimize the cost of the mandate by replacing other public service announcements with the announcement required by this section. However, CBO does not have sufficient information to determine the cost of this mandate.

Digital tuners for small televisions

Section 3409 would require television manufacturers to include digital tuners in all sets with screens sized between 13 inches and

24 inches sold in the United States, effective March 1, 2007. Under current law, such television sets would be required to include digital tuners by July 1, 2007. Advancing the deadline by four months would be a new private-sector mandate. Based on information from industry and government sources that the inclusion of such digital tuners is already anticipated and planned, CBO expects that the direct cost of expediting the deadline would be small.

Carriage obligations

Section 3410 would impose on cable companies and satellite carriers certain requirements related to the video stream they receive from television stations. Under the conditions outlined in the bill, those cable companies and satellite carriers would be required to carry an eligible station's primary video stream and program-related material without material degradation and to carry that stream in a format viewable on analog and digital televisions. According to industry sources, most cable providers are planning to carry both digital and analog signals when the transition to digital occurs. Therefore, the direct cost to comply with those mandates would be small.

Other impacts

Because the legislation would set a firm date for television broadcasters to switch to an all-digital signal, households that depend on analog signals for over-the-air broadcasts will lose the use of their television sets sooner than under current law. To receive a digital signal, consumers would have to subscribe to a satellite or cable service, purchase a digital-ready television, or buy a set-top converter box. The least costly method for consumers would be to purchase a converter box. The legislation would require that part of the auction receipts be used by the Department of Commerce to "implement and administer a program through which households in the United States may obtain, upon request, up to two coupons that can be applied toward the purchase of digital-to-analog converter boxes." The value of each coupon would be $40, and the legislation would provide up to $990 million for the coupon program.

Previous CBO Estimate: On October 24, 2005, CBO transmitted a cost estimate for the Digital Transition and Public Safety Act of 2005, as approved by the Senate Committee on Commerce, Science, and Transportation on October 20, 2005. The two estimates differ largely because of differences in the amount and timing of the direct spending authorized by each version and differences in the time period covered by the extension of the FCC's auction authority. The Senate legislation would also impose intergovernmental and private-sector mandates; the direct cost of those mandates would fall below the annual thresholds established by UMRA, CBO estimates.

Estimate prepared by: Federal Costs: Subtitles A and B: Tom Bradley, Jeanne De Sa, Sarah Evans, Geoff Gerhardt, Tim Gronniger, Eric Rollins, Shinobu Suzuki, and Camile Williams; Subtitle C: Matt Kapuscinski; Subtitle D: Kathleen Gramp, Melissa Z. Petersen, and Matthew Pickford; Impact on state, local, and tribal governments: Leo Lex and Sarah Puro; Impact on the private

sector: Subtitles A, B, and C: Stuart Hagen; Subtitle D: Philip Webre and Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 3401. Short title

Section 3401 of the bill establishes the short title, the "Digital Television Transition Act of 2005."

Section 3402. Findings

Section 3402 of the bill sets out the congressional findings underlying the bill.

Section 3403. Analog spectrum recovery: hard deadline

Section 3403 of the bill amends section 309(j)(14) of the Communications Act to (1) eliminate the 85-percent penetration test in current law; (2) establishes December 31, 2008, as the firm date for the end of analog broadcasts by full-power television broadcast stations; (3) directs the Commission to issue a report and order by December 31, 2006 on the digital television table of channel allotments; and, (4) gives the Commission until July 31, 2007 to complete any and all reconsideration of that report and order; and instructs the Commission to submit reports to Congress every six months between January 31, 2006 and July 31, 2007 on the coordination of digital channel allotments with Canada and Mexico. To minimize disruption while broadcasters prepare their digital facilities for digital-only broadcasting, section 3403 of the bill also prohibits the Commission from making further changes in the channel allocations between July 31, 2007 and January 1, 2009, unless

doing so is necessary for reasons of public safety or necessary to prevent a delay in the end of analog broadcasting by full-power television stations. Section 3403 instructs the Commission to terminate all analog full-power television station licenses by January 1, 2009, the date by which full-power broadcast television stations must vacate one of their six-MHz channels.

Section 3403(b)(4) of the bill directs the Commission to issue a final order in the matter of Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186). In this matter, the Commission proposes to allow unlicensed devices to operate in the "white spaces" where the spectrum allocated to broadcast television stations is not being used. The Committee recognizes the value of finding additional spectrum for unlicensed devices to meet the growing consumer demand for robust wireless broadband environments in the home, office, and public spaces. The Committee also notes, however, that broadcasters will be deploying and modifying their broadcast facilities as the nation completes the digital television transition. The Committee therefore expects the Commission to carefully evaluate whether the presence of unlicensed devices operating in the broadcast television band will produce harmful interference to television stations broadcasting in that band. In order to properly evaluate this matter, the Committee expects the Commission to conduct thorough laboratory and field testing of unlicensed devices to measure the potential for harmful interference and determine whether such devices should be permitted to operate in the television band, and, if so, what safeguards should be imposed to avoid any such interference. The Committee strongly urges manufacturers of such unlicensed devices to make prototypical devices available on a timely basis to the Commission for testing.

Section 3404. Auction of recovered spectrum

Section 3404 of the bill directs the Commission to start no later than January 7, 2008, the auction of the spectrum that the full-power stations must vacate in the 700 MHz band. Section 3404 also makes the Commission's auction authority permanent. That auction authority would otherwise expire on September 30, 2007. (see 47 U.S.C. 309(j)(11)) The section also requires the Commission to initiate an ongoing inquiry into the participation of women, minorities, and small businesses in spectrum auctions, and to submit a report to Congress on the inquiry at least every two years.

Section 3405. The Digital Television Conversion Fund

Section 3405(a) of the bill places (1) $990 million of the proceeds from the auction of spectrum in the 700 MHz band vacated by the broadcasters into a digital television converter-box fund; (2) $500 million of the proceeds into a fund to assist first responders in the acquisition and deployment of interoperable radio communications equipment tuned to the public safety channels in the 700 MHz band; (3) $30 million into a fund to temporarily assist broadcasters in New York City harmed by the destruction of the World Trade Center; and, (4) $3 million into a fund to temporarily assist low-power television stations with digital-to-analog conversions. The remainder of the proceeds is placed in the general fund of the Treasury.

Section 3405(b) adds new section 159 to the NTIA Organization Act, which governs the converter-box program. Section 159(a) authorizes the Assistant Secretary of NTIA to implement and administer the converter-box program, under which U.S. households may obtain up to two coupons toward the purchase of converter boxes.

Section 159(b) of the NTIA Organization Act directs the Assistant Secretary to promulgate regulations governing (1) the content and distribution of coupon request forms and coupons; consumer redemption of, and retailer reimbursement for, the coupons; (2) the types of converter boxes that shall be eligible for purchase with a coupon; (3) certification and education of retailers involved in the program; and, (4) consumer and retailer appeals. Each household in the United States may receive up to two $40 coupons toward the purchase of converter boxes. NTIA may use up to $160 million for administration, and up to $990 million total for the program.

Section 159(b)(2)(B) allows the Assistant Secretary to enlist the assistance of non-governmental entities, including religious organizations, in the distribution of request forms if the Assistant Secretary determines that such assistance would make the program more successful. The Committee does not intend for the Assistant Secretary to enlist such help, however, if the Assistant Secretary determines that doing so would make administration of the program more difficult, such as by making it hard to ensure the forms contain the required information, or by confusing consumers about whether particular forms are valid. To the extent that the Assistant Secretary does seek such assistance, the Committee intends for the Assistant Secretary to establish regulations to ensure that the non-governmental entities, and the consumers to whom they distribute request forms, participate in the program in a way that is consistent with the program's objectives and requirements.

Section 159(c) requires the Assistant Secretary to protect consumer privacy in the use of information provided in conjunction with participation in the program.

Section 159(d) authorizes the Assistant Secretary to use the monies in the Digital Television Conversion Fund for administration of the program. To enable the Assistant Secretary to begin designing and implementing the program as soon as possible, Section 159(d) allows the Assistant Secretary to borrow funds from the Treasury prior to the deposit of the auction proceeds.

To promote energy conservation while ensuring that inexpensive converter boxes are available to consumers, section 159(e) sets an energy standard requiring converter-boxes eligible for the program to use no more than 9 watts in the passive standby mode. The Secretary of Energy shall enforce the standard. The subsection also preempts the application of State energy output, usage, or consumption standards to digital-to-analog converter boxes. The potential for separate State statutes creates uncertainty in the planning, manufacture, and sale of digital-to-analog converter boxes. The Committee intends this provision to reduce the cost of producing converter boxes while at the same time promoting energy conservation.

Section 159(f) gives NTIA 9 months from enactment to promulgate the regulations necessary to implement the converter-box program.

Section 159(g) defines "digital-to-analog converter-box," "household," and "standby passive mode."

Section 3406. Public Safety Interoperable Communications Fund

Section 3406 of the bill adds new section 160 to the NTIA Organization Act, which directs NTIA to use up to $500 million from the Public Safety Interoperable Communications Fund to implement a grant program to assist State and local public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, the twenty-four MHz of spectrum in the 700 MHz band originally allocated to public safety in 1997 for radio communications. Under new section 160, the term "interoperable communications systems" is defined as "communications systems which enable public safety agencies to share information amongst local, state, and Federal public safety agencies in the same area via voice or data services." The grant program requires public safety agencies to provide not less than a 20 percent match in order to be eligible for a grant, and limits grants to 3 years in duration. The Committee intends that grants under this section may be used for the acquisition costs associated with designing an interoperable communications system so that the system is properly engineered based upon the topography, population density, or other characteristics of the area in which the system will operate. The Committee notes that there is a diverse array of technological and engineering solutions that enable interoperable communications systems.

Section 3407. NYC 9/11 Digital Transition Fund

Section 3407 of the bill adds new section 161 to the NTIA Organization Act, which makes up to $30 million from the NYC 9/11 Digital Transition Fund available to New York City broadcast television stations to construct temporary digital broadcast facilities to boost their signals until permanent facilities can be installed on the Freedom Tower.

Section 3408. Low-power television transition provisions

Section 3408(a) of the bill amends section 337(e)(1) of the Communications Act to (1) clarify that full-power television stations, not low-power television stations operating in a secondary capacity, must vacate channels 60 to 69; (2) amends section 337(e)(2) to make clearer that Class A television stations may not operate on channels 52 to 69; and, (3) amends section 336(f) to make clearer that low-power television stations other than Class A stations may continue to operate on channels 52 to 59 in a secondary capacity.

Section 3408(b) of the bill amends section 309(j)(14)(A) of the Communications Act to allow low-power television stations to continue to broadcast in analog format after December 31, 2008.

Section 3408(c) of the bill amends section 336(f)(4) to clarify that the Commission may, but is not required to, grant any low-power broadcast television station-including Class A stations, television translator stations, and booster stations-a second channel for purposes of facilitating the DTV transition for low-power broadcast television stations.

Section 3408(d) of the bill adds new section 162 to the NTIA Organization Act. New section 162 makes up to $3 million from the Low-Power Digital-to-Analog Conversion Fund available to low-power broadcast television stations. The low-power stations may use those funds toward the cost of devices to convert the digital signals of their corresponding full-power stations so that the low-power stations can continue broadcasting in analog format until the Commission completes the DTV transition for low-power stations. The Committee understands that these devices cost approximately $400.

Section 3408(e) of the bill gives the Commission until December 31, 2008, to issue a report and order specifying how and under what timeline the Commission will complete the DTV transition for low-power stations.

Section 3409. Consumer education regarding analog televisions

Section 3409(a) of the bill amends section 303 of the Communications Act to give the Commission authority to create certain consumer education regulations regarding analog-only television receivers that have, or are sold in a bundle with, display screens.

Section 3409(b) of the bill amends section 303 of the Communications Act to spell out those regulations. New section 303(d)(1) requires that, within 180 days of enactment, manufacturers begin labeling analog-only receivers that have, or are sold in a bundle with, display screens. New section 303(d)(2) requires that, within 45 days of enactment, retailers begin placing signs near analog-only receivers that have, or are sold in a bundle with, display screens. New section 303(d)(3) specifies the content of the labels and signs, which are intended to inform consumers about the impact the firm DTV transition deadline will have on the performance of analog-only television receivers. New section 303(d)(4) requires the Commission and the NTIA to begin a consumer outreach program to educate consumers about the DTV transition. The Committee expects the Commission and the NTIA to pay particular attention to educating non-English speaking households, such as those in states that border Mexico, to ensure that these consumers are aware of the transition and the converter-box program that is available to them. New section 303(d)(5) requires television broadcasters to run public service announcement and MVPDs to mail billing inserts that contain specific language educating consumers about the DTV transition. New section 303(d)(6) requires the Commission and the NTIA to submit reports to Congress regarding their consumer outreach efforts, as well as the efforts of broadcasters, cable and satellite operators, consumer electronics manufacturers, retailers, and consumer groups.

Section 3409(c) of the bill requires the Commission to accelerate to March 1, 2007, from July 1, 2007, the deadline by which broadcast television receivers that have, or are sold in a bundle with, display screens sized 13- to 24-inches must be able to receive digital broadcast programming over the air. This section also prohibits the Commission from extending or otherwise delaying the schedule for larger television receivers to incorporate such capability.

Section 3410. Additional provisions

Section 3410(a) of the bill creates new section 614(b)(11) of the Communications Act (47 U.S.C. 534(b)(11)). New section 614(b)(11) addresses how cable operators will provide programming to their subscribers with analog and digital televisions. This section applies to the programming of commercial and non-commercial full-power broadcast television stations that are transmitting exclusively in digital format and that rely exclusively on the must-carry provisions of the Communications Act to obtain cable carriage. New section 614(b)(11) does not apply to the programming of the vast majority of stations, which rely on retransmission consent agreements. The carriage and format of such programming will be governed by the terms of those agreements. In addition, the programming of full-power broadcast stations that transmit any programming in analog format in a local market and that rely on the must-carry rules will continue to be entitled to carriage in that market of only the analog transmissions of their primary video and, to the extent technically feasible, program-related material.

New section 614(b)(11)(A) creates the general rule that, once a television station begins broadcasting exclusively in digital format in a local market, a cable system in that market shall carry the station's primary video stream and program-related material in the format the station transmits it. To qualify for such carriage, the station must be relying on either the commercial or non-commercial must-carry provisions of sections 614 and 615. In other words, if such a station broadcasts its primary video stream and program-related material in high- definition format, the cable system must offer that stream to the cable system's subscribers in high-definition format. If the station transmits the stream in standard-definition format, the cable system must offer the stream to cable customers in standard definition format. New section 614(b)(11)(A)(ii) prohibits a station from invoking 614(b)(11)(A) with respect to some of the station's programming, however, while demanding compensation for the provision of other programming transmitted by the station.

New section 614(b)(11)(B) allows a cable system to offer the primary video stream and program-related material of a must-carry station in additional analog or digital formats other than the format in which the station transmits it, so long as the cable system carries the stream and program-related material in the format or formats required by section 614(b)(11). This provision ensures that the cable system can offer the broadcast station's primary video stream and program-related material in formats that the cable system's subscribers can view. For example, if the station is transmitting in high-definition format, this provision allows a cable system to convert the primary video stream and program-related material to an analog-viewable format for a subscriber who does not have a digital television, and who otherwise would not be able to view the programming over the cable system. New section 614(b)(11)(B)(i) prohibits the cable system from otherwise materially degrading the primary video stream and program-related material in the conversion process.

New section 614(b)(11)(C) creates some exceptions to the general rule of new section 614(b)(11)(A). Those exceptions operate until

January 1, 2014. As discussed above in the context of new section 614(b)(11)(B), a cable subscriber with an analog television will not be able to view over the cable system a broadcast station's digital transmission unless the cable system converts that transmission to an analog-viewable format. To ensure that cable subscribers do not lose access to must-carry content, new section 614(b)(11)(C)(i)(I) requires a cable system to offer the primary video stream and program-related content in an analog-viewable format as well as in a digital-viewable format. As discussed below in connection with new section 614(b)(11)(D)(i), the cable operator can do this by carrying that content in both analog and digital formats, or by carrying it only in digital format and using set-top boxes to convert the content to an analog-viewable format for subscribers with analog televisions. For that reason, the Committee uses the word "offer" in many parts of new section 614(b)(11) rather than the word "carry."

Smaller-capacity cable systems with an activated capacity of 550 MHz or less, however, may not be able to offer the primary video stream and program-related material in both analog and standard-definition digital formats. Consequently, new section 614(b)(11)(C)(ii) allows these cable systems to offer the primary video stream and program-related material solely in an analog-viewable format. These exceptions end January 1, 2014, by which time large and small cable systems will have had the opportunity to increase their capacity or find other ways to increase efficiency.

The Committee emphasizes that the conversion of content from high-definition to standard-definition or analog format is meant only as a transitional measure. It should also be observed that the vast majority of high-definition content is carried pursuant to retransmission consent agreements, and so is not subject to these must-carry provisions regarding conversion. Such content will be carried in the format or formats required by the retransmission consent agreements. Moreover, only consumers with high-definition televisions will be able to watch high-definition content in the first place. Many, if not most, high-definition televisions will have digital tuners, especially in light of the tuner mandate, which the bill accelerates in section 3409(c). Consequently, these consumers that own high-definition televisions will likely be able to watch high-definition content over the air even if a cable operator converts the stream to standard-definition or analog format.

New section 614(b)(11)(D)(i) allows a cable operator to perform any conversion permitted or required by new section 614(b)(11) anywhere from the cable head-end to the customer premises. For example, an operator could perform a conversion from digital to analog format at its head-end, in which case every subscriber would receive that content in analog-format, regardless of the format in which the content was broadcast and regardless what type of television the subscriber possessed. To also provide that content in digital format to its subscribers, the cable operator would then need to dedicate additional space on the system for a digital version of the same content. Alternatively, the cable operator could carry the content in digital format, and then use cable set-top boxes in the homes of subscribers with analog televisions to convert the content to an analog-viewable format. In this way, the cable operator could avoid the need to carry the same content in multiple

formats, but would then need to deploy set-top boxes. The Committee intends to leave to the cable operator's business judgment how best to accomplish the permitted and required conversions.

New section 614(b)(11)(D)(ii) allows a cable operator to use switched digital video technology to accomplish the conversions and transmissions permitted or required by new section 614(b)(11). Today, cable operators generally provide all the content they offer to all their subscribers, whether or not those subscribers are actually watching the content at a given moment. Switched digital video is an emerging technology that enables a cable operator to provide specific content only to those subscribers watching the content, which saves capacity. This provision also applies with respect to other transmission technologies. While nothing in the Communications Act or the Commission's rules prohibits a cable operator's use of switched video or other technologies to transmit any broadcast or non-broadcast video signals, the Committee included this provision in the bill to avoid any question as to whether such technologies were permissible within the statutorily-created and defined must-carry framework.

New section 614(b)(11)(E) is intended to clarify that the mere act of converting content to another format as permitted or required by new section 614(b)(11) shall not be treated as a violation of the prohibition against material degradation. Conversions necessary for the consumer to view the content and required by new section 614(b)(11)(C), such as conversions from a digital format to an analog format for consumers with analog televisions, do not degrade the content. Indeed, without such conversion, the consumer loses the ability to view the content at all. Similarly, conversions permitted by new section 614(b)(11) shall not, as a matter of law, be deemed a material degradation. Other alterations, however, whether or not made in conjunction with a conversion, may still constitute an impermissible degradation if they perceptibly affect the picture or sound quality the consumer receives.

New section 614(b)(11)(F) is intended to clarify that the requirement mentioned in section 614(b)(11) to carry program-related material is still contingent on the technical feasibility of such carriage, as it is under current law.

Section 3410(b) of the bill requires that any television broadcast station's primary video stream and program-related material that a cable operator provides in an analog-viewable format shall be offered on the cable basic tier. It also provides that, once a local broadcast station is transmitting exclusively in digital format, any of that television broadcast station's primary video stream and program-related material that the cable operator provides in a digital-viewable format shall also be offered on the cable basic tier.

Section 3410(c) of the bill adds new section 338(l) of the Communications Act. New section 338(l) addresses how satellite operators will provide programming to their subscribers with analog and digital televisions. The provision applies to the programming of commercial and non-commercial full-power broadcast television stations that are transmitting exclusively in digital format and that rely exclusively on the must-carry provisions of the Communications Act to obtain satellite carriage. The requirements are comparable to those that section 3410(a) creates for cable operators, ex-

cept that new section 338(l) imposes the obligations in a manner consistent with the market-by- market nature of satellite service. The programming of full-power broadcast stations that transmit any programming in analog format in a local market and that rely on the must-carry rules will continue to be entitled to carriage in that market of only the analog transmissions of their primary video and, to the extent technically feasible, program- related material. New section 338(l) does not apply to the programming of the vast majority of stations, which rely on retransmission consent agreements. The carriage and format of such programming will be governed by the terms of those agreements.

New section 338(l)(1) establishes the general rule that, once a television station requesting carriage under section 338 begins broadcasting exclusively in digital format in a local market, a satellite carrier transmitting the digital signal of any other local television station in that local market shall carry the primary video stream and program-related material of the requesting carrier in that market without material degradation. New section 338(l)(1) also includes the same requirement created in the section 3010(a) cable provisions that the requesting station not require compensation from that satellite carrier for carriage in that market of any other local broadcast programming transmitted by that station in that market.

New section 338(l)(2) requires the satellite carrier to carry in a local market the primary video stream and program-related material in the format a local broadcaster transmits the stream if the satellite carrier is carrying in that market and in that format the primary video stream and program-related material of any other local broadcaster. In other words, under the general rule, if a satellite carrier is carrying in high-definition format the primary video stream and program-related material of any local broadcaster in a local market, it must carry in high-definition format the primary video stream and program-related material of any local broadcaster transmitting in high-definition in that market that relies on section 338 for carriage in that market.

New section 338(l)(3) creates the comparable authority for satellite carriers to carry programming in multiple formats as section 3410(a) of the bill creates for cable operators.

New section 338(l)(4) creates some exceptions to the general rule of new sections 338(l)(1) and 338(l)(2), just as section 3410(a) of the bill created some exceptions for cable operators. To ensure that satellite subscribers do not lose access to must-carry content, new section 338(l)(4)(A) requires a cable system to offer, in a format viewable on analog and digital televisions, the primary video stream and program- related content required to be carried by new section 338(l)(1). Unlike cable operators, however, satellite carriers already use set-top boxes to provide service to all their subscribers, and already carry all programming in a digital format. Indeed, in the case of analog broadcast programming, satellite operators first convert the programming to digital format at their local receive facility, and then use the set-top box to convert it back to analog-viewable format for their subscribers with analog televisions. Thus, to meet the requirements of new section 338(1)(4)(A), the satellite carrier will likely just carry the primary video stream and pro-

gram-related content in standard-definition digital format and use the set-top box to convert the stream to an analog viewable format for subscribers with analog televisions.

Until January 1, 2014, new section 338(l)(4)(b) allows a satellite carrier to offer the primary video stream and program-related material of a local broadcast station relying on section 338 in standard-definition digital format in lieu of high-definition format. Beginning January 1, 2014, however, if the satellite carrier is offering any local broadcast content in a market in high-definition format, the satellite carrier will be required to carry in high-definition format the primary video stream and program related-format of all local broadcast stations relying on section 338 for carriage in the market.

Again, as the Committee emphasized above in its discussion of new section 614(b)(11)(C), the conversion of content from high-definition to standard-definition or analog format is meant only as a transitional measure. The vast majority of high-definition content is carried pursuant to retransmission consent agreements, and so is not subject to these must-carry provisions regarding conversion. Under retransmission consent agreements, the content will be carried in the format or formats required by the agreements. Moreover, only consumers with high-definition televisions will be able to watch high-definition content. Many, if not most, high-definition televisions will have digital tuners, especially in light of the tuner mandate, which the bill accelerates in section 3409(c). Consequently, these consumers will likely be able to watch high-definition content over the air even if a satellite carrier converts the content to standard-definition or analog format.

Sections 3410(c)(2)(4) of the bill creates conforming changes required by the addition of new section 338(l).

Section 3410(d) of the bill gives the FCC one year from enactment to implement section 3410.

Section 3411. Deployment of broadband wireless technologies

Section 3411 requires the Commission to assess the necessity of rechannelizing the spectrum located between 767–773 MHz and 797–803 MHz to accommodate broadband applications. The Committee believes that the propagation characteristics of the 700 MHz band present an ideal environment for broadband applications for public safety. The Committee also expects that, if the Commission rechannelizes public safety channels in order to permit the use of broadband applications, such use shall be in addition to, not to the exclusion of, applications based upon the existing 700 MHz band plan. The Committee expects the Commission to ensure that public safety operations based upon the existing 700 MHz band plan operate free from harmful interference.

Section 3412. Sense of Congress

Section 3412 expresses a sense of Congress regarding concentration in the wireless communications industry, and the potential for wireless services using the 700 MHz band to provide consumers with another competitive alternative for broadband services.

Section 3413. Band plan revision required

Section 3413 requires the Commission to reconfigure the band plan for Block B of the lower 700-megahertz band based on metropolitan statistical areas (MSAs) and rural statistical areas (RSAs).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE XI—GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION

* * * * * * *

PART A—GENERAL PROVISIONS

* * * * * * *

SEC. 1108. ADDITIONAL GRANTS TO PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA; LIMITATION ON TOTAL PAYMENTS.

(a) * * *

* * * * * * *

(g) MEDICAID PAYMENTS TO TERRITORIES FOR FISCAL YEAR 1998 AND THEREAFTER.—

(1) * * *

(2) FISCAL YEAR 1999 AND THEREAFTER.—Notwithstanding subsection (f) *and subject to paragraph (3)*, with respect to fiscal year 1999 and any fiscal year thereafter, the total amount certified by the Secretary under title XIX for payment to—

(A) * * *

* * * * * * *

(3) FISCAL YEARS 2006 AND 2007 FOR CERTAIN INSULAR AREAS.—The amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for fiscal year 2006 and fiscal year 2007 shall be increased by the following amounts:

(A) For Puerto Rico, $12,000,000 for fiscal year 2006 and $12,000,000 for fiscal year 2007.

(B) For the Virgin Islands, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

(C) For Guam, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

(D) For the Northern Mariana Islands, $1,000,000 for fiscal year 2006 and $2,000,000 for fiscal year 2007.

(E) For American Samoa, $2,000,000 for fiscal year 2006 and $4,000,000 for fiscal year 2007.

Such amounts shall not be taken into account in applying paragraph (2) for fiscal year 2007 but shall be taken into account in applying such paragraph for fiscal year 2008 and subsequent fiscal years.

* * * * * * *

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

* * * * * * *

STATE PLANS FOR MEDICAL ASSISTANCE

* * * * * * *

SEC. 1902. (a) A State plan for medical assistance must—

(1) * * *

* * * * * * *

(25) provide—

(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, *including self-insured plans*, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, [and health maintenance organizations] *health maintenance organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service*) to pay for care and services available under the plan, including—

(i) * * *

* * * * * * *

(G) that the State prohibits any health insurer (including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, *a self-insured plan,* a service benefit plan, [and a health maintenance organization] *a health maintenance organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service*), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a plan under this title for such State, or any other State; [and]

(H) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services; *and*

(I) that the State shall provide assurances satisfactory to the Secretary that the State has in effect laws requiring health insurers, including self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, health maintenance organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, as a condition of doing business in the State, to—

(i) provide eligibility and claims payment data with respect to an individual who is eligible for, or is provided, medical assistance under the State plan, upon the request of the State;

(ii) accept the subrogation of the State to any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State plan;

(iii) respond to any inquiry by the State regarding a claim for payment for any health care item or service submitted not later than 3 years after the date of the provision of such health care item or service; and

(iv) agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim;

* * * * * * *

(66) provide for making eligibility determinations under section 1935(a); **[**and**]**

(67) provide, with respect to services covered under the State plan (but not under title XVIII) that are furnished to a PACE program eligible individual enrolled with a PACE provider by a provider participating under the State plan that does not have a contract or other agreement with the PACE provider that establishes payment amounts for such services, that such participating provider may not require the PACE provider to pay the participating provider an amount greater than the amount that would otherwise be payable for the service to the participating provider under the State plan for the State where the PACE provider is located (in accordance with regulations issued by the Secretary)**[**.**]***; and*

(68) at the option of the State and notwithstanding paragraph (10)(B) or (23), provide for the establishment of a nonemergency medical transportation brokerage program in order to more cost-effectively provide transportation for individuals eligible for medical assistance under the State plan who need access to medical care or services and have no other means of transportation which—

(A) may include wheelchair van, taxi, stretcher car, bus passes and tickets, secured transportation, and such other transportation as the Secretary determines appropriate; and

(B) may be conducted under contract with a broker who—

(i) is selected through a competitive bidding process based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs;

(ii) has oversight procedures to monitor beneficiary access and complaints and ensure that transport personnel are licensed, qualified, competent, and courteous;

(iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services; and

(iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on the prohibitions on physician referrals under section 1877 and such other prohibitions and requirements as the Secretary determines to be appropriate).

* * * * * * *

(cc) PROVISION OF HOME AND COMMUNITY-BASED SERVICES UNDER STATE PLAN.—

(1) CONDITIONS.—A State may provide home and community-based services under section 1905(a)(28), other than through a waiver or demonstration project under section 1915 or 1115, only if the following conditions are met:

(A) EXPIRATION OF PREVIOUS WAIVER.—Any State waiver or demonstration project under either such section with respect to services for individuals described in such section has expired.

(B) INFORMATION.—The State must monitor and report to the Secretary, in a form and manner specified by the Secretary and on a quarterly basis, enrollment and expenditures for provision of such services under such section.

(2) OPTIONS.—Notwithstanding any other provision of this title, in a State's provision of services under section 1905(a)(28)—

(A) a State is not required to comply with the requirements of section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community);

(B) a State may limit the number of individuals who are eligible for such services and may establish waiting lists for the receipt of such services; and

(C) a State may limit the amount, duration, and scope of such services.

Nothing in this section shall be construed as applying the previous sentence to any items or services other than home and community-based services provided under section 1905(a)(28).

(3) USE OF ELECTRONIC DATA.—The State shall permit health care providers to comply with documentation and data requirements imposed with respect to home and community-based services through the maintenance of data in electronic form rather than in paper form.

PAYMENT TO STATES

SEC. 1903. (a) * * *

* * * * * * *

(i) Payment under the preceding provisions of this section shall not be made—

(1) * * *

* * * * * * *

(10)(A) with respect to covered outpatient drugs unless there is a rebate agreement in effect under section 1927 with respect to such drugs or unless section 1927(a)(3) applies, **[**and**]**

(B) with respect to any amount expended for an innovator multiple source drug (as defined in section 1927(k)) dispensed on or after July 1, 1991, if, under applicable State law, a less expensive multiple source drug could have been dispensed, but only to the extent that such amount exceeds the upper payment limit for such multiple source drug; **[**or**]**

(C) with respect to any amount expended for the ingredient cost of a covered outpatient drug that exceeds the Federal upper limit for that drug established and applied under section 1927(e); and

(D) with respect to covered outpatient drugs described in section 1927(a)(7), unless information respecting utilization data and coding on such drugs that is required to be submitted under such section is submitted in accordance with such section; or

* * * * * * *

(21) with respect to amounts expended for covered outpatient drugs described in section 1927(d)(2)(K) (relating to drugs when used for treatment of sexual or erectile dysfunction)**[**.**]** *or described in subparagraph (B) or (C) of section 1927(d)(2); or*

(22) with respect to amounts expended for medical assistance for an individual who declares under section 1137(d)(1)(A) to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this title, unless the requirement of subsection (z) is met.

* * * * * * *

(w)(1) * * *

* * * * * * *

(7) For purposes of this subsection:

(A) Each of the following shall be considered a separate class of health care items and services:

(i) * * *

* * * * * * *

[(viii) Services of a medicaid managed care organization with a contract under section 1903(m).**]**

(viii) Services of managed care organizations (including health maintenance organizations, preferred provider orga-

nizations, and such other similar organizations as the Secretary may specify by regulation).

* * * * * * *

(x) PAYMENTS FOR ESTABLISHMENT OF ALTERNATE NON-EMERGENCY SERVICES PROVIDERS.—

(1) PAYMENTS.—In addition to the payments otherwise provided under subsection (a), subject to paragraph (2), the Secretary shall provide for payments to States under such subsection for the establishment of alternate non-emergency service providers (as defined in section 1916A(f)(6)(B)), or networks of such providers.

(2) LIMITATION.—The total amount of payments under this subsection shall be equal to, and shall not exceed, $100,000,000 during the four-year period beginning with 2006. This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

(3) PREFERENCE.—In providing for payments to States under this subsection, the Secretary shall provide preference to States that establish, or provide for, alternate non-emergency services providers or networks of such providers that—

(A) serve rural or underserved areas where beneficiaries under this title may not have regular access to providers of primary care services; or

(B) are in partnership with local community hospitals.

(4) FORM AND MANNER OF PAYMENT.—Payment to a State under this subsection shall be made only upon the filing of such application in such form and in such manner as the Secretary shall specify. Payment to a State under this subsection shall be made in the same manner as other payments under section 1903(a).

(y) MEDICAID TRANSFORMATION PAYMENTS.—

(1) IN GENERAL.—In addition to the payments provided under subsection (a), subject to paragraph (4), the Secretary shall provide for payments to States for the adoption of innovative methods to improve the effectiveness and efficiency in providing medical assistance under this title.

(2) PERMISSIBLE USES OF FUNDS.—The following are examples of innovative methods for which funds provided under this subsection may be used:

(A) Methods for reducing patient error rates through the implementation and use of electronic health records, electronic clinical decision support tools, or e-prescribing programs.

(B) Methods for improving rates of collection from estates of amounts owed under this title.

(C) Methods for reducing waste, fraud, and abuse under the program under this title, such as reducing improper payment rates as measured by annual payment error rate measurement (PERM) project rates.

(D) Implementation of a medication risk management program as part of a drug use review program under section 1927(g).

(3) APPLICATION; TERMS AND CONDITIONS.—

(A) IN GENERAL.—No payments shall be made to a State under this subsection unless the State applied to the Secretary for such payments in a form, manner, and time specified by the Secretary.

(B) TERMS AND CONDITIONS.—Such payments are made under such terms and conditions consistent with this subsection as the Secretary prescribes.

(C) ANNUAL REPORT.—Payment to a State under this subsection is conditioned on the State submitting to the Secretary an annual report on the programs supported by such payment. Such report shall include information on—

(i) the specific uses of such payment;

(ii) an assessment of quality improvements and clinical outcomes under such programs; and

(iii) estimates of cost savings resulting from such programs.

(4) FUNDING.—

(A) LIMITATION ON FUNDS.—The total amount of payments under this subsection shall be equal to, and shall not exceed—

(i) $50,000,000 for fiscal year 2007; and

(ii) $50,000,000 for fiscal year 2008.

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

(B) ALLOCATION OF FUNDS.—The Secretary shall specify a method for allocating the funds made available under this subsection among States. Such method shall provide preference for States that design programs that target health providers that treat significant numbers of medicaid beneficiaries.

(C) FORM AND MANNER OF PAYMENT.—Payment to a State under this subsection shall be made in the same manner as other payments under section 1903(a). There is no requirement for State matching funds to receive payments under this subsection.

(5) MEDICATION RISK MANAGEMENT PROGRAM.—

(A) IN GENERAL.—For purposes of this subsection, the term "medication risk management program" means a program for targeted beneficiaries that ensures that covered outpatient drugs are appropriately used to optimize therapeutic outcomes through improved medication use and to reduce the risk of adverse events.

(B) ELEMENTS.—Such program may include the following elements:

(i) The use of established principles and standards for drug utilization review and best practices to analyze prescription drug claims of targeted beneficiaries and identify outlier physicians.

(ii) On an ongoing basis provide outlier physicians—

(I) a comprehensive pharmacy claims history for each targeted beneficiary under their care;

(II) information regarding the frequency and cost of relapses and hospitalizations of targeted beneficiaries under the physician's care; and

(III) applicable best practice guidelines and empirical references.

(iii) Monitor outlier physician's prescribing, such as failure to refill, dosage strengths, and provide incentives and information to encourage the adoption of best clinical practices.

(C) TARGETED BENEFICIARIES.—For purposes of this paragraph, the term "targeted beneficiaries" means medicaid eligible beneficiaries who are identified as having high prescription drug costs and medical costs, such as individuals with behavioral disorders or multiple chronic diseases who are taking multiple medications.

(z)(1) For purposes of subsection (i)(21), the requirement of this subsection is, with respect to an individual declaring to be a citizen or national of the United States, that, subject to paragraph (2), there is presented satisfactory documentary evidence of citizenship or nationality (as defined in paragraph (3)) of the individual.

(2) The requirement of paragraph (1) shall not apply to an alien who is eligible for medical assistance under this title—

(A) and is entitled to or enrolled for benefits under any part of title XVIII;

(B) on the basis of receiving supplemental security income benefits under title XVI; or

(C) on such other basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality had been previously presented.

(3)(A) For purposes of this subsection, the term "satisfactory documentary evidence of citizenship or nationality" means—

(i) any document described in subparagraph (B); or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

(B) The following are documents described in this subparagraph:

(i) A United State passport.

(ii) Form N–550 or N–570 (Certificate of Naturalization).

(iii) Form N–560 or N–561 (Certificate of United States Citizenship).

(iv) Such other document as the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity.

(C) The following are documents described in this subparagraph:

(i) A certificate of birth in the United States.

(ii) Form FS–545 or Form DS–1350 (Certification of Birth Abroad).

(iii) Form I–97 (United States Citizen Identification Card).

(iv) Form FS–240 (Report of Birth Abroad of a Citizen of the United States).

(v) Such other document (not described in subparagraph (B)(iv)) as the Secretary may specify that provides proof of United States citizenship or nationality.

(D) The following are documents described in this subparagraph:

(i) Any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act.

(ii) Any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.

(E) A reference in this paragraph to a form includes a reference to any successor form.

* * * * * * *

DEFINITIONS

SEC. 1905. For purposes of this title—

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance or, in the case of medicare cost-sharing with respect to a qualified medicare beneficiary described in subsection (p)(1), if provided after the month in which the individual becomes such a beneficiary) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A)) not receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, and with respect to whom supplemental security income benefits are not being paid under title XVI, who are—

(i) under the age of 21, or, at the option of the State, under the age of 20, 19, or 18 as the State may choose,

(ii) relatives specified in section 406(b)(1) with whom a child is living if such child is (or would, if needy, be) a dependent child under part A of title IV,

(iii) 65 years of age or older,

(iv) blind, with respect to States eligible to participate in the State plan program established under title XVI,

(v) 18 years of age or older and permanently and totally disabled, with respect to States eligible to participate in the State plan program established under title XVI,

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under State plans approved under title I, X, XIV, or XVI,

(vii) blind or disabled as defined in section 1614, with respect to States not eligible to participate in the State plan program established under title XVI,

(viii) pregnant women,

(ix) individuals provided extended benefits under section 1925,

(x) individuals described in section 1902(u)(1),

(xi) individuals described in section 1902(z)(1),

(xii) employed individuals with a medically improved disability (as defined in subsection (v)), or

(xiii) individuals described in section 1902(aa),

but whose income and resources are insufficient to meet all of such cost—

(1) * * *

* * * * * * *

(27) subject to subsection (x), primary and secondary medical strategies and treatment and services for individuals who have Sickle Cell Disease; [and]

(28) subject to section 1902(cc), home and community-based services (within the scope of services described in paragraph (4)(B) of section 1915(c) for which the Secretary has the authority to approve a waiver and not including room and board) provided pursuant to a written plan or care for individuals—

(A) who are 65 years of age or older who are disabled (as defined under the State plan), who are persons with developmental disabilities or mental retarded or person with related conditions, or who are within a subgroup thereof under the State plan;

(B) with respect to whom there has been a determination, in the manner described in paragraph (1) of such section, that but for the provision of such services the individuals would require the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan; and

(C) who qualify for medical assistance under the eligibility standards in effect in the State (which may include standards in effect under an approved waiver) as of the date of the enactment of this paragraph; and

[(28)] *(29)* any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary,

except as otherwise provided in paragraph (16), such term does not include—

(A) * * *

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PROVISIONS RESPECTING INAPPLICABILITY AND WAIVER OF CERTAIN REQUIREMENTS OF THIS TITLE

SEC. 1915. (a) * * *

* * * * * * *

(g)(1) * * *

[(2) For purposes of this subsection, the term "case management services" means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.]

(2) For purposes of this subsection:

(A)(i) The term "case management services" means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

(ii) Such term includes the following:

(I) Assessment of an eligible individual to determine service needs, including activities that focus on needs identification, to determine the need for any medical, educational, social, or other services. Such assessment activities include the following:

(aa) Taking client history.

(bb) Identifying the needs of the individual, and completing related documentation.

(cc) Gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible individual.

(II) Development of a specific care plan based on the information collected through an assessment, that specifies the goals and actions to address the medical, social, educational, and other services needed by the eligible individual, including activities such as ensuring the active participation of the eligible individual and working with the individual (or the individual's authorized health care decision maker) and others to develop such goals and identify a course of action to respond to the assessed needs of the eligible individual.

(III) Referral and related activities to help an individual obtain needed services, including activities that help link eligible individuals with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the individual.

(IV) Monitoring and follow-up activities, including activities and contacts that are necessary to ensure the care plan is effectively implemented and adequately addressing the needs of the eligible individual, and which may be with the individual, family members, providers, or other entities and conducted as frequently as necessary to help determine such matters as—

(aa) whether services are being furnished in accordance with an individual's care plan;

(bb) whether the services in the care plan are adequate; and

(cc) whether there are changes in the needs or status of the eligible individual, and if so, making necessary adjustments in the care plan and service arrangements with providers.

(iii) Such term does not include the direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred, including, with respect to the direct delivery of foster care services, services such as (but not limited to) the following:

(I) Research gathering and completion of documentation required by the foster care program.

(II) Assessing adoption placements.

(III) Recruiting or interviewing potential foster care parents.

(IV) Serving legal papers.
(V) Home investigations.
(VI) Providing transportation.
(VII) Administering foster care subsidies.
(VIII) Making placement arrangements.

(B) The term "targeted case management services" means case management services that are furnished without regard to the requirements of section 1902(a)(1) and section 1902(a)(10)(B) to specific classes of individuals or to individuals who reside in specified areas.

(3) With respect to contacts with individuals who are not eligible for medical assistance under the State plan or, in the case of targeted case management services, individuals who are eligible for such assistance but are not part of the target population specified in the State plan, such contacts—

(A) are considered an allowable case management activity, when the purpose of the contact is directly related to the management of the eligible individual's care; and

(B) are not considered an allowable case management activity if such contacts relate directly to the identification and management of the noneligible or nontargeted individual's needs and care.

(4)(A) In accordance with section 1902(a)(25), Federal financial participation only is available under this title for case management services or targeted case management services if there are no other third parties liable to pay for such services, including as reimbursement under a medical, social, educational, or other program.

(B) A State shall allocate the costs of any part of such services which are reimbursable under another federally funded program in accordance with OMB Circular A–87 (or any related or successor guidance or regulations regarding allocation of costs among federally funded programs) under an approved cost allocation program.

* * * * * * *

(i)(1) A State may provide, as "medical assistance", payment for part or all of the cost of self-directed personal assistance services (other than room and board) under the plan which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that, but for the provision of such services, the individuals would require and receive personal care services under the plan, or home and community-based services provided pursuant to a waiver under sub-section (c). Self-directed personal assistance services may not be provided under this subsection to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, not related by blood or marriage.

(2) The Secretary shall not grant approval for a State self-directed personal assistance services program under this section unless the State provides assurances satisfactory to the Secretary of the following:

(A) Necessary safeguards have been taken to protect the health and welfare of individuals provided services under the program, and to assure financial accountability for funds expended with respect to such services.

(B) The State will provide, with respect to individuals who—

(i) are entitled to medical assistance for personal care services under the plan, or receive home and community-based services under a waiver granted under subsection (c);

(ii) may require self-directed personal assistance services; and

(iii) may be eligible for self-directed personal assistance services,

an evaluation of the need for personal care under the plan, or personal services under a waiver granted under subsection (c).

(C) Such individuals who are determined to be likely to require personal care under the plan, or home and community-based services under a waiver granted under subsection (c) are informed of the feasible alternatives, if available under the State's self-directed personal assistance services program, at the choice of such individuals, to the provision of personal care services under the plan, or personal assistance services under a waiver granted under subsection (c).

(D) The State will provide for a support system that ensures participants in the self-directed personal assistance services program are appropriately assessed and counseled prior to enrollment and are able to manage their budgets. Additional counseling and management support may be provided at the request of the participant.

(E) The State will provide to the Secretary an annual report on the number of individuals served and total expenditures on their behalf in the aggregate. The State shall also provide an evaluation of overall impact on the health and welfare of participating individuals compared to non-participants every three years.

(3) A State may provide self-directed personal assistance services under the State plan without regard to the requirements of section 1902(a)(1) and may limit the population eligible to receive these services and limit the number of persons served without regard to section 1902(a)(10)(B).

(4)(A) For purposes of this subsection, the term "self-directed personal assistance services" means personal care and related services, or home and community-based services otherwise available under the plan under this title or subsection (c), that are provided to an eligible participant under a self-directed personal assistance services program under this section, under which individuals, within an approved self-directed services plan and budget, purchase personal assistance and related services, and permits participants to hire, fire, supervise, and manage the individuals providing such services.

(B) At the election of the State—

(i) a participant may choose to use any individual capable of providing the assigned tasks including legally liable relatives as paid providers of the services; and

(ii) the individual may use the individual's budget to acquire items that increase independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

(5) For purpose of this section, the term "approved self-directed services plan and budget" means, with respect to a participant, the

establishment of a plan and budget for the provision of self-directed personal assistance services, consistent with the following requirements:

(A) SELF-DIRECTION.—The participant (or in the case of a participant who is a minor child, the participant's parent or guardian, or in the case of an incapacitated adult, another individual recognized by State law to act on behalf of the participant) exercises choice and control over the budget, planning, and purchase of self-directed personal assistance services, including the amount, duration, scope, provider, and location of service provision.

(B) ASSESSMENT OF NEEDS.—There is an assessment of the needs, strengths, and preferences of the participants for such services.

(C) SERVICE PLAN.—A plan for such services (and supports for such services) for the participant has been developed and approved by the State based on such assessment through a person-centered process that—

(i) builds upon the participant's capacity to engage in activities that promote community life and that respects the participant's preferences, choices, and abilities; and

(ii) involves families, friends, and professionals in the planning or delivery of services or supports as desired or required by the participant.

(D) SERVICE BUDGET.—A budget for such services and supports for the participant has been developed and approved by the State based on such assessment and plan and on a methodology that uses valid, reliable cost data, is open to public inspection, and includes a calculation of the expected cost of such services if those services were not self-directed. The budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the state but not included in the budget.

(E) APPLICATION OF QUALITY ASSURANCE AND RISK MANAGEMENT.—There are appropriate quality assurance and risk management techniques used in establishing and implementing such plan and budget that recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities.

(6) A State may employ a financial management entity to make payments to providers, track costs, and make reports under the program. Payment for the activities of the financial management entity shall be at the administrative rate established in section 1903(a).

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USE OF ENROLLMENT FEES, PREMIUMS, DEDUCTIONS, COST SHARING, AND SIMILAR CHARGES

SEC. 1916. (a) * * *

* * * * * * *

(f) No deduction, cost sharing, or similar charge may be imposed under any waiver authority of the Secretary, except as provided in subsections (a)(3) and (b)(3) *and section 1916A*, unless such waiver

is for a demonstration project which the Secretary finds after public notice and opportunity for comment—

(1) * * *

* * * * * * *

STATE OPTION FOR ALTERNATIVE PREMIUMS AND COST SHARING

SEC. 1916A. (a) STATE FLEXIBILITY.—

(1) IN GENERAL.—Notwithstanding sections 1916 and 1902(a)(10)(B), a State, at its option and through a State plan amendment, may impose premiums and cost sharing for any group of individuals (as specified by the State) and for any type of services (and may vary such premiums and cost sharing among such groups or types, including through the use of tiered cost sharing for prescription drugs) consistent with the limitations established under this section. Nothing in this section shall be construed as superseding (or preventing the application of) section 1916(g).

(2) DEFINITIONS.—In this section:

(A) PREMIUM.—The term "premium" includes any enrollment fee or similar charge.

(B) COST SHARING.—The term "cost sharing" includes any deduction, deductible, copayment, or similar charge.

(b) LIMITATIONS ON EXERCISE OF AUTHORITY.—

(1) INDIVIDUALS WITH FAMILY INCOME BELOW 100 PERCENT OF POVERTY LEVEL.—In the case of an individual whose family income does not exceed 100 percent of the Federal poverty level applicable to a family of the size involved, subject to subsections (c)(2) and (e)(2)(A), the limitations otherwise provided under subsections (a) and (b) of section 1916 shall continue to apply and no premium will be imposed under the plan, except that the total annual aggregate amount of cost sharing imposed (including any increased cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved for the year involved.

(2) INDIVIDUALS WITH FAMILY INCOME ABOVE 100 PERCENT OF POVERTY LEVEL.—In the case of an individual whose family income exceeds 100 percent of the Federal poverty level applicable to a family of the size involved, the total annual aggregate amount of premiums and cost sharing imposed (including any increase and cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved for the year involved.

(3) ADDITIONAL LIMITATIONS.—

(A) PREMIUMS.—No premiums shall be imposed under this section with respect to the following:

(i) Individuals under 18 years of age that are required to be provided medical assistance under section 1902(a)(10)(A)(i), and including individuals with respect to whom adoption or foster care assistance is made available under part E of title IV without regard to age.

(ii) Pregnant women.

(iii) Any terminally ill individual who is receiving hospice care (as defined in section 1905(o)).

(iv) Any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

(B) COST SHARING.—Subject to the succeeding provisions of this section, no cost sharing shall be imposed under this section with respect to the following:

(i) Services furnished to individuals under 18 years of age that are required to be provided medical assistance under section 1902(a)(10)(A)(i), and including services furnished to individuals with respect to whom adoption or foster care assistance is made available under part E of title IV without regard to age.

(ii) Preventive services (such as well baby and well child care and immunizations) provided to children under 18 years of age regardless of family income.

(iii) Services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy.

(iv) Services furnished to a terminally ill individual who is receiving hospice care (as defined in section 1905(o)).

(v) Services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

(vi) Emergency services (as defined by the Secretary for purposes of section 1916(a)(2)(D)).

(vii) Family planning services and supplies described in section 1905(a)(4)(C).

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing a State from exempting additional classes of individuals from premiums under this section or from exempting additional individuals or services from cost sharing under this section.

(4) INDEXING NOMINAL AMOUNTS.—In applying section 1916 under paragraph (1) with respect to cost sharing that is "nominal" in amount—

(A) the Secretary shall phase-in an increase in such amount over a 3 year period (beginning January 1, 2006) so that—

(i) a $3 nominal amount in 2005 would be increased to be a $5 nominal amount in 2008; and

(ii) other nominal amounts would be increased by a proportional amount (with appropriate rounding) during such period; and

(B) the Secretary shall increase such "nominal" amounts for each subsequent year (beginning with 2009) by the annual percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) as rounded up in an appropriate manner.

(5) DETERMINATIONS OF FAMILY INCOME.—In applying this subsection, family income shall be determined in a manner specified by the State for purposes of this subsection, including the use of such disregards as the State may provide. Family income shall be determined for such period and at such periodicity as the State may provide under this title.

(6) POVERTY LINE DEFINED.—For purposes of this section, the term "poverty line" has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

(7) CONSTRUCTION.—Nothing in this section shall be construed—

(A) as preventing a State from further limiting the premiums and cost sharing imposed under this section beyond the limitations provided under this subsection;

(B) as affecting the authority of the Secretary through waiver to modify limitations on premiums and cost sharing under this subsection; or

(C) as affecting any such waiver of requirements in effect under this title before the date of the enactment of this section with regard to the imposition of premiums and cost sharing.

(c) SPECIAL RULES FOR COST SHARING FOR PRESCRIPTION DRUGS.—

(1) IN GENERAL.—In order to encourage beneficiaries to use drugs (in this subsection referred to as "preferred drugs") identified by the State as the least (or less) costly effective prescription drugs within a class of drugs (as defined by the State), with respect to one or more groups of beneficiaries specified by the State, subject to paragraphs (2) and (5), the State may—

(A) provide an increase in cost sharing (above the nominal level otherwise permitted under section 1916 or subsection (b), but subject to paragraphs (2) and (3)) with respect to drugs that are not preferred drugs within a class; and

(B) waive or reduce the cost sharing otherwise applicable for preferred drugs within such class and shall not apply any such cost sharing for such preferred drugs for individuals for whom cost sharing may not otherwise be imposed under subsection (b)(3)(B).

(2) LIMITATIONS.—

(A) BY INCOME GROUP AS A MULTIPLE OF NOMINAL AMOUNTS.—In no case may the increase in cost sharing under paragraph (1)(A) with respect to a non-preferred drug exceed, in the case of an individual whose family income is—

(i) below 100 percent of the poverty line applicable to a family of the size involved, the amount of nominal cost sharing (as otherwise determined under subsection (b));

(ii) at least 100 percent, but below 150 percent, of the poverty line applicable to a family of the size involved, two times the amount of nominal cost sharing (as otherwise determined under subsection (b)); or

(iii) at least 150 percent of the poverty line applicable to a family of the size involved, three times the amount of nominal cost sharing (as otherwise determined under subsection (b)).

(B) LIMITATION TO NOMINAL FOR EXEMPT POPULATIONS.—In the case of an individual who is otherwise not subject to cost sharing due to the application of subsection (b)(3), any increase in cost sharing under paragraph (1)(A) with respect to a non-preferred drug may not exceed a nominal amount (as otherwise determined under subsection (b)).

(C) CONTINUED APPLICATION OF AGGREGATE CAP.—In addition to the limitations imposed under subparagraphs (A) and (B), any increase in cost sharing under paragraph (1)(A) continues to be subject to the aggregate cap on cost sharing applied under paragraph (1) or (2) of subsection (b), as the case may be.

(D) TRICARE PHARMACY BENEFIT PROGRAM LIMITATIONS.—In no case may a State—

(i) treat as a non-preferred drug under this subsection a drug that is treated as a preferred drug under the TRICARE pharmacy benefit program established under section 1074g of title 10, United States Code, as such program is in effect on the date of the enactment of this section; or

(ii) impose cost sharing under this subsection that exceeds the cost sharing imposed under the standards under such pharmacy benefit program, as such program is in effect as of the date of the enactment of this section.

(3) WAIVER.—In carrying out paragraph (1), a State shall provide for the application of cost sharing levels applicable to a preferred drug in the case of a drug that is not a preferred drug if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual or both.

(4) EXCLUSION AUTHORITY.—Nothing in this subsection shall be construed as preventing a State from excluding from paragraph (1) specified drugs or classes of drugs.

(5) PRIOR AUTHORIZATION AND APPEALS PROCESS.—A State may not provide for increased cost sharing under this subsection unless the State has implemented for outpatient prescription drugs a system for prior authorization and an appeals process for determinations relating to prior authorization.

(d) ENFORCEABILITY OF PREMIUMS AND OTHER COST SHARING.—

(1) PREMIUMS.—Notwithstanding section 1916(c)(3) and section 1902(a)(10)(B), a State may, at its option, condition the provision of medical assistance for an individual upon prepayment of a premium authorized to be imposed under this section, or may terminate eligibility for such medical assistance on the basis of failure to pay such a premium but shall not terminate eligibility of an individual for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. A State may apply the previous sentence for some or all groups of beneficiaries as specified by the State and may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(2) COST SHARING.—Notwithstanding section 1916(e) or any other provision of law, a State may permit a provider participating under the State plan to require, as a condition for the provision of care, items, or services to an individual entitled to medical assistance under this title for such care, items, or services, the payment of any cost sharing authorized to be imposed under this section with respect to such care, items, or services. Nothing in this paragraph shall be construed as preventing a provider from reducing or waiving the application of such cost sharing.

(e) STATE OPTION FOR IMPOSING COST SHARING FOR NON-EMERGENCY CARE FURNISHED IN AN HOSPITAL EMERGENCY ROOM.—

(1) IN GENERAL.—Notwithstanding section 1916 or the previous provisions of this section, but subject to the limitations of paragraph (2), a State may, by amendment to its State plan under this title, impose cost sharing for non-emergency services furnished to an individual (within one or more groups of individuals specified by the State) in a hospital emergency department under this subsection if the following conditions are met:

(A) ACCESS TO NON-EMERGENCY ROOM PROVIDER.—The individual has actually available and accessible (as such terms are applied by the Secretary under section 1916(b)(3)) an alternate non-emergency services provider with respect to such services.

(B) NOTICE.—The physician or hospital must inform the beneficiary after the appropriate screening assessment, but before providing the non-emergency services, of the following:

(i) The hospital may require the payment of the State specified cost sharing before the service can be provided.

(ii) The name and location of an alternate non-emergency services provider (described in subparagraph (A)) that is actually available and accessible (as described in such subparagraph).

(iii) The fact that such alternate provider can provide the services without the imposition of the increase in cost sharing described in clause (i).

(iv) The hospital provides a referral to coordinate scheduling of this treatment.

Nothing in this subsection shall be construed as preventing a State from applying (or waiving) cost sharing otherwise permissible under this section to services described in clause (iii).

(2) LIMITATIONS.—

(A) FOR POOREST BENEFICIARIES.—In the case of an individual described in subsection (b)(1), the cost sharing imposed under this subsection may not exceed twice the amount determined to be nominal under this section, subject to the percent of income limitation otherwise applicable under subsection (b)(1).

(B) APPLICATION TO EXEMPT POPULATIONS.—In the case of an individual who is otherwise not subject to cost sharing under subsection (b)(3), a State may impose cost sharing under paragraph (1) for care in an amount that does not exceed a nominal amount (as otherwise determined under subsection (b)) so long as no cost sharing is imposed to receive such care through an outpatient department or other alternative health care provider in the geographic area of the hospital emergency department involved.

(C) CONTINUED APPLICATION OF AGGREGATE CAP.—In addition to the limitations imposed under subparagraphs (A) and (B), any increase in cost sharing under paragraph (1) continues to be subject to the aggregate cap on cost sharing applied under paragraph (1) or (2) of subsection (b), as the case may be.

(3) CONSTRUCTION.—Nothing in this section shall be construed—

(A) to limit a hospital's obligations with respect to screening and stabilizing treatment of an emergency medical condition under section 1867; or

(B) to modify any obligations under either State or Federal standards relating to the application of a prudent-layperson standard with respect to payment or coverage of emergency services by any managed care organization.

(4) DETERMINATION STANDARD.—No hospital or physician that makes a determination with respect to the imposition of cost sharing under this subsection shall be liable in any civil action or proceeding for such determination absent a finding by clear and convincing evidence of gross negligence by the hospital or physician. The previous sentence shall not affect any liability under section 1867 or otherwise applicable under State law based upon the provision (or failure to provide) care.

(5) DEFINITIONS.—For purposes of this subsection:

(A) NON-EMERGENCY SERVICES.—The term "non-emergency services" means any care or services furnished in a emergency department of a hospital that the physician determines do not constitute an appropriate medical screening examination or stabilizing examination and treatment screening required to be provided by the hospital under section 1867.

(B) ALTERNATE NON-EMERGENCY SERVICES PROVIDER.—The term "alternative non-emergency services provider" means, with respect to non-emergency services for the diag-

nosis or treatment of a condition, a health care provider, such as a physician's office, health care clinic, community health center, hospital outpatient department, or similar health care provider, that provides clinically appropriate services for such diagnosis or treatment of the condition within a clinically appropriate time of the provision of such non-emergency services and that is participating in the program under this title.

LIENS, ADJUSTMENTS AND RECOVERIES, AND TRANSFERS OF ASSETS

SEC. 1917. (a) * * *

(b)(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

(A) * * *

* * * * * * *

(C)(i) * * *

(ii) Clause (i) shall not apply in the case of an individual who received medical assistance under a State plan of a State which had a State plan amendment approved as of May 14, 1993, *or which has a State plan amendment that provides for a qualified State long-term care insurance partnership (as defined in clause (iii))* which provided for the disregard of any assets or resources—

(I) * * *

* * * * * * *

(iii) For purposes of this paragraph, the term "qualified State long-term care insurance partnership" means an approved State plan amendment under this title that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy (including a certificate issued under a group insurance contract), if the following requirements are met:

(I) The policy covers an insured who was a resident of such State when coverage first became effective under the policy.

(II) The policy is a qualified long-term care insurance policy (as defined in section 7702B(b) of the Internal Revenue Code of 1986) issued on or after the first day of the first calendar quarter in which the plan amendment was submitted to the Secretary.

(III) If the policy does not provide some level of inflation protection, the insured was offered, before the policy was sold, a long-term care insurance policy that provides some level of inflation protection.

(IV) The State Medicaid agency under section 1902(a)(5) provides information and technical assistance to the State insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training or

demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.

(V) The issuer of the policy provides regular reports to the Secretary that include, in accordance with regulations of the Secretary (promulgated after consultation with the States), notification regarding when all benefits provided under the policy have been paid and the amount of such benefits paid, when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.

(VI) The State does not impose any requirement affecting the terms or benefits of such a policy unless the State imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

In the case of a long-term care insurance policy which is exchanged for another such policy, subclause (I) shall be applied based on the coverage of the first such policy that was exchanged.

(iv) The Secretary—

(I) as appropriate, shall provide copies of the reports described in clause (iii)(V) to the State involved; and

(II) shall promote the education of consumers regarding qualified State long-term care insurance partnerships.

(v) The Secretary, in consultation with other appropriate Federal agencies, issuers of long-term care insurance, the National Association of Insurance Commissioners, and State insurance commissioners, shall develop recommendations for Congress to authorize and fund a uniform minimum data set to be reported electronically by all issuers of long-term care insurance policies under qualified State long-term care insurance partnerships to a secure, centralized electronic query and report-generating mechanism that the State, the Secretary, and other Federal agencies can access.

(c)(1)(A) * * *

(B)(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d) *or in the case of any other disposal of assets made on or after the date of the enactment of the Medicaid Reconciliation Act of 2005*, 60 months) before the date specified in clause (ii).

* * * * * * *

[(D) The date**]** *(D)(i) In the case of a transfer of asset made before the date of the enactment of the Medicaid Reconciliation Act of 2005, the date* specified in this subparagraph is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

(ii) In the case of a transfer of asset made on or after the date of the enactment of the Medicaid Reconciliation Act of 2005, the date specified in this subparagraph is the first day of a month during or after which assets have been transferred for less than fair

market value, or the date on which the individual is eligible for medical assistance under the State plan and is receiving services described in subparagraph (C) but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.

(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

(A) * * *

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(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary**[**;**]**.

The procedures established under subparagraph (D) shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the legal guardian of the individual. While an application for an undue hardship waiver is pending under subparagraph (D) in the case of an individual who is a resident of a nursing facility, if the application meets such criteria as the Secretary specifies, the State may provide for payments for nursing facility services in order to hold the bed for the individual at the facility, but not in excess of payments for 30 days.

* * * * * * *

(e)(1) In order to meet the requirements of this section for purposes of section 1902(a)(18), a State shall require, as a condition for the provision of medical assistance for services described in subsection (c)(1)(C)(i) (relating to long-term care services) for an individual, the application of the individual for such assistance (including any recertification of eligibility for such assistance) shall disclose the following:

(A) A description of any interest the individual or community spouse has in an annuity (or similar financial instrument which provides for the conversion of a countable asset to a noncountable asset, as may be specified by the Secretary), regardless of whether the annuity is irrevocable or is treated as an asset.

(B) Full information (as specified by the Secretary) concerning any transaction involving the transfer or disposal of assets during the previous period of 60 months, if the transaction exceeded $100,000, without regard to whether the transfer or disposal was for fair market value. For purposes of applying the previous sentence under this subsection, all transactions of $5,000 or more occurring within a 12-month period shall be treated as a single transaction. The dollar amounts specified in the first and second sentences of this subparagraph shall be increased, beginning with 2007, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000 in the case of the first sentence and $100 in the case of the second sentence.

Such application or recertification form shall include a statement that under paragraph (2) the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of the provision of such medical assistance.

(2)(A) In the case of any annuity in which an institutionalized individual or community spouse has an interest, if medical assistance is furnished to the individual for services described in subsection (c)(1)(C)(i), by virtue of the provision of such assistance the State becomes the remainder beneficiary in the first position for the total amount of such medical assistance paid on behalf of the individual under this title (or, where there is a community spouse or minor or disabled child in such first position, in the position immediately succeeding the position of such spouse or child or both).

(B) In the case of disclosure concerning an annuity under paragraph (1)(A), the State shall notify the issuer of the annuity of the right of the State under subparagraph (A) as a preferred remainder beneficiary in the annuity for medical assistance furnished to the individual. Nothing in this paragraph shall be construed as preventing such an issuer from notifying persons with any other remainder interest of the State's remainder interest under subparagraph (A).

(C) In the case of such an issuer receiving notice under subparagraph (B), the State may require the issuer to notify the State when there is a change in the amount of income or principal being withdrawn from the amount that was being withdrawn at the time of the most recent disclosure described in paragraph (1)(A). A State shall take such information into account in determining the amount of the State's obligations for medical assistance or in the individual's eligibility for such assistance.

(3)(A) For purposes of subsection (c)(1), a transaction described in paragraph (1)(B) shall be deemed as the transfer of an asset for less than fair market value unless the individual demonstrates to the satisfaction of the State that the transfer of the asset was for fair market value.

(B) The Secretary may provide guidance to States on categories of arms length transactions (such as the purchase of a commercial annuity) that could be generally treated as a transfer of asset for fair market value.

(4) Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1)(A).

(f)(1) Notwithstanding any other provision of this title, subject to paragraph (2), in determining eligibility of an individual for medical assistance with respect to nursing facility services or other long-term care services, the individual shall not be eligible for such assistance if the individual's equity interest in the individual's home exceeds $500,000. The dollar amount specified in the preceding sentence shall be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000.

(2) Paragraph (1) shall not apply with respect to an individual if—

(A) the spouse of such individual, or

(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614,

is lawfully residing in the individual's home.

(3) Nothing in this subsection shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

(4) The Secretary shall establish a process whereby paragraph (1) is waived in the case of a demonstrated hardship.

(g) TREATMENT OF ENTRANCE FEES OF INDIVIDUALS RESIDING IN CONTINUING CARE RETIREMENT COMMUNITIES.—

(1) IN GENERAL.—For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this title, the rules specified in paragraph (2) shall apply to individuals residing in continuing care retirement communities or life care communities that collect an entrance fee on admission from such individuals.

(2) TREATMENT OF ENTRANCE FEE.—For purposes of this subsection, an individual's entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that—

(A) the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

(B) the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

(C) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

(3) TREATMENT IN RELATION TO SPOUSAL SHARE.—To the extent that an entrance fee is determined to be an available resource to an individual applying for medical assistance and the individual has a community spouse as defined in section 1924(h), the entrance fee shall be considered in the computation of spousal share pursuant to section 1924(c).

[(e)**]** *(h)* In this section, the following definitions shall apply:

(1) * * *

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REQUIREMENTS FOR NURSING FACILITIES

SEC. 1919. (a) * * *

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(c) REQUIREMENTS RELATING TO RESIDENTS' RIGHTS.—

(1) * * *

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(5) ADMISSIONS POLICY.—

(A) ADMISSIONS.—With respect to admissions practices, a nursing facility must—

(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this title or title XVIII, (II) *subject to clause (v),* not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this title or title XVIII, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

* * * * * * *

(v) TREATMENT OF CONTINUING CARE RETIREMENT COMMUNITIES ADMISSION CONTRACTS.—Notwithstanding subclause (II) of subparagraph (A)(i), subject to section 1924(c) and (d), contracts for admission to a State licensed, registered, certified, or equivalent continuing care retirement community or life care community, including services in a nursing facility that is part of such community, may require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance.

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TREATMENT OF INCOME AND RESOURCES FOR CERTAIN INSTITUTIONALIZED SPOUSES

SEC. 1924. (a) * * *

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(d) PROTECTING INCOME FOR COMMUNITY SPOUSE.—

(1) * * *

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(6) APPLICATION OF "INCOME FIRST" RULE FOR FUNDING COMMUNITY SPOUSE MONTHLY INCOME ALLOWANCE.—For purposes of this subsection and subsection (e), any transfer or allocation made from an institutionalized spouse to meet the need of a community spouse for a community spouse monthly income allowance under paragraph (1)(B) shall be first made from income of the institutionalized spouse and then only when the income is not available from the resources of such institutionalized spouse.

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PAYMENT FOR COVERED OUTPATIENT DRUGS

SEC. 1927. (a) REQUIREMENT FOR REBATE AGREEMENT.—

(1) * * *

* * * * * * *

(5) LIMITATION ON PRICES OF DRUGS PURCHASED BY COVERED ENTITIES.—

(A) * * *

(B) COVERED ENTITY DEFINED.—In this subsection, the term "covered entity" means an entity described in section 340B(a)(4) of the Public Health Service Act *and a children's hospital described in section 1886(d)(1)(B)(iii) which meets the requirements of clauses (i) and (iii) of section 340B(b)(4)(L) of the Public Health Service Act and which would meet the requirements of clause (ii) of such section if that clause were applied by taking into account the percentage of care provided by the hospital to patients eligible for medical assistance under a State plan under this title.*

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(7) REQUIREMENT FOR SUBMISSION OF UTILIZATION DATA FOR CERTAIN PHYSICIAN ADMINISTERED DRUGS.—

(A) SINGLE SOURCE DRUGS.—In order for payment to be available under section 1903(a) for a covered outpatient drug that is a single source drug that is physician administered (as determined by the Secretary), and that is administered on or after January 1, 2006, the State shall provide for the submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section for drugs administered for which payment is made under this title.

(B) MULTIPLE SOURCE DRUGS.—

(i) IN GENERAL.—Not later than January 1, 2007, the information shall be submitted under subparagraph (A) using National Drug Code codes unless the Secretary specifies that an alternative coding system should be used.

(ii) IDENTIFICATION OF MOST FREQUENTLY PHYSICIAN ADMINISTERED MULTIPLE SOURCE DRUGS.—Not later than January 1, 2007, the Secretary shall publish a list of the 20 physician administered multiple source drugs that the Secretary determines have the highest dollar volume of physician administered dispensing under this title. The Secretary may modify such list from year to year to reflect changes in such volume.

(iii) REQUIREMENT.—In order for payment to be available under section 1903(a) for a covered outpatient drug that is a multiple source drug that is physician administered (as determined by the Secretary), that is on the list published under clause (ii), and that is administered on or after January 1, 2008, the State shall provide for the submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section.

(C) HARDSHIP WAIVER.—The Secretary may delay the application of subparagraph (A) or (B), or both, in the case of a State to prevent hardship to States which require additional time to implement the reporting system required under the respective subparagraph.

(b) TERMS OF REBATE AGREEMENT.—

(1) * * *

* * * * * * *

(3) MANUFACTURER PROVISION OF PRICE INFORMATION.—

(A) IN GENERAL.—Each manufacturer with an agreement in effect under this section shall report to the Secretary—

[(i) not later than 30 days after the last day of each rebate period under the agreement (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (k)(1)) and, (for single source drugs and innovator multiple source drugs), the manufacturer's best price (as defined in subsection (c)(2)(B)) for covered outpatient drugs for the rebate period under the agreement,]

(i) not later than 30 days after the last day of each rebate period under the agreement—

(I) on the average manufacturer price (as defined in subsection (k)(1)) for covered outpatient drugs for the rebate period under the agreement (including for all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act); and

(II) for single source drugs and innovator multiple source drugs (including all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act), on the manufacturer's best price (as defined in subsection (c)(1)(C)) for such drugs for the rebate period under the agreement;

(ii) not later than 30 days after the date of entering into an agreement under this section on the average manufacturer price (as defined in subsection (k)(1)) as of October 1, 1990 for each of the manufacturer's covered outpatient drugs *(including for such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act)*; [and]

(iii) for calendar quarters beginning on or after January 1, 2004, in conjunction with reporting required under clause (i) and by National Drug Code (including package size)—

(I) the manufacturer's average sales price (as defined in section 1847A(c)) and the total number of units specified under section 1847A(b)(2)(A);

(II) if required to make payment under section 1847A, the manufacturer's wholesale acquisition cost, as defined in subsection (c)(6) of such section; and

(III) information on those sales that were made at a nominal price or otherwise described in section 1847A(c)(2)(B);

for a drug or biological described in subparagraph (C), (D), (E), or (G) of section 1842(o)(1) or section 1881(b)(13)(A)(ii)**[.]***; and*

(iv) for calendar quarters beginning on or after July 1, 2006, in conjunction with reporting required under clause (i) and by National Drug Code (including package size)—

(I) the manufacturer's RAMP (as defined in subsection (e)(2)(B)(i)) and the total number of units required to compute the volume weighted average RAMP under subsection (e)(2)(C);

(II) if required to make payment under subsection (e)(2)(D), the manufacturer's wholesale acquisition cost, as defined in clause (ii) of such subsection; and

(III) information on those sales that were made at a nominal price or otherwise described in subsection (e)(2)(B)(ii)(II);

for all covered outpatient drugs. Information reported under this subparagraph is subject to audit by the Inspector General of the Department of Health and Human Services.

(D) CONFIDENTIALITY OF INFORMATION.—Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii) (other than the wholesale acquisition cost for purposes of carrying out section 1847A) is confidential and shall not be disclosed by the Secretary or the Secretary of Veterans Affairs or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except—

(i) * * *

(ii) to permit the Comptroller General to review the information provided, **[**and**]**

(iii) to permit the Director of the Congressional Budget Office to review the information provided**[.]***, and*

(iv) to States to carry out this title.

The previous sentence shall also apply to information disclosed under section 1860D–2(d)(2) or 1860D–4(c)(2)(E) and drug pricing data reported under the first sentence of section 1860D–31(i)(1).

* * * * * * *

(c) DETERMINATION OF AMOUNT OF REBATE.—

(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—

(A) * * *

* * * * * * *

(C) BEST PRICE DEFINED.—For purposes of this section—

(i) IN GENERAL.—The term "best price" means, with respect to a single source drug or innovator multiple source drug of a manufacturer *(including any other such drug of a manufacturer that is sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act)*, the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding—

(I) * * *

* * * * * * *

(ii) SPECIAL RULES.—The term "best price"—

(I) * * *

(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package; [and]

(III) shall not take into account prices that are merely nominal in amount[.]*; and*

(IV) in the case of a manufacturer that approves, allows, or otherwise permits any other drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act, shall be inclusive of the lowest price for such authorized drug available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding those prices described in subclauses (I) through (IV) of clause (i).

* * * * * * *

(d) LIMITATIONS ON COVERAGE OF DRUGS.—

(1) * * *

* * * * * * *

(5) REQUIREMENTS OF PRIOR AUTHORIZATION PROGRAMS.—A State plan under this title may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) only if the system [providing for such approval—] *providing for such approval meets the following requirements:*

(A) *The system* provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization[; and].

(B) [except] *Except* with respect to the drugs on the list referred to in paragraph (2), *the system* provides for the dispensing of at least 72-hour supply of a covered out-

patient prescription drug in an emergency situation (as defined by the Secretary).

(C) The system provides that an atypical antipsychotic or antidepressant single source drug may be placed on a list of drugs subject to prior authorization only where a drug use review board has determined, based on the strength of the scientific evidence and standards of practice, including assessing peer-reviewed medical literature, pharmacoeconomic studies, outcomes research data and other information as the board determines to be appropriate, that placing the drug on prior approval or otherwise imposing restrictions on its use is not likely to harm patients or increase overall medical costs.

(D) The system provides that where a response is not received to a request for authorization of an atypical antipsychotic or antidepressant drug prescribed within 24 hours after the prescription is transmitted, payment is made for a 30 day supply of a medication that the prescriber certifies is medically necessary.

* * * * * * *

[(e) TREATMENT OF PHARMACY REIMBURSEMENT LIMITS.—

[(1) IN GENERAL.—During the period beginning on January 1, 1991, and ending on December 31, 1994—

[(A) a State may not reduce the payment limits established by regulation under this title or any limitation described in paragraph (3) with respect to the ingredient cost of a covered outpatient drug or the dispensing fee for such a drug below the limits in effect as of January 1, 1991, and

[(B) except as provided in paragraph (2), the Secretary may not modify by regulation the formula established under sections 447.331 through 447.334 of title 42, Code of Federal Regulations, in effect on November 5, 1990, to reduce the limits described in subparagraph (A).

[(2) SPECIAL RULE.—If a State is not in compliance with the regulations described in paragraph (1)(B), paragraph (1)(A) shall not apply to such State until such State is in compliance with such regulations.

[(3) EFFECT ON STATE MAXIMUM ALLOWABLE COST LIMITATIONS.—This section shall not supersede or affect provisions in effect prior to January 1, 1991, or after December 31, 1994, relating to any maximum allowable cost limitation established by a State for payment by the State for covered outpatient drugs, and rebates shall be made under this section without regard to whether or not payment by the State for such drugs is subject to such a limitation or the amount of such a limitation.

[(4) ESTABLISHMENT OF UPPER PAYMENT LIMITS.—The Secretary shall establish a Federal upper reimbursement limit for each multiple source drug for which the FDA has rated three or more products therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such and shall use only such formulations when determining any such upper limit.]

(e) PHARMACY REIMBURSEMENT LIMITS.—

(1) FEDERAL UPPER LIMIT FOR INGREDIENT COST OF COVERED OUTPATIENT DRUGS.—

(A) IN GENERAL.—Subject to subparagraph (B), no Federal financial participation shall be available for payment for the ingredient cost of a covered outpatient drug in excess of the Federal upper limit for that drug established under paragraph (2).

(B) OPTIONAL CARVE OUT.—A State may elect not to apply subparagraph (A) to payment for either or both of the following:

(i) Drugs dispensed by specialty pharmacies (such as those dispensing only immunosuppressive drugs), as defined by the Secretary.

(ii) Drugs administered by a physician in a physician's office.

(2) FEDERAL UPPER LIMIT.—

(A) IN GENERAL.—Except as provided in subparagraph (D) and subject to paragraph (5), the Federal upper limit established under this paragraph for the ingredient cost of a—

(i) single source drug, is 106 percent of the RAMP (as defined in subparagraph (B)(i)) for that drug; and

(ii) multiple source drug, is 120 percent of the volume weighted average RAMP (as determined under subparagraph (C)) for that drug.

A drug product that is a single source drug and that becomes a multiple source drug shall continue to be treated under this subsection as a single source drug until the Secretary determines that there are sufficient data to compile the volume weighted average RAMP for that drug.

(B) RAMP AND RELATED PROVISIONS.—For purposes of this subsection:

(i) RAMP DEFINED.—The term "RAMP" means, with respect to a covered outpatient drug by a manufacturer for a calendar quarter and subject to clauses (ii) and (iii), the average price paid to a manufacturer for the drug in the United States in the quarter by wholesalers for drugs distributed to retail pharmacies, excluding service fees that are paid by the manufacturer to an entity and that represent fair market value for a bona-fide service provided by the entity.

(ii) SALES EXEMPTED FROM COMPUTATION.—The RAMP under clause (i) shall exclude any of the following:

(I) Sales exempt from inclusion in the determination of best price under subsection (c)(1)(C)(i).

(II) Such other sales as the Secretary identifies as sales to an entity that are merely nominal in amount under subsection (c)(1)(C)(ii)(III).

(iii) SALE PRICE NET OF DISCOUNTS.—In calculating the RAMP under clause (i), such RAMP shall include any of the following:

(I) Cash discounts and volume discounts.

(II) Free goods that are contingent upon any purchase requirement.

(III) Sales at a nominal price that are contingent upon any purchase requirement or agreement.

(IV) Chargebacks, rebates (not including rebates provided under an agreement under this section), or any other direct or indirect discounts.

(V) Any other price concessions, which may be based on recommendations of the Inspector General of the Department of Health and Human Services, that would result in a reduction of the cost to the purchaser.

(iv) RETAIL PHARMACY.—For purposes of this subsection, the term "retail pharmacy" does not include mail-order only pharmacies or any pharmacy at a nursing facility or home.

(C) VOLUME WEIGHTED AVERAGE RAMP DEFINED.—For purposes of subparagraph (A), for all drug products included within the same multiple source drug billing and payment code (or such other methodology as may be specified by the Secretary), the volume weighted average RAMP is the volume weighted average of the RAMPs reported under section 1927(b)(3)(A)(iv) determined by—

(i) computing the sum of the products (for each National Drug Code assigned to such drug products) of—

(I) the manufacturer's RAMP (as defined in subparagraph (B)); and

(II) the total number of units specified under section 1847A(b)(2) sold; and

(ii) dividing the sum determined under clause (i) by the sum of the total number of units under clause (i)(II) for all National Drug Codes assigned to such drug products.

(D) EXCEPTION FOR INITIAL SALES PERIODS.—

(i) IN GENERAL.—In the case of a single source drug during an initial sales period (not to exceed 2 calendar quarters) in which data on sales for the drug are not sufficiently available from the manufacturer to compute the RAMP or the volume weighted average RAMP under subparagraph (C), the Federal upper limit for the ingredient cost of such drug during such period shall be the wholesale acquisition cost (as defined in clause (ii)) for the drug.

(ii) WHOLESALE ACQUISITION COST.—For purposes of clause (i), the term "wholesale acquisition cost" means, with respect to a single source drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data.

(E) UPDATES; DATA COLLECTION.—

(i) FREQUENCY OF DETERMINATION.—The Secretary shall update the Federal upper limits applicable under this paragraph on at least a quarterly basis, taking into account the most recent data collected for purposes of determining such limits and the Food and Drug Administration's most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations".

(ii) COLLECTION OF DATA.—Data on RAMP is collected under subsection (b)(3)(A)(iv).

(F) AUTHORITY TO ENTER CONTRACTS.—The Secretary may enter into contracts with appropriate entities to determine RAMPs and other data necessary to calculate the Federal upper limit for a covered outpatient drug established under this subsection and to calculate that payment limit.

(3) DISPENSING FEES.—

(A) IN GENERAL.—A State which provides medical assistance for covered outpatient drugs shall pay a dispensing fee for each covered outpatient drug in accordance with this paragraph. A State may vary the amount of such dispensing fees, including taking into account the special circumstances of pharmacies that are serving rural or underserved areas or that are sole community pharmacies, so long as such variation is consistent with subparagraph (B).

(B) DISPENSING FEE PAYMENT FOR MULTIPLE SOURCE DRUGS.—A State shall establish a dispensing fee under this title for a covered outpatient drug that is treated as a multiple source drug under paragraph (2)(A) (whether or not it may be an innovator multiple source drug) in an amount that is not less than $8 per prescription unit. The Secretary shall define what constitutes a prescription unit for purposes of the previous sentence.

(4) EFFECT ON STATE MAXIMUM ALLOWABLE COST LIMITATIONS.—This section shall not supersede or affect provisions in effect prior to January 1, 1991, or after December 31, 1994, relating to any maximum allowable cost limitation established by a State for payment by the State for covered outpatient drugs, and rebates shall be made under this section without regard to whether or not payment by the State for such drugs is subject to such a limitation or the amount of such a limitation.

(5) EVALUATION OF USE OF RETAIL SURVEY PRICE METHODOLOGY.—

(A) IN GENERAL.—The Secretary may develop a methodology to set the Federal upper limit based on the reported retail survey price, as most recently reported under subparagraph (C), instead of a percentage of RAMP or volume weighted average RAMP as described in paragraph (2).

(B) INITIAL APPLICATION.—For 2007, the Secretary may use this methodology for a limited number of covered outpatient drugs, including both single source and multiple source drugs, selected by the Secretary in a manner so as to be representative of the classes of drugs dispensed under this title.

(C) DETERMINATION OF RETAIL SURVEY PRICE FOR COVERED OUTPATIENT DRUGS.—

(i) USE OF VENDOR.—The Secretary may contract services for the determination of retail survey prices for covered outpatient drugs that represent a nationwide average of pharmacy sales costs for such drugs, net of all discounts and rebates. Such a contract shall be awarded for a term of 2 years.

(ii) USE OF COMPETITIVE BIDDING.—In contracting for such services, the Secretary shall competitively bid for an outside vendor that has a demonstrated history in—

(I) surveying and determining, on a representative nationwide basis, retail prices for ingredient costs of prescription drugs;

(II) working with retail pharmacies, commercial payers, and States in obtaining and disseminating such price information; and

(III) collecting and reporting such price information on at least a monthly basis.

(iii) ADDITIONAL PROVISIONS.—A contract with a vendor under this subparagraph shall include such terms and conditions as the Secretary shall specify, including the following:

(I) The vendor must monitor the marketplace and report to the Secretary each time there is a new covered outpatient drug available nationwide.

(II) The vendor must update the Secretary no less often than monthly on the retail survey prices for multiple source drugs.

(III) The vendor must apply methods for independently confirming retail survey prices.

(iv) AVAILABILITY OF INFORMATION TO STATES.—Information on retail survey prices obtained under this subparagraph, including applicable information on single source drugs, shall be provided to States on an ongoing, timely basis.

(D) STATE USE OF RETAIL SURVEY PRICE DATA.—

(i) DISTRIBUTION OF PRICE DATA.—The Secretary shall devise and implement a means for electronic distribution to each State agency designated under section 1902(a)(5) with responsibility for the administration or supervision of the administration of the State plan under this title of the retail survey price determined under this paragraph.

(ii) AUTHORITY TO ESTABLISH PAYMENT RATES BASED ON DATA.—A State may use the price data received in accordance with clause (i) in establishing payment rates for the ingredient costs and dispensing fees for covered outpatient drugs dispensed to individuals eligible for medical assistance under this title.

(6) LIMITATION ON JUDICIAL REVIEW.—There shall be no administrative or judicial review of—

(A) the Secretary's determinations of Federal upper limits, RAMPs, and volume weighted average RAMPs under this subsection, including the assignment of National Drug Codes to billing and payment classes;

(B) the Secretary's disclosure to States of the average manufacturer prices, RAMPs, volume weighted average RAMPs, and retail survey prices;

(C) determinations under this subsection by the Secretary of covered outpatient drugs which are dispensed by a specialty pharmacy or administered by a physician in a physician's office;

(D) the contracting and calculations process under this subsection; and

(E) the method to allocate rebates, chargebacks, and other price concessions to a quarter if specified by the Secretary.

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(g) DRUG USE REVIEW.—

(1) * * *

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(3) STATE DRUG USE REVIEW BOARD.—

(A) * * *

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(C) ACTIVITIES.—The activities of the DUR Board shall include but not be limited to the following:

(i) * * *

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(iv) The development and oversight of prior authorization programs described in subsection (d)(5).

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(k) DEFINITIONS.—In the section—

(1) AVERAGE MANUFACTURER PRICE.—**[**The term**]**

(A) IN GENERAL.—The term "average manufacturer price" means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.

(B) INCLUSION OF SECTION 505(c) DRUGS.—In the case of a manufacturer that approves, allows, or otherwise permits any drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act, such term shall be inclusive of the average price paid for such authorized drug by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.

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PROVISIONS RELATING TO MANAGED CARE

SEC. 1932. (a) * * *

(b) BENEFICIARY PROTECTIONS.—

(1) * * *

(2) ASSURING COVERAGE TO EMERGENCY SERVICES.—

(A) * * *

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(D) EMERGENCY SERVICES FURNISHED BY NON-CONTRACT PROVIDERS.—Any provider of emergency services that does not have in effect a contract with a medicaid managed care entity that establishes payment amounts for services furnished to a beneficiary enrolled in the entity's medicaid managed care plan must accept as payment in full the amounts (less any payments for indirect cots of medical education and direct costs of graduate medical education) that it could collect if the beneficiary received medical assistance under this title other than through enrollment in such an entity.

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STATE FLEXIBILITY IN BENEFIT PACKAGES

SEC. 1936. (a) STATE OPTION OF PROVIDING BENCHMARK BENEFITS.—

(1) AUTHORITY.—

(A) IN GENERAL.—Notwithstanding any other provision of this title, a State, at its option as a State plan amendment, may provide for medical assistance under this title to individuals within one or more groups of individuals specified by the State through enrollment in coverage that provides—

(i) benchmark coverage described in subsection (b)(1) and for qualifying child benchmark dental coverage described in subparagraph (E); or

(ii) benchmark equivalent coverage described in subsection (b)(2) and for qualifying child benchmark dental coverage described in subparagraph (E).

(B) LIMITATION.—The State may only exercise the option under subparagraph (A) for eligibility categories that had been established before the date of the enactment of this section.

(C) OPTION OF WRAP-AROUND BENEFITS.—In the case of coverage described in subparagraph (A), a State, at its option, may provide such wrap-around or additional benefits as the State may specify.

(D) TREATMENT AS MEDICAL ASSISTANCE.—Payment of premiums for such coverage under this subsection shall be treated as payment of other insurance premiums described in the third sentence of section 1905(a).

(E) QUALIFYING CHILD DEFINED.—For purposes of subparagraph (A), the term "qualifying child" means a child under 18 years of age with a family income below 133 percent of the poverty line applicable to a family of the size involved.

(F) BENCHMARK DENTAL COVERAGE.—For purposes of subparagraph (A), the term "benchmark dental coverage" means, with respect to a State, dental benefits coverage that

is equivalent to or better than the dental coverage offered under the dental benefit plan that covers the greatest number of individuals in the State who are not entitled to medical assistance under this title.

(2) APPLICATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a State may require that a full-benefit eligible individual (as defined in subparagraph (C)) within a group obtain benefits under this title through enrollment in coverage described in paragraph (1)(A). A State may apply the previous sentence to individuals within one or more groups of such individuals.

(B) LIMITATION ON APPLICATION.—A State may not require under subparagraph (A) an individual to obtain benefits through enrollment described in paragraph (1)(A) if the individual is within one of the following categories of individuals:

(i) MANDATORY PREGNANT WOMEN AND CHILDREN.—The individual is a pregnant woman or child under 18 years of age who is required to be covered under the State plan under section 1902(a)(10)(A)(i).

(ii) DUAL ELIGIBLES.—The individual is entitled to benefits under any part of title XVIII.

(iii) TERMINALLY ILL HOSPICE PATIENTS.—The individual is terminally ill and is receiving benefits for hospice care under this title.

(iv) ELIGIBLE ON BASIS OF INSTITUTIONALIZATION.—The individual is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

(v) MEDICALLY FRAIL AND SPECIAL MEDICAL NEEDS INDIVIDUALS.—The individual is medically frail or otherwise an individual with special medical needs (as identified in accordance with regulations of the Secretary).

(vi) BENEFICIARIES QUALIFYING FOR LONG-TERM CARE SERVICES.—The individual qualifies based on medical condition for medical assistance for long-term care services described in section 1917(c)(1)(C).

(C) FULL-BENEFIT ELIGIBLE INDIVIDUALS.—

(i) IN GENERAL.—For purposes of this paragraph, subject to clause (ii), the term "full-benefit eligible individual" means for a State for a month an individual who is determined eligible by the State for medical assistance for all services defined in section 1905(a) which are covered under the State plan under this title for such month under section 1902(a)(10)(A) or under any other category of eligibility for medical assistance for all such services under this title, as determined by the Secretary.

(ii) EXCLUSION OF MEDICALLY NEEDY AND SPEND-DOWN POPULATIONS.—Such term shall not include an individual determined to be eligible by the State for medical assistance under section 1902(a)(10)(C) or by reason of section 1902(f) or otherwise eligible based on a reduction of income based on costs incurred for medical or other remedial care.

(b) BENCHMARK BENEFIT PACKAGES.—

(1) IN GENERAL.—For purposes of subsection (a)(1), each of the following coverage shall be considered to be benchmark coverage:

(A) FEHBP-EQUIVALENT HEALTH INSURANCE COVERAGE.—The standard Blue Cross/Blue Shield preferred provider option service benefit plan, described in and offered under section 8903(1) of title 5, United States Code.

(B) STATE EMPLOYEE COVERAGE.—A health benefits coverage plan that is offered and generally available to State employees in the State involved.

(C) COVERAGE OFFERED THROUGH HMO.—The health insurance coverage plan that—

(i) is offered by a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act), and

(ii) has the largest insured commercial, non-medicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State involved.

(2) BENCHMARK-EQUIVALENT COVERAGE.—For purposes of subsection (a)(1), coverage that meets the following requirement shall be considered to be benchmark-equivalent coverage:

(A) INCLUSION OF BASIC SERVICES.—The coverage includes benefits for items and services within each of the following categories of basic services:

(i) Inpatient and outpatient hospital services.

(ii) Physicians' surgical and medical services.

(iii) Laboratory and x-ray services.

(iv) Well-baby and well-child care, including age-appropriate immunizations.

(v) Other appropriate preventive services, as designated by the Secretary.

(B) AGGREGATE ACTUARIAL VALUE EQUIVALENT TO BENCHMARK PACKAGE.—The coverage has an aggregate actuarial value that is at least actuarially equivalent to one of the benchmark benefit packages described in paragraph (1).

(C) SUBSTANTIAL ACTUARIAL VALUE FOR ADDITIONAL SERVICES INCLUDED IN BENCHMARK PACKAGE.—With respect to each of the following categories of additional services for which coverage is provided under the benchmark benefit package used under subparagraph (B), the coverage has an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of services in such package:

(i) Coverage of prescription drugs.

(ii) Mental health services.

(iii) Vision services.

(iv) Hearing services.

(3) DETERMINATION OF ACTUARIAL VALUE.—The actuarial value of coverage of benchmark benefit packages shall be set forth in an actuarial opinion in an actuarial report that has been prepared—

(A) by an individual who is a member of the American Academy of Actuaries;

(B) using generally accepted actuarial principles and methodologies;

(C) using a standardized set of utilization and price factors;

(D) using a standardized population that is representative of the population involved;

(E) applying the same principles and factors in comparing the value of different coverage (or categories of services);

(F) without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and

(G) taking into account the ability of a State to reduce benefits by taking into account the increase in actuarial value of benefits coverage offered under this title that results from the limitations on cost sharing under such coverage.

The actuary preparing the opinion shall select and specify in the memorandum the standardized set and population to be used under subparagraphs (C) and (D).

(4) COVERAGE OF RURAL HEALTH CLINIC AND FQHC SERVICES.—Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark equivalent coverage under this section unless—

(A) the individual has access, through such coverage or otherwise, to services described in subparagraphs (B) and (C) of section 1905(a)(2); and

(B) payment for such services is made in accordance with the requirements of section 1902(bb).

HEALTH OPPORTUNITY ACCOUNTS

SEC. 1937. (a) AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary shall establish a demonstration program under which States may provide under their State plans under this title (including such a plan operating under a statewide waiver under section 1115) in accordance with this section for the provision of alternative benefits consistent with subsection (c) for eligible population groups in one or more geographic areas of the State specified by the State. An amendment under the previous sentence is referred to in this section as a "State demonstration program".

(2) INITIAL DEMONSTRATION.—The demonstration program under this section shall begin on January 1, 2006. During the first 5 years of such program, the Secretary shall not approve

more than 10 State demonstration programs, with each State demonstration program covering one or more geographic areas specified by the State. After such 5-year period—

(A) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that a State demonstration program previously implemented has been unsuccessful, such a demonstration program may be extended or made permanent in the State; and

(B) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that all State demonstration programs previously implemented were unsuccessful, other States may implement State demonstration programs.

(3) APPROVAL.—The Secretary shall not approve a State demonstration program under paragraph (1) unless the program includes the following:

(A) Creating patient awareness of the high cost of medical care.

(B) Providing incentives to patients to seek preventive care services.

(C) Reducing inappropriate use of health care services.

(D) Enabling patients to take responsibility for health outcomes.

(E) Providing enrollment counselors and ongoing education activities.

(F) Providing transactions involving health opportunity accounts to be conducted electronically and without cash.

(G) Providing access to negotiated provider payment rates consistent with this section.

Nothing in this section shall be construed as preventing a State demonstration program from providing incentives for patients obtaining appropriate preventive care (as defined for purposes of section 223(c)(2)(C) of the Internal Revenue Code of 1986), such as additional account contributions for an individual demonstrating healthy prevention practices.

(4) NO REQUIREMENT FOR STATEWIDENESS.—Nothing in this section or any other provision of law shall be construed to require that a State must provide for the implementation of a State demonstration program on a Statewide basis.

(5) REPORTS.—The Secretary shall periodically submit to Congress reports regarding the success of State demonstration programs.

(b) ELIGIBLE POPULATION GROUPS.—

(1) IN GENERAL.—A State demonstration program under this section shall specify the eligible population groups consistent with paragraphs (2) and (3).

(2) ELIGIBILITY LIMITATIONS DURING INITIAL DEMONSTRATION PERIOD.—During the initial 5 years of the demonstration program under this section, a State demonstration project shall not apply to any of the following individuals:

(A) Individuals who are 65 years of age or older.

(B) Individuals who are disabled, regardless of whether or not their eligibility for medical assistance under this title is based on such disability.

(C) Individuals who are eligible for medical assistance under this title only because they are (or were within the previous 60 days) pregnant.

(D) Individuals who have been eligible for medical assistance for a continuous period of less than 3 months.

(3) ADDITIONAL LIMITATIONS.—A State demonstration project shall not apply to any individual within a category of individuals described in section 1936(a)(2)(B).

(4) LIMITATIONS.—

(A) STATE OPTION.—This subsection shall not be construed as preventing a State from further limiting eligibility.

(B) ON ENROLLEES IN MEDICAID MANAGED CARE ORGANIZATIONS.—Insofar as the State provides for eligibility of individuals who are enrolled in medicaid managed care organizations, such individuals may participate in the State demonstration project only if the State provides assurances satisfactory to the Secretary that the following conditions are met with respect to any such organization:

(i) In no case may the number of such individuals enrolled in the organization who participate in the project exceed 5 percent of the total number of individuals enrolled in such organization.

(ii) The proportion of enrollees in the organization who so participate is not significantly disproportionate to the proportion of such enrollees in other such organizations who participate.

(iii) The State has provided for an appropriate adjustment in the per capita payments to the organization to account for such participation, taking into account differences in the likely use of health services between enrollees who so participate and enrollees who do not so participate.

(5) VOLUNTARY PARTICIPATION.—An eligible individual shall be enrolled in a State demonstration project only if the individual voluntarily enrolls. Except in such hardship cases as the Secretary shall specify, such an enrollment shall be effective for a period of 12 months, but may be extended for additional periods of 12 months each with the consent of the individual.

(c) ALTERNATIVE BENEFITS.—

(1) IN GENERAL.—The alternative benefits provided under this section shall consist, consistent with this subsection, of at least—

(A) coverage for medical expenses in a year for items and services for which benefits are otherwise provided under this title after an annual deductible described in paragraph (2) has been met; and

(B) contribution into a health opportunity account.

Nothing in subparagraph (A) shall be construed as preventing a State from providing for coverage of preventive care (referred

to in subsection (a)(3)) within the alternative benefits without regard to the annual deductible.

(2) ANNUAL DEDUCTIBLE.—The amount of the annual deductible described in paragraph (1)(A) shall be at least 100 percent, but no more than 110 percent, of the annualized amount of contributions to the health opportunity account under subsection (d)(2)(A)(i), determined without regard to any limitation described in subsection (d)(2)(C)(ii).

(3) ACCESS TO NEGOTIATED PROVIDER PAYMENT RATES.—

(A) FEE-FOR-SERVICE ENROLLEES.—In the case of an individual who is participating in a State demonstration project and who is not enrolled with a medicaid managed care organization, the State shall provide that the individual may obtain demonstration project medicaid services from—

(i) any participating provider under this title at the same payment rates that would be applicable to such services if the deductible described in paragraph (1)(A) was not applicable; or

(ii) any provider at payment rates that do not exceed 125 percent of the payment rate that would be applicable to such services furnished by a participating provider under this title if the deductible described in paragraph (1)(A) was not applicable.

(B) TREATMENT UNDER MEDICAID MANAGED CARE PLANS.—In the case of an individual who is participating in a State demonstration project and is enrolled with a medicaid managed care organization, the State shall enter into an arrangement with the organization under which the individual may obtain demonstration project medicaid services from any provider under such organization at payment rates that do not exceed the payment rate that would be applicable to such services if the deductible described in paragraph (1)(A) was not applicable.

(C) COMPUTATION.—The payment rates described in subparagraphs (A) and (B) shall be computed without regard to any cost sharing that would be otherwise applicable under section 1916.

(D) DEFINITIONS.—For purposes of this paragraph:

(i) The term "demonstration project medicaid services" means, with respect to an individual participating in a State demonstration project, services for which the individual would be provided medical assistance under this title but for the application of the deductible described in paragraph (1)(A).

(ii) The term "participating provider" means—

(I) with respect to an individual described in subparagraph (A), a health care provider that has entered into a participation agreement with the State for the provision of services to individuals entitled to benefits under the State plan; or

(II) with respect to an individual described in subparagraph (B) who is enrolled in a medicaid managed care organization, a health care provider

that has entered into an arrangement for the provision of services to enrollees of the organization under this title.

(4) NO EFFECT ON SUBSEQUENT BENEFITS.—Except as provided under paragraphs (1) and (2), alternative benefits for an eligible individual shall consist of the benefits otherwise provided to the individual, including cost sharing relating to such benefits.

(5) OVERRIDING COST SHARING AND COMPARABILITY REQUIREMENTS FOR ALTERNATIVE BENEFITS.—The provisions of this title relating to cost sharing for benefits (including section 1916) shall not apply with respect to benefits to which the annual deductible under paragraph (1)(A) applies. The provisions of section 1902(a)(10)(B) (relating to comparability) shall not apply with respect to the provision of alternative benefits (as described in this subsection).

(6) TREATMENT AS MEDICAL ASSISTANCE.—Subject to subparagraphs (D) and (E) of subsection (d)(2), payments for alternative benefits under this section (including contributions into a health opportunity account) shall be treated as medical assistance for purposes of section 1903(a).

(7) USE OF TIERED DEDUCTIBLE AND COST SHARING.—

(A) IN GENERAL.—A State—

(i) may vary the amount of the annual deductible applied under paragraph (1)(A) based on the income of the family involved so long as it does not favor families with higher income over those with lower income; and

(ii) may vary the amount of the maximum out-of-pocket cost sharing (as defined in subparagraph (B)) based on the income of the family involved so long as it does not favor families with higher income over those with lower income.

(B) MAXIMUM OUT-OF-POCKET COST SHARING.—For purposes of subparagraph (A)(ii), the term "maximum out-of-pocket cost sharing" means, for an individual or family, the amount by which the annual deductible level applied under paragraph (1)(A) to the individual or family exceeds the balance in the health opportunity account for the individual or family.

(8) CONTRIBUTIONS BY EMPLOYERS.—Nothing in this section shall be construed as preventing an employer from providing health benefits coverage consisting of the coverage described in paragraph (1)(A) to individuals who are provided alternative benefits under this section.

(d) HEALTH OPPORTUNITY ACCOUNT.—

(1) IN GENERAL.—For purposes of this section, the term "health opportunity account" means an account that meets the requirements of this subsection.

(2) CONTRIBUTIONS.—

(A) IN GENERAL.—No contribution may be made into a health opportunity account except—

(i) contributions by the State under this title; and

(ii) contributions by other persons and entities, such as charitable organizations.

(B) STATE CONTRIBUTION.—A State shall specify the contribution amount that shall be deposited under subparagraph (A)(i) into a health opportunity account.

(C) LIMITATION ON ANNUAL STATE CONTRIBUTION PROVIDED AND PERMITTING IMPOSITION OF MAXIMUM ACCOUNT BALANCE.—

(i) IN GENERAL.—A State—

(I) may impose limitations on the maximum contributions that may be deposited under subparagraph (A)(i) into a health opportunity account in a year;

(II) may limit contributions into such an account once the balance in the account reaches a level specified by the State; and

(III) subject to clauses (ii) and (iii) and subparagraph (D)(i), may not provide contributions described in subparagraph (A)(i) to a health opportunity account on behalf of an individual or family to the extent the amount of such contributions (including both State and Federal shares) exceeds, on an annual basis, $2,500 for each individual (or family member) who is an adult and $1,000 for each individual (or family member) who is a child.

(ii) INDEXING OF DOLLAR LIMITATIONS.—For each year after 2006, the dollar amounts specified in clause (i)(III) shall be annually increased by the Secretary by a percentage that reflects the annual percentage increase in the medical care component of the consumer price index for all urban consumers.

(iii) BUDGET NEUTRAL ADJUSTMENT.—A State may provide for dollar limitations in excess of those specified in clause (i)(III) (as increased under clause (ii)) for specified individuals if the State provides assurances satisfactory to the Secretary that contributions otherwise made to other individuals will be reduced in a manner so as to provide for aggregate contributions that do not exceed the aggregate contributions that would otherwise be permitted under this subparagraph.

(D) LIMITATIONS ON FEDERAL MATCHING.—

(i) STATE CONTRIBUTION.—A State may contribute under subparagraph (A)(i) amounts to a health opportunity account in excess of the limitations provided under subparagraph (C)(i)(III), but no Federal financial participation shall be provided under section 1903(a) with respect to contributions in excess of such limitations.

(ii) NO FFP FOR PRIVATE CONTRIBUTIONS.—No Federal financial participation shall be provided under section 1903(a) with respect to any contributions described in subparagraph (A)(ii) to a health opportunity account.

(E) APPLICATION OF DIFFERENT MATCHING RATES.—The Secretary shall provide a method under which, for expendi-

tures made from a health opportunity account for medical care for which the Federal matching rate under section 1903(a) exceeds the Federal medical assistance percentage, a State may obtain payment under such section at such higher matching rate for such expenditures.

(3) USE.—

(A) GENERAL USES.—

(i) IN GENERAL.—Subject to the succeeding provisions of this paragraph, amounts in a health opportunity account may be used for payment of such health care expenditures as the State specifies.

(ii) GENERAL LIMITATION.—In no case shall such account be used for payment for health care expenditures that are not payment of medical care (as defined by section 213(d) of the Internal Revenue Code of 1986).

(iii) STATE RESTRICTIONS.—In applying clause (i), a State may restrict payment for—

(I) providers of items and services to providers that are licensed or otherwise authorized under State law to provide the item or service and may deny payment for such a provider on the basis that the provider has been found, whether with respect to this title or any other health benefit program, to have failed to meet quality standards or to have committed one or more acts of fraud or abuse; and

(II) items and services insofar as the State finds they are not medically appropriate or necessary.

(iv) ELECTRONIC WITHDRAWALS.—The State demonstration program shall provide for a method whereby withdrawals may be made from the account for such purposes using an electronic system and shall not permit withdrawals from the account in cash.

(B) MAINTENANCE OF HEALTH OPPORTUNITY ACCOUNT AFTER BECOMING INELIGIBLE FOR PUBLIC BENEFIT.—

(i) IN GENERAL.—Notwithstanding any other provision of law, if an account holder of a health opportunity account becomes ineligible for benefits under this title because of an increase in income or assets—

(I) no additional contribution shall be made into the account under paragraph (2)(A)(i);

(II) subject to clause (iii), the balance in the account shall be reduced by 25 percent; and

(III) subject to the succeeding provisions of this subparagraph, the account shall remain available to the account holder for withdrawals under the same terms and conditions as if the account holder remained eligible for such benefits.

(ii) SPECIAL RULES.—Withdrawals under this subparagraph from an account—

(I) shall be available for the purchase of health insurance coverage; and

(II) may, subject to clause (iv), be made available (at the option of the State) for such additional expenditures (such as job training and tuition ex-

penses) specified by the State (and approved by the Secretary) as the State may specify.

(iii) EXCEPTION FROM 25 PERCENT SAVINGS TO GOVERNMENT FOR PRIVATE CONTRIBUTIONS.—Clause (i)(II) shall not apply to the portion of the account that is attributable to contributions described in paragraph (2)(A)(ii). For purposes of accounting for such contributions, withdrawals from a health opportunity account shall first be attributed to contributions described in paragraph (2)(A)(i).

(iv) CONDITION FOR NON-HEALTH WITHDRAWALS.—No withdrawal may be made from an account under clause (ii)(II) unless the accountholder has participated in the program under this section for at least 1 year.

(v) NO REQUIREMENT FOR CONTINUATION OF COVERAGE.—An account holder of a health opportunity account, after becoming ineligible for medical assistance under this title, is not required to purchase high-deductible or other insurance as a condition of maintaining or using the account.

(4) ADMINISTRATION.—A State may coordinate administration of health opportunity accounts through the use of a third party administrator and reasonable expenditures for the use of such administrator shall be reimbursable to the State in the same manner as other administrative expenditures under section 1903(a)(7).

(5) TREATMENT.—Amounts in, or contributed to, a health opportunity account shall not be counted as income or assets for purposes of determining eligibility for benefits under this title.

(6) UNAUTHORIZED WITHDRAWALS.—A State may establish procedures—

(A) to penalize or remove an individual from the health opportunity account based on nonqualified withdrawals by the individual from such an account; and

(B) to recoup costs that derive from such nonqualified withdrawals.

REFERENCES TO LAWS DIRECTLY AFFECTING MEDICAID PROGRAM

SEC. [1936] *1938*. (a) * * *

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DISSENTING VIEWS OF REPRESENTATIVES DINGELL, WAXMAN, MARKEY, BOUCHER, TOWNS, PALLONE, BROWN, GORDON, RUSH, ESHOO, STUPAK, ENGEL, WYNN, GREEN, STRICKLAND, DEGETTE, CAPPS, DOYLE, ALLEN, DAVIS, SCHAKOWSKY, SOLIS, GONZALEZ, INSLEE, BALDWIN, AND ROSS

Subtitle A—Medicaid

The House Republican Budget Resolution calls for $35 billion or more in mandatory spending cuts, at least $10 billion of which are to come out of Medicaid. At the same time, the Resolution calls for $106 billion in new tax cuts. And the Republican Budget Resolution actually increases the deficit by $35 billion as a result of continued tax cuts benefitting the richest Americans.

The Republicans on the Committee on Energy and Commerce have put forward a package that attempts to meet Reconciliation targets primarily by making cuts to the Medicaid program. These cuts would hurt the poorest of the poor, taking away needed healthcare services and raising the costs of care for the most vulnerable. According to preliminary estimates from the Congressional Budget Office (CBO), cuts directly affecting beneficiaries through higher charges or reduced services are three times higher than other cuts to the program under the Medicaid subtitle.

These cuts to the program that provides health insurance to one in seven Americans are being made to partially offset additional tax cuts for the wealthiest individuals. Households with incomes of more than $1 million a year—the richest 0.2 percent of the U.S. population—are already receiving tax cuts averaging $103,000 this year, and will receive another $20,000 a year in tax cuts when cuts coming in January are fully phased in. And, nearly all (97 percent) of the new measures benefit households earning over $200,000 a year.[1] It is particularly disturbing to see the Committee move forward with this package while American families continue to lose health insurance coverage and slip into poverty.

The number of Americans without health insurance was at an all-time high in 2004—an increase of 800,000 people from the preceding year. Six million more people had no health insurance in 2004 than in 2000. Medicaid and State Children's Health Insurance Program (SCHIP) coverage largely protected children from this sobering downturn.[2] And, according to the most recent U.S. Census data, the number of people who work but live in poverty increased by 563,000 and median income among the working age

[1] Center on Budget and Policy Priorities, New Tax Cuts Primarily Benefitting Millionaires Slated to Take Effect In January, September 19, 2005.

[2] Center on Budget and Policy Priorities, The Number of Uninsured Americans Continued to Rise in 2004, August 30, 2005.

population fell by 1.2 percent. There were four million more poor people in 2004 than in 2001.[3]

The Senate Committee on Finance Republican package, while flawed in its own right, did not cut beneficiaries' services, increase out-of-pocket costs, or increase long-term care penalties. The House Republican package included numerous harmful provisions that the Senate Republican did not adopt.

Rep. Edward Markey offered an amendment to strike all of the provisions in the Medicaid Subtitle. It was defeated on a party-line vote. The following highlights the major flaws in this bill.

Increased cost-sharing for all Medicaid beneficiaries

Subtitle A of Title II increases cost-sharing for all Medicaid beneficiaries. First, it increases the nominal cost-sharing amounts that are allowed to be charged under the law, and indexes those amounts to medical inflation. If this provision is enacted, the cost-sharing charges will increase on average six times faster than the Federal poverty level (FPL), which is indexed only to inflation. The package would expose Medicaid beneficiaries to new premium requirements, which could reach 5 percent of income, even for a family at 101 percent of FPL (just over $1,031/month for a family of 2). No beneficiary with an income greater than 100 percent of FPL is protected against premium charges; States could charge premiums as high as 5 percent of income.

Providers are explicitly allowed to turn patients away if they cannot pay the cost-sharing on the spot. In addition, States will be able to terminate coverage if they cannot afford premiums. States are not required to have a system to track cost-sharing and notify families who have reached the cap. Families will have to keep receipts and other items to prove to the State they have met the burden. Presumably, they would also have to carry these materials with them to medical appointments to prove to a provider that they are no longer subject to the cost-sharing requirements.

In addition, the bill grants broad new authority for States to determine income for the purposes of applying cost-sharing rules. Under current law, States have flexibility to disregard certain income and assets, however they can be no more restrictive than the Federal standard. States could now be more restrictive and thus count additional income, such as an unrelated party living in the home or a non-legally responsible stepparent (increasing gross income) to apply higher cost-sharing burdens at lower levels of poverty.

While certain services are exempted from cost-sharing, such as services for children in families with incomes under 100 percent of FPL, prenatal services furnished to pregnant women, preventive services, and services furnished to individuals in institutions, due to the new premium requirements and other cost-sharing requirements on prescription drugs and emergency room access, the protections for these populations on paper will mean little in practice.

Second, the package includes new cost-sharing requirements on prescription drugs and emergency room visits. These requirements

[3] Center on Budget and Policy Priorities, Economic Recovery Failed to Benefit Much of the Population in 2004, August 30, 2005.

would apply even to children and pregnant women under 100 percent of poverty who under current law are exempted from cost-sharing. States would be permitted to charge up to three times the new nominal cost-sharing levels for "non-preferred" prescription drugs—up to $15 or 15 percent of the cost of the medicine. For children below poverty, States can only charge up to the "nominal" levels, however, this is a significant change from current law which protects children under poverty from cost-sharing. In spite of the fact that States may not charge cost-sharing higher than that charged under TRICARE, that program allows up to 50 percent co-insurance on prescription drugs, so this protection is meaningless.

Research has documented the detrimental effect prescription drug cost-sharing can have on health. A recent small survey in Minneapolis's main public hospital showed the negative effects of prescription drug co-payments implemented in that State's Medicaid program. Slightly more than half of those surveyed reported being unable to obtain their prescriptions at least once in the last six months because of the co-payment charges. Those who failed to obtain their prescriptions at least once experienced an increase in subsequent emergency room visits and hospital admissions, including admissions for strokes and asthma attacks.[4]

On emergency room use as well, beneficiaries will see higher cost-sharing burdens. Ostensibly, this is to deter non-emergency care. In order to deter unnecessary use of the emergency room, however, beneficiaries must have an alternative provider available. The bill would impose higher cost-sharing on Medicaid beneficiaries for non-emergency use of the emergency room, without ensuring adequate access to alternative services. In particular, the nature of the Medicaid population requires that special considerations be taken into account such as the location and hours of operations for alternative providers must be accessible, and access to appropriate language expertise (translator services). Many beneficiaries are constrained as well by not owning a car, and often the emergency room is the only healthcare provider accessible by public transportation when the individual is not working and can go. The bill, however, makes no requirement that States establish appropriate alternate care networks that can serve the affected population before such additional costs are imposed.

These new cost-sharing burdens would especially disadvantage those with disabilities, particularly those who are living in the community or attempting to gain independence and move from an institution into the community-based living arrangements. Those living with disabilities, even those at the lowest levels of poverty, are not protected from these new charges unless they reside in an institution. The practical effect of this package will be to exacerbate the institutional bias, forcing more individuals with disabilities out of the community and back into nursing homes and other institutions as they will be unable to pay the higher cost-sharing imposed on individuals residing in the community.

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[4] Melody Mendiola, Kevin Larsen, et al., "Medicaid Patients Perceive Copays as a Barrier to Medication Compliance," Hennepin County Medical Center, Minneapolis, MN, at http://www.hcmc.org/depts/medicine/medresearch.htm.

Reduced benefits coverage

Subtitle A of Title II also would allow States to provide significantly reduced benefits coverage for Medicaid beneficiaries. This coverage would mirror private coverage or coverage provided in the SCHIP, or be actuarially equivalent to that coverage. Medicaid does, in fact, cover benefits that are frequently limited or excluded in private insurance programs because of the nature of the population Medicaid serves. Those with modest incomes and those with intense healthcare needs find private insurance inadequate, either because the out-of-pocket costs are so great as to be a barrier to gaining access to care or because the benefits are insufficient. In particular, Medicaid covers prescription drugs, rehabilitation and therapy services, durable medical equipment, long-term care, and mental health services that are often unavailable in the private market.

The Republican package would allow States to offer benefits packages that do not include these important services. In addition, the package would eliminate the Early Periodic Screening Diagnostic and Treatment benefit (EPSDT) for children above the poverty level (100 percent FPL for those over age 6; 133 percent FPL for infants to age 6). EPSDT is of critical importance for all children and guarantees that they get treatment for identified medical problems that are medically necessary.

States could even apply these new, reduced benefits packages to individuals living with disabilities, again exacerbating the institutional bias. When individuals with disabilities find the benefits they need—such as personal care services, home health services, or mental health services—are no longer available in the community, they will be forced back into institutions.

Restrictions on access to long-term care

According to the Congressional Budget Office, the bill cuts $2.5 billion from long-term care services for the elderly and disabled who are living in institutions. By changing the "look-back" period and penalty date for asset transfers, the Republican package would impose significant new hardships on those who need long-term care services under Medicaid. These provisions will be especially troubling for individuals with cognitive impairments who will find it more difficult to maintain records or track financing 60 months back. These provisions will also result in destitute individuals being denied Medicaid eligibility when they need nursing home care at the point when they have no other resources with which to pay. In addition, the package does not provide specific exceptions for legitimate "good Samaritan" transfers, for example to help a child with healthcare bills or donations to a charity.

In addition, the bill includes a number of other troubling proposals such as: a proposal to change the way income and assets are counted that would reduce the amount of income available to the community spouse after the death of the institutionalized spouse; a proposal pertaining to annuities and aggregating transfers that would place the burden on the beneficiary to prove that a transfer was for fair market value; and a proposal that would require Medicaid to count "entrance deposits" for care in a continuing care re-

tirement community (CCRC) as an asset, to allow the CCRC to collect higher private-pay rates for care for a longer period of time.

If this bill is enacted, many elderly individuals would be forced to sell their house or take out a reverse mortgage in order to qualify for Medicaid. This proposal amounts to an estate tax on the elderly, disproportionately affecting minorities and low-income homeowners who hold notably more of their net wealth in the form of home equity. Homes make up more than 50 percent of total net wealth of minorities, and more than 75 percent of total net wealth for those with incomes under $20,000. Home equity is nearly 60 percent of net wealth for those over 75 years old.

In fact, Medicaid drains the estates of many more families than the estate tax. Medicaid beneficiaries assets are taxed at 100 percent above $2,000 or $3,000. In contrast, the effective tax rate on the very large estates of the wealthiest is only 5 percent (on the smallest estates subject to tax) to 23 percent (on the largest estates). The loss of Federal revenues from one year of the estate tax—estimated at more than $40 billion in 2005—exceeds the entire amount spent by individuals and families out of their own resources for nursing home care—$33 billion in 2005.

Reductions in access to pharmacies

The Republican package would change the way Medicaid pays pharmacies for prescription drugs dispensed to Medicaid beneficiaries. The Inspector General of U.S. Department of Health and Human Services (HHS), the Congressional Budget Office, and the Government Accountability Office have identified the existing system as needing improvement. We support improvements to payment accuracy, but concerns were expressed that the new system established by this bill would be detrimental to pharmacies, in particular with an amendment adopted to include prompt pay discounts in the definition of Retail Average Manufacturer Price. These new reimbursement procedures could result in a lack of access to pharmaceuticals, particularly in rural areas.

Burdensome reporting requirements on beneficiaries and States

We also expressed serious concerns with a provision in the Republican package that would require that almost all Medicaid applicants provide paperwork demonstrating that they are United States citizens.[5] This provision essentially mandates that applicants—including children, those in institutions, homeless people and disaster survivors—submit either a valid birth certificate or passport to get health benefits. Large numbers of people do not have such documents readily available and the charges to obtain duplicate documents could be prohibitive, especially for those at the lowest income levels. This proposal is unnecessary and would create new administrative burdens for States. The HHS Office of the Inspector General recently investigated this subject and did not recommend requiring that states verify citizenship.[6] State Medicaid

[5] Those exempted include those who are applying as non-citizens and those who are eligible because of Medicare or SSI enrollment or those who have previously demonstrated that they are citizens.

[6] Office of the Inspector General, "Self-Declaration of U.S. Citizenship Requirements for Medicaid," July 2005.

administrators noted that, based on the results of their quality control review systems, "they have not seen a problem with self-declaration of citizenship." The Centers for Medicare and Medicaid Services (CMS) acknowledged that it was not aware of problems of false allegations of citizenship. State administrators noted that requiring citizenship verification would slow down processing of applications and increase administrative costs. The requirements proposed in the bill would complicate administration, deny or delay insurance coverage for large numbers of U.S. citizens, and have negligible impact on the integrity of the Medicaid program. An amendment to strike this provision, offered by Rep. Hilda Solis, was defeated largely along party lines.

Health Opportunity Accounts

The Republican package included a provision allowing States to provide beneficiaries with "Health Opportunity Accounts" (HOAs) rather than comprehensive Medicaid coverage. These accounts would have a high deductible (including some Government help to meet the deductible), after which beneficiaries would pay ordinary Medicaid cost-sharing. HOAs would pose significant risks for beneficiaries, particularly those with high health care needs who exhaust their funds before having met the deductible. These individuals would face significant increases in cost-sharing. According to CBO, HOAs cost money to the Federal Government, rather than save it.

Medicaid beneficiaries already pay a significant amount out-of-pocket for their health care. On average, adults on Medicaid pay a larger percentage of their income in out-of-pocket medical expenses than do non-low-income individuals with private insurance. Moreover, in recent years, the share of Medicaid beneficiaries' income that is consumed by out-of pocket medical expenses has been rising twice as fast as their incomes. This burden is especially high for Medicaid beneficiaries who have disabilities.[7]

The Committee markup

An amendment (Markey) to strike the Subtitle on Medicaid failed on a party-line vote. Democrats offered numerous amendments on individual sections of the bill. For example, amendments were offered to exclude vulnerable populations from the legislation, such as: children (Capps); children with special needs (Waxman); members of the Armed Forces who served or are serving in Iraq and their families (Pallone); and women with breast or cervical cancer (Eshoo). Only the Eshoo amendment succeeded.

We also offered amendments to protect special populations from the increased cost-sharing or reduced benefits provisions by offering amendments such as: assuring meaningful benefits for individuals with disabilities (DeGette); protecting individuals with mental illness or cognitive impairment (Wynn); protecting low-income individuals from onerous premiums and cost-sharing (Baldwin); protecting special needs children from prescription drug cost-sharing (Davis of Florida); preventing enforcement of cost-sharing that

[7] Leighton Ku and Matthew Broaddus, "Out-of-Pocket Medical Expenses for Medicaid Beneficiaries Are Substantial and Growing," Center on Budget and Policy Priorities, May 31, 2005.

would cause harm if services were not received (Waxman); protecting individuals with diabetes from increased cost-sharing (Gonzalez); protecting access to medically necessary services for children (Rush); and protecting access to benefits and preventing discrimination (Strickland). All of these amendments which would have protected vulnerable populations from the extreme provisions of this package were defeated largely along party lines.

Likewise, Republicans defeated Democratic amendments which would have protected the elderly from the onerous changes to Medicaid long-term care coverage, including an amendment to protect beneficiaries' homes (Schakowsky), an amendment to protect beneficiaries from losing access to nursing home care (Markey), and an amendment to protect the elderly from disqualification from Medicaid because of "good Samaritan" acts, such as helping a child with college tuition, donating to a charity, or keeping a family member from bankruptcy (Pallone).

Democrats also offered amendments to protect States from the Medicare "clawback" which, under current law, requires States to continue to pay prescription drug costs for beneficiaries eligible for both Medicare and Medicaid, even though the benefit will no longer be covered under Medicaid for these beneficiaries (Stupak, Strickland). The "clawback" has flaws that penalize States that have aggressively managed prescription drug costs under Medicaid and will cost States considerable resources in the coming years.

Rep. Stupak also offered an amendment to strike the provision that would cut millions from 4 States—Michigan, California, Pennsylvania, and Oregon—by eliminating the current law provision that allows States to tax Medicaid HMOs. States use this tax revenue to increase provider payment rates under Medicaid. Even the association representing the insurance plans subject to these State taxes, America's Health Insurance Plans (AHIP), was opposed to this provision in the Republican package This amendment was defeated on a party-line vote.

Notably absent from the bill were any provisions addressing important Medicare issues over which the Committee has jurisdiction, such as the pending Medicare physician payment cuts, Medicare overpayments to HMOs, problems with enrollment of the low-income into the new Medicare prescription drug benefit, or other matters. Rep. Dingell offered an amendment to stave off the pending Medicare physician payment cuts for two years and protect beneficiaries from increased premiums as a result. This amendment also was defeated by a party-line vote.

Unlike the bill reported by the Senate Committee on Finance, which included an equal share of cuts to Medicaid and Medicare, along with increases in those programs, the bill adopted by our Committee cuts only Medicaid. Congress could save at least $20 billion in the next five years by eliminating overpayments to HMOs in the Medicare Advantage program. Unlike cutting benefits and increasing cost-sharing for the poorest of the poor, reducing HMO overpayments has been recommended by the Medicare Payment Advisory Commission (MedPAC), the Government Accountability Office, and even the HHS Inspector. Rep. Brown of Ohio offered an amendment that would have eliminated the cuts to Medicaid and instead reduced Medicare HMO overpayments, using the money

saved to increase community living options for those with disabilities. The amendment was defeated on a party-line vote.

In sum, the bill shifts new burdens onto working families—through increased cost-sharing, decreased benefits, and new restrictions on access to long-term care—that will ultimately be detrimental not only to their health but to the health of our Nation as a whole. Rather than moving to reduce the number of uninsured and improve coverage for those who have it, this package moves us in the opposite direction. Savings achieved by reducing care for the most vulnerable will be used to partially offset new tax breaks for the wealthiest in the Nation, while the overall budget still increases the national debt. With the effects of this Subtitle on the health and well-being of infants, school children, their parents, individuals with severe and permanent disabilities, the working disabled, pregnant women, and the elderly weighing heavily on our minds, we strongly oppose these unfair and harmful provisions.

Subtitle B—Katrina Health Care Relief

It has been two months since Hurricane Katrina and the long road to recovery continues. It is estimated that 1.5 million individuals survived Hurricane Katrina and they are now scattered across all 50 states with large populations going to Texas, Georgia, and Arkansas. The faces and stories of devastation, destruction, hope, and faith are scattered across the country. Both the States that Hurricane Katrina struck and the States where large numbers of evacuees have gone are now facing the bills of the hurricane and daily additional mounting costs of recovery and care.

With regard to health care, evacuees are in one of three categories. Either they have access to Federal or State health programs such as Medicaid or Medicare, they are still receiving services under private insurance, or are uninsured and either receiving care as needed from charity institutions or forgoing care altogether. Unfortunately, Medicaid, our Nation's safety net, as currently structured is unable to offer care for certain groups of people, such as single and married adults without children. For example, a 62-year-old man with diabetes would not be covered. Even though all types of people were affected by the devastation of the hurricane—young and old, male and female, parents and single people—only some are eligible for health care under Medicaid.

The Administration relaxed some of the bureaucracy to allow those that are eligible to apply or receive care without all of their documentation. They created new bureaucracies, however, in attempting to expand Medicaid to some within currently designated groups. They have established a system where each of the 50 States would need to separately apply for a waiver to gain approval for flexibility in the Medicaid program. None of the States, including Louisiana, Mississippi, and Alabama, would receive any additional financing for covering the survivors. And the host States would need to get reimbursement from the hurricane-devastated home States of Louisiana, Mississippi, and Alabama for the evacuee population receiving Medicaid coverage in order to be made whole.

The Administration's proposal did not address the fact that States need additional financial assistance in covering the many

newly-uninsured populations and both home and host States need help with the State share of their Medicaid program to keep from cutting benefits. In addition, it does nothing to help providers with the free care they are offering. Congressional action is required for this type of comprehensive support.

The problem is exacerbated in Louisiana, Mississippi, and Alabama because of destruction and recovery costs. The revenue bases of these States have been eroded precisely as they need money to keep their States running. For example, Louisiana has a 11–14 percent unemployment rate and much of Mississippi's revenues were affected because many of the casinos were flooded. Without state money, it becomes difficult to keep the Medicaid program solvent.

It also becomes impossible to retain or recruit providers and help them rebuild their offices and hospitals.

To date, neither the House nor the Senate have passed legislation providing funding for health coverage and provider assistance with bad debt.

Committee Bill

Rep. Pickering offered a substitute for the entire Subtitle, that was adopted by voice vote. The legislation, which provided insufficient resources to solve the entirety of the problem, included the following:

- The Federal Government will provide 100 percent Federal funding for Medicaid or SCHIP eligible individuals that reside in a Katrina impacted parish or county or for a Katrina impacted survivor wherever in the United States they may currently reside. The Federal Government will provide the funding retroactively starting on August 28, 2005, through May 15, 2006.
- A Katrina impacted survivor is an individual who had lived in a major disaster parish or county during the week preceding the Hurricane. And a major disaster parish or county is based on disaster declarations as of September 14, 2005, by the Stafford Disaster Relief and Emergency Assistance Act.
- The Federal Government will also provide 100 percent Federal funding for all Medicaid recipients in a Katrina impacted parish or county. This includes any parish in the State of Louisiana and any county in the State of Mississippi.

Green Substitute

Representative Gene Green offered a broader and more comprehensive health relief package. In addition to full Federal funding for Medicaid-eligible individuals regardless of where they evacuated, provided they came from a disaster relief parish or county, it expanded coverage to all poor and near poor children, pregnant women, individuals with disabilities, and poor single adults who are from disaster relief Medicaid parishes and counties. The legislation also addressed the growing trouble the States of Louisiana, Mississippi, and Alabama are having with coming up with the State share for their remaining Medicaid population. They did this by providing 100 percent funding for all Medicaid recipients in Louisiana, Mississippi, and Alabama. The Substitute had a number of

provisions to help those with private insurance as well. Finally, it did also have direct assistance for providers.

Green withdrew the Substitute after a colloquy with Chairman Barton, in which the Chairman offered to continue to work on matters contained in the Substitute. The Green Substitute included the following:

Emergency Assistance to Disaster States

Louisiana, Mississippi, and counties under disaster declaration in Alabama will receive 100 percent Federal Medical Assistance Percentage (FMAP) from August 28, 2005, through December 31, 2006, for their Medicaid recipients.

Disaster Relief Medicaid (DRM)

- Coverage for residents and evacuees of counties and parishes under FEMA declaration of hardest hit areas (individual and public assistance disaster declaration) regardless of where they live now.
- Provides Katrina survivors with streamlined access to temporary Medicaid benefits in either the disaster-affected States or a host State.
- Provides 100 percent FMAP for benefits provided through DRM to the State hosting the evacuee for benefits provided that evacuee.
- Covers all populations regardless of categorical, resource, or residence eligibility requirements up to 100 percent FPL.
- Covers pregnant women and children regardless of categorical, resource, or residence eligibility requirements up to 200 percent FPL.
- Streamlined eligibility and enrollment procedures would apply, including common one-page national application form promulgated by the Secretary, no requirement of documentation, issuance of a temporary eligibility card, presumptive eligibility, and off-site enrollment.
- Individuals can self-attest to eligibility for DRM, but States are obligated to make a good faith effort to determine eligibility and individuals are liable for full costs of care if they falsely attest.
- Covers workers who live outside the geographic area but lost employment from a business located inside the geographic area as a result of Hurricane Katrina.
- Allows States to provide extended mental health benefits under DRM up to 100 percent FPL.
- Ensures that Home and Community Based Services (HCBS) populations in DRM do not count against host State Medicaid limits or caps.

Duration of DRM

- DRM would be a temporary Medicaid benefit eligibility that would last for an initial 5-month eligibility period, with a possible extension of an additional 5 months by the President/Secretary. Any determination of an extension of DRM eligibility by the President/Secretary will apply to DRM benefits nationally.

• The 5-month clock for benefits would begin on the date of enactment, with retroactive coverage of claims incurred by DRM-eligible individuals from August 28, 2005.

Amendment to Existing 1135 Waiver Authority

• Amends 1135 waiver authority to allow the Secretary to extend benefits under existing authority to individuals displaced due to a disaster. Current authority only allows the Secretary to waive requirements for a specific geographic location.

Emergency Assistance to Providers

• Creates a Disaster Relief Fund to offset increased Medicaid or uncompensated care costs arising for Medicaid providers (hospitals, skilled nursing facilities, Federally qualified health centers, rural health care clinics) as a result of Hurricane Katrina.

• Fully reimburses hospitals in disaster areas and for evacuees originating in disaster areas for Medicare bad debt (unpaid Medicare beneficiary co- payments and deductibles).

• Ensures hospitals in disaster areas are not penalized for any failure to submit quality data.

Emergency Assistance to Medicare Beneficiaries

• Waives the Part B late enrollment penalty for Medicare eligible beneficiaries who are unable to submit applications during the initial enrollment period.

• Requires the HHS Secretary to submit to Congress by December 1, 2005, a written plan on how CMS will transition into Medicare Part D the dual-eligibles who are evacuees or residents of hardest hit counties and parishes.

Emergency Assistance for Private Coverage

• Disaster Relief Funds may also be used to provide employee or employee and employer share of private insurance coverage for pre-existing coverage.

• Programs administered through State insurance commissioners.

Additional amendments

The Committee adopted an amendment offered by Rep. Burgess to exempt Hurricane Katrina evacuees and income attributable to such evacuees from consideration in the per capita income computation of the State's Federal matching assistance percentage for any year after 2006 if the Secretary determines the State has a significant number of Hurricane Katrina evacuees. It passed on voice vote.

Another amendment by Rep. Burgess, also adopted by voice vote, requires the Secretary of HHS to designate certain areas affected by Hurricane Katrina as medically underserved areas or health professional shortage areas and to designate one or more populations of each such area as a medically underserved population. We are not aware of any problem that is solved by the amendment. The Administration has provided numerous briefings for congressional staff on Katrina relief and has not indicated that legislation

of this kind is either necessary or desirable. Moreover, the amendment contains unclear provisions that render it ambiguous in terms of its scope and duration. The National Association of Community Health Centers has expressed concerns with the amendment's waiver of important provisions applicable to providers that may otherwise qualify for the programs and policies that are implicated with designation of an area as a health professional shortage area or medically underserved area. It also noted that current law contains broad waiver authority. Chairman Barton recognized that Democrats had concerns with the amendment, and said they would be considered in conference.

Subtitle C—Katrina and Rita Energy Relief

Crude oil and gasoline prices had been rising steeply prior to the hurricanes. The findings in this subtitle discuss projections by the Energy Information Administration (EIA) of higher heating costs this winter, which will translate into greater cooling costs this summer. At a recent hearing of the Subcommittee on Energy and Air Quality, the EIA predicted winter heating prices may hit record levels, with natural gas bills up as much as 48 percent, heating oil prices as much as 32 percent, propane as much as 30 percent, and electricity as much as 5 percent.

Nevertheless, this Congress has failed to increase funding for the Low-Income Home Energy Assistance Program (LIHEAP) either through regular appropriations or emergency appropriations. This Subtitle adds $1 billion in spending for LIHEAP.

Representatives Rush, Green, and Markey offered an amendment to change the $1 billion spending to $3.093 billion. This amount, along with projected appropriations, would raise LIHEAP spending to the $5.1 billion authorized level in the Energy Policy Act of 2005. It was defeated on a party-line vote. Major oil companies, already recipients of significant tax and other subsidies under the energy bill, are now enjoying record quarterly profits, but those who are least able to bear the brunt of high energy prices in the months to come have not gotten what they were promised.

JOHN D. DINGELL.
HENRY A. WAXMAN.
EDWARD J. MARKEY.
RICK BOUCHER.
EDOLPHUS TOWNS.
FRANK PALLONE, JR.
SHERROD BROWN.
BART GORDON.
BOBBY L. RUSH.
ANNA G. ESHOO.
BART STUPAK.
ELIOT L. ENGEL.
ALBERT R. WYNN.
GENE GREEN.
TED STRICKLAND.
DIANA DEGETTE.
LOIS CAPPS.
MICHAEL DOYLE.

TOM ALLEN.
JIM DAVIS.
JAN SCHAKOWSKY.
HILDA L. SOLIS.
CHARLES A. GONZALEZ.
JAY INSLEE.
TAMMY BALDWIN.
MIKE ROSS.

PURPOSE AND SUMMARY

The purpose of this Committee Print is to implement much needed Medicaid reforms. This Committee Print also complies with the reconciliation directive included in section 201(a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H. Con. Res. 95, and is consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

BACKGROUND AND NEED FOR LEGISLATION

Medicaid currently provides medical care to 53 million Americans at a cost exceeding $300 billion. According to the Centers for Medicare and Medicaid Services (CMS), total combined Federal and state spending on Medicaid over the next 10 years is estimated at $4.5 trillion. Medicaid is already the biggest item in many state budgets, exceeding elementary and secondary education combined.

The Medicaid program is a shared responsibility of Federal and state governments to provide medical assistance to certain low-income groups. State expenditures are matched by the Federal government using a formula based on average per capita income in each state relative to national per capita income. The Federal Medical Assistance Percentage (FMAP) for fiscal year 2006 will range from 50 to 76%. Overall, the Federal government pays for about 57% of total Medicaid expenditures.

Unlike the Federal government, states can not have deficits, so the only way for governors to meet their Medicaid obligations is to either raise taxes or cut benefits. Unreformed, analysts predict Medicaid will bankrupt every state in as little as 20 years—absorbing 80–100% of all state dollars.

States are already taking drastic action to avoid financial ruin. Between 2002 and 2005, all states reduced provider rates and implemented drug cost controls; 38 states reduced eligibility; and 34 states reduced benefits. Hundreds of thousands of beneficiaries are already slated to lose eligibility or face reduced benefits in several states.

In response to this crisis, the National Governors Association (NGA) has put forth a bipartisan Medicaid reform plan developed by an NGA working group of eleven governors; nine of whom serve on the NGA's Executive Committee. The working group began deliberating late last year and received input from Medicaid directors and governors from more than 30 states. The NGA supports both short-term flexibilities and long-term structural reform to promote quality care and sustainability of the program. Among others, reforms are recommended in key areas such as the Medicaid pre-

scription drug reimbursement, asset transfers, cost sharing, and benefit package flexibility.

Medicaid has unquestionably succeeded in its basic mission of providing health care coverage for vulnerable, low-income populations. At the same time, its structure contains flaws that have led to serious problems, some of which have impeded Medicaid recipients' ability to access quality health care. Medicaid now covers many diverse populations that differ substantially from the very low-income persons the program was initially designed to cover. The program still, however, applies many of the original eligibility and benefit mandates to all of these populations. In addition, the Medicaid program also imposes a standard limitation on recipient cost-sharing, irrespective of a person's income level. Some have suggested the possibility of improving Medicaid's program design by allowing different populations to have access to multiple packages of benefits, along with cost-sharing obligations that reflect their different income levels, that would be better tailored to their individual needs.

Many Medicaid recipients currently are unable to obtain quality health care services because they have little autonomy in making their health care decisions. They are limited to those providers that a state selects, who are willing to accept the reimbursement amounts set by the state. This often results in beneficiaries having little or no input into what services they receive, who provides those services, and when they can receive them. A limited number of states operating under research and demonstration waivers, authorized under Section 1115 of the Social Security Act, are currently participating in projects that allow certain disabled Medicaid recipients to exercise greater control over their health care services. These demonstrations provide cash allowances to these Medicaid recipients, and allow them to purchase their necessary services, while providing them with assistance in managing their funds. These demonstrations have proven to be extremely popular among the disabled Medicaid recipients that participated in the programs.

As previously noted, Medicaid also faces a looming crisis, due to the projected increases in costs associated with long-term care. Many advocates believe that the current Medicaid reimbursement structure reflects a strong bias towards providing long-term care in institutional settings, which is less preferable for many recipients and is often more expensive than other care options. In addition, Medicaid's current benefit structure often encourages seniors with higher incomes to engage in creative estate management and asset redistribution, to enable them to qualify for the long-term care benefits that Medicaid provides, rather than encouraging more of them to purchase private long-term care insurance.

During the 108th and 109th Congresses, the House Committee on Energy and Commerce held ten hearings on the topic of reforming the Medicaid program. These hearings highlighted the need for reform and illustrated several areas of specifically needed reforms.

Hurricanes Katrina and Rita severely disrupted crude oil and natural gas production in the Gulf of Mexico. They also shut down most of the crude oil refinery capacity in the Gulf of Mexico region. These production and supply disruptions are expected to lead to increased home energy costs this winter. The Energy Information Ad-

ministration projects that average home heating expenditures will increase about 33% this winter, assuming a normal winter. Expenditures for natural gas and home heating oil may increase significantly more. Disruptions to fuel supplies may lead to higher fuel costs throughout the year, impacting both heating and cooling costs. These large increases in costs will particularly harm low-income consumers. The Low-Income Home Energy Assistance Program ("LIHEAP") is designed to help low-income Americans with heating and cooling costs. Accordingly, Congress seeks a one-time only supplement to LIHEAP funds to assist low-income consumers with the higher home energy bills they will see as a result of Hurricanes Katrina and Rita.

HEARINGS

The Full Committee and the Subcommittee on Health held hearings on Medicaid reform during the first session of the 109th Congress. On April 27, 2005, the Subcommittee on Health held a hearing entitled "Long-Term Care and Medicaid: Spiraling Costs and the Need for Reform." The Subcommittee received testimony from Dr. Mark McClellan, Administrator of the Centers for Medicare & Medicaid Services (CMS); Dr. Douglas Holtz-Eakin, Director of the Congressional Budget Office (CBO; Kathy Allen, Director, Health Care, Medicaid and Private Health Insurance Issues, U.S. Government Accountability Office (GAO); Carol O'Shaughnessy, Specialist in Social Legislation, Congressional Research Service (CRS); Karen Ignani, President & CEO, America's Health Insurance Plans; Stephen Moses, President, Center for Long-Term Care Financing; Dr. Barbara Stucki, National Council on Aging; Bernard Krooks, Esq.; Jennie Chin Hansen, Board Member, AARP; Judy Feder, Dean of Public Policy, Georgetown University; and, Lee Page, Associate Advocacy Director, Paralyzed Veterans of America.

On June 15, 2005, the Full Committee held a hearing entitled "Medicaid Reform: the National Governors Association's Bipartisan Roadmap." The Committee received testimony from NGA Chairman, Virginia Gov. Mark Warner and NGA Vice-Chairman, Arkansas Gov. Mike Huckabee.

On June 22, 2005, the Subcommittee on Health held a hearing entitled: "Medicaid Prescription Drugs: Examining Options for Payment Reform." The Subcommittee received testimony from Dr. Douglas Holtz-Eakin, Director of the Congressional Budget Office (CBO); Mr. Anthony Rodgers, Director of the Arizona Medicaid program; Craig Fuller, Vice-President of the National Association of Chain Drug Stores (NACDS); John Calfee, Resident Scholar at the American Enterprise Institute (AEI); Kathy King, U.S. Government Accountability Office (GAO); and Kathleen Gifford, Health Management Associates.

On September 8, 2005, the Full Committee held a hearing entitled: "Medicaid: Empowering Beneficiaries on the Road to Reform." The Committee received testimony from Mr. Jim Gardner, President & CEO Northeast Georgia Health System; Mr. David Parrella, Director, Connecticut Medical Care Administration; Mr. Merrill Mathews, Executive Director, Council for Affordable Health Insurance; The Honorable Frank Keating, President & CEO, American Council of Life Insurers; Dr. David Alexander, President, DeVos

Children's Hospital; Dr. Thomas "Byron" Thames representing AARP; and Mr. Bob Sheehan, Executive Director, Community Mental Health Authority of Clinton-Eaton-Ingham Counties.

COMMITTEE CONSIDERATION

On Wednesday, October 27, 2005, the Committee met in open markup session and approved the Committee Print entitled Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief, amended, by a record vote of 28 yeas and 22 nays. A motion by Mr. Barton to transmit the recommendations of the Committee, and all appropriate accompanying material including additional, supplemental, or dissenting views, to the House Committee on the Budget, in order to comply with the reconciliation directive included in section 201(a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H. Con. Res. 95, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974, was agreed to by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the recorded votes taken on amendments offered to the measure, including the names of those Members voting for and against. A motion by Mr. Barton to transmit the recommendations of the Committee, and all appropriate accompanying material including additional, supplemental, or dissenting views, to the House Committee on the Budget, in order to comply with the reconciliation directive included in section 201(a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H. Con. Res. 95, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974, was agreed to by a voice vote.

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 76

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Markey, No. 1a, to the amendment offered by Mr. Barton, No. 1, to strike subtitle A.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 24 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 77

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Brown, No. 1c, to the amendment offered by Mr. Barton, No. 1, to make home and community-based services an optional Medicaid benefit, offset by payment reductions to Medicare Advantage plans.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor				Mr. Pallone			
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle			
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis			
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez			
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter				Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 78

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Ms. Capps, No. 1e, to the amendment offered by Mr. Barton, No. 1, to create a rule of construction to exempt children from the provisions of subtitle A, except for sections 3131 and 3132.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell			
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood				Mr. Rush			
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella				Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle			
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez			
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan							
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 79

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Pallone, No. 1i, to the amendment offered by Mr. Barton, No. 1, to exempt individuals who have served or are serving in the United States Armed Forces (including the National Guard or Reserves) in Iraq, or members of the families of such individuals from the provisions of subtitle A.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 23 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis	X			Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette			
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee			
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 80

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Strickland, No. 1m, to the amendment offered by Mr. Barton, No. 1, to strike section 3124, use of benchmark benefit packages.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis			
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee			
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 81

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Waxman, No. 1n, to the amendment offered by Mr. Barton, No. 1, to create a rule of construction to exempt special needs children from the provisions of subtitle A, except for sections 3131 and 3132.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 22 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering				Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich	X			Ms. Capps	X		
Mr. Bass		X		Mr. Doyle			
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis			
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee			
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick				Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy	X						
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 82

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Rush, No. 2, to increase the appropriation for LIHEAP in section 3301(b) from $1,000,000,000 to $3,093,000,000.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella				Mr. Strickland			
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis			
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 83

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Markey, No. 1q, to the amendment offered by Mr. Barton, No. 1, to (1) strike section 3111, lengthening look-back period; and, (2) changing the beginning date for period of ineligibility.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez			
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn							
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 84

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Buyer, No. 1r, to the amendment offered by Mr. Barton, No. 1, to restrict states' ability to use prior authorization with respect for certain mental health prescription drugs.

DISPOSITION: **AGREED TO,** by a roll call vote of 31 yeas to 20 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush			
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn			
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella	X			Mr. Strickland	X		
Mr. Buyer	X			Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono	X			Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers	X			Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick	X			Mr. Ross	X		
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 85

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Ms. Degette, No. 1s, to the amendment offered by Mr. Barton, No. 1, to create a new section to prohibit a state under its plan under title XIX of the Social Security Act from denying services to an individual with disabilities under subtitle A, if a doctor certifies that the services are medically necessary.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 23 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton				Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry				Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 86

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Rush, No. 1t, to the amendment offered by Mr. Barton, No. 1, to create a new section to prohibit a state under its plan under title XIX of the Social Security Act from denying services to a child under subtitle A, if a doctor certifies that the services are medically necessary.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 24 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 87

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Waxman, No. 1v, to the amendment offered by Mr. Barton, No. 1, to add a new section to create a rule of construction to exempt special needs children from the provisions of chapter 3 of subtitle A.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 24 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 88

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Ms. Baldwin, No. 1w, to the amendment offered by Mr. Barton, No. 1, to strike section 3121, state option for alternative Medicaid premiums and cost-sharing; to strike section 3122, special rules for cost-sharing for prescription drugs; and, to strike section 3123, emergency room copayments for non-emergency care.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis	X			Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette			
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen			
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 89

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Dingell, No. 1y, to the amendment offered by Mr. Barton, No. 1, to provide a minimum update for Medicare payments to physicians' for 2006 and 2007.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 90

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Pallone, No. 1z, to the amendment offered by Mr. Barton, No. 1, to create a new section to prohibit a lien from being imposed if certain transfers of assets have occurred during the period of ineligibility.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts		X		Mr. Allen	X		
Ms. Bono		X		Mr. Davis			
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 91

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An en bloc amendment by Mr. Davis, No. 1bb, to the amendment offered by Mr. Barton, No. 1, to (1) exempt children from the special rules of cost-sharing for prescription drugs in section 3122; and, (2) exempt children with special needs from the special rules of cost-sharing for prescription drugs in section 3122.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 24 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis				Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green			
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts				Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy							
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 92

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Waxman, No. 1cc, to the amendment offered by Mr. Barton, No. 1, to require that a provider, participating in a state plan under title XIX of the Social Security Act, may not deny care or services to an individual eligible for care or services based on an inability to pay any increased cost-sharing resulting from the subtitle A, unless the provider determines that the failure to receive services will not result in the serious disability or death of the individual or fetus, in the case of a pregnant woman.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 22 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts				Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 93

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Ms. Solis, No. 1dd, to the amendment offered by Mr. Barton, No. 1, to strike section 3145, improved enforcement of documentation requirements.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland			
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts				Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 94

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Stupak, No. 1ee, to the amendment offered by Mr. Barton, No. 1, to repeal subsection (c) of section 1935 of the Social Security Act (42 U.S.C. 1396u-5) retroactive to the date of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts				Mr. Allen	X		
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 95

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Ross, No. 1ff, to the amendment offered by Mr. Barton, No. 1, to modify to the Medicaid rebate formula so that prices from Mexico and Canada would be included in the calculation of best price.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts				Mr. Allen			
Ms. Bono		X		Mr. Davis	X		
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 96

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Stupak, No. 1jj, to the amendment offered by Mr. Barton, No. 1, to strike section 3142, managed care organization provider tax reform.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts				Mr. Allen	X		
Ms. Bono		X		Mr. Davis			
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 97

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Engel, No. 1mm, to the amendment offered by Mr. Barton, No. 1, to provide for optional Medicaid coverage for low-income individuals infected with HIV.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 21 yeas to 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall				Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood				Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson	X			Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts				Mr. Allen	X		
Ms. Bono		X		Mr. Davis			
Mr. Walden		X		Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/27/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 98

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

AMENDMENT: An amendment by Mr. Strickland, No. 1oo, to the amendment offered by Mr. Barton, No. 1, to allow a state to elect to substitute '2003' for any subsequent year before 2006 as it relates to paragraph (3) of section 1935(c) of the Social Security Act (42 U.S.C. 1396u-5(c)).

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 20 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey	X		
Mr. Upton		X		Mr. Boucher			
Mr. Stearns				Mr. Towns			
Mr. Gillmor				Mr. Pallone	X		
Mr. Deal		X		Mr. Brown	X		
Mr. Whitfield		X		Mr. Gordon			
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel	X		
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Buyer		X		Ms. DeGette	X		
Mr. Radanovich		X		Ms. Capps	X		
Mr. Bass		X		Mr. Doyle	X		
Mr. Pitts				Mr. Allen	X		
Ms. Bono		X		Mr. Davis			
Mr. Walden				Ms. Schakowsky	X		
Mr. Terry		X		Ms. Solis	X		
Mr. Ferguson		X		Mr. Gonzalez	X		
Mr. Rogers		X		Mr. Inslee	X		
Mr. Otter		X		Ms. Baldwin	X		
Ms. Myrick		X		Mr. Ross	X		
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					
Mr. Barrett		X					

10/28/2005

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 99

Bill: Committee Print, Medicaid, Katrina Health Care Relief, and Katrina and Rita Energy Relief.

MOTION: Motion by Mr. Barton to agree to the Committee Print, as amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 28 yeas to 22 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey		X	
Mr. Upton	X			Mr. Boucher			
Mr. Stearns	X			Mr. Towns			
Mr. Gillmor	X			Mr. Pallone		X	
Mr. Deal	X			Mr. Brown		X	
Mr. Whitfield	X			Mr. Gordon			
Mr. Norwood	X			Mr. Rush		X	
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson		X		Mr. Engel		X	
Mr. Shadegg	X			Mr. Wynn		X	
Mr. Pickering	X			Mr. Green		X	
Mr. Fossella	X			Mr. Strickland		X	
Mr. Buyer	X			Ms. DeGette		X	
Mr. Radanovich	X			Ms. Capps		X	
Mr. Bass	X			Mr. Doyle		X	
Mr. Pitts				Mr. Allen		X	
Ms. Bono	X			Mr. Davis		X	
Mr. Walden	X			Ms. Schakowsky		X	
Mr. Terry	X			Ms. Solis		X	
Mr. Ferguson	X			Mr. Gonzalez		X	
Mr. Rogers	X			Mr. Inslee		X	
Mr. Otter	X			Ms. Baldwin		X	
Ms. Myrick	X			Mr. Ross		X	
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						
Mr. Barrett	X						

10/27/2005

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held oversight hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

This legislation will reform Medicaid to provide for the long term sustainability of the program, and for other purposes.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own estimate prepared by the Director of the Congressional Budget Office concerning new budget authority. This estimate is done to comply with the reconciliation directive included in section 201(a) of the Concurrent Resolution on the Budget for Fiscal Year 2006, H. Con. Res. 95, and consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 31, 2005.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation recommendations of the House Committee on Energy and Commerce.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Tom Bradley.

Sincerely,

DONALD B. MARRON,
(For Douglas Holtz-Eakin, Director).

Enclosure.

Reconciliation Recommendations of the House Committee on Energy and Commerce

Summary: This legislation would make a variety of changes to the Medicaid program, provide funding for health and energy relief in areas affected by Hurricanes Katrina and Rita, and modify the terms of the Federal Communications Commission's (FCC's) authority to auction licenses for use of the electromagnetic spectrum. CBO estimates that enacting this legislation would increase direct spending by $2.8 billion in 2006, but would reduce direct spending by about $17 billion over the 2006–2010 period and about $53 billion over the 2006–2015 period. Enacting the legislation would not affect federal revenues.

Subtitle A would reduce net Medicaid outlays in a number of ways, most substantially by allowing states to reduce benefits and impose additional cost-sharing requirements and premiums on certain enrollees, reducing payments for prescription drugs, and tightening the rules relating to asset transfers prior to eligibility for Medicaid long-term care services. Those savings would be partly offset by an expansion of home- and community-based services and other benefit expansions. Subtitle B would provide a temporary increase in the federal matching rates for Alabama, Louisiana, and Mississippi and establish other policies directed at areas affected by Hurricane Katrina. Subtitle C would provide increased funding for the Low-Income Home Energy Assistance Program (LIHEAP). Subtitle D would amend existing law regarding the FCC's authority to auction licenses to use the electromagnetic spectrum. It would set a firm date for television broadcasters to switch from analog to digital signals, and would allow the Department of Commerce to spend some of the resulting auction proceeds for programs to assist consumers and others in making that transition.

Subtitles A, B, and C of the legislation contain no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Subtitle D contains both intergovernmental and private-sector mandates. CBO estimates that any resulting costs to state, local, or tribal governments would be small and would not exceed the threshold established by UMRA ($62 million in 2005, adjusted annually for inflation). Subtitles A and B would have a significant effect on state Medicaid programs, and CBO estimates that, as a result, states would realize savings of $12 billion over the 2006–2010 period. In addition, subtitle C would provide $1 billion in additional grant funds to states for low-income energy assistance.

The Digital Television Transition Act of 2005 (subtitle D) would impose private-sector mandates on television broadcasters, manufacturers, certain retailers, cable companies, and satellite carriers. Because CBO does not have sufficient information about the existing practices of the broadcast industry, we cannot determine whether the aggregate direct cost to comply with those mandates would exceed the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of the legislation is shown in Table 1. The effects of this legislation fall within budget functions 370 (commerce and

housing credit), 550 (health), 600 (income security), and 950 (undistributed offsetting receipts).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF THE RECONCILIATION RECOMMENDATIONS OF THE HOUSE COMMITTEE ON ENERGY AND COMMERCE

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Medicaid:												
Estimated Budget Authority	−350	−1,592	−2,350	−3,288	−4,297	−5,236	−6,184	−7,172	−8,150	−9,113	−11,877	−47,731
Estimated Outlays	−440	−1,562	−2,320	−3,258	−4,297	−5,236	−6,184	−7,172	−8,150	−9,113	−11,877	−47,731
Katrina Health Care Relief:												
Estimated Budget Authority	2,545	*	*	1	6	*	*	*	*	*	2,553	2,553
Estimated Outlays	2,515	45	*	−1	−6	*	*	*	*	*	2,553	2,553
Katrina and Rita Energy Relief:												
Estimated Budget Authority	1,000	0	0	0	0	0	0	0	0	0	1,000	1,000
Estimated Outlays	750	230	20	0	0	0	0	0	0	0	1,000	1,000
Digital Television Transition:												
Estimated Budget Authority	7	1,294	1,914	−11,547	−145	−150	−150	−150	−150	−150	−8,477	−9,227
Estimated Outlays	7	1,294	1,914	−11,997	40	5	−40	−150	−150	−150	−8,742	−9,227
Total Changes:												
Estimated Budget Authority	3,202	−298	−436	−14,833	−4,436	−5,386	−6,334	−7,321	−8,301	−9,263	−16,801	−53,405
Estimated Outlays	2,832	7	−386	−15,256	−4,263	−5,231	−6,224	−7,322	−8,300	−9,263	−17,066	−53,405

Notes: Components may not sum to totals because of rounding. * = between −$500,000 and $500,000.

Basis of estimate: For this estimate, CBO assumes that the reconciliation legislation will be enacted by the end of December 2005.

Subtitle A—Medicaid

The legislation would reduce federal Medicaid spending by an estimated $440 million in 2006, $11.9 billion over the 2006–2010 period, and $47.7 billion over the 2006–2015 period. Those savings would be achieved mostly by allowing states to trim benefits for certain enrollees, letting states impose higher cost-sharing requirements and premiums on certain enrollees, lowering payments for outpatient prescription drugs, and increasing penalties for individuals who transfer assets for less than fair market value in order to qualify for nursing home care. (The figures in this estimate represent the federal share of Medicaid and SCHIP spending unless noted otherwise.) The estimated effects of subtitle A are shown in detail in Table 2.

Chapter 1: Prescription Drugs. The provisions of this chapter would limit payments for outpatient prescription drugs, increase the rebates that Medicaid receives from drug manufacturers, and restrict states' ability to limit access to certain drugs. CBO estimates that those provisions would reduce Medicaid spending by $25 million in 2006, $2.1 billion over the 2006–2010 period, and $7.7 billion over the 2006–2015 period.

Limits on Pharmacy Reimbursement. The legislation would replace Medicaid's current payment system for outpatient prescription drugs, which is largely based on average wholesale price, with a new system based on retail average manufacturer price (RAMP). The RAMP would be the average price that manufacturers receive for sales to all retail pharmacies other than mail order pharmacies. The legislation would limit federal Medicaid payments for prescription drugs to 106 percent of RAMP for a single-source drug and 120 percent of the volume-weighted RAMP for a multiple-source drug. (The volume-weighted average would be calculated across all therapeutically equivalent and bioequivalent forms of a drug.) The legislation also would allow the Department of Health and Human Services (HHS) to increase those payment limits based on surveys of retail prices for prescription drugs. Those limits would apply only to a drug's ingredient costs. States would continue to determine dispensing fees, except that the legislation would require dispensing fees for multiple-source drugs to be at least $8 per prescription. Those provisions would take effect on January 1, 2007.

TABLE 2.—ESTIMATED BUDGETARY EFFECTS OF SUBTITLE A—MEDICAID

	Outlays in millions of dollars, by fiscal year—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Chapter I: Prescription Drugs:												
Limits on Pharmacy Reimbursement	0	−300	−425	−525	−650	−775	−900	−1,050	−1,200	−1,375	−1,900	−7,200
Rebates on Physician-Administered Drugs	−5	−10	−15	−20	−20	−20	−15	−15	−15	−20	−70	−155
Include Authorized Generics in Best Price	−20	−40	−45	−55	−60	−70	−80	−95	−110	−125	−220	−700
Expand Eligibility for 340B Program	*	*	*	*	*	*	*	*	*	*	*	*
Limit Use of Prior Authorization	0	20	30	35	40	45	50	55	60	70	125	405
Chapter 2: Asset Transfers:												
Revisions to Penalty Period	−140	−290	−290	−350	−420	−450	−470	−490	−520	−560	−1,490	−3,980
Home Equity Provisions	−30	−90	−140	−150	−170	−180	−200	−220	−240	−270	−580	−1,690
Treatment of Large Annuities	−20	−50	−70	−70	−70	−80	−80	−80	−90	−90	−280	−700
Require States to Use ''Income First'' Rule	−10	−20	−20	−20	−20	−20	−20	−20	−20	−20	−90	−190
Clarify Treatment of CCRC Fees	−10	−10	−20	−20	−20	−20	−20	−30	−30	−30	−80	−210
Chapter 3: Cost Sharing and Benefits:												
Increase Cost Sharing and Premiums	−70	−250	−420	−630	−880	−1,150	−1,400	−1,590	−1,720	−1,860	−2,250	−9,970
Alternative Benefit Packages	−150	−470	−780	−1,090	−1,450	−1,850	−2,310	−2,830	−3,420	−3,890	−3,940	−18,240
Additional Cost Sharing for Drugs	0	−30	−50	−70	−110	−150	−190	−220	−250	−280	−260	−1,350
Non-Emergency Care Provisions	10	20	10	0	−40	−50	−60	−70	−70	−80	0	−330
Non-Emergency Medical Transportation	15	5	−15	−30	−30	−30	−35	−35	−40	−40	−55	−235
Exemption for Women with Certain Cancers	*	*	1	1	1	1	1	1	2	2	3	11
Chapter 4: Benefit Expansions:												
Home- and Community-Based Services	0	50	155	270	340	350	375	405	435	460	815	2,840
Self-Directed Services Provisions	5	15	30	40	40	45	50	50	55	60	130	390
Long-Term Care Partnership Programs	0	0	0	5	5	5	10	15	15	15	10	70
Health Opportunity Accounts	5	10	15	15	15	25	35	40	50	55	60	265
Chapter 5: Other Provisions:												
Restrictions on Provider Taxes	−5	−15	−15	−190	−390	−430	−460	−500	−530	−580	−615	−3,115
Third-Party Recovery	−20	−70	−110	−140	−140	−150	−160	−170	−170	−190	−480	−1,320
Targeted Case Management Services	−30	−100	−180	−230	−220	−230	−250	−260	−280	−290	−760	−2,070
Additional Funding for the Territories	20	28	29	31	32	33	35	37	38	40	140	323
Medicaid Transformation Grants	0	50	50	0	0	0	0	0	0	0	100	100
Require Evidence of Citizenship	−5	−20	−45	−70	−80	−85	−95	−105	−110	−120	−220	−735
Payment for Emergency Services	0	−10	−15	−15	−20	−20	−20	−20	−20	−25	−60	−165
Modify Calculation of FMAPs	15	15	15	20	20	20	25	25	30	30	85	215

TABLE 2.—ESTIMATED BUDGETARY EFFECTS OF SUBTITLE A—MEDICAID—Continued

	Outlays in millions of dollars, by fiscal year—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Non-Application to Katrina Evacuees	5	0	0	0	0	0	0	0	0	0	5	5
Total Changes in Subtitle A	−440	−1,562	−2,320	−3,258	−4,297	−5,236	−6,184	−7,172	−8,150	−9,113	−11,877	−47,731
Memorandum:												
Projected Medicaid Spending Under Current Law (in billions of dollars)	190.7	202.3	220.5	239.3	260.0	282.1	304.9	330.1	357.6	387.7	1,112.8	2,775.2

Notes.—Components may not sum to totals because of rounding. Changes in budget authority would be identical to changes in estimated outlays for all provisions except tbose affecting nonemergency care. CCRC = continuing care retirement community; FMAP = federal medical assistance percentage. * = between −$500,000 and $500,000.

Based on data on average manufacturer prices (which manufacturers currently submit to HHS under Medicaid's drug rebate program) and prescription drug spending by Medicaid, as well as other data on national drug sales, CBO estimates that this provision would reduce Medicaid spending by $1.9 billion over the 2006–2010 period and by $7.2 billion over the 2006–2015 period. Those savings reflect CBO's expectation that states would raise dispensing fees to mitigate the effect of the new payment limits on pharmacies and preserve the widespread participation of pharmacies in Medicaid. The estimate also accounts for lower rebates from drug manufacturers resulting from increased use of cheaper generic drugs.

Other Provisions. The chapter also contains provisions that would: Require states to collect rebates from drug manufacturers on certain drugs administered by physicians; expand the definition of the "best price"—which HHS uses in calculating the rebate that manufacturers of brand-name drugs must pay to Medicaid—to include the prices of authorized generics; allow certain children's hospitals to purchase prescription drugs at discounted prices (under section 340B of the Public Health Service Act); and make it more difficult for states to require physicians to obtain permission before prescribing drugs to treat depression and other psychiatric conditions. CBO estimates that those provisions would reduce net Medicaid spending by a total of $165 million over the 2006–2010 period and $450 million over the 2006–2015 period.

Chapter 2: Asset Transfers. The provisions of this chapter would reduce Medicaid spending by an estimated $2.5 billion over the 2006–2010 period and $6.8 billion over the 2006–2015 period, primarily by increasing penalties on individuals who transfer assets for less than fair market value in order to qualify for nursing home care and by making individuals with more than $500,000 in home equity ineligible for nursing home benefits.

Revisions to Penalty Period. Medicaid currently imposes a period of ineligibility for nursing home benefits on individuals who transfer assets for less than fair market value. The penalty period is based on the value of any assets transferred during the three years prior to application—known as the look-back period—and starts on the date the assets were transferred. Those rules have relatively little effect because any penalty period usually has expired by the time an individual applies for Medicaid.

Under this legislation, the penalty period would start when an individual becomes eligible for Medicaid and the look-back period would be extended from three years to five years. The legislation also would codify certain protections against undue hardship for individuals who transfer assets. Those changes would apply only to asset transfers that occur after enactment, so the effect of the longer look-back period would not be felt until January 1, 2009.

CBO estimates that those provisions would reduce Medicaid spending by $140 million in 2006, by $1.5 billion over five years, and by $4.0 billion over 10 years by deterring some individuals from transferring assets and thus delaying or preventing them from receiving nursing home benefits.

Treatment of Home Equity. Under current law, the value of an individual's home is not included when determining eligibility for Medicaid. The legislation would make individuals with more than

$500,000 in home equity ineligible for nursing home benefits. That dollar figure would be adjusted annually for inflation starting in 2011. The prohibition would not apply if an individual's spouse, minor child, or disabled child (regardless of age) lives in the house. This provision would apply to individuals who apply for Medicaid after January 1, 2006. CBO estimates that this provision would reduce Medicaid spending by $580 million over the 2006–2010 period and by $1.7 billion over the 2006–2015 period.

Other Savings. The legislation also would: Require Medicaid applicants with annuities to name the state as remainder beneficiary to the extent of Medicaid's expenditures for that individual; require states to use the same method to calculate income allowances for spouses of Medicaid nursing home residents who still live in the community; and clarify that deposits paid to continuing care retirement communities are counted when determining Medicaid eligibility. CBO estimates that those provisions would reduce Medicaid spending by $40 million in 2006, $450 million over five years, and $1.1 billion over 10 years.

Chapter 3: Cost Sharing and Benefits. This chapter contains a number of provisions that would decrease direct spending, most notably by allowing states greater flexibility in imposing cost-sharing requirements and premiums than they have under current law, and by permitting states to restrict benefits for certain enrollees. Other provisions would give states additional flexibility in setting cost-sharing limits for prescription drugs and emergency room care. In aggregate, we estimate that the provisions of this chapter would decrease Medicaid outlays by $195 million in fiscal year 2006, by $6.5 billion over the 2006–2010 period, and by $30.1 billion over the 2006–2015 period.

Increase Cost Sharing and Premiums. Current Medicaid law permits states to impose nominal cost-sharing requirements on benefits for certain beneficiaries other than children and pregnant women and narrowly limits states' ability to charge premiums. Since 1982, Medicaid regulations have limited the nominal cost-sharing amount for most services to $3 and have prohibited providers from denying services to individuals who do not pay. Although some states have permission from the Centers for Medicaid and Medicare Services (CMS) to impose premiums and cost-sharing requirements on higher-income enrollees through waivers of Medicaid law, the majority of Medicaid enrollees do not pay any cost sharing.

The legislation would permit states to subject a broader range of enrollees to cost-sharing and premium requirements. Those proposed increases in cost sharing and premiums would apply to all Medicaid beneficiaries with some exceptions, mainly children and pregnant women with family incomes below the federal poverty level. Moreover, cost sharing would not apply to preventive services for all children, pregnancy-related services, and certain other services that are exempt from cost sharing under current law. Under the legislation, states also could increase the amounts that states may charge for cost sharing. For individuals under the federal poverty level, states could increase nominal copays from $3 to $5 in fiscal year 2008, and increase that amount by medical inflation in subsequent years. There would be no limit on the amount of nomi-

nal copays for individuals with income above the federal poverty level. However, regardless of family income, aggregate cost sharing and premiums for all Medicaid individuals in a family could not exceed 5 percent of family income. Additionally, states could allow providers to deny services for lack of payment and condition benefits on prepayment of premiums.

CBO based its estimate on analysis of current state premium and cost-sharing policies, income data from the Current Population Survey, and Medicaid administrative data, and assumed that states would adopt new cost-sharing measures over a 10–year period. CBO estimates that the proposed changes in cost-sharing policy would decrease Medicaid spending by $70 million in fiscal year 2006, by $2.3 billion over the 2006–2010 period, and by $10.0 billion over the 2006–2015 period. Those savings reflect CBO's expectation of reduced utilization of services due to higher cost-sharing requirements and decreased participation in Medicaid by individuals who would be required to pay premiums.

Alternative Benefit Packages. Under current law, state Medicaid programs generally must offer the same set of benefits to all enrollees, regardless of income or eligibility category. States also must provide benefits not otherwise covered by the state's Medicaid plan to children to treat medical conditions diagnosed under the program. Some states offer reduced benefit packages under current law to certain enrollees with family incomes above the federal poverty level under waivers granted by CMS.

The legislation would allow states to scale back Medicaid benefits provided to certain groups of enrollees. States could offer reduced benefit packages only to enrollees who are in eligibility categories the state established before the date of enactment, not to new categories of enrollees. Additionally, states could not reduce benefits for certain categories of children and pregnant women that the federal government requires state Medicaid programs to cover, individuals eligible for both Medicare and Medicaid, and certain other aged and disabled enrollees who receive long-term care services, or are medically frail or have special medical needs.

The provision would require that states choosing to restrict benefits offer packages of benefits that meet certain minimum standards. The package of benefits would have to include certain basic services, such as physician and hospital coverage, and with some exceptions, would be required to be actuarially equivalent to coverage provided under a so-called benchmark benefit package. The benchmark benefit packages would be the standard Blue Cross/Blue Shield preferred-provider option in the Federal Employees Health Benefit program, a health benefit plan that is offered and generally available to state employees, and the benefits offered by the health maintenance organization with the largest commercial enrollment in the state. The legislation would allow states to offer less than actuarially equivalent benefits for certain services such as prescription drugs and mental health services and would permit payment of wrap-around coverage for other health insurance.

CBO expects that some states would be interested in providing scaled-back coverage to certain categories of individuals, primarily families with income over the poverty level and some disabled beneficiaries, and assumes that implementation would occur over a

10-year period. Based on Medicaid administrative data, and analysis of state experiences with providing limited benefit packages to poor families, CBO estimates that this provision would decrease federal spending by $150 million in fiscal year 2006, by $3.9 billion over five years, and by $18.2 billion over 10 years.

Other Provisions. Other provisions of this chapter would allow states to require costsharing by enrollees—including those who otherwise are exempt from cost-sharing rules—for certain prescription drugs that are not preferred drugs within a class, and for nonemergency care provided in a hospital. The chapter also would provide liability protection to emergency room providers, appropriate additional funds for state development of alternative delivery networks, and loosen rules governing state provision of non emergency transportation. Those provisions would increase federal outlays by $25 million in 2006, and would decrease spending by $312 million over the 2006–2010 period and by $1.9 billion over the 2006–2015 period, CBO estimates.

Chapter 4: Benefit Expansions. The provisions of this chapter would: allow states to expand benefits for certain individuals requiring long-term care in the community; encourage the purchase of certain kinds of long-term care insurance by allowing individuals who purchase such insurance to protect more of their assets if they eventually need nursing home care under Medicaid; and permit states to conduct demonstration projects that establish Medicaid-funded individual accounts that beneficiaries would use to pay for certain services. CBO estimates that those provisions would increase Medicaid spending by $10 million in fiscal year 2006, by $1.0 billion over the 2006–2010 period, and by $3.6 billion over the 2006–2015 period.

Home- and Community-Based Services. This provision would allow states to offer certain long-term care services to aged and disabled individuals, including those with developmental disabilities and mental retardation, who otherwise would require the level of care provided in an institution. Those services, known as home- and community-based services, could include respite care, adult day health care, and other kinds of assistance, at the option of a state. Under current law, states may provide one or more of those services to a limited number of beneficiaries with permission from CMS to waive provisions of Medicaid law. The legislation would ease certain restrictions of this process and allow states to expand coverage more easily. Based on administrative data and information from the Survey of Income and Program Participation on health insurance and disability, CBO estimates this provision would increase Medicaid spending by $815 million over the 2006–2010 period and by $2.8 billion over the 2006–2015 period.

Other Provisions. The legislation would allow states to directly provide limited Medicaid funding to certain enrollees needing long-term care in the community and would establish a demonstration program—health opportunity accounts—to allow certain families with children to pay for some of their Medicaid costs with funds provided by their state. The legislation also would repeal a moratorium on the number of states that may operate Long-Term Care Partnership Programs, which allow individuals who purchase certain kinds of long-term care insurance to protect more of their as-

sets if they later need nursing home care under Medicaid. Four states currently operate those programs, and CBO anticipates that about a third of the remaining states would do so under the legislation. CBO estimates those provisions would increase Medicaid spending by $5 million in 2006, by $200 million over five years, and by $725 million over 10 years.

Chapter 5: Other Provisions. The provisions of this chapter with the largest budgetary impact would restrict states' ability to use revenues from taxes on health care providers as the state share of program spending, make it easier for states to avoid overpayments for Medicaid recipients who also have private health insurance, and limit coverage of targeted case management services. Overall, we estimate that enacting this chapter would reduce Medicaid spending by $1.8 billion over five years and by $6.8 billion over 10 years.

Restrictions on Provider Taxes. Many states finance part of their share of Medicaid spending by imposing taxes on health care providers. States typically impose taxes on a particular type of provider and use the revenues to increase payment rates to those same providers. In the process, states collect federal Medicaid funds for those higher payments. Federal law generally requires states to tax all providers in a class, so states typically tax classes of providers (such as hospitals or nursing homes) of which a relatively large share receive significant Medicaid payments and stand to benefit from the higher payment rates that result from the provider tax. However, the law allows states to impose taxes only on those managed care organizations (MCOs) that serve Medicaid recipients. Because that exception makes it easier for states to impose provider taxes on MCOs, several states have already imposed such taxes, and more are planning to do so.

The legislation would require any taxes on MCOs to apply to all such organizations, including those that do not enroll Medicaid recipients. This provision would take effect upon enactment but would not apply fully to states with existing taxes on MCOs until 201O. CBO anticipates that states ultimately would eliminate their taxes on MCOs under the legislation. Using CMS data on provider taxes, we estimate that the resulting savings would reduce Medicaid spending by $615 million over the 2006–2010 period and by $3.1 billion over the 2006–2015 period.

Third-Party Recovery. The legislation would strengthen Medicaid's status as payer of last resort relative to private health insurance by specifying that pharmacy benefit managers and self-insured plans are liable third parties, requiring insurers to submit eligibility and claims data for Medicaid recipients to states on a regular basis, and requiring insurers to pay claims for Medicaid recipients that are submitted within three years of the date of service. Those provisions would take effect on January 1, 2006. CBO estimates that the legislation would improve states' abilities to identify liable third parties and would increase the amounts that Medicaid recovers from insurers for recipients who also have private health insurance, thereby reducing Medicaid spending by $480 million over the 2006–2010 period and by $1.3 billion over the 2006–2015 period.

Targeted Case Management Services. Medicaid allows states to cover case management services that help recipients obtain access to medical, social, and other services and permits states to target those services to specific populations, such as disabled adults. However, current law provides little guidance on the specific types of services that Medicaid will cover, and some states have billed the program for services that are core elements of other programs, such as juvenile justice and foster care. The legislation would clarify that case management services must help recipients gain access to needed medical, social, educational, and other services and would specify that Medicaid will not cover services that are normally provided under other programs (including certain activities provided by foster care programs). This provision would take effect on January 1, 2006.

CBO estimates that this provision would reduce Medicaid spending on case management services by about 10 percent, yielding savings of $1.1 billion over the 2006–2010 period and $3.0 billion over the 2006–2015 period. Based on information provided by CMS, we anticipate that some of the case management services previously covered by Medicaid would be billed instead to the federal foster care program, raising spending by $350 million over the 2006–2010 period and $940 million over the 2006–2015 period. Together, those reductions in spending for Medicaid and increases in spending for foster care would reduce federal spending by $760 million over the 2006–2010 period and by $2.1 billion over the 2006–2015 period, CBO estimates.

Other Provisions. The remaining provisions in this chapter would: increase funding for Medicaid programs in the United States' territories; provide funds to states that make their Medicaid programs more effective and efficient; require recipients to document their U.S. citizenship; limit the amounts that MCOs must pay to certain providers of emergency services furnished to enrollees in Medicaid managed care plans; and exclude some employer pension contributions from the calculation of the federal government's share of Medicaid spending-known as the federal medical assistance percentage (FMAP). On net, CBO estimates that those provisions would increase Medicaid outlays by $45 million over the 2006–2010 period and reduce spending by $262 million over the 2006–2015 period.

Subtitle B—Katrina health care relief

The legislation would increase the federal government's share of Medicaid spending to 100 percent for individuals who lived in Louisiana, Mississippi, and parts of Alabama during the week prior to August 28, 2005. Under current law, the federal government pays about 70 percent of Medicaid costs in Alabama and Louisiana and 76 percent of costs in Mississippi. The legislation also would provide full federal funding for children from those areas who are enrolled in the State Children's Health Insurance Program (SCHIP). The full federal funding would apply to services provided between August 28, 2005, and May 15, 2006. CBO estimates that these changes would increase Medicaid and SCHIP spending by $2.5 billion in 2006 (see Table 3). The acceleration ofSCHIP spending

would result in small offsetting reductions in spending in later years.

The legislation would appropriate $90 million in 2006 in additional funding for high-risk pools that states operate for individuals who cannot otherwise obtain health insurance. We estimate that appropriation would increase direct spending by $45 million in both 2006 and 2007.

Subtitle C—Katrina and Rita energy relief

Section 3301 of the legislation would appropriate $1 billion for fiscal year 2006 for the Low Income Home Energy Assistance Program. Those funds would supplement the regular appropriation for the program. CBO estimates that LIHEAP outlays would increase by $750 million in fiscal year 2006 and by $1.0 billion over the 2006–2008 period as a result of this additional funding.

TABLE 3. ESTIMATED BUDGETARY EFFECTS OF SUBTITLE B—KATRINA HEALTH CARE RELIEF

	Outlays in millions of dollars, by fiscal year—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Temporary FMAP Increases for Katrina Areas	2,470	*	*	−1	−6	*	*	*	*	*	2,463	2,463
State High-Risk Insurance Pools	45	45	0	0	0	0	0	0	0	0	90	90
Total Changes in Subtitle	2,515	45	*	−1	−6	*	*	*	*	*	2,553	2,553

Notes.—Components may not sum to totals because of rounding. FMAP = federal medical assistance percentage. * = between −$500,000 and $500,000.

Subtitle D—Digital television transition

The Digital Television Transition Act of 2005 (subtitle D of this legislation) would amend existing law regarding the FCC's authority to auction licenses to use the electromagnetic spectrum, resulting in additional auction proceeds of $10 billion over the 2006–2010 period and $10.8 billion over the 2006–2015 period, CBO estimates. Under the legislation, the Department of Commerce would spend about $1 billion of those proceeds to assist consumers and others affected by the transition from analog to digital television broadcasts and another $500 million for grants to public safety agencies for communications systems. The legislation also would direct the FCC to complete various regulatory proceedings; exempt low-power television stations from certain requirements; and require television broadcasters, manufacturers, and other firms to carry out certain activities related to the digital transition. The budgetary impact of those provisions is detailed in Table 5 and discussed below.

TABLE 5.—ESTIMATED BUDGETARY EFFECTS OF SUBTITLE D—DIGITAL TELEVISION

	By fiscal year, in millions of dollars											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Spectrum Auction Proceeds:												
Estimated Budget Authority	0	1,250	1,550	−12,650	−150	−150	−150	−150	−150	−150	−10,000	−10,750
Estimated Outlays	0	1,250	1,550	−12,650	−150	−150	−150	−150	−150	−150	−10,000	−10,750
Converter Box Subsidies:												
Estimated Budget Authority	5	30	350	600	5	0	0	0	0	0	990	990
Estimated Outlays	5	30	350	600	5	0	0	0	0	0	990	990
Interoperability Grants:												
Estimated Budget Authority	0	0	0	500	0	0	0	0	0	0	500	500
Estimated Outlays	0	0	0	50	185	155	110	0	0	0	235	500
NYC Television Reimbursement:												
Estimated Budget Authority	2	14	14	0	0	0	0	0	0	0	30	30
Estimated Outlays	2	14	14	0	0	0	0	0	0	0	30	30
Low-Power Transition Assistance:												
Estimated Budget Authority	0	0	0	3	0	0	0	0	0	0	3	3
Estimated Outlays	0	0	0	3	0	0	0	0	0	0	3	3
Total Estimated Changes:												
Estimated Budget Authority	7	1,294	1,914	−11,547	−145	−150	−150	−150	−150	−150	−8,477	−9,227
Estimated Outlays	7	1,294	1,914	−11,997	40	5	−40	−150	−150	−150	−8,742	−9,227
Memorandum:												
Proceeds from Spectrum Auctions Under Current Law:												
Estimated Budget Authority	0	−7,605	−7,650	0	0	0	0	0	0	0	−15,255	−15,255
Estimated Outlays	0	−7,605	−7,650	0	0	0	0	0	0	0	−15,255	−15,255

Notes.—Components may not sum to totals because of rounding. * = between −$500,000 and $500,000.

Changes in Spectrum Auction Authority. This legislation would permanently extend the FCC's authority to auction licenses to use the electromagnetic spectrum, which currently expires at the end of fiscal year 2007. It also would change the statutory requirements for the return and subsequent auction of licenses for frequencies now used for television channels 52 through 69. The legislation would require the existing licensees to terminate broadcasts on December 31, 2008; under current law, those licenses do not have to be returned until at least 85 percent of households are able to receive television signals in a digital format. Under this legislation, the FCC would be required to auction licenses for use of 60 megahertz of the returned spectrum by January 7, 2008.

Spectrum Auction Proceeds Under Current Law. The proposed changes would significantly increase the quantity and quality of spectrum to be auctioned in the next few years. CBO expects that, under current law, the FCC will auction 90 megahertz for advanced wireless services in 2006 or 2007 and that proceeds from that and other smaller auctions will yield about $15 billion in receipts to the Treasury (recorded in the budget as offsets to outlays) in 2007 and 2008. CBO considers it unlikely that the television licenses would be auctioned under current law because the wireless industry has shown little interest in these frequencies while there is so much uncertainty about when the spectrum would be cleared for alternative uses. In fact, recent efforts to auction encumbered television licenses have yielded very little money.

Additional Auction Proceeds Under the Legislation. By imposing a firm date for both clearing channels 52–69 and auctioning the licenses for use of that spectrum, the legislation would have the effect of making available over a three-year period (2006 through 2008) a large quantity (150 megahertz) of high-quality spectrum that could be used for various wireless applications, including voice, video, data, and broadband services.

CBO estimates that the proceeds from the auction of the 60 megahertz now used by broadcasters would most likely total between $10 billion and $15 billion, with an expected value of about $12.5 billion. But offering the wireless industry a total of 150 megahertz within a two- or three-year time period would probably result in lower bids in the 90 megahertz auction than will take place under current law. CBO estimates that increasing the total supply of spectrum would result in a $2.5 billion reduction in receipts from the auctions being held under current law. Hence, we estimate that enacting the legislation would increase net receipts from spectrum auctions by $10 billion. (As a result, CBO expects that proceeds from all auctions over the next five years would total $25 billion.)

Estimates of spectrum values are very uncertain, largely because they depend on market factors that differ among firms, technologies, and regions, all of which can vary over time. CBO's estimates of the potential proceeds from such auctions are based on a variety of methods and considerations, including assessments of potential cash flows for various applications, historical trends in auction bids, and information provided by numerous industry experts.

Proceeds from spectrum auctions are recorded in the budget after the licenses are granted to the winning bidder. Based on past expe-

rience as to the duration of large auctions and the licensing process, CBO estimates that the $12.5 billion would be recorded on the budget in fiscal year 2009.

Finally, CBO expects that extending the FCC's auction authority would increase direct spending for auction-related expenses; generate additional offsetting receipts from auctions of other spectrum licenses; and change the timing of some auctions that might occur in 2007 if the commission anticipated that its auction authority was going to expire. CBO estimates that those changes would reduce the net proceeds from auctions by about $300 million in 2008; but would increase offsetting receipts by $150 million a year over the 2009–2015 period.

Spending of Auction Proceeds. Under the legislation, some of the proceeds from the auction of licenses for the use of the returned television spectrum would be deposited in four new funds established for specified purposes. From those funds, a total of $1.5 billion would be made available for spending by the Department of Commerce:

- Assisting consumers to obtain necessary hardware (converter boxes) for converting analog television signals to digital television signals—$990 million;
- Providing grants to public safety agencies for interoperable communications systems—$500 million;
- Reimbursing television stations in New York City for certain costs associated with the digital transition—$30 million; and
- Helping low-power television stations convert to digital technology—$3 million.

Converter box program. The legislation would allow households to apply for up to two coupons valued at $40 each that could be applied toward the purchase of certain kinds of settop boxes that convert digital broadcast signals into a signal that can be viewed on an analog television set. The coupons would be issued from January 1, 2008, through January 31, 2009; each coupon would be valid for three months, meaning that the program would terminate on April 30, 2009. Funding for the converter box program would be derived from the proceeds of the auction of the returned analog licenses, but the department could borrow up to $990 million from the Treasury in advance of the auction to begin implementing the program. Any borrowed funds would have to be repaid out of the auction proceeds. Finally, the legislation would cap administrative costs for the program at $160 million.

CBO expects that implementing the coupon program would take 18 months to two years because of the regulatory and contractual complexity of creating a new subsidy program.

Key elements of the program would include: developing regulations and contracts; determining which converter boxes would be eligible for the subsidy; printing and distributing application forms; certifying participating retailers; issuing coupons to eligible households; processing and validating retailers' invoices; handling complaints from consumers and retailers; and auditing program results. Thus, we assume that the department would begin developing the program in 2006 in order to have it up and running by

January 2008. Outlays for redeemed coupons would be concentrated in fiscal years 2008 and 2009.

Other programs. Funding for the other three programs also would be derived from auction proceeds, but the department would be authorized to borrow up to $30 million in advance to cover certain costs incurred by television stations in New York City for digital broadcasts prior to the completion of the Freedom Tower. Thus, we expect that spending for that program would begin in 2006 but expenditures for the interoperabi1ity grants and low-power television assistance would not begin until auction proceeds became available in fiscal year 2009. CBO estimates that outlays for these programs will follow historical patterns for similar activities.

Estimated impact on state, local, and tribal goverments: Subtitles A, B, and C of the legislation contain no intergovernmental mandates as defined in UMRA, but subtitle D contains such mandates. CBO estimates that the costs of complying with those mandates would not exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation). Provisions of subtitles A and B would have a significant effect on the way states operate the Medicaid program, and CBO estimates that, as a result, states would realize savings of $12 billion over the 2006–2010 period. Most of those savings would result from limits on reimbursements to pharmacies, revisions to asset-transfer rules, increased cost sharing, and higher federal reimbursements to states affected by Hurricane Katrina. Subtitle C also would provide an additional $1 billion to states for energy assistance to people affected by Hurricanes Katrina and Rita.

Subtitle D contains intergovernmental mandates because it would impose certain requirements on television stations—more than 40 percent of which are owned by state and local entities—and would preempt energy efficiency standards in at least two states. CBO estimates that the net costs, if any, to publicly owned television stations would be small.

Subtitle D would require public television stations to stop broadcasting their analog signals by December 31, 2008, earlier than is likely under current law. Most publicly owned television stations have already made the transition to digital television and would realize savings of up to $100,000 per station in electricity costs when they turn off their analog signals. Subtitle D also would require those stations, during the 2008 calendar year, to air two 60-second public service announcements each day about the transition to digital service. Costs to produce and distribute a 60-second public service announcement are typically quite small, and we estimate that the net impact on public television stations would not be significant.

Section 159 would preempt energy efficiency standards for convertor boxes in both California and New York and prohibit other state or local governments from passing laws that would regulate the energy consumption of the boxes. This provision would probably not impose any costs on state or local governments.

Other provisions of subtitle D would benefit state and local governments by creating a $500 million grant program to assist public safety entities in acquiring and deploying certain types of communications systems.

Estimated impact on the private sector: The legislation contains several private-sector mandates, as defined in UMRA, on television broadcasters, manufacturers, certain retailers, cable companies, and satellite carriers. Specifically, subtitle D would impose mandates by requiring:

- Broadcast stations to cease analog television service on December 31, 2008;
- Manufacturers, retailers, broadcasters, and cable and satellite service providers to undertake specific measures to educate consumers about the transition from analog to digital broadcasting;
- Television manufacturers to include digital tuners in all sets with screens sized between 13 inches and 24 inches sold in the United States, effective March 1, 2007; and.
- Cable companies and satellite carriers to carry certain video streams in a form that can be received by analog and digital televisions.

Because CBO does not have sufficient information about the existing practices of the broadcast industry, we cannot determine whether the aggregate direct cost to comply with those mandates would exceed the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Termination of broadcast television analog licenses

Current law requires all television broadcasters to give up their analog spectrum on December 31, 2006. TV broadcasters can receive an unlimited extension of this deadline for several reasons; most notably, an extension may be granted to broadcasters until at least 85 percent of households in their service areas are capable of receiving a digital signal. Most experts agree that the 2006 deadline for vacating the analog channels will not be met by broadcasters in most markets under the current rules. Section 3403 would impose a mandate by requiring the FCC to terminate all licenses for broadcasting analog signals and requiring broadcast stations to cease analog television service on December 31, 2008, with no extensions. Because nearly all television broadcasters are already broadcasting digital signals, the direct cost of the mandate would be minimal.

Consumer education measures

Section 3409 would impose mandates on manufacturers, retailers, broadcasters, and providers of cable and satellite services to undertake specific measures to educate consumers about the transition from analog to digital broadcasting. The provisions of this section would require:

- Manufacturers and retail distributors of analog television receivers to display certain language warning consumers about the transition to digital;
- Multichannel video program distributors to include notices in the bills they send to their subscribers during 2008; and
- Television broadcasters to air two public service announcements daily during 2008.

This section would require manufacturers, within six months of enactment, to place a label with specific warning language on each television apparatus shipped in interstate commerce or manufactured in the United States that is not capable of receiving a digital broadcast signal. In addition, manufacturers would have to include a warning notice on the outside of the retail packaging such products. The labels and notices would include information warning consumers about the deadline on all analog broadcasts, and the need for the analog product to be connected to a converter box or cable or satellite service to receive digital signals. The legislation contains specific language to be used for labels and warning notices.

As currently sold, the screens of televisions usually come with stickers attached and retail packaging usually contains some printing. According to industry sources, the direct cost of modifying such labeling to include the warning language would be small.

The legislation also would require retail distributors of television equipment not capable of receiving a digital broadcast to place signs containing the warning language in their establishments in the vicinity of the displays of such products. Retail distributors vending such products by mail, catalog, or electronic means would have to display the warning language along with the language describing the product. Based on information from the U.S. Census, more than 100,000 retail establishments sell televisions. According to industry sources, signs can be printed for up to about $5 each. The number of signs for each establishment would depend on its size and the product placement of analog televisions. The incremental cost to other retail vendors to provide the warning language for products sold by mail, catalog, or electronic means would be small. Consequently, CBO expects the direct cost to comply with this mandate would be small relative to UMRA's threshold for private sector mandates.

In addition, this section would require distributors of multichannel video programs, who are primarily cable companies and satellite carriers, to include a notice warning consumers about the transition to digital broadcasts in the bills they send to their subscribers during 2008. Information from the industry indicates that those additional notices would most likely not increase the cost of postage for mailing out such bills, CBO expects that the direct cost to comply with this mandate would be small.

Lastly, this section would require television broadcasters to air at least two public service announcements daily, one during the 8 a.m. to 9 a.m. hour and one during the 8 p.m. to 9 p.m. hour, for one year beginning January 1, 2008. The cost of this mandate would be the cost of making the announcement and the lost net income from airing the announcements instead of what broadcasters would otherwise air. The cost to broadcasters could be substantial, depending on how this requirement would affect advertising revenue. According to some industry experts, broadcasters air a large number of public service announcements under current law and the industry could minimize the cost of the mandate by replacing other public service announcements with the announcement required by this section. However, CBO does not have sufficient information to determine the cost of this mandate.

Digital tuners for small televisions

Section 3409 would require television manufacturers to include digital tuners in all sets with screens sized between 13 inches and 24 inches sold in the United States, effective March 1, 2007. Under current law, such television sets would be required to include digital tuners by July 1, 2007. Advancing the deadline by four months would be a new private-sector mandate. Based on information from industry and government sources that the inclusion of such digital tuners is already anticipated and planned, CBO expects that the direct cost of expediting the deadline would be small.

Carriage obligations

Section 3410 would impose on cable companies and satellite carriers certain requirements related to the video stream they receive from television stations. Under the conditions outlined in the bill, those cable companies and satellite carriers would be required to carry an eligible station's primary video stream and program-related material without material degradation and to carry that stream in a format viewable on analog and digital televisions. According to industry sources, most cable providers are planning to carry both digital and analog signals when the transition to digital occurs. Therefore, the direct cost to comply with those mandates would be small.

Other impacts

Because the legislation would set a firm date for television broadcasters to switch to an all-digital signal, households that depend on analog signals for over-the-air broadcasts will lose the use of their television sets sooner than under current law. To receive a digital signal, consumers would have to subscribe to a satellite or cable service, purchase a digital-ready television, or buy a set-top converter box. The least costly method for consumers would be to purchase a converter box. The legislation would require that part of the auction receipts be used by the Department of Commerce to "implement and administer a program through which households in the United States may obtain, upon request, up to two coupons that can be applied toward the purchase of digital-to-analog converter boxes." The value of each coupon would be $40, and the legislation would provide up to $990 million for the coupon program.

Previous CBO estimate: On October 24, 2005, CBO transmitted a cost estimate for the Digital Transition and Public Safety Act of 2005, as approved by the Senate Committee on Commerce, Science, and Transportation on October 20, 2005. The two estimates differ largely because of differences in the amount and timing of the direct spending authorized by each version and differences in the time period covered by the extension of the FCC's auction authority. The Senate legislation would also impose intergovernmental and private-sector mandates; the direct cost of those mandates would fall below the annual thresholds established by UMRA, CBO estimates.

Estimate prepared by: Federal Costs: Subtitles A and B: Tom Bradley, Jeanne De Sa, Sarah Evans, Geoff Gerhardt, Tim Gronniger, Eric Rollins, Shinobu Suzuki, and Camile Williams. Subtitle C: Matt Kapuscinski. Subtitle D: Kathleen Gramp, Melissa

Z. Petersen, and Matthew Pickford. Impact on State, Local, and Tribal Governments: Leo Lex and Sarah Puro. Impact on the Private Sector: Subtitles A, B, and C: Stuart Hagen. Subtitle D: Philip Webre and Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 3100. Short title of subtitle; rule of construction with regard to Katrina evacuees.

Section 3100 establishes the short title of the subtitle as "Medicaid Reconciliation Act of 2005." The section also establishes a rule of construction with regard to Hurricane Katrina evacuees.

Section 3101. Federal upper limit (FUL)

Current law

Under current law, states have considerable flexibility in setting the Medicaid payment rates for prescription drugs. However, total Federal reimbursements for state prescription drug spending are subject to a ceiling called the Federal upper limit (FUL).

The FUL applies to multiple source drugs—those that have at least three therapeutically equivalent drug versions sold by at least three suppliers. The FUL is calculated by the Centers for Medicare and Medicaid Services (CMS) to be equal to 150% of the published price for the least costly therapeutic equivalent. The published prices that CMS uses as a basis for calculating the FULs are the lowest of the average wholesale prices (AWP) for each group of drug equivalents. The FUL amounts are calculated and published in regulations by CMS. CMS periodically updates the FUL list and

re-publishes those amounts. A state's payment for all Medicaid prescription drugs with a FUL must not exceed, in the aggregate, the payment levels established by the FUL program. The aggregate cap allows states to increase or decrease the cost of individual prescription drugs in accordance with state or local markets while maintaining the overall savings created by the FUL program. States may exceed the FUL price for individual prescription drugs as long as their aggregate expenditures do not exceed the amounts that would have otherwise been spent by applying the FUL limit plus a reasonable dispensing fee.

Pharmaceutical manufacturers that wish to have their products available to Medicaid beneficiaries must enter into "rebate agreements" under which they agree to provide state Medicaid programs with the rebates based on drugs provided to Medicaid beneficiaries. The rebates are calculated based on the average manufacturer's price (AMP) of each product, and for certain products, the best price at which the manufacturers sells the drug. The AMP is defined as the average price paid to a manufacturer by wholesalers for drugs distributed to retail pharmacies and must be provided by manufacturers to CMS through routine reporting and periodic verification surveys.

AMPs and best prices, as submitted by prescription drug manufacturers to CMS for the purpose of calculating Medicaid drug rebates, must remain confidential except as the Secretary determines necessary to carry out the Medicaid prescription drug provisions, and to permit the Comptroller General and the Congressional Budget Office to review the information provided.

Explanation of provision

Medicaid prescription drug coverage is one of the most expensive and fastest growing health care expenditures. In fiscal year (FY) 2003, Medicaid prescription drug expenditures totaled $31 billion, triple what was spent in 1994. Between 1998 and 2002, Medicaid prescription drug expenditures grew at an annual rate of 19 percent, and the Office of the Actuary at CMS projects an annual growth rate of 12.7 percent through 2011. That is a far higher rate of growth than overall Medicaid expenditures.

While prescription drugs expenditures are rapidly rising, it is also becoming evident that AWP does not reflect prices that are actually paid in the marketplace. In December, 2004, the Committee on Energy and Commerce held a hearing, "Medicaid Prescription Drug Reimbursement: Why the Government Pays Too Much." In that hearing, HHS Assistant Inspector General (IG), George Greeb, testified that, "the published AWPs that States use to establish their Medicaid drug reimbursements generally bear little resemblance to the prices incurred by retail pharmacies to purchase drugs." Additionally, the IG discovered that pharmacy acquisition costs for brand name drugs in 1999 were an average of 21.8% below AWP and for generic drugs were an average of 65.9% below AWP.

Section 3101 would replace the current FUL requirement that is based on AWP with a new FUL formula based on retail average manufacturer price (RAMP).

FUL for ingredient cost

The FUL for the ingredient cost of a single source drug would be equal to the 106% of the retail average manufacturer price (RAMP) for that drug. The FUL for the ingredient cost of a multiple source drug would be equal to 120% of the volume weighted average RAMP for that drug.

RAMP is based on AMP and defined as the average price paid to a manufacturer for the drug in the U.S. in the quarter by wholesalers for drugs distributed to retail pharmacies, excluding service fees paid by the manufacturer. Sales exempted from RAMP would include those sales exempt from the determination of best price and any other sales as identified by the Secretary that are nominal in amount. In calculating RAMP, cash and volume discounts; free goods contingent upon a purchase requirement; nominal price sales contingent upon a purchase requirement or agreement; chargebacks and rebates provided to a pharmacy or any other direct or indirect discounts; and any other price concession, which may be based on the recommendation of the Inspector General of HHS, that result in a reduction of cost to the purchaser would be included. Under this subsection, retail pharmacies would be defined to exclude mail-order only pharmacies and pharmacies at nursing facilities and homes.

With respect to "free goods contingent upon a purchase requirement or agreement" referred to above, the Committee intends to ensure consistent treatment to other Federal programs of the terms used in the RAMP methodology. For example, the terms "free goods not contingent on a purchase" should also include free drugs that are provided to induce a contemporaneous or a future purchase of the same or another drug. The terms "free goods not contingent on a purchase" should, for Medicaid, have the same meaning as the terms are used in Medicare.

The volume weighted RAMP would be determined, for all drug products included within the same multiple source drug billing and payment code. The RAMP for each product with a National Drug Code (NDC) would be multiplied by the total number of units of the drug product sold, and then those amounts would be summed together and divided by the total number of units sold for all NDC codes.

For drugs sold during an initial sales period in which data on sales for the drug is not sufficiently available from the manufacturer to compute the RAMP or the weighted average RAMP, the provision would establish a transitional upper payment limit to apply only during such period. During the initial sales period, not to exceed 2 calendar quarters, the upper limit for such drugs would be calculated to be equal to the wholesale acquisition cost (WAC) for the drug. The provision would define WAC to be the manufacturer's list price for the drug or biological to wholesalers or direct purchasers in the U.S., not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data.

The Secretary would be required to update the upper payment limits on a quarterly basis, taking into account the most recent data collected for purposes of determining such limits and the Food

and Drug Administration's (FDA) most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations." In addition, the Secretary would be required to collect data on the price and volume of sales of covered outpatient drugs for the first calendar quarter beginning after the date of enactment or during which the drug is marketed, whichever is later.

States may elect not to apply the new FUL to covered outpatient drugs dispensed by specialty pharmacies as defined by the Secretary, or drugs administered by a physician in a physician's office. Certain drugs administered in specialty pharmacies and physician's offices, may require additional administrative expenses, and thus the appropriate payment level may exceed the FUL.

Dispensing fees

Section 3101 would require states to pay a dispensing fee for each covered outpatient drug. Dispensing fees for drugs defined as multiple source drugs under the FUL policy would be required to be no less than $8 per prescription unit. The Secretary would be required to define what constitutes a prescription unit for this purpose. Additionally, this section explicitly states that states would be allowed to vary dispensing fees to take into account the special circumstances of pharmacies serving rural and underserved areas and sole community pharmacies. This section did not set a dispensing fee level for single source drugs, so that the setting of such fees remains at the state's discretion.

Evaluation of Use of Retail Survey Price Methodology

Section 3101 would allow the Secretary to develop a methodology to set the FUL based on the most recently reported retail survey price instead of a percentage of RAMP or the volume weighted average RAMP. For 2007, the Secretary may use this methodology for a limited number of covered outpatient drugs, including both single source and multiple source drugs selected to be representative of the classes of drugs dispensed under Medicaid.

The provision would allow the Secretary to contract with a vendor to obtain retail survey prices for Medicaid covered outpatient drugs that represent a nationwide average of pharmacy sales costs for such drugs, net of all discounts and rebates. Such a contract would be awarded for a term of 2 years. The Secretary would be required to (1) competitively bid for an outside vendor with a demonstrated history in surveying and determining on a representative nationwide basis, retail prices for ingredient costs of prescription drugs; (2) work with retail pharmacies, commercial payers, and states in obtaining and disseminating price information; and, (3) collect and report price information on at least a monthly basis. The contract would include the terms and conditions specified by the Secretary and would include a requirement that the vendor (1) monitor the marketplace and report to the Secretary each time there is a new covered outpatient drug available nationwide; (2) update the Secretary no less often than monthly on the retail survey prices for multiple source drugs and on the computed upper payment limit for those drugs; and, (3) to independently confirm retail survey prices. Information on the retail survey prices obtained through this process, including information on single source drugs

would be required to be provided to states on an ongoing and timely basis.

The provision would also require the Secretary to devise and implement a means for electronic distribution of the most recently calculated AMP and retail survey price for single source drugs, and the most recently calculated AMP and FUL for multiple source drugs to each state Medicaid agency. States would be permitted to use such data in establishing payment rates for ingredients and dispensing fees for covered outpatient drugs under state Medicaid programs. The provision would establish an additional exception to the confidentiality provision, allowing for states to use this price information in establishing payment rates.

Reports

Section 3101 would require the Comptroller General of the U.S. to provide a report to Congress no later than nine months after the date of enactment on the appropriateness of payment levels to pharmacies for dispensing fees under the Medicaid program. Within the report, the appropriateness in payments for pharmacies in rural or underserved areas, as well as specialty pharmacies, should be examined.

This provision would also require the Inspector General of HHS to provide a report to Congress, no later than two years after the date of enactment, on the appropriateness of using RAMP and retail survey prices rather than the AMP or other price measures, as the basis for establishing a FUL for reimbursement of outpatient drugs under Medicaid.

Section 3102. Collection and submission of utilization data for certain physician administered drugs

Current law

Manufacturers are required to provide rebates to states for all Medicaid covered outpatient prescription drugs, with a few exceptions. Managed care organizations as well as outpatient drugs dispensed by a hospital and billed at no more than the hospital's purchasing costs are exempt from the rebate requirement. States have often been unable to collect rebates on certain drugs administered by physicians in their offices or in another outpatient setting, such as chemotherapy, because health providers use Healthcare Common Procedure Coding System (HCPCS) J-codes to bill the Medicaid program for injectable prescription drugs, including cancer drugs. The HCPCS J-codes do not, however, provide states with the specific manufacturer information necessary to enable them to seek rebates. CMS has requested that states identify Medicaid drugs, specifically those billed using HCPCS J-codes, so that rebates can be collected for these drugs.

Explanation of provision

CMS believes that because of this coding discrepancy, rebates have not been collected on these drugs, resulting in the loss of millions of dollars. Section 3102, states would be required to submit to the Secretary utilization data and coding information for single source drugs or biologicals that are physician administered out-

patient drugs and are administered on or after January 1, 2006, so that the Secretary would be able to collect rebates for those drugs.

The Secretary would also require that no later than January 1, 2007, utilization data and coding information by NDC would be required for multiple source drugs (unless the Secretary identifies an alternative methodology. When the Secretary obtains that data, the Secretary would be required to publish a list of the 20 highest volume physician administered multiple source drugs. On or after January 1, 2008, the state would be required to submit utilization and coding information for the 20 highest volume drugs. The Secretary would be able to modify such list from year to year to reflect changes in such volume.

Under this section, states must submit this coding and utilization data as a condition of receiving Federal Medicaid payments. The Secretary may delay the application of the reporting requirements in the case of a state to prevent hardship to Sates that require additional time to implement such a reporting system.

Section 3103. Improved regulation of drugs sold under a new drug application approved under Section 505(c) of the Federal Food, Drug, and Cosmetic Act

Current law

Under the Medicaid drug rebate program, rebate amounts are calculated separately for brand name drug products provided to Medicaid beneficiaries and for generics. The rebate for brand name drugs, referred to as single source and innovator multiple source drugs, is equal to the greater of 15.1% of the average manufacturer's price (AMP) or the AMP minus the best price available from the manufacturer. The rebate for multiple source drugs is equal to 11% of the AMP.

Prescription drug manufacturers participating in the Medicaid program are required to report to the Secretary data on the AMP for each pharmaceutical product offered under Medicaid and, for each brand name drug product, the best price available to any wholesaler, retailer, provider, health maintenance organization (HMO), nonprofit entity, or governmental entity. The term 'best price' is defined in the Medicaid statute but only with respect to brand name drugs since the best price is part of the rebate computation for only those drugs.

Drug price reporting is based on each drug product's unique "national drug code" (NDC). For each product for which pricing has been reported, HHS calculates the rebate amount. The NDC code numbers are assigned to each drug product by the Food and Drug Administration (FDA) together with the manufacturers.

Sometimes manufacturers produce both a brand name version of a prescription drug and also sell or license a second manufacturer (or a subsidiary) to produce some of the same product to be sold or re-labeled as a generic. These generics, known as "authorized generics," are sometimes distributed the same manufacturer and sometimes by a second manufacturer and are provided with a separate NDC code. The rebate is calculated for each manufacturer's product and, for brand name products, takes into account the best price reported for each drug. Such price often does not include the

price of the product sold as the authorized generic both because it is considered a separate product (with its own unique NDC number) and is often sold by a separate manufacturer.

Explanation of provision

Section 3103 would modify the existing drug price reporting requirements for pharmaceutical manufacturers. Not later than 30 days after the last day of each rebate period, manufacturers would be required to report each covered outpatient drug, including those sold under a new drug application approved by the FDA, the average manufacturer's price for such drugs; and, for single source drugs, innovator multiple source drugs, and any other drug sold under a new drug application approved by the FDA, the manufacturers best price for such drugs during the applicable rebate period; and not later than 30 days after the date of entering into a drug rebate agreement, on the average manufacturer price for each of the manufacturer's covered outpatient drugs, including those sold under a new drug application approved by the FDA.

The current law definition of best price would be changed to apply not only to each single source drug and innovator multiple source drug, but also to drugs sold under a new drug application (NDA) approved by under Section 505(c) of the Federal Food, Drug and Cosmetic Act (FFDCA). In addition, the definition would be modified so that the best price, in the case of a manufacturer that approves, allows or otherwise permits an authorized generic or any other drug of the manufacturer to be sold under an NDA, is inclusive of the lowest price such authorized generic or other drug is sold to any wholesaler, retailer, provider, HMO, nonprofit or governmental entity except for those entities excluded under current law.

Section 3103 would modify the current law definition of AMP to include, in the case of a manufacturer that approves, allows, or otherwise permits a drug of the manufacturer to be sold under an NDA to be inclusive of the average manufacturer price paid for such drugs.

Section 3103 would become effective on the date of enactment.

Section 3104. Children's hospital participation in Section 340B drug discount program

Current law

The 340B Drug Pricing Program resulted from enactment of Public Law 102–585, the Veterans Health Care Act of 1992, which is codified as Section 340B of the Public Health Service Act. This program limits the cost of covered outpatient drugs to certain Federal grantees, Federally- qualified health center look-alikes and qualified disproportionate share hospitals. Significant savings on pharmaceuticals may be seen by those entities that participate in this program.

Explanation of provision

Under current law, while the 340B Drug Pricing Program is codified in the Public Health Service Act, the authority for the level of drug reimbursements is under Medicaid. Section 3104 amends the

Section 1927(a)(5)(B) of the Medicaid statute to include children's hospitals (as described in Section 1886(d)(1)(B)(iii) of the Social Security Act) in the definition of "covered entity" to permit those hospitals access to 340B drug prices.

Section 3105. Improving patient outcomes through greater reliance on science and best practices

Current law

In general, Medicaid beneficiaries receiving care in the fee-for-service sector are assured of broad pharmaceutical coverage due to statutory requirements within the rebate agreements between states and the drug manufacturers. In return for entering into agreements with the Secretary, state Medicaid programs are required to cover all of the drugs marketed by those manufacturers (with possible exceptions for the categories of drugs that states are allowed to exclude from coverage).

Currently, states do have a number of techniques to control cost and utilization of pharmaceuticals. One of those techniques is prior authorization. Prior authorization is the requirement that only pharmaceutical products for which advance approval is sought and received from a designated individual or entity are to be covered. States may establish prior authorization programs under Medicaid for all drugs or for certain classes of drugs, as long as these programs meet two criteria: (1) they must respond within 24 hours to a request for approval, and (2) they must dispense at least a 72–hour supply of a covered drug in emergency situations. In 2002, all (including the District of Columbia) but four states report having a prior authorization procedure for at least some covered drugs.

Explanation of provision

Section 3105 would require that an atypical antipsychotic or antidepressant single source drug may be subject to prior authorization only when a drug use review board has determined, based on the strength of the scientific evidence and standards of practice, including assessing peer-reviewed medical literature, pharmacoeconomic studies, outcomes research data and other information as the board determines to be appropriate, that placing the drug on prior approval or otherwise imposing restrictions on its use is not likely to harm patients or increase overall medical costs. Additionally, if a response is not received for an atypical antipsychotic or antidepressant drug prescribed within 24 hours after the prescription is transmitted, payment is made for a 30 day supply of the medication.

Section 3105 would take effect January 1, 2007

Section 3111. Lengthening Look-Back period; change in beginning date for period of ineligibility

Current law

The ability of individuals to transfer or shelter assets in order to meet Medicaid's financial eligibility requirements for long-term care services is well known. Countless books, seminars, advertisements, and billboards tout the services of professional "Medicaid planners" who assist seniors, often at the behest of adult children,

with such "Medicaid estate planning" or "Medicaid planning" activities. A myriad of legal maneuvers and financial instruments, including large dollar annuities, are employed in this endeavor. In many instances, those who engage in Medicaid planning could have used at least a portion of transferred or sheltered assets to pay privately for long-term care—delaying or even obviating the need for taxpayer-financed care. While the precise extent of Medicaid planning is difficult to determine, it cannot be disputed that substitution of Medicaid dollars for otherwise available private dollars results in additional costs to the program. According to the Congressional Research Service, "even if only a fraction of spending were saved, it could be millions or possibly billions of dollars." (Medicaid Asset Transfers and Estate Planning, Testimony before the Senate Committee on Finance, June 19, 2005).

Current law requires states to impose penalties on individuals who transfer assets (all income and resources of the individual and of the individual's spouse) for less than fair market value. Specifically, the rules require states to delay Medicaid eligibility for certain Medicaid long-term care services for individuals applying for care in a nursing home, and, at state option, for certain people receiving care in community-based settings, who have transferred assets for less than fair market value on or after a "look-back date." The "look-back date" is 36 months prior to application for Medicaid for income and most assets disposed of by the individual, and 60 months in the case of certain trusts.

The period of ineligibility, or penalty period, begins on the first day of the first month during or after which assets have been improperly transferred and which does not occur in any other period of ineligibility. Although there is no limit to the length of a penalty period, most penalty periods expire before care is ever needed thus rendering the notion of a penalty meaningless in such cases.

To protect beneficiaries from unintended consequences of the asset transfer penalties, current law requires states to establish procedures for not imposing penalties on persons who, according to criteria established by the Secretary, can show that a penalty would impose an undue hardship. CMS guidance specifies that undue hardship can occur when application of the penalty would deprive the individual of medical care so that his or her health or life would be endangered, or when it would deprive the individual of food, clothing, shelter, or other necessities of life. The guidance explains that undue hardship does not exist when application of the penalty would merely cause the individual inconvenience or when it might restrict his or her lifestyle but would not put him or her at risk of serious deprivation.

CMS guidance requires that state procedures, at a minimum, provide for and discuss (1) a notice to recipients that an undue hardship exception exists; (2) a timely process for determining whether an undue hardship waiver will be granted; and, (3) a process under which an adverse determination can be appealed.

Explanation of provision

Section 3111(a) would amend section 1917(c)(1)(B)(i) of the Social Security Act to lengthen the general look-back date to 60 months (as is already the case with certain trusts) for income and assets

disposed of by the individual after this Act's date of enactment. For income and assets disposed of prior to the enactment date, the look back periods of 36 months for income and assets and 60 months for certain trusts would apply.

Section 3111(b) would amend section 1917(c)(1)(D) of the Social Security Act by changing the start date of the ineligibility period for all transfers made on or after the date of the enactment, to the first day of a month during or before which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the state plan and is receiving certain long-term care services, whichever is later and which does not occur during any period of ineligibility as a result of an asset transfer policy. These services would include (1) nursing facility care; (2) services provided in any institution in which the level of care is equivalent to those provided by a nursing facility; (3) Section 1915(c) home and community-based waiver services; (4) home health services; and, (5) personal care furnished in a home or other locations. At state option, they may also include other state plan long-term care services.

The amendments made by this subsection would apply to transfers made on or after the date of enactment.

Section 3111(d) specifies the criteria by which an application for an undue hardship waiver would be approved by codifying CMS guidance on state procedure. Approval would be subject to a finding that the application of an ineligibility period would deprive the individual of medical care such that the individual's health or life would be endangered, or that the individual would be deprived of food, clothing, shelter, or other necessities of life. States would also be required to provide for (1) notice to recipients that an undue hardship exception exists; (2) a timely process for determining whether an undue hardship waiver will be granted; and, (3) a process under which an adverse determination can be appealed.

This subsection would also amend section 1917(c)(2) of the Social Security Act to permit facilities in which institutionalized individuals reside to file undue hardship waiver applications on behalf of the individual, with the institutionalized individual's consent or the consent of his or her guardian. If the application for undue hardship of nursing facility residents meets criteria specified by the Secretary, the state would have the option of providing payments for nursing facility services to hold the bed for these individuals at a facility while an application is pending. Such payments could not be made for longer than 30 days.

Section 3112. Disclosure and treatment of annuities and of large transactions.

Current law

CMS guidance (Transmittal Letter 64) asks states to determine the ultimate purpose of an annuity in order to distinguish those that are validly purchased as part of a retirement plan from those that abusively shelter assets. To be deemed valid in this respect, the life of the annuity must coincide with the average number of years of life expectancy for the individual (according to tables in the transmittal), i.e., the annuity must be "actuarially sound." The

purchase of an "actuarially sound" annuity by an applicant or a community spouse is a common technique to convert countable resources into non-countable income or income able to be sheltered for purposes of the Medicaid eligibility determination. It is not unusual for hundreds of thousands of dollars to be converted in this manner. Thus, individuals with significant assets can qualify for taxpayer-financed long-term care services virtually overnight.

Explanation of provision

Section 3112 would amend section 1917 of the Social Security Act by adding a new subsection that would require individuals, at the initial application or recertification for certain Medicaid long-term care services, to disclose to the state the following:

(A) A description of any interest the individual or community spouse has in an annuity (or similar financial instrument which provides for the conversion of a countable asset to a non-countable assets, as specified by the Secretary), regardless of whether the annuity is irrevocable or is treated as an asset;

(B) Full information (as specified by the Secretary) concerning any transaction involving the transfer or disposal of assets during the previous 60 month period, if the transaction exceeded $100,000, without regard to whether the transfer or disposal was for fair market value. All transactions of $5,000 or more occurring within a 12-month period shall be treated as a single transaction. These dollar amounts would be increased, beginning with 2007, from year to year based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest $1,000 in the case of the $100,000 number and to the nearest $100 in the case of the $5,000 number.

Applications or recertification forms shall include a statement that designates the state as the remainder beneficiary under such an annuity or similar financial instrument, subject to the following provisions:

(A) For institutionalized individuals who receive certain Medicaid-covered long-term care services, the state would become the remainder beneficiary in the first position of an annuity (in which the individual has an interest) for the total amount paid by Medicaid on behalf of the individual. This provision would not apply when a spouse, child under age 21, or child who is blind or disabled (as defined by the section 1614 of the Social Security Act) is a named beneficiary;

(B) In the case of disclosure concerning an annuity, the state would notify the annuity's issuer of the state's right as a preferred remainder beneficiary in the annuity for Medicaid services furnished to the individual. This provision would not prevent the issuer from notifying persons with any other remainder of the state's interest in the remainder;

(C) The state may require an issuer to notify when there is a change in the amount of income or principal being withdrawn from the amount being withdrawn at the time of the most recent disclosure, as specified above. A state would take such information into account when determining the amount of the state's obligations for Medicaid or the individual's eligi-

bility. Such a change in amount would be deemed as a transfer of an asset for less than fair market value unless the individual demonstrates, to the state's satisfaction, that the asset transfer was for fair market value.

The Secretary may provide guidance to states on categories of arms length transactions (such as the purchase of a commercial annuity) that could be generally treated as an asset transfer for fair market value.

Section 3112 would apply to transactions (including the purchase of an annuity) occurring on or after the date of the enactment.

Section 3113. Application of "income-first" rule in applying community spouse's income before assets in providing support of community spouse

Current law

Current law includes provisions to protect a spouse whose husband or wife seeks Medicaid coverage for long-term care services.

Regarding income, current law exempts all of the community spouse's income (e.g., pension or Social Security) from being considered available to the other spouse for purposes of Medicaid eligibility. For community spouses with more limited income, section 1924(d) of the Social Security Act provides for the establishment of a minimum monthly maintenance needs allowance (MMMNA) to meet basic monthly needs. If the community spouse's monthly income amount is less than the MMMNA (or a higher amount per court order), the institutionalized spouse may choose to transfer an amount of his or her income to make up for the shortfall. Within Federal limits, states set the maximum monthly income level that community spouses may retain. Federal requirements specify that this amount may be no greater than $2,377.50 per month, and no less than $1,561.25 per month in 2005.

Regarding assets, Federal law allows states to select the amount of assets a community spouse may be allowed to retain. This amount is referred to as the community spouse resource allowance (CSRA). Federal requirements specify that this amount may be no greater than $95,100 and no less than $19,020 in total countable assets in 2005. If the community spouse's assets are less than the state-specified maximum, then the Medicaid beneficiary must transfer his or her share of the assets to the community spouse until the community-spouse's share reaches the maximum. All other non-exempt assets are supposed to be depleted before the applicant can qualify for Medicaid.

States have some flexibility in the way they apply these rules. In allocating income and resources between spouses, states have employed two divergent methods. Under the "income-first" method, the institutionalized spouse's income is first allocated to the community spouse to enable the community spouse sufficient income to meet the MMMNA; the remainder, if any, is applied to the institutionalized spouse's cost of care. Under this method, the assets of an institutionalized spouse (e.g., an annuity or other income producing asset) cannot be transferred to the community spouse to generate additional income for the community spouse unless the income transferred by the institutionalized spouse would not enable the

community spouse's total monthly income to reach the MMMNA (or a higher amount per court order).

In contrast, under the other method, known as the "resources-first" method, the couple's resources can be protected first for the benefit of the community spouse to the extent necessary to ensure that the community spouse's total income, including income generated by the CSRA, meets the community spouse's minimum monthly maintenance needs allowance. Additional income from the institutionalized spouse that may be, but has not been, made available for the community spouse is used toward the cost of care for the institutionalized spouse. Applying the "resources-first" method, courts have allowed institutionalized spouses to transfer resources worth hundreds of thousands of dollars upon an ostensible showing such resources have limited income-producing potential.

Explanation of provision

Section 3113 would amend section 1924(d) of the Social Security Act to require that any transfer or allocation made from an institutionalized spouse to meet an income need of a community spouse be first made from income of the institutionalized spouse, thus codifying the "income-first" method. Only when sufficient income is not available, could resources of the institutionalized spouse be transferred or allocated.

Section 3113 would apply to transfers and allocations made on or after the date of this Act's enactment by individuals who become institutionalized spouses on or after such date.

Section 3114. Disqualification for long-term care assistance for individuals with substantial home equity

Current law

Medicaid excludes the entire value of an applicant's home, without limit, when determining financial eligibility for long-term care assistance. Thus, a home value of one million dollars ($1,000,000), five million dollars ($5,000,000), or even ten million dollars ($10,000,000) does not affect an applicant's access to taxpayer-financed care. A home is defined as any property in which an individual (and spouse, if any) has an ownership interest and which serves as the individual's principal place of residence.

Explanation of provision

Section 3114 would amend section 1917 of the Social Security Act to exclude from Medicaid eligibility for nursing facility or other long- term care services, those individuals with an equity interest in their home of greater than half-a-million dollars ($500,000). This amount would be increased, beginning in 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers rounded to the nearest $1,000.

Section 3114 would not apply to individuals whose spouse, child under age 21, or child who is blind or disabled (as defined by the section 1614 of the Social Security Act) lawfully resides in the individual's home. The Secretary would establish a process to waive application of this provision for demonstrated cases of hardship. This provision would not prevent an individual from using a reverse

mortgage or home equity loan to reduce the individual's total equity interest in the home.

In addition, section 3114 would apply to individuals who are determined eligible for Medicaid with respect to nursing facility or other long-term care services based on an application filed on or after January 1, 2006.

Section 3115. Enforceability of continuing care retirement communities (CCRC) and life care community admission contracts

Current law

Continuing Care Retirement Communities (CCRCs) offer a range of housing and health care services to serve older persons as they age and as their health care needs change over time. The services generally offered include meals, transportation, emergency response systems, and on-site nursing and physician services. CCRCs were developed, in large part, in response to an interest among many elderly persons to age-in-place. CCRCs are paid primarily with private funds, but a number also accept Medicaid payment for nursing facility services. Under current law, section 1919(c)(5)(A)(i)(II) of the Social Security Act prohibits a Medicaid-certified nursing facility from requiring oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under Medicaid or Medicare. Courts have construed this language to invalidate contract provisions, mutually agreed to by applicants and communities that provide residents spend declared resources before applying for taxpayer-financed care.

Explanation of provision

Section 3115 would amend section 1919(c)(5)(A)(i)(II) of the Social Security Act to provide an exception for state-licensed, registered, certified, or equivalent continuing care retirement communities (CCRCs) or a life care community (including nursing facility services provided as part of that community) to allow them to require in their admissions contracts that residents spend their resources (subject to Medicaid's rules concerning the resources allowance for a community spouse), declared for the purposes of admission, on their care before they apply for Medicaid.

This section would also amend section 1917 of the Social Security Act to consider certain entrance fees for CCRCs or life care communities to be countable resource, and thus available (subject to a community spouse resource allowance if applicable) to the applicant, for purposes of the Medicaid eligibility determination if the following conditions are met:

(A) the individual would have the ability to use the entrance fee, or the contract provides that the entrance fee could be used, to pay for care should other resources or income of the individual be insufficient to pay for care;

(B) the individual would be eligible for a refund of any remaining entrance fee when the individual dies or terminates the CCRC or life care community contract and leaves the community; and

(C) the entrance fee does not confer an ownership interest in the CCRC or life care community.

Section 3121. State option for alternative Medicaid premiums and cost sharing

Current law

State Medicaid programs may require that certain beneficiaries pay deductibles, co-payments or other service-related cost sharing amounts, although there are limits on the amounts that states can impose, the beneficiary groups that can be required to pay, and the services for which cost-sharing can be charged. Generally, states are precluded from imposing any meaningful cost sharing on Medicaid beneficiaries because Section 1916(e) of the Social Security Act prohibits providers from denying care or services to a beneficiary on account of the beneficiaries' inability to pay any deduction, cost sharing, or similar charge.

Medicaid specifically prohibits the imposition of any cost sharing on some groups of beneficiaries, unless the prohibitions are waived under an approved research and demonstration waiver. All cost-sharing related to the delivery of health services is prohibited for children under 18 years of age, and pregnant women for any services that relate to the pregnancy or any related condition that may complicate the pregnancy. In addition, cost sharing cannot be charged for services furnished to individuals who are inpatients in a hospital, or are residing in a long term care facility or in another medical institution if the individual was required to spend most of their income for medical care; services furnished to individuals receiving hospice care; emergency services; and family planning services and supplies.

Subject to the prior limitations, Medicaid programs are allowed to establish "nominal" service-related cost-sharing requirements. Nominal amounts are defined in regulations (42 CFR 447.54) and are generally between $0.50 and $3, depending on the cost of the service provided. For working individuals with disabilities who qualify for Medicaid under the Balanced Budget Act of 1997 (BBA97) and the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) pathways, service-related cost-sharing charges may be required that exceed nominal amounts as long as they set on a sliding scale based on income. Premiums and enrollment fees are generally prohibited under Medicaid, except in limited circumstances for specified groups.

Explanation of provision

While current law allows for cost-sharing, there is no authority by either the Secretary or the state to be able to enforce it. Section 3121 would allow states for the first time to choose to impose enforceable premiums and cost-sharing for certain groups of individuals for services. The intent of the provision is to encourage beneficiaries to have greater awareness of the costs of their health care and create incentives for the utilization of more appropriate and cost effective treatments. Examples include creating financial incentives for the use of lower cost generic medications, beneficiaries receiving primary care through health clinics or physicians and participating in disease management programs. Under this provision, premiums and cost-sharing would be allowed to vary among

classes or groups of individuals and types of service, including through the use of tiered cost-sharing for prescription drugs.

The bill contains several limitations, which are intended to protect the most vulnerable Medicaid beneficiaries from any adverse consequences as a result of these new policies. The first limitation is income based. Medicaid beneficiaries with family incomes that do not exceed 100% of the FPL could only be charged nominal amounts for cost-sharing. In addition, the total amount of cost-sharing for all beneficiaries in a family with income below 100% could not exceed 5% of the total family income for the year. Beneficiaries with family income above 100% of FPL could face higher cost sharing amounts, but the total amount could still not exceed 5%.

The bill continues to exempt certain types of beneficiaries (subject to the drug and hospital cost sharing policies described below) and services from the new cost sharing policy. These beneficiaries include (1) mandatory Medicaid services furnished to individuals under 18 years of age and individuals receiving adoption or foster care assistance under part E of title IV without regard to their age; (2) preventive care and immunizations provided to all children under 18 years of age; (3) services furnished to pregnant women if such services relate to pregnancy or to any other medical condition which could complicate the pregnancy; (4) services furnished to a terminally ill individual who is receiving hospice care; (5) services furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution if such individual is required as a condition of receiving services to spend down for the cost of medical care all but a minimal amount of the individual's income for personal needs; (6) emergency services; and, (7) family planning services and supplies. States, at their option, may also exempt additional classes of individuals or services from cost-sharing.

Section 3121 would direct the Secretary to adjust the current "nominal" cost-sharing amounts, which have remained unchanged since 1982. Beginning on January 1, 2006, nominal cost sharing amounts will gradually increase over three years, so that the amounts will equal $5 in 2008. Other nominal amounts would be increased by a proportional amount over the same period. Beginning in 2009, all nominal amounts would be increased by the annual percentage increase in the medical care component of the consumer price index for all urban consumers and would be rounded up in an appropriate manner.

States would specify the manner that family income would be determined and the income disregarded for cost-sharing purposes. Family income must be determined for such period and at such intervals (periodicity) as the state specifics. The cost-sharing provisions would not prevent states from further limiting cost sharing, affect the authority of the Secretary to waive limits on premiums or cost-sharing, nor affect waivers in effect before the date of enactment.

Section 3121 would also allow states to condition the provision of medical assistance on the payment of premiums, and to terminate eligibility for medical assistance on the basis of failure to pay a premium if that failure continues for at least 60 days. States may

also waive premium payments in cases where such payments would be an undue hardship. The provision would allow states to permit providers participating in Medicaid to require a Medicaid beneficiary to pay authorized cost-sharing as a condition for the provision of care or services. Providers would also be allowed to reduce or waive cost- sharing amounts. The provision would allow states to implement these new provisions regarding cost-sharing on or after January 1, 2006.

Finally, under section 3121, the Government Accountability Office (GAO) would be required to conduct a study of the impact of premiums and cost-sharing under Medicaid on access to and utilization of services. The report would be required to be submitted to Congress no later than January 1, 2008.

Section 3122. Special rules for cost sharing for prescription drugs

Current law

Cost-sharing for outpatient prescription drugs follows the rules described above for all cost-sharing amounts. While some states may require cost-sharing amounts that are slightly lower for generic drugs or for drugs listed on a preferred drug list, the application of Section 1916(e) limits the effectiveness of such efforts.

Explanation of provision

Section 3122 would allow states to impose cost-sharing amounts in order to create financial incentives for beneficiaries to use clinically appropriate, lower cost medications. Under this option, states may impose higher cost-sharing amounts for non-preferred drugs within a class, and waive or reduce the cost-sharing otherwise applicable for preferred drugs within such class in order to encourage the use of lower cost drugs.

Total amounts of cost-sharing for non-preferred drugs would be limited by the income level of the beneficiary. For those individuals with family income below 100% of FPL, nominal cost sharing would apply (with no cost sharing allowed for preferred drugs). For those with family income at or above 100% but below 150% of FPL, the cost sharing would be capped at two times the applicable nominal amount, and for those with income equal to or exceeding 150% of FPL, cost sharing would be capped at three times the applicable nominal amount. In addition, states in establishing lists of preferred drug must include all drugs currently designated as preferred drugs under the TRICARE pharmacy benefit program. Similarly, states could not impose cost- sharing on Medicaid beneficiaries that exceed the TRICARE standards for cost-sharing.

In cases in which a prescribing physician determines that the preferred drug would not be effective or would have adverse health effects or both, the state may impose the cost-sharing amount for preferred drugs on the prescribed non-preferred product. This provision would not prevent states from excluding specified drugs or classes of drugs from these special cost-sharing rules. Finally, states would be prohibited from implementing these special cost-sharing rules for prescription drugs unless the state has instituted a system for prior authorization and related appeals processes for outpatient prescription drugs. The provision would become effective

for cost-sharing imposed for items and services furnished on or after October 1, 2006.

Section 3123. Emergency room copayments for Non-Emergency care

Current law

States may request and receive approval for a waiver of nominal cost sharing amounts for emergency room services provided for non- emergencies. This waiver authority, in section 1916(a)(3) and (b)(3), allows states to impose cost-sharing amounts of up to twice nominal levels for outpatient services received at a hospital emergency room if the services are not emergency services. States may impose such amounts if they have established, to the satisfaction of the Secretary, that individuals eligible for services under the plan have available and accessible to them alternative sources of non-emergency, outpatient services.

Explanation of provision

Section 3123 would allow states, thru state plan amendments, the option to impose cost-sharing on individuals seeking treatment in hospital emergency rooms for non-emergency services. The intent of the section is to create a disincentive to discourage beneficiaries from using hospital emergency rooms to obtain primary and other forms of non-emergency care. In the course of its examination of this issue, the Committee found numerous studies that highlight the frequency with which some individuals seek treatment for non-emergency services in hospital emergency rooms. This imposes significantly increased costs on providers, diverts needed resources away from those truly needing emergency care, and denies these individuals the opportunity to benefit from coordinated primary care and disease management programs that they might otherwise receive from a physician or health center.

Under the proposal, states would be allowed to amend their state plans to apply increased cost-sharing only if the individual seeking care has actually available and accessible to them alternate non-emergency providers for needed services. In addition, before being able to charge a co-payment; the physician or hospital must inform the beneficiary after the appropriate screening assessment, but before the non-emergency services are provided that the hospital can require the increased cost- sharing amount; the name and location of the alternative non-emergency services provider that is actually accessible and available; that the alternate provider can provide services without the co-payment charged in the emergency room; and that the hospital can provide a referral to coordinate scheduling the treatment.

For individuals in families with income below 100% of FPL, the increased cost sharing amount for non-emergency services provided in a hospital emergency department cannot exceed twice the nominal amounts. Individuals who are otherwise exempt from cost-sharing under proposed section 1916A(b)(4) may be required to pay a co-payment for non-emergency services provided in a hospital emergency department, but the required payment could not exceed a nominal amount. In addition, aggregate caps on cost-sharing (in terms of nominal amounts and maximum cost-sharing based on the

specified percentage of family income identified above) would still apply.

Nothing in this provision would be intended to limit a hospital's obligations to screen and stabilize an emergency medical condition (as defined for Medicare purposes); or to modify any obligations under a Federal or state prudent-layperson standard with respect to payment or coverage of emergency services provided by managed care organizations. Hospitals and physicians making decisions regarding the applicable cost-sharing amount would be protected from liability in a civil action or proceeding for such a determination absent a finding of clear and convincing evidence of gross negligence. This section does not affect any liability based on examination and treatment of emergency medical conditions and women in labor, as defined in Medicare statute, nor otherwise applicable provisions regarding the delivery of services or failure to provide care under state law.

Additionally, section 3122 would require the Secretary to provide for payments to states for the establishment of alternate non-emergency providers, or networks of such providers. It also authorizes and appropriates $100 million for paying such providers for the 4-year period beginning with 2006, among those states that file an application for funds in such a manner as the Secretary specifies. The Secretary would be required to give a preference to states that establish or provide for alternate non-emergency services providers or networks of such providers that serve rural or underserved areas where beneficiaries may not have regular access to primary care providers, or in partnership with local community hospitals. The provision would be effective upon the date of enactment.

Section 3124. Use of benchmark benefit packages

Current law

Medicaid's current benefits package is typically very generous, especially when compared with the actuarial value of benefits provided through private health plans, state employee plans and Federal Employee Health Benefit Plans that are available for Members of Congress, their staff and other Federal employees. Federal law requires states to provide certain benefits under their Medicaid programs. States may also elect to provide additional, so called optional benefits (which must be generally available to all Medicaid beneficiaries). In general, each service must be sufficient in amount, duration and scope to reasonably achieve its purpose. With certain exceptions, the amount, duration and scope of benefits must be the same statewide. And with certain exceptions, beneficiaries must have freedom of choice among health care providers or managed care entities participating in Medicaid.

The benefits that states provide to Medicaid beneficiaries may currently differ, depending on whether the individual is categorically eligible versus medically needy. "Medically needy" groups include individuals meeting the same categorical requirements as the categorically needy (i.e., they are families with children, aged, disabled, pregnant, etc.). Medical expenses (if any) may be subtracted from income in determining financial eligibility for medically needy individuals. For nearly all categorically needy groups, medical ex-

penses are not considered when determining financial eligibility for Medicaid.

Benefits identified in Federal statute and regulations include a wide range of medical care and services. Some benefits are specific items, such as eyeglasses and prosthetic devices. Other benefits are defined in terms of specific types of providers (e.g., physicians, inpatient hospital services) whose array of services are designated as coverable under Medicaid. Still other benefits define specific types of service (e.g., family planning services and supplies, pregnancy-related services) that may be delivered by any qualified medical provider that participates in Medicaid.

Examples of benefits that are mandatory for most Medicaid groups include (1) inpatient hospital services; (2) services provided by Federally qualified health centers; (3) laboratory and x-ray services; (4) physician services; (5) early and periodic screening, diagnostic and treatment services for individuals under 21; (6) pregnancy-related services; (7) nursing facility services for individuals age 21 and over; and, (8) home health care for those entitled to nursing home care. Examples of optional benefits for most Medicaid groups that are offered by many states include prescription drugs, routine dental care, and physical therapy.

In contrast, the State Children's Health Insurance Program (SCHIP) provides states with greater flexibility in designing the appropriate benefits package. The SCHIP model has been very successful, and has allowed states to provide health coverage for up to 5 million previously uninsured children since its inception in 1997. Under SCHIP, states may enroll targeted low-income children in Medicaid (sometimes called an SCHIP Medicaid expansion), create a new separate state program, or devise a combination of both approaches.

Generally, states that choose to create separate SCHIP programs may elect any of three benefit options: (1) a benchmark benefit package, (2) benchmark-equivalent coverage, or, (3) any other health benefits plan that the Secretary determines will provide appropriate coverage to the targeted population of uninsured children. A benchmark benefit package is one of the following three plans: (1) the standard Blue Cross/Blue Shield preferred provider option plan offered under the Federal Employees Health Benefits Program (FEHBP), (2) the health coverage that is offered and generally available to state employees in the state involved, and, (3) the health coverage that is offered by a health maintenance organization (HMO) with the largest commercial (non-Medicaid) enrollment in the state involved.

Benchmark-equivalent coverage is defined as a package of benefits that has the same actuarial value as one of the benchmark benefit packages. A state choosing to provide benchmark-equivalent coverage must cover each of the benefits in the "basic benefits category," including (1) inpatient and outpatient hospital services, (2) physicians' surgical and medical services, (3) lab and x-ray services, and, (4) well-baby and well-child care, including age-appropriate immunizations. Benchmark-equivalent coverage must also include at least 75% of the actuarial value of coverage under the benchmark plan for each of the benefits in the "additional service category," including (1) prescription drugs, (2) mental health services,

(3) vision services, and (4) hearing services. The actuarial value of benchmark benefit packages, coverage offered under the state SCHIP plan, and coverage of any categories of additional services must be established in an actuarial report prepared by a member of the American Academy of Actuaries.

Explanation of provision

Section 3124 would give states the ability to modify the Medicaid benefits package for certain groups of beneficiaries. These modifications would be similar to the modified benefits that many states currently provide through their SCHIP programs. States would not be required to adopt any of the changes, but merely gain additional flexibility in designing a benefits package that best fits the needs of their Medicaid beneficiaries.

This section would allow states, through a state plan amendment, to provide Medicaid benefits to certain groups of beneficiaries through benchmark coverage or benchmark equivalent coverage. States that offer benchmark or benchmark equivalent coverage could also choose to provide wrap-around or additional benefits, as the state may specify. Premium payments for benchmark or benchmark equivalent coverage would be treated as medical assistance, and thus would be eligible for Federal financial participation (i.e., the Federal government would share in the costs of these premium payments).

States would be able to require that a "full-benefit eligible individual," within a group of such individuals, obtain services through enrollment in benchmark or benchmark equivalent coverage. A full- benefit eligible individual means (for a given state and month) an individual who is determined eligible for all services covered for the categorically needy, or under any other category of eligibility for all such services, as determined by the Secretary. The definition of full-benefit eligible individual *excludes* persons who are: (1) medically needy, (2) categorically needy individuals in certain states who are required to pay for medical expenses from their income until their remaining net income meets SSI financial standards in effect in 1972, and, (3) other individuals who qualify for Medicaid when costs incurred for medical expenses or other remedial care are subtracted from income to meet financial eligibility requirements (also known as spend-down populations).

States would also be required to exempt certain populations and services from the application of this section. These include: (1) mandatory pregnant women and children, (2) dual eligibles (i.e., Medicaid beneficiaries also entitled to benefits under Medicare), (3) terminally ill hospice patients receiving Medicaid hospice services, (4) individuals who are inpatients in a hospital, nursing facility, intermediate care facility for the mentally retarded (ICF–MR), or other medical institution, when such an individual is required as a condition of receiving institutional care, to pay for costs of medical care except for a minimal amount retained from their income for personal needs, (5) individuals who are medically frail or who have special medical needs, as identified in accordance with regulations of the Secretary, and (6) individuals who qualify for Medicaid long-term care services (i.e., nursing facility services, a level of care in any institutional equivalent to nursing facility services, home

and community-based waiver services, home health services, home and community care for functionally disabled elderly individuals, personal care, and other optional long-term care services offered by the state).

This section would also modify the current definition of benchmark dental coverage to include dental benefits coverage that is equivalent to or better than the dental coverage offered under the dental benefit plan that covers the greatest number of individuals in the state (exclusive of Medicaid). Section 3124 also requires that the benchmark or benchmark equivalent coverage provides access to services provided by rural health clinics or Federally qualified health centers.

Section 3125. State option to establish Non-Emergency medical transportation program

Current law

Although there is no explicit reference to transportation in Federal Medicaid law, Federal regulations require states to ensure necessary transportation for recipients to and from providers and to describe the methods that they will use to meet this requirement in their Medicaid state plan. States may choose whether to provide transportation as an optional Medicaid service or claim it as an administrative expense.

If a state chooses to provide transportation as an optional Medicaid service, the state receives matching payments from the Federal government, determined using the Federal medical assistance percentage (FMAP). Under this option, states must meet a number of Federal requirements that apply to all Medicaid services (e.g., enrollees must have freedom to choose among qualified providers) unless they have an approved waiver from the Centers for Medicare and Medicaid Services (CMS). The state may only receive matching payments at its FMAP rate if the provider actually supplying the service receives payment directly from the state. Other arrangements (e.g., payment to a broker who manages and pays transportation providers) must be claimed as an administrative expense.

If a state chooses to claim transportation as an administrative expense, the state is reimbursed by a 50% match rate, which is lower than the FMAP in many states. However, states may be willing to trade lower Federal reimbursement for flexibility under this option, since there are fewer Federal requirements that must be met.

Currently, it is estimated that about four million Medicaid recipients, many of them in rural areas, use non-emergency, medical transportation (NEMT) to access essential medical services such as doctors' visits and kidney dialysis.

The HHS Inspector General has identified "brokerage" agreements (under which state Medicaid agencies contract with public or private non-profit or for-profit transportation providers to be the sole provider of NEMT for a geographical area) as a strategy to reduce fraud and abuse. Brokerage agreements facilitate strict screening and re-screening at the time of the trip for eligibility and reconciliation of trips with payments for medical services.

United We Ride, the Federal Interagency Coordinating Council on Access and Mobility, created by on February 24, 2004 by executive order of President George W. Bush, also identified brokerage agreements as a strategy to save Medicaid dollars. A recent United We Ride report found, following the institution of a brokerage agreement for NEMT in Georgia, "In the first year, transportation costs were cut in half and continued to decline by 30 percent over the next two years." Under current law and Federal regulations, states wanting to establish transportation brokerages must use Medicaid administrative funds or obtain section 1915 (b) freedom of choice waivers, which must be renewed every three years.

Explanation of provision

Section 3125 authorizes a new optional service, non-emergency medical transportation brokerage program. States would have the option to establish brokerage agreements without obtaining section 1915 (b) freedom of choice waivers or using administrative funds. This will provide a more cost-effective form of transportation for individuals eligible for Medicaid who need access to medical care and have no other means of transportation.

Section 3125 also establishes standards for brokerage contracts including a competitive bidding process based on a state's evaluation of the broker's experience, performance, references, resources, qualifications and costs. Brokers must have oversight procedures to monitor beneficiary access and complaints and ensure that transport personnel are licensed, qualified competent and courteous. This section also requires a report to Congress by the HHS Inspector General by January 1, 2007 on the implementation of this provision.

Section 3126. Exempting women covered under breast or cervical cancer program

Current law

Women with breast and cervical cancer are provided eligibility for Medicaid services under Section 1902(aa) of the Social Security Act.

Explanation of provision

Section 3126 would exempt individuals who are eligible under Section 1902(aa) from the application of any other sections of this proposal.

Section 3131. Expanded access to home and Community-Based services for the elderly and disabled

Current law

Medicaid home and community-based service (HCBS) waivers authorized by Section 1915(c) of Title XIX of the Social Security Act give states the flexibility to provide a broad range of home and community-based services to Medicaid beneficiaries who would otherwise need the level of care provided in a nursing facility, intermediate care facility for persons with mental retardation (ICF–MR) or hospital. HCBS waiver services can include case management, homemaker/home health aide services, personal care, psychosocial

rehabilitation, home health, private duty nursing, adult day care, habilitation, respite care, day treatment, and any other service requested by the state and approved by the Secretary. As part of the waiver, states may define the services that will be offered, target a specific population (e.g., elderly individuals) or a specific geographic region, and limit the number of waiver participants usually on account of cost constraints. This has resulted in long waiting lists for the elderly, disabled, and MR/DD populations in many states.

Approval for a HCBS waiver is contingent on a state documenting the cost-neutrality of the waiver. Cost-neutrality is met if, on average, the per person cost under the HCBS waiver is no higher than the cost if the person were residing in one of the three types of institutions identified in Medicaid law (hospital, nursing facility or ICF–MR). The state determines which type of institution(s) it will use to make the cost-neutrality calculation.

A HCBS waiver is generally approved for a 3 or 5–year time period and is subject to additional oversight from the Centers for Medicare and Medicaid Services (CMS). In July 2003, there were 275 HCBS waivers nationwide in all states (except Arizona which offers HCBS services under a Section 1115 waiver).

Explanation of provision

Section 3131 would allow states to cover a broad range of home and community-based services (HCBS) as an optional benefit under the state Medicaid plan without requiring a waiver. States would be able to define which HCBS services will be covered and could include any service authorized by Federal law for existing HCBS waiver programs (as defined in Section 1915(c)(4)(B) of the Social Security Act).

To qualify for this benefit the individual must meet the following criteria: (1) age 65 or older or disabled (as defined under the Medicaid state plan) or are persons with a developmental disability, mental retardation or a related condition; (2) have had a determination that, but for the provision of such services, the individual would require the level of care provided in a hospital, nursing facility or ICF–MR (the cost of which could be reimbursed under Medicaid); and, (3) meet the Medicaid eligibility standards in effect in the state (which may include an approved Medicaid waiver) as of the date of enactment of this provision.

A state would not be required to comply with existing Medicaid requirements regarding the statewide availability of the service, the comparability of services, and the income and resource rules applicable in the community. A state may also limit the number of individuals who are eligible for services, establish waiting lists for the receipt of these services, and limit the amount, duration, and scope of services.

Section 3131 would be effective for home and community-based services furnished on or after October 1, 2006.

Section 3132. Optional choice of self-directed personal assistance services (cash and counseling)

Current law

Under current law, state Medicaid programs offer several types of long-term care services to individuals who, because of disability or chronic illness, need assistance with activities such as eating, bathing, and dressing. Medicaid programs have the option of covering personal care services and may also cover a broad set of other services through a home and community-based (HCBS) waiver authorized under Section 1915(c) of the Social Security Act. To qualify for a HCBS waiver, the individual must require the level of care of a hospital, nursing facility or intermediate care facility for persons with mental retardation.

Traditionally, Medicaid personal care and other related services have been provided to individuals through local public or private agencies. However, in the last decade, Medicaid beneficiaries with disabilities or chronic conditions and Federal and state policymakers have been increasing the discretion that beneficiaries have over key elements of the service (e.g., what time a personal care worker comes to the home to help the beneficiary, who provides the service, etc.) These types of programs are broadly known as "self-directed" or "consumer-directed" programs. The specific elements that a Medicaid beneficiary can control vary widely depending upon the state and the type of service covered. Currently, Medicaid law allows certain types of self-directed programs to be implemented through the normal Medicaid state plan and HCBS waiver process. Other types of self-directed programs, such as "Cash and Counseling" require a research and demonstration waiver under Section 1115 of the Social Security Act. As well, CMS has created an "Independence Plus" template to facilitate state waiver requests by outlining the required elements of a waiver application and by providing technical assistance on key features of a self-directed program.

Explanation of provision

Section 3132 would allow a state to cover, under the Medicaid program, payment for part or all of the cost of self-directed personal assistance services (other than room and board) based on a written plan of care to individuals for whom there has been a determination that, but for the provision of such services, the individuals would require and receive personal care services under Medicaid state plan or home and community-based services under a HCBS waiver. Self-directed personal assistance services may not be provided to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, not related by blood or marriage.

The Secretary must not approve a state's self-directed personal assistance services program unless the state assures that the necessary safeguards have been taken to protect the health and welfare of individuals receiving these services and that financial accountability exists for funds expended for these services.

The state must also evaluate the need for personal care under the Medicaid state plan or personal services under a HCBS waiver

for individuals who (1) are entitled to Medicaid personal care under the state plan or receive HCBS waiver services; (2) may require self-directed personal assistance services; and, (3) may be eligible for self-directed personal assistance services. If covered by the state and at the choice of the individual, those who are likely to require personal care or HCBS waiver services must be informed of the feasible alternatives in the provision of Medicaid personal care services or personal assistance services under a HCBS waiver. The state must also provide a support system that ensures participants in the program are appropriately assessed and counseled prior to enrollment and are able to manage their budgets. Additional counseling and management support may be provided at the request of the participant.

A state may provide self-directed personal assistance services under the state plan without regard to the Medicaid requirements for statewideness (under Section 1902(a)(1) of the Social Security Act), and may limit the population eligible to receive these services and the number of persons served without regard to Medicaid requirements regarding comparability (Section 1902(a)(10)(B) of the Social Security Act).

Under this section, the term "self-directed personal assistance services" means personal care and related services, or HCBS waiver services that are provided to an eligible participant. Individuals participating in such services will be permitted, within an approved self-directed services plan and budget, to purchase personal assistance and related services, and hire, fire, supervise, and manage the individuals providing such services.

At the election of the state, a participant will be allowed to (1) choose as a paid service provider, any individual capable of providing the assigned tasks including legally liable relatives, and, (2) use the individualized budget to acquire items that increase independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance. This provision will apply to apply to services furnished on or after January 1, 2006.

Section 3133. Expansion of State long-term care partnership program

Current law

Under Medicaid's long-term care (LTC) insurance partnership program, certain persons who have exhausted (or used at least some of) the benefits of a private long-term care insurance policy may access Medicaid without meeting the same means-testing requirements as other groups of Medicaid eligibles. For these individuals, means-testing requirements are relaxed at: (1) the time of application to Medicaid; and (2) the time of the beneficiary's death when Medicaid estate recovery is generally applied.

Section 1917 of the Social Security Act (amended by the Omnibus Budget Reconciliation Act of 1993, P.L. 103–66) allows states with an approved state plan amendment as of May 14, 1993 to exempt individuals from Medicaid estate recovery who apply to Medicaid after exhausting their private long-term care insurance benefits. By

that date, five states (California, Connecticut, Indiana, Iowa, and New York) had received CMS approval. Except for Iowa, all of these states have implemented partnership programs.

Federal oversight of long-term care insurance is largely limited to provisions established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA, P.L. 104–191). HIPAA established new rules regarding the tax treatment of LTC insurance and expenses, and defined the requirements for a tax-qualified LTC insurance policy. HIPPA also includes requirements that tax-qualified policies comply with consumer protections regarding the delivery of policies, information on denials of claims, and disclosure.

Explanation of provision

Section 3133 would amend section 1917(b)(1)(C)(ii) of the Social Security Act to allow additional groups of individuals in states with state plan amendments approved after May 14, 1993 to be exempt from estate recovery requirements if the amendment provides for a qualified state long-term care insurance partnership program. The term "Qualified State LTC Insurance Partnership," would mean a Medicaid State plan amendment that provides for the disregard of any assets or resources in the amount equal to the amount of insurance benefit made to or on behalf of an individual who is a beneficiary under a long-term care policy (including a certificate issued under a group insurance contract), if the following requirements are met:

(A) The policy covers an insured who was a resident of such state when coverage first became effective under the policy. (In the case of a long-term care insurance policy exchanged for another such policy, this requirement would apply based on the coverage of the first such policy that was exchanged);

(B) The policy is a qualified long-term care insurance policy (meeting specifications defined in section 7702B(b) of the Internal Revenue Code of 1986) issued on or after the first day of the first calendar quarter in which the plan amendment was submitted to the Secretary;

(C) If the policy does not provide some level of inflation protection, the insured was offered, before the policy was sold, a long-term care insurance policy that provides some level of inflation protection;

(D) The state Medicaid agency provides information and technical assistance to the state insurance department on the insurance department's role of assuring that any individual who sells a long- term care insurance policy under the partnership receives training or demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care;

(E) The issuer of the policy provides regular reports to the Secretary that include, in accordance with the Secretary's regulations (promulgated after consultation with the states), notification regarding when all benefits provided under the policy have been paid and the amount of such benefits paid, when the policy otherwise terminates, and such other information as the Secretary determines appropriate to the administration of such partnerships;

(F) The state does not impose any requirement affecting the terms or benefits of such a policy unless the state imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

The Secretary, as appropriate, would provide copies of the state reports to the state involved and would promote the education of consumers regarding qualified state long-term care insurance partnerships. In addition, in consultation with other appropriate Federal agencies, issuers of long-term care insurance, and the National Association of Insurance Commissioners, the Secretary would develop recommendations for Congress to authorize and fund a uniform minimum data set to be reported electronically by all issuers of long-term care insurance policies under qualified state long-term care insurance partnerships to a secure, centralized electronic query and report generating mechanism that State, the Secretary, and other Federal agencies can access.

To permit portability in long-term care insurance policies purchased under state long-term care insurance partnerships, the Secretary may develop, in consultation with the states and the National Association of Insurance Commissioners, uniform standards for reciprocal recognition of such policies among states with qualified state long-term care insurance partnerships.

With respect to policy exchanges, existing policy holders will be able to exchange existing policies for Partnership policies in accordance with policy provisions and state law after a State's plan amendment is effective.

A state plan amendment that provides for a qualified state long-term care insurance partnership would be effective for long-term care insurance policies issued on or after a date, specified in the amendment, that is not earlier than the first day of the first calendar quarter in which the plan amendment was submitted to the Secretary.

Section 3134. Health opportunity accounts

Current law

No provision exists in current law.

Explanation of provision

Inspired by the growing popularity and success of heath savings accounts (HSAs) created in the Medicare Prescription Drug, Improvement and Modernization Act of 2003, health opportunity accounts are intended to give participants meaningful opportunities to participate in the health care marketplace with greater choice of providers than otherwise available in the Medicaid program.

Section 3134 would require the Secretary to establish a demonstration program within Medicaid for health opportunity accounts providing alternative benefits beginning January 1, 2006. During the first five years, the Secretary would be able to approve no more than ten state demonstration programs; after such period, a state demonstration program would be able to be extended or made permanent unless the Secretary finds it has been unsuccessful, taking into account the cost-effectiveness, quality of care, and

other criteria. After such period, other states would be allowed to implement state demonstration programs unless the Secretary finds that all state demonstration programs have been unsuccessful based on those criteria.

Approved demonstration programs would create patient awareness of the high cost of medical care, provide incentives for them to seek preventive care, reduce inappropriate use of health care, enable patients to take responsibility for health outcomes, provide enrollment counselors and ongoing education activities, provide that transactions can be conducted electronically and without cash, and provide access to negotiated provider payment rates.

Individual enrollment would be voluntary and effective for 12 months, though they would be permitted to be extended for an additional 12-month periods with the consent of an individual. The Secretary would be authorized to grant hardship exceptions to allow enrollees to end participation at any time including the initial 12-month period.

A state demonstration program would be required to specify eligible population groups. During the initial five-year period, a program would not be permitted to include individuals who are 65 years of age or older, individuals who are disabled, individuals who are eligible for Medicaid because they are (or were within the previous 60 days) pregnant, and individuals who have been eligible for Medicaid for a continuous period of less than 3 months. In addition, a demonstration project would not include pregnant women or children under 18 years of age required to be covered under a state plan, individuals entitled to Medicare, terminally ill patients receiving hospice care under Medicaid, patients in institutions if they are required (as a condition of receiving services under the state plan) to spend all but a minimal amount of their income for medical costs, individuals who are medically frail or have special medical needs (according to regulations of the Secretary), or individuals qualifying for long-term care services. States would be permitted to further limit eligibility.

Individuals enrolled in Medicaid managed care organizations (MCOs) would be permitted to participate in the demonstration program only if the state provides assurances that no more than 5% of the MCO enrollees would participate in the demonstration, that the proportion of MCO enrollees who would participate in the demonstration would not be not significantly disproportionate to the proportion of enrollees in other MCOs who would participate in the demonstration, and that the state would provide for an appropriate adjustment in the per capita payments to the MCO, taking into account likely differences in the use of health care.

Alternative benefits would be required to consist, at a minimum, of contributions to health opportunity accounts and, after an annual deductible is met, coverage for medical expenses in a year for items and services covered under the existing Medicaid state plan (including such a plan operating under the Section 1115 waiver authority). Nothing would prevent a state from providing coverage for preventive care without applying the annual deductible.

The annual deductible under the state demonstration program would be required to be at least 100 percent but no more than 110 percent of the annualized amount of state contributions to the

health opportunity account (including both state and Federal shares) determined without regard to the dollar amount by which such state contributions would be indexed for inflation every year after 2006.

Participants not enrolled in Medicaid MCOs would be able to obtain services covered under Medicaid from any provider participating under Medicaid at the same payment rates that would be applicable if the deductible did not apply, or from any other provider at payment rates that do not exceed 125% of the rates that would be applicable to such services furnished by a participating provider if the deductible did not apply. Participants enrolled in Medicaid MCOs would be permitted to obtain demonstration project services from any MCO provider under such organization at payment rates that would be applicable if the deductible did not apply. The payment rates just described would be computed without regard to any Medicaid cost-sharing requirements that would otherwise be applicable under the Medicaid state plan.

States would be permitted to vary the amount of the deductible and the maximum out-of-pocket cost-sharing (the excess of the deductible over the balance in the health opportunity account) for a family (or an individual) according to family (or individual) income as long as higher income families (or individuals) are not favored over lower income families (or individuals). Employers would be permitted to provide coverage for health benefits consisting of coverage for medical services provided after taking account of the deductible.

Contributions to health opportunity accounts would be permitted to be made by the state or by other persons and entities, such as charitable organizations. States would be permitted to limit contributions once an account balance reaches a state-specified amount. State contributions to an account (including both state and Federal shares) generally would not be permitted to exceed $2,500 for each adult family member and $1,000 for each child; these amounts would be indexed for inflation every year after 2006. However, states would be permitted to contribute more for specified individuals if they provide assurances that contributions otherwise made to others would be reduced so that aggregate state contributions would not be increased. No Federal financial participation would be available with respect to contributions exceeding the general limits nor to contributions made by persons or entities other than a state.

In general, health opportunity accounts would be used to pay for health care expenditures as the state specifies, though in no case would they be used for expenses that are not deductible for tax purposes. States would be permitted to restrict payments to providers that are licensed or otherwise authorized under state law to provide an item or service, and they would be permitted to deny payments for providers found to have failed to meet quality standards or to have committed fraud or abuse. Payments would also be restricted for items and services states find are not medically appropriate or necessary. States would be required to provide for a method whereby account withdrawals are made using an electronic system; they would not be permitted to authorize cash withdrawals.

If an account holder becomes ineligible for Medicaid because of an increase in income or assets, no additional state contributions would be permitted to be made and the balance in the account attributable to state contributions (including both state and Federal shares) would be required to be reduced by 25%. (For purposes of accounting for such contributions, withdrawals would be required to first be attributed to contributions made by the state.) Generally, the account would be required to remain available under the same terms and conditions as if the account holder remained eligible for Medicaid. However, withdrawals would also be permitted to be made to purchase health insurance (though the account holder would not be required to do so) and, at state option, for additional expenditures (such as for job training and tuition) as specified by the state and approved by the Secretary. Withdrawals for additional expenditures would be allowed only if the account holder has participated in the health opportunity account program for at least one year.

States would be permitted to coordinate the administration of health opportunity accounts through a third-party administrator, and reasonable expenditures for this shall be reimbursable to the state in the same manner as other Medicaid administrative expenditures. States would also be permitted to establish procedures to penalize or remove individuals from accounts if they make nonqualified withdrawals, and they would be permitted to recoup costs associated with those withdrawals.

Amounts in or contributed to a health opportunity account would not be permitted to be counted as income or assets for purposes of determining eligibility for Medicaid.

Section 3141. Increase in Medicaid payments to insular areas

Section 3141 would provide annual increases for fiscal years 2006 and 2007 in the cap on Federal funding for the Medicaid programs in each of the Virgin Islands, Guam, the Northern Marianas, American Samoa and Puerto Rico.

Under this section, Puerto Rico's Medicaid cap would be annually increased by $12 million in fiscal years 2006 and 2007. The Virgin Islands and Guam would have their caps increased by $2.5 million in fiscal year 2006 and $5.0 million in fiscal year 2007. The Northern Marianas' cap would be increased by $1 million in fiscal year 2006 and $2 million in fiscal year 2007. American Samoa's cap would be increased by $2.0 million in fiscal year 2006 and $4 million in fiscal year 2007. For fiscal year 2008 and subsequent fiscal years, the total annual cap on Federal funding for the Medicaid programs in each of the Virgin Islands, Guam, the Northern Marianas, and American Samoa would be calculated by increasing the fiscal year2007 ceiling, as modified by this provision, by the percentage change in the medical care component of the Consumer Price Index (CPI–U) for all Urban Consumers (as published by the Bureau of Labor Statistics).

Section 3142. Managed care organization provider tax reform

Section 3142 would close the loophole created by the separate classification of Medicaid Managed Care Organizations (MCO) for purposes of establishing permissible provider taxes. The proposal

would expand the current list of providers to include all MCO's. To qualify for Federal reimbursement under the proposal, a state's provider tax would need to apply to both Medicaid and non-Medicaid MCO's. This would make the MCO provider class more consistent with the other provider classes for purposes of determining if a provider tax is broad-based.

This section would become effective at the beginning of fiscal year 2009 when states with taxes based on the current law MCO provider class would be reimbursed for up to 50% of taxes collected. At the beginning of fiscal year 2010, no Federal Medicaid reimbursement would be available for taxes collected based on the current law MCO provider class.

Section 3143. Medicaid transformation grants

In an effort to help modernize the Medicaid program and to increase administrative efficiency and clinical outcomes for beneficiaries, section 3143 adds a new subsection (y) to Section 1903 of the Social Security Act authorizing "Medicaid Transformation Payments." In addition to the normal Federal reimbursement received under 1903(a), the Secretary of Health and Human Services would provide for payments to states for the adoption of innovative methods to improve the effectiveness and efficiency in providing medical assistance under Medicaid.

Examples of innovative methods for which such funds may be used include: (1) methods for reducing patient error rates through the implementation and use of electronic health records, electronic clinical decision support tools, or e-prescribing programs, (2) methods for improving rates of collection from estates of owed to Medicaid, and, (3) methods for reducing waste, fraud, and abuse under Medicaid, such as reducing improper payment rates as measured by the annual payment error rate measurement (PERM) project rates, and (4) implementation of a medication risk management program as part of a drug use review program under section 1927(g).

Total payments under the new subsection (y) would equal and not exceed $50 million in each of fiscal years 2007 and 2008. The Secretary would specify a method for allocating the funds among states. Payment to a state under subsection (y) would be made in the same manner as other payments under Section 1903(a), but there would be no requirement for state matching funds to receive such payment.

The committee recognizes the dramatic impact that the adoption of electronic medical records and electronic prescribing can have on reducing patient errors for the Medicaid population. Adoption of electronic medical records has been estimated to cost an average of $33,000–$44,000 per physician and health care facilities with high Medicaid populations are seeking assistance to set up these systems. Accordingly, the committee recommends that the Secretary focus the funding for the Medicaid Transformation Grants on county nursing homes, skilled nursing facilities, Federally qualified community health centers, Federally qualified community health center (and similar such facilities) and inter-city urban hospitals or any other health care provider or facility deemed to have a high Medicaid population by the Secretary.

Section 3144. Improved enforcement of documentation requirements

Section 3144 amends the list of third parties named in Section 1902(a)(25) of the Social Security Act that states must take all reasonable measures to ascertain the legal liability of to include: (1) self-insured plans, (2) pharmacy benefit managers, and, (3) other parties that are legally responsible (by statute, contract, or agreement) for payment of a claim for a health care item or service. It would also amend that section to include these entities in the list of health insurers that states must prohibit from taking an individual's Medicaid status into account when enrolling the individual or making payments for benefits to or on behalf of the individual.

A state would be required to provide assurances satisfactory to the Secretary that it has laws in effect requiring health insurers (including parties that are legally responsible for payment of a claim for a health care item or service), as a condition of doing business in the state, to: (1) provide, upon request of the state, eligibility and claims payment data with respect to individuals who are eligible for or receiving Medicaid, (2) accept an individual's or other entity's assignment of rights (i.e., rights to payment from the parties) to the state, and, (3) respond to any inquiry from the state regarding a claim for payment for any health care item or service submitted not later than three years after the date such item or service was provided.

Section 3144 would be effective January 1, 2006, except in the case of a state whose legislative calendar does not allow for timely passage of state laws necessary for compliance with the Medicaid state plan requirements of this section.

Section 3145. Improved enforcement of documentation requirements

In order to reduce the number of individuals receiving Medicaid benefits who are not lawfully in the United States, section 3145 adds a new subsection (a)(22) to Section 1903 of the Social Security Act to prohibit states from receiving Federal reimbursement for medical assistance provided under Medicaid to an individual who has not met the documentary requirements of a new subsection (y), as described below.

The new subsection (y) would require an individual declaring to be a citizen or national of the United States to present satisfactory documentary evidence of citizenship or nationality (as described below). The requirement would not apply to aliens who are eligible for Medicaid: (1) on the basis of being entitled or enrolled for benefits under Medicare (2) on the basis of receiving Supplemental Security Income benefits, or (3) such other basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality had been previously presented.

For purposes of the new subsection (y), satisfactory documentary evidence would include one of the following documents: (1) a United States passport; Form N–550 or N–570 (Certificate of Naturalization); (2) Form N–560 or N–561 (Certificate of United States Citizenship); or, (3) such other document that the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity.

Satisfactory documentary evidence would also include a document from each of the following lists: (1) a certificate of birth in the United States; (2) form FS–545 or Form DS–1350 (Certificate of Birth Abroad); (3) form I–97 (United States Citizen Identification Card); (4) form FS–240 (Report of Birth Abroad of a Citizen of the United States); or, (5) Such other document as the Secretary may specify (excluding a document specified by the Secretary as described above) that provides proof of United States citizenship or nationality; and any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act; or any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.

This section would apply to determinations of initial eligibility for Medicaid made on or after July 1, 2006, and to redeterminations made after such date in the case of individuals for whom the requirement of the new subsection (y) was not previously met.

Section 3146. Reforms of targeted case management

Section 3146 would further define the Medicaid Targeted Case Management (TCM) benefit under Section 1915(g)(2) of the Social Security Act, and would codify the ability of states to use an approved cost allocation plan (as outlined under OMB Circular A–87, or other related or subsequent guidance) for determining the amount that can be billed as Medicaid TCM services when case management is also reimbursable by another Federally-funded program.

Specifically, section 3146 would clarify that the TCM benefit includes the following: (1) assessment of an eligible individual to determine service needs by taking a client history, identifying an individual's needs and completing related documentation, and if needed, gathering information from other sources; (2) development of a specific care plan based on the information collected through an assessment that specifies the goals and actions to address the individual's needs; (3) referral and related activities to help an individual obtain needed services; and, (4) monitoring and follow-up activities including activities and contacts to ensure the care plan is effectively implemented and adequately addressing the individual's needs.

Section 3146 would also specify certain activities that are not reimbursable as TCM services. First, the TCM benefit would not include the direct delivery of an underlying medical, educational, social or other services to which an eligible individual has been referred. In addition, with respect to the direct delivery of foster care services, the TCM benefit would not cover: research gathering and completion of required foster care documentation, assessing adoption placements, recruiting or interviewing potential foster care parents, serving legal papers, home investigations, providing transportation, administering foster care subsidies, and making placement arrangements.

In cases where a TCM provider contacts individuals who are not Medicaid eligible or who are not part of the TCM target population, the activity could be billed as TCM services if the purpose of the contact is directly related to the management of the eligible indi-

vidual's care. If the contact is related to the identification and management of the non-eligible or non-targeted individual's needs and care, the activity may not be billed as TCM services.

Finally, consistent with existing Medicaid law, this section would also specify that Federal Medicaid funding would only be available for TCM services if there are no other third parties liable to pay for such services, including as reimbursement under a medical, social, educational, or other program.

Section 3147. Emergency services furnished by non-contract providers for Medicaid managed care enrollees

Section 3147 amend Section 1932(b)(2) of the Social Security Act to provide that any provider of emergency services that does not have in effect a contract with a Medicaid managed care plan must accept as payment in full the amounts (less any payments for indirect costs of medical education and direct costs of graduate medical education) it could collect if the beneficiary received medical assistance other than through enrollment in a managed care plan.

Section 3148. Adjustment in computation of Medicaid FMAP to disregard an extraordinary employer pension contribution

Section 3148 would disregard for computing the per capita income of a state any significantly disproportionate employer pension contribution when determining the Federal medical assistance percentage (FMAP) under Section 1905(b) of the Social Security Act beginning fiscal year 2006. A significantly disproportionate employer pension contribution is an employer contribution toward pensions allocated to such state for a period if the aggregate amount so allocated exceeds 50 percent of the total increase in personal income in that state for the period involved.

Section 3201. Targeted Medicaid relief for States affected by Hurricane Katrina

Section 3201 provides that for items and services furnished during the period that begins on August 28, 2005, and ends on May 15, 2006, the FMAP would be 100% for providing medical assistance for such items under a Medicaid state plan to any individual residing in a Katrina impacted parish or county or to a Katrina Survivor. Costs directly attributable to all administrative activities that relate to the provision of such medical assistance would also be reimbursed at 100%. A Katrina impacted parish or county is any parish in the state of Louisiana, any county in the state of Mississippi, and any major disaster county in the state of Alabama.

During the period, the Federal reimbursement rate would be 100% for providing child health assistance under an SCHIP state plan to any individual residing in a Katrina impacted parish or county or to a Katrina Survivor, as well as for costs directly attributable to related administrative activities. For purposes of section 3201 (a), the provision would define a Katrina Survivor as an individual who, on any day during the week preceding August 28, 2005, had a primary residence in a major disaster parish or county (described in section 3201 (c)).

For purposes of section 3201 (a), the provision would define a major disaster parish or county as a parish of the state of Lou-

isiana or a county of the state of Mississippi or Alabama for which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act as a result of Hurricane Katrina and which the President has determined, as of September 14, 2005, warrants individual assistance from the Federal government under such Act.

Section 3202. State high risk health insurance pool funding

Section 3202 would amend the Public Health Service Act to reauthorize Federal funding for state high-risk health insurance pools for fiscal year 2006. For fiscal year 2006, the provision would provide $90 million in appropriations for grants to states to be used to cover up the operating expenses of existing state high risk pools in accordance with existing statutory requirements.

Section 3203. Recomputation of HPSA, MUA, and MUP designations within Hurricane Katrina affected areas

Section 3203 would require the Secretary to conduct a review of all Hurricane Katrina disaster areas and designate (as appropriate) these areas as either health professional shortage areas or medically underserved areas and also designate populations living there as medically underserved populations.

Section 3204. Waiver of certain requirements applicable to the provision of health care in areas impacted by Hurricane Katrina

Section 3204 is a waiver of Certain Requirements Applicable to the Provision of Health Care in Areas Impacted by Hurricane Katrina.

Section 3205. FMAP hold harmless for Katrina impact

Section 3205 requires that the Secretary, when computing the FMAP under section 1905(b) to disregard evacuees and income attributable to such evacuees, who were evacuated as a result of Hurricane Katrina, for the purposes of calculating the states' FMAP.

Section 3301. Hurricanes Katrina and Rita energy relief

Section 3301 makes available to the Secretary of the Department of Health and Human Services an additional one-time only $1 billion in LIHEAP funding. This $1 billion is in addition to any other funds appropriated for LIHEAP for fiscal year 2006. These funds are regular funds and flow through the LIHEAP formula. Availability of the $1 billion expires at the end of fiscal year 2006.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * * * *

TITLE III—SPECIAL PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 303. GENERAL POWERS OF COMMISSION.

Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

(a) * * *

* * * * * * *

(z) Require the consumer education measures specified in section 330(d) in the case of apparatus designed to receive television signals that—

(1) are shipped in interstate commerce or manufactured in the United States;

(2) have an integrated display screen or are sold in a bundle with a display screen; and

(3) are not capable of receiving broadcast signals in the digital television service.

* * * * * * *

SEC. 309. ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES.

(a) * * *

* * * * * * *

(j) USE OF COMPETITIVE BIDDING.—

(1) * * *

* * * * * * *

(8) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in [subparagraph (B) or subparagraph (D)] *subparagraphs (B), (D), and (E)*, all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

* * * * * * *

(C) DEPOSIT AND USE OF AUCTION ESCROW ACCOUNTS.—Any deposits the Commission may require for the qualification of any person to bid in a system of competitive bidding pursuant to this subsection shall be deposited in an interest bearing account at a financial institution designated for purposes of this subsection by the Commission (after consultation with the Secretary of the Treasury). Within 45 days following the conclusion of the competitive bidding—

(i) the deposits of successful bidders shall be paid to the Treasury*, except as otherwise provided in subparagraph (E)(i)*;

* * * * * * *

(E) TRANSFER OF REVENUES FOR DIGITAL TELEVISION CONVERSION.—

(i) PROCEEDS FOR DTV CONVERSION FUND.—Notwithstanding subparagraph (A), of the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to recovered analog spectrum—

(I) $990,000,000 shall be deposited in a separate fund in the Treasury to be known as the "Digital Television Conversion Fund", and be available exclusively to carry out section 159 of the National Telecommunications and Information Administration Organization Act;

(II) $500,000,000 shall be deposited in a separate fund in the Treasury to be known as the "Public Safety Interoperable Communications Fund", and be available exclusively to carry out section 160 of such Act;

(III) $30,000,000 shall be deposited in a separate fund in the Treasury to be known as the "NYC 9/11 Digital Transition Fund", and be available exclusively to carry out section 161 of such Act;

(IV) $3,000,000 shall be deposited in a separate fund in the Treasury to be known as the "Low-Power Digital-to-Analog Conversion Fund", and be available exclusively to carry out section 162 of such Act; and

(V) the remainder of such proceeds shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(ii) RECOVERED ANALOG SPECTRUM.—For purposes of clause (i), the term "recovered analog spectrum" has the meaning provided in paragraph (15)(C)(vi).

* * * * * * *

[(11) TERMINATION.—The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 2007.**]**

* * * * * * *

(14) AUCTION OF RECAPTURED BROADCAST TELEVISION SPECTRUM.—

(A) LIMITATIONS ON TERMS OF TERRESTRIAL TELEVISION BROADCAST LICENSES.—A *full-power* television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond **[**December 31, 2006**]** *December 31, 2008*.

[(B) EXTENSION.—The Commission shall extend the date described in subparagraph (A) for any station that re-

quests such extension in any television market if the Commission finds that—

[(i) one or more of the stations in such market that are licensed to or affiliated with one of the four largest national television networks are not broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market;

[(ii) digital-to-analog converter technology is not generally available in such market; or

[(iii) in any market in which an extension is not available under clause (i) or (ii), 15 percent or more of the television households in such market—

[(I) do not subscribe to a multichannel video programming distributor (as defined in section 602) that carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such market; and

[(II) do not have either—

[(a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or

[(b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.]

[(C)] *(B)* SPECTRUM REVERSION AND RESALE.—

(i) The Commission shall—

(I) ensure that, as licenses for analog television service expire pursuant to subparagraph (A) [or (B)], each licensee shall cease using electromagnetic spectrum assigned to such service according to the Commission's direction; and

* * * * * * *

[(D)] *(C)* CERTAIN LIMITATIONS ON QUALIFIED BIDDERS PROHIBITED.—In prescribing any regulations relating to the qualification of bidders for spectrum reclaimed pursuant to [subparagraph (C)(i)] *subparagraph (B)(i)*, the Commission, for any license that may be used for any digital television service where the grade A contour of the station is projected to encompass the entirety of a city with a population in excess of 400,000 (as determined using the 1990 decennial census), shall not—

(i) * * *

* * * * * * *

(15) COMMISSION TO DETERMINE TIMING OF AUCTIONS.—

(A) * * *

* * * * * * *

(C) EXCEPTION.—

(i) * * *

* * * * * * *

(v) ADDITIONAL DEADLINES FOR RECOVERED ANALOG SPECTRUM.—Notwithstanding subparagraph (B), the Commission shall conduct the auction of the licenses for recovered analog spectrum by commencing the bidding not later than January 7, 2008, and shall deposit the proceeds of such auction in accordance with paragraph (8)(E)(i) not later than June 30, 2008.

(vi) RECOVERED ANALOG SPECTRUM.—For purposes of clause (v), the term "recovered analog spectrum" means the spectrum between channels 52 and 69, inclusive (between frequencies 698 and 806 megahertz, inclusive) reclaimed from analog television service broadcasting under paragraph (14), other than—

(I) the spectrum required by section 337 to be made available for public safety services; and

(II) the spectrum auctioned prior to the date of enactment of the Digital Television Transition Act of 2005.

* * * * * * *

[(15)**]** *(16)* SPECIAL AUCTION PROVISIONS FOR ELIGIBLE FREQUENCIES.—

(A) * * *

* * * * * * *

SEC. 330. PROHIBITION AGAINST SHIPMENT OF CERTAIN TELEVISION RECEIVERS.

(a) * * *

* * * * * * *

(d) CONSUMER EDUCATION REGARDING ANALOG TELEVISION RECEIVERS.—

(1) REQUIREMENTS FOR MANUFACTURERS.—Any manufacturer of any apparatus described in section 303(z) shall—

(A) place in a conspicuous place on any such apparatus that such manufacturer ships in interstate commerce or manufactures in the United States after 180 days after the date of enactment of the Digital Television Transition Act of 2005, a label containing, in clear and conspicuous print, the warning language required by paragraph (3); and

(B) also include after 180 days after the date of enactment of the Digital Television Transition Act of 2005, such warning language on the outside of the retail packaging of such apparatus, in a conspicuous place and in clear and conspicuous print, in a manner that cannot be removed.

(2) REQUIREMENTS FOR RETAIL DISTRIBUTORS.—Any retail distributor shall place conspicuously in the vicinity of each apparatus described in section 303(z) that such distributor displays for sale or rent after 45 days after the date of enactment

of the Digital Television Transition Act of 2005, a sign containing, in clear and conspicuous print, the warning language required by paragraph (3). In the case of a retail distributor vending such apparatus via direct mail, catalog, or electronic means, such as displays on the Internet, the warning language required by such paragraph shall be prominently displayed, in clear and conspicuous print, in the vicinity of any language describing the product.

(3) WARNING LANGUAGE.—The warning language required by this paragraph shall read as follows: "This television has only an analog broadcast tuner. After December 31, 2008, television broadcasters will broadcast only in digital format. You will then need to connect this television to a digital-to-analog converter box or cable or satellite service if you wish to receive broadcast programming. The device, if any, that a cable or satellite subscriber will need to connect to an analog television will depend on the cable or satellite service provider. The television should continue to work as before, however, with devices such as VCRs, digital video recorders, DVD players, and video game systems. For more information, call the Federal Communications Commission at 1–888–225–5322 (TTY: 1–888–835–5322) or visit the Commission's website at: www.fcc.gov.".

(4) COMMISSION AND NTIA OUTREACH.—Beginning within one month after the date of enactment of the Digital Television Transition Act of 2005, the Commission and the National Telecommunications and Information Administration shall engage, either jointly or separately, in a public outreach program, including the distribution of materials on their web sites and in Government buildings, such as post offices, to educate consumers regarding the digital television transition. The Commission and the National Telecommunications and Information Administration may seek public comment in crafting their public outreach program, and may seek the assistance of private entities, such as broadcasters, manufacturers, retailers, cable and satellite operators, and consumer groups in administering the public outreach program. The program shall educate consumers about—

(A) the deadline for termination of analog television broadcasting;

(B) the options consumers have after such termination to continue to receive broadcast programming; and

(C) the converter box program under section 159 of the National Telecommunications and Information Administration Organization Act.

(5) ADDITIONAL DISCLOSURES.—

(A) ANNOUNCEMENTS AND NOTICES REQUIRED.—From January 1, 2008, through December 31, 2008—

(i) each television broadcaster shall air, at a minimum, two 60-second public service announcements per day, one during the 8 to 9 a.m. hour and one during the 8 to 9 p.m. hour; and

(ii) each multichannel video program distributor (as such term is defined in section 602 of this Act) shall include a notice in any periodic bill.

(B) CONTENTS OF ANNOUNCEMENTS AND NOTICES.—The announcements and notices required by subparagraphs (A)(i) and (A)(ii), respectively, shall state, at a minimum, that: "After December 31, 2008, television broadcasters will broadcast only in digital format. You will then no longer be able to receive broadcast programming on analog-only televisions unless those televisions are connected to a digital-to-analog converter box or a cable or satellite service. The device, if any, that a cable or satellite subscriber will need to connect to an analog television will depend on the cable or satellite service provider. Analog-only televisions should continue to work as before, however, with devices such as VCRs, digital video recorders, DVD players, and video game systems. You may be eligible for up to two coupons toward the purchase of up to two converter-boxes. For more information, call the Federal Communications Commission at 1–888–225–5322 (TTY: 1–888–835–5322) or visit the Commission's website at: www.fcc.gov.".

(6) REPORT REQUIRED.—Beginning January 31, 2006, and ending July 31, 2008, the Commission and the National Telecommunications and Information Administration, either jointly or separately, shall submit reports every six months to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the Commission's and such Administration's consumer education efforts, as well as the consumer education efforts of broadcasters, cable and satellite operators, consumer electronics manufacturers, retailers, and consumer groups. The Commission and such Administration may solicit public comment in preparing their reports.

[(d)] *(e)* For the purposes of this section, and [sections 303(s), 303(u), and 303(x)] *subsections (s), (u), (x), and (z) of section 303*—

(1) * * *

* * * * * * *

SEC. 336. BROADCAST SPECTRUM FLEXIBILITY.

(a) * * *

* * * * * * *

(f) PRESERVATION OF LOW-POWER COMMUNITY TELEVISION BROADCASTING.—

(1) * * *

* * * * * * *

(4) ISSUANCE OF LICENSES FOR ADVANCED TELEVISION SERVICES TO TELEVISION TRANSLATOR STATIONS AND QUALIFYING LOW-POWER TELEVISION STATIONS.—The Commission is not required to issue any additional license for advanced television services to the licensee of a class A television station under this subsection, or to any licensee of any television translator station *or other low-power station*, but shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application. Such new

license or the original license of the applicant shall be forfeited after the end of the digital television service transition period, as determined by the Commission. A licensee of a low-power television station or television translator station may, at the option of licensee, elect to convert to the provision of advanced television services on its analog channel, but shall not be required to convert to digital operation until the end of such transition period.

* * * * * * *

SEC. 337. ALLOCATION AND ASSIGNMENT OF NEW PUBLIC SAFETY SERVICES LICENSES AND COMMERCIAL LICENSES.

(a) * * *

* * * * * * *

(e) REMOVAL AND RELOCATION OF INCUMBENT BROADCAST LICENSEES.—

(1) CHANNELS 60 TO 69.—Any [person who] *full-power television station licensee that* holds a television broadcast license to operate between 746 and 806 megahertz may not operate at that frequency after the date on which the digital television service transition period terminates, as determined by the Commission.

(2) INCUMBENT QUALIFYING LOW-POWER STATIONS.—After making any allocation or assignment under this section, the Commission shall seek to assure, consistent with the Commission's plan for allotments for digital television service, that each qualifying low-power television station is assigned a frequency below [746 megahertz] *698 megahertz* to permit the continued operation of such station.

(3) CONTINUATION OF LOW-POWER BROADCASTING.—Subject to section 336(f) of the Communications Act (47 U.S.C. 336(f)), a low-power television station, television translator station, or television booster station (as defined by Commission regulations) may operate above 698 megahertz on a secondary basis in accordance with Commission rules, including rules governing completion of the digital television service transition for low-power broadcasters.

* * * * * * *

SEC. 338. CARRIAGE OF LOCAL TELEVISION SIGNALS BY SATELLITE CARRIERS.

(a) * * *

(b) GOOD SIGNAL REQUIRED.—

(1) COSTS.—A television broadcast station asserting its right to carriage under [subsection (a)] *subsections (a) or (l)* shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

* * * * * * *

(c) DUPLICATION NOT REQUIRED.—

(1) COMMERCIAL STATIONS.—Notwithstanding [subsection (a)(1)] *subsections (a)(1) and (l)*, a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) NONCOMMERCIAL STATIONS.—The Commission shall prescribe regulations limiting the carriage requirements under [subsection (a)] *subsections (a) and (l)* of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulations shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under section 615.

* * * * * * *

(l) SPECIFIC CARRIAGE OBLIGATIONS AFTER DIGITAL TRANSITION.—

(1) CARRIAGE OF DIGITAL FORMATS.—With respect to any television station that requests carriage under this section and that is transmitting broadcast programming exclusively in the digital television service in a local market in the contiguous United States (hereafter in this paragraph referred to as an eligible requesting station), a satellite carrier carrying the digital signal of any other local television station in that local market shall carry the eligible requesting station's primary video stream and program-related material, without material degradation, if the licensee for that eligible requesting station—

(A) relies on this section to obtain carriage of the primary video stream and program-related material by that satellite carrier in that market; and

(B) permits the satellite carrier to carry without compensation any other programming broadcast by that local station that is carried on that system.

(2) FORMATTING OF PRIMARY VIDEO STREAM.—A satellite carrier must offer the primary video stream and program-related material of an eligible requesting station in the digital format transmitted by the station if the satellite carrier carries the primary video stream of any other local television station in that local market in the same digital format.

(3) MULTIPLE FORMATS PERMITTED.—A satellite carrier may offer the primary video stream and program-related material of an eligible requesting station in any analog or digital format or formats, whether or not doing so requires conversion from the format transmitted by that eligible requesting station, so long as—

(A) the satellite carrier offers the primary video stream and program-related material in the converted analog or digital format or formats without material degradation; and

(B) also offers the primary video stream and program-related material in the manner or manners required by this subsection.

(4) TRANSITIONAL CONVERSIONS.—Notwithstanding any requirement in paragraphs (1) and (2) to carry the primary video stream and program-related material in the digital format transmitted by the local television station, but subject to the prohibition on material degradation, until January 1, 2014, a satellite carrier—

(A) shall offer the primary video stream and program-related material of any local television broadcast station required to be carried under paragraph (1) in the format necessary for such stream to be viewable on analog and digital televisions; and

(B) may convert the primary video stream and program-related material to standard-definition format in lieu of offering it in the digital format transmitted by the local television station.

(5) LOCATION AND METHOD OF CONVERSION.—A satellite carrier may perform any conversion permitted or required by this subsection at any location, from the local receive facility to the customer premises, inclusive.

(6) CONVERSIONS NOT TREATED AS DEGRADATION.—Any conversion permitted or required by this subsection shall not, by itself, be treated as a material degradation.

(7) CARRIAGE OF PROGRAM-RELATED MATERIAL.—The obligation to carry program-related material under this subsection is effective only to the extent technically feasible.

(8) DEFINITION OF STANDARD-DEFINITION FORMAT.—For purposes of this subsection, a stream shall be in standard definition digital format if such stream meets the criteria for such format as specified in the standard recognized by the Commission in section 73.682 of its rules (47 CFR 73.682) or a successor regulation.

* * * * * * *

TITLE VI—CABLE COMMUNICATIONS

* * * * * * *

SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

(a) * * *

(b) SIGNALS REQUIRED.—

(1) * * *

* * * * * * *

(11) CARRIAGE OF DIGITAL FORMATS.—

(A) PRIMARY VIDEO STREAM.—With respect to any television station that is transmitting broadcast programming exclusively in the digital television service in a local market, a cable operator of a cable system in that market shall carry the station's primary video stream and program-related material in the digital format transmitted by that sta-

tion, without material degradation, if the licensee for that station—

(i) relies on this section or section 615 to obtain carriage of the primary video stream and program-related material on that cable system in that market; and

(ii) permits the cable system to carry without compensation any other programming broadcast by that station that is carried on that system.

(B) MULTIPLE FORMATS PERMITTED.—A cable operator of a cable system may offer the primary video stream and program-related material of a local television station described in subparagraph (A) in any analog or digital format or formats, whether or not doing so requires conversion from the format transmitted by the local television station, so long as—

(i) the cable operator offers the primary video stream and program-related material in the converted analog or digital format or formats without material degradation; and

(ii) also offers the primary video stream and program-related material in the manner or manners required by this paragraph.

(C) TRANSITIONAL CONVERSIONS.—Notwithstanding the requirement in subparagraph (A) to carry the primary video stream and program-related material in the digital format transmitted by the local television station, but subject to the prohibition on material degradation, until January 1, 2014—

(i) a cable operator—

(I) shall offer the primary video stream and program-related material in the format or formats necessary for such stream and material to be viewable on analog and digital televisions; and

(II) may convert the primary video stream and program-related material to standard-definition digital format in lieu of offering it in the digital format transmitted by the local television station;

(ii) notwithstanding clause (i), a cable operator of a cable system with an activated capacity of 550 megahertz or less—

(I) shall offer the primary video stream and program-related material of the local television station described in subparagraph (A), converted to an analog format; and

(II) may, but shall not be required to, offer the primary video stream and program-related material in any digital format or formats.

(D) LOCATION AND METHOD OF CONVERSION.—

(i) A cable operator of a cable system may perform any conversion permitted or required by this paragraph at any location, from the cable head-end to the customer premises, inclusive.

(ii) Notwithstanding any other provision of this Act other than the prohibition on material degradation, a

cable operator may use switched digital video technology to accomplish any conversion or transmission permitted or required by this paragraph.

(E) CONVERSIONS NOT TREATED AS DEGRADATION.—Any conversion permitted or required by this paragraph shall not, by itself, be treated as a material degradation.

(F) CARRIAGE OF PROGRAM-RELATED MATERIAL.—The obligation to carry program-related material under this paragraph is effective only to the extent technically feasible.

(G) DEFINITION OF STANDARD-DEFINITION FORMAT.—For purposes of this paragraph, a stream shall be in standard definition digital format if such stream meets the criteria for such format as specified in the standard recognized by the Commission in section 73.682 of its rules (47 CFR 73.682) or a successor regulation.

* * * * * * *

SEC. 623. REGULATION OF RATES.

(a) * * *

(b) ESTABLISHMENT OF BASIC SERVICE TIER RATE REGULATIONS.—

(1) * * *

* * * * * * *

(7) COMPONENTS OF BASIC TIER SUBJECT TO RATE REGULATION.—

(A) MINIMUM CONTENTS.—Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) * * *

* * * * * * *

[(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.]

(iii) Both of the following signals:

(I) the primary video stream and program-related material of any television broadcast station that is provided by the cable operator to any subscriber in an analog format, and

(II) the primary video stream and program-related material—

(aa) of any television broadcast station that is transmitting exclusively in digital format, and

(bb) that is provided by the cable operator to any subscriber in a digital format,

but excluding a signal that is secondarily transmitted by a satellite carrier beyond the local service area of such station.

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NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION ORGANIZATION ACT

TITLE I—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

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PART C—SPECIAL AND TEMPORARY PROVISIONS

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SEC. 159. DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM.

(a) CREATION OF PROGRAM.—The Assistant Secretary—

(1) shall use the funds available under subsection (d) of this section to implement and administer a program through which households in the United States may obtain, upon request, up to two coupons that can be applied toward the purchase of digital-to-analog converter boxes, subject to the restrictions in this section and the regulations created thereunder; and

(2) may award one or more contracts (including a contract with another Federal agency) for the administration of some or all of the program.

(b) PROGRAM SPECIFICATIONS.—

(1) FORM OF COUPON REQUEST.—The regulations under this section shall prescribe the contents of the coupon request form and the information any household seeking a coupon shall provide on the form. The coupon request form shall be required to include instructions for its use and also describe, at a minimum, the requirements and limitations of the program, the ways in which the form and the information the household provides will be used, and to whom the form and the information will be disclosed.

(2) DISTRIBUTION OF COUPON REQUEST FORMS.—

(A) PAPER AND ELECTRONIC FORMS.—The Assistant Secretary shall provide for the distribution of paper coupon request forms at Government buildings, including post offices. The Assistant Secretary shall provide for the availability to households of electronic coupon request forms, and may permit such forms to be submitted electronically.

(B) ADDITIONAL DISTRIBUTION.—If the Assistant Secretary determines that doing so would make the program more successful and easier for consumers to participate in, paper and electronic coupon request forms shall also be distributed by such private entities as the Assistant Secretary

shall specify (such as retailers, manufacturers, broadcasters, religious organizations, and consumer groups) and shall be distributed in the manner specified by the Assistant Secretary.

(3) LIMITATIONS.—

(A) TWO-PER-HOUSEHOLD MAXIMUM.—A household may obtain coupons only by making a request as required by the regulations under this section. Any request must be made between January 1, 2008, and January 31, 2009, inclusive. The Assistant Secretary shall ensure that each requesting household receives no more than two coupons.

(B) NO COMBINATIONS OF COUPONS.—Two coupons may not be used in combination toward the purchase of a single digital-to-analog converter box.

(C) DURATION.—All coupons shall expire 3 months after issuance.

(4) DISTRIBUTION OF COUPONS.—

(A) Coupons shall be distributed to requesting households by mail and each coupon shall be issued in the name of a member of the requesting household, and shall include a unique identification number as well as any other measures the Assistant Secretary deems necessary to minimize fraud, counterfeiting, duplication, and other unauthorized use.

(B) Included on or provided with each coupon shall be, at a minimum, instructions for the coupon's use and a description of the coupon's limitations.

(C) The Assistant Secretary shall expend not more than $160,000,000 on administrative expenses and shall ensure that the sum of all administrative expenses for the program and the total maximum value of all the coupons redeemed, and issued but not expired, does not exceed $990,000,000.

(D) The Assistant Secretary may expend up to $5,000,000 of the administrative expenses on the public outreach program required by section 330(d)(4) of the Communications Act of 1934 (47 U.S.C. 330(d)(4)). Such funds may be used for grants to the Association of Public Television Stations, in partnership with noncommercial educational television broadcast stations (as defined section 397(6) of the Communications Act of 1934 (47 U.S.C. 397(6))) to carry out such public outreach.

(5) QUALIFYING PURCHASES.—

(A) QUALIFYING BOX.—The regulations shall specify methods for determining and identifying the converter boxes that meet the definition in subsection (g).

(B) COUPON VALUE.—The value of each coupon shall be $40.

(6) REDEMPTION OF COUPONS.—No coupon shall be redeemed except upon submission of reasonable proof that the individual redeeming the coupon is the individual named on the coupon, and such additional information as is required by the regulations under this section. In the case of retail distribution of digital-to-analog converter boxes over the Internet or by telephone, submission of a valid credit card number issued in the name of the household member, the unique identification number on

the coupon, the address of the household, and such other information as is required by the regulations under this section shall be reasonable proof of identity, except that the redemption of coupons over the Internet or by telephone shall be prohibited if the Assistant Secretary determines that such redemption would be unreasonably susceptible to fraud or other abuse.

(7) RETAILER CERTIFICATION.—

(A) Any retailer desiring to qualify for coupon reimbursement under this section shall, in accordance with the regulations under this section, be required to undergo a certification process to qualify for participation in the program.

(B) As part of the certification process, retailers shall be informed of the program's details and their rights and obligations, including their obligations to honor all valid coupons that are tendered in the authorized manner, and to keep a reasonable number of eligible converter boxes in stock.

(8) COUPON REIMBURSEMENT AND RETAILER AUDITING.—

(A) REIMBURSEMENT.—The regulations under this section shall establish the process by which retailers may seek and obtain reimbursement for the coupons, and shall include the option for retailers to seek and obtain reimbursement electronically.

(B) AUDITS.—Such regulations shall establish procedures for the auditing of retailer reimbursements.

(9) APPEALS.—The regulations under this section shall establish an appeals process for the review and resolution of complaints—

(A) by a household alleging that—

(i) the household was improperly denied a coupon;

(ii) a valid coupon properly tendered was not honored; or

(iii) the household was otherwise harmed by another violation of this section or such regulations; or

(B) by a retailer of digital-to-analog converter boxes alleging that the retailer was improperly denied reimbursement for a valid coupon properly tendered and accepted under this section or such regulations.

All such complaints shall be resolved within 30 days after receipt of the complaint.

(10) ENFORCEMENT.—The regulations under this section shall provide for the termination of eligibility to participate in the program for retailers or households that engage in fraud, misrepresentation, or other misconduct in connection with the program, or that otherwise violate this section or such regulations.

(11) PROGRESS REPORT.—Beginning with a report on March 31, 2008, and ending with a report on June 30, 2009, the Assistant Secretary shall submit reports to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, every three months summarizing the progress of coupon distribution and redemption, including how many coupons are being distributed and redeemed, and how quickly.

(c) PRIVACY.—The program under this section shall ensure that personally identifiable information collected in connection with the program under this section is not used or shared for any other purpose than as described in this section, except as otherwise required or authorized by law. For purposes of this subsection, the term "personally identifiable information" shall have the same meaning as provided in section 338(i)(2).

(d) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—From the Digital Television Conversion Fund established by section 309(j)(8)(E)(i)(I) of the Communications Act of 1934, there shall be available to carry out this section such sums as may be necessary for fiscal years 2008 and 2009. Any sums that remain unexpended in the Fund at the end of fiscal year 2009 shall revert to and be deposited in the general fund of the Treasury.

(2) CREDIT.—The Assistant Secretary may borrow from the Treasury such sums as may be necessary not to exceed $990,000,000 to implement and administer the program in accordance with this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Conversion Fund under section 309(j)(8)(E) of such Act.

(e) ENERGY STANDARDS REQUIRED.—

(1) STANDARD.—The maximum energy consumption for the passive standby mode of a digital-to-analog converter box shall be no more than 9 watts.

(2) ENFORCEMENT.—The Secretary of Energy shall enforce the requirements of paragraph (1). Any converter box that the Secretary of Energy determines is not in compliance with the requirements of paragraph (1) shall not be eligible for purchase with assistance made available under this section.

(3) PREEMPTION.—No State or any political subdivision thereof may establish or enforce any law, rule, regulation, or other provision having the force of law that regulates the energy output, usage, or consumption standards for a digital-to-analog converter box.

(f) IMPLEMENTATION.—The Secretary of Commerce shall promulgate, within 9 months after the date of enactment of the Digital Television Transition Act of 2005, such regulations as are necessary to carry out this section.

(g) DEFINITION.—For purposes of this section:

(1) DIGITAL-TO-ANALOG CONVERTER BOX.—The term "digital-to-analog converter box" means a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service.

(2) HOUSEHOLD.—The term "household" means the residents at a residential street or rural route address, and shall not include a post office box.

(3) STANDBY PASSIVE MODE.—The term "standby passive mode" means a low power state the digital-to-analog converter device enters while connected to a power source which fulfills

not the main function but can be switched into another mode by means of an internal or external signal.

SEC. 160. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS FUND.

(a) PROGRAM AUTHORIZED.—From the funds available under subsection (f), the Assistant Secretary shall carry out a grant program to assist public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, reallocated public safety spectrum for radio communications.

(b) TERMS AND CONDITIONS OF GRANTS.—In order to obtain a grant under this section, a public safety agency shall—

(1) submit an application to the Assistant Secretary at such time, in such form, and containing or accompanied by such information and assurances as the Assistant Secretary shall require;

(2) agree that, if awarded a grant, the public safety agency will submit annual reports to the Assistant Secretary for the duration of the grant award period with respect to—

(A) the expenditure of grant funds; and

(B) progress toward acquiring and deploying interoperable communications systems funded by the grant;

(3) agree to provide, from non-Federal sources, not less than 20 percent of the costs of acquiring and deploying the interoperable communications systems acquired and deployed with funds provided under this section; and

(4) agree to remit to the Assistant Secretary any grant funds that remain unexpended at the end of the 3-year period of the grant.

(c) DURATION OF GRANT; RECOVERY OF UNUSED FUNDS.—Grants under this section shall be awarded in the form of a single grant for a period of not more that 3 years. At the end of 3 years, any grant funds that remain unexpended shall be remitted by the grantee to the Assistant Secretary, and, subject to subsection (f)(2), may be awarded to other eligible grant recipients. At the end of fiscal year 2010, any such reawarded grant funds that remain unexpended shall be remitted by the grantee to the Assistant Secretary and may not be reawarded to other grantees.

(d) OVERSIGHT OF EXPENDITURES.—The Assistant Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce, not later than 6 months after the first award of a grant under this section and every 6 months thereafter until October 1, 2010, a report—

(1) identifying, on a State-by-State basis, using the information submitted under subsection (b)(2), the results of the program, including an identification, on a State-by-State basis, of—

(A) the public safety agencies awarded a grant;

(B) the amount of the grant;

(C) the specified use for the grant; and

(D) how each such grant was spent; and

(2) stating the cumulative total of the amount of grants awarded, and the balance, if any, remaining in the Public Safety Interoperable Communications Fund; and

(3) in the final such report, stating the amount in the Fund that reverted to the general fund of the Treasury.

(e) REGULATIONS.—The Secretary is authorized to prescribe such regulations as are necessary to carry out this section.

(f) AVAILABILITY OF FUNDS.—

(1) AVAILABILITY.—From the Public Safety Interoperable Communications Fund established by section 309(j)(8)(E)(i)(II) of the Communications Act of 1934, there shall be available to carry out this section such sums as may be necessary for fiscal years 2008, 2009, and 2010.

(2) REVERSION.—Any sums that remain unexpended in the Fund at the end of fiscal year 2010 shall revert to and be deposited in the general fund of the Treasury.

(g) DEFINITIONS.—For purposes of this section:

(1) PUBLIC SAFETY AGENCY.—The term "public safety agency" means any State or local government entity, or nongovernmental organization authorized by such entity, whose sole or principal purpose is to protect the safety of life, health, or property.

(2) INTEROPERABLE COMMUNICATIONS SYSTEMS.—The term "interoperable communications systems" means communications systems which enable public safety agencies to share information amongst local, State, and Federal public safety agencies in the same area via voice or data signals.

(3) REALLOCATED PUBLIC SAFETY SPECTRUM.—The term "reallocated public safety spectrum" means the bands of spectrum located at 764–776 megahertz and 794–806 megahertz, inclusive.

SEC. 161. NYC 9/11 DIGITAL TRANSITION FUND.

(a) FUNDS AVAILABLE.—From the NYC 9/11 Digital Transition Fund established by section 309(j)(8)(E)(i)(III) of the Communications Act of 1934, there shall be available to carry out this section such sums as may be necessary for fiscal years 2006 through 2008. Any sums that remain unexpended in the Fund at the end of fiscal year 2008 shall revert to and be deposited in the general fund of the Treasury. The Assistant Secretary may borrow from the Treasury such sums as may be necessary not to exceed $30,000,000 to implement and administer the program in accordance with this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the NYC 9/11 Digital Transition Fund under section 309(j)(8)(E) of such Act.

(b) USE OF FUNDS.—The sums available under subsection (a) shall be made available by the Assistant Secretary by grant to be used to reimburse the Metropolitan Television Alliance for costs incurred in the design and deployment of a temporary digital television broadcast system to ensure that, until a permanent facility atop the Freedom Tower is constructed, the members of the Metropolitan Television Alliance can provide the New York City area with an adequate digital television signal as determined by the Federal Communications Commission.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter or otherwise affect the Federal Communications Commission's authority with respect to licensing and interference regulation.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "Metropolitan Television Alliance" means the organization formed by New York City television broadcast station licensees to locate new shared facilities as a result of the attacks on September 11, 2001 and the loss of use of shared facilities that housed broadcast equipment.

(2) The term "New York City area" means the five counties comprising New York City and counties of northern New Jersey in immediate proximity to New York City (Bergen, Essex, Union and Hudson Counties).

SEC. 162. LOW-POWER TELEVISION DIGITAL-TO-ANALOG CONVERSION.

(a) CREATION OF PROGRAM.—The Assistant Secretary shall use the funds available under subsection (d) from the Low-Power Digital-to-Analog Conversion Fund to implement and administer a program through which each eligible low-power television station may receive compensation toward the cost of the purchase of a digital-to-analog conversion device that enables it to convert the incoming digital signal of its corresponding full-power television station to analog format for transmission on the low-power television station's analog channel. An eligible low-power television station may receive such compensation only if it submits a request for such compensation on or before December 31, 2008.

(b) ELIGIBLE STATIONS.—For purposes of this section, an eligible low-power television station shall be a low-power television broadcast station, Class A television station, television translator station, or television booster station—

(1) that is itself broadcasting exclusively in analog format; and

(2) that has not purchased a digital-to-analog conversion device prior to enactment of this section.

(c) QUALIFYING DEVICES AND AMOUNTS.—The Assistant Secretary—

(1) may determine the types of digital-to-analog conversion devices for which an eligible low-power broadcast television station may receive compensation under this section; and

(2) shall determine the maximum amount of compensation such a low-power television broadcast station may receive based on the average cost of such digital-to-analog conversion devices during the time period such low-power broadcast television station purchased the digital-to-analog conversion device, but in no case shall such compensation exceed $400.

(d) FUNDS AVAILABLE.—From the Low-Power Digital-to-Analog Conversion Fund established by section 309(j)(8)(E)(i)(IV) of the Communications Act of 1934, there shall be available to carry out this section such sums as may be necessary for fiscal years 2008 and 2009. Any sums that remain unexpended in such Fund at the end of fiscal year 2009 shall revert to and be deposited in the general fund of the Treasury.

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DISSENTING VIEWS OF REPS. JOHN D. DINGELL, HENRY A. WAXMAN, EDWARD J. MARKEY, RICK BOUCHER, FRANK PALLONE, JR., SHERROD BROWN, BART GORDON, BART STUPAK, GENE GREEN, TED STRICKLAND, DIANA DEGETTE, LOIS CAPPS, MICHAEL F. DOYLE, TOM ALLEN, JIM DAVIS, JANICE D. SCHAKOWSKY, HILDA L. SOLIS, CHARLES A. GONZALEZ, TAMMY BALDWIN, AND MIKE ROSS

SUMMARY

We support the transition to digital television (DTV). If done properly, it will enhance public safety communications, bring consumers the many benefits of advanced television, and provide spectrum that will enhance wireless competition and broadband services.

Unfortunately, the bill (in the form of legislation recommended to the Committee on the Budget) reported by our Committee is a failure. Driven by budget policy rather than telecommunications policy, the bill places the burden of the transition on those with the least income, and in its efforts to maximize revenues available for tax cuts for the wealthiest Americans, provides woefully inadequate resources to public safety. In the end, these policies may actually reduce revenues from the sale of spectrum, as bidders doubt the ability of the Government to follow through with its plans, and may well result in further delays in the digital transition.

The Republican plan summarily turns off millions of analog television sets—televisions that continue to be sold in stores today—without an adequate plan to assure consumers that they can restore the TV picture, without charge, by obtaining a digital-to-analog converter box.

The bill establishes a hard date of December 31, 2008, for the cessation of analog broadcasts, meaning that all televisions relying upon an over-the-air analog signal from the broadcaster will go dark. The Government Accountability Office (GAO) has estimated that 21 million households rely solely on over-the-air broadcasting and these homes average two television sets per household. It is also estimated that there are as many as 73 million sets that are not connected either to cable or satellite. In order to use these televisions, consumers will have to buy converter boxes, which are estimated to cost at least $60 per box.

In order to aid in this transition, the bill would provide $830 million for coupons worth a $40 discount on each converter box. The bill would allow up to two boxes per household, but is not limited to households that rely solely on over-the-air transmission. The coupons would cover approximately 21 million sets, or less than a third of the need. Even if the program were limited to two coupons only for households relying solely on over-the-air broadcasts, half

of those households would be left in the dark. Simply put, the Republican plan will run out of money before the need is met.

The bill assumes that consumers can afford a co-payment on each box, but it is known that those households relying on over-the-air broadcasts are often low-income, elderly, and minority households which can least afford the expense. Depending upon the cost of the converter boxes, this co-payment could be $20, $30, or more. In fact, the digital transition ordered by this bill is expected to impose an aggregate television tax in the form of the purchase of converter boxes of $3.5–$4 billion, of which the bill covers less than 25 percent.

It is unjust to tax consumers for the DTV transition simply to try to foot the bill for a tax cut for the wealthiest of our citizens.

The sale of spectrum is estimated by the Congressional Budget Office (CBO) to yield $10 billion and independent estimates place the value as high as $28 billion, so there are public revenues available for the conversion.

The other important use of the funds would be for public safety communications. Terrorist attacks and recent hurricane disasters have reminded us of the problems of the interoperability of first responder communications systems.

The Office of Management and Budget has estimated the costs of achieving interoperability at $15 billion or more. Yet in the interest of maximizing revenues to be put toward tax cuts favoring the wealthy, the bill provides just $500 million for this purpose.

Democrats put forth a substitute at markup that failed on a straight party line vote. The substitute would have provided up to two vouchers per household covering the full $60 cost of the converter box, thus eliminating the television tax imposed by the bill. The cost of the proposal was estimated by CBO to be $3.5–$4 billion, including administrative costs, somewhat more than a bipartisan bill reported by the Senate Commerce Committee, which provided $3 billion for the converter boxes. As described earlier, the reported bill provides less than $1 billion, including administrative costs.

The substitute would have provided $6 billion for public safety interoperability and E–911 implementation. This would be an important down payment on the full cost of upgrading first responder equipment. As described earlier, the reported bill provides just $500 million for these purposes.

Last April, the House passed a budget resolution calling for $35 billion in spending cuts and revenue enhancements such as spectrum sales, while providing $70 billion in new tax cuts, more than half of which will go to the wealthiest one percent. The resolution passed without a single Democratic vote, because not only would it increase the deficit, but also it does not reflect our values.

The bill before us is a part of that debate. All of us should recognize that the public airwaves are owned by the public, yet this bill would sell those airwaves and return the money in the form of tax cuts that go primarily to the wealthiest, while imposing a television tax on the poorest households. At the same time, faced with the decision of using a portion of the funds for even more tax cuts or the needs of public safety and our first responders, the bill chooses tax cuts. On both counts, we disagree.

PROBLEMS WITH THE REPUBLICAN BILL

I. ORDINARY AMERICANS ARE BEING TAXED UNNECESSARILY TO HELP PAY FOR THE DIGITAL TELEVISION TRANSITION

Households relying solely upon free, over-the-air television to receive their news, weather, emergency alerts, and entertainment will be forced to help pay for this transition.

GAO has testified that as of 2004, 21 million out of 108.4 million households (19 percent) relied exclusively on free, over-the-air broadcast transmissions to receive television programming. According to GAO, a disproportionate number of these over-the-air households are low-income, with 48 percent having a household income of less than $30,000. GAO also found that these households are disproportionately nonwhite and Hispanic. According to GAO, over-the-air households average 2.1 televisions per home.

It is estimated that there are as many as 73 million analog television receivers in use in the United States that are not connected either to cable or to satellite. Many households that subscribe to cable or satellite service also have over-the-air sets in their home that will be affected by the shut off of analog broadcasting. Other homes may have sets connected to satellite service yet continue to receive their local broadcast stations using over-the-air antennas.

When analog broadcasting ceases, analog-only television sets will no longer work without additional equipment. Consumers who want to continue using analog television receivers will need to obtain a digital-to-analog converter box or subscribe to a service that enables the continued viewing of analog signals. Because digital-to-analog converter boxes are projected to cost $60 or more when manufactured in significant volume, equipping existing analog television sets with the necessary converter boxes could cost billions.

Faced with a choice of who will pay for the transition, the Committee voted to tax consumers to keep watching television. Under the bill, every consumer with an analog television will pay something to keep that set working after December 31, 2008. Although the bill provides for a limited distribution of $40 coupons to requesting consumers, there is no guarantee of the cost of the boxes. Because converter boxes are projected to cost $60 or more when manufactured in volume, the bill would require households lucky enough to receive a coupon to still pay $20 or more per television set to keep it working. Households left out of the coupon distribution program will have to pay $60 or more per set. In the aggregate, these consumer out-of-pocket expenses represent a $3.55 billion tax.

But the Republican plan provides only $990 million for a converter box program, of which $160 million can be used for the sizeable administrative costs involved in printing and distributing coupon request forms, receiving applications, distributing coupons, and reimbursing retailers. So that leaves only $830 million for the coupons, which will cover just a fraction of the millions of homes that will need a converter box. At $40 per coupon, the bill only provides for 20.75 million coupons. With an estimated 73 million unconnected television sets and only 20.75 million covered by the bill, consumers who own the other 52.25 million sets will have to pay the full costs to obtain the necessary equipment.

Due to the limited funding in the bill, coupons will be available on a first-come, first-served basis. When the money runs out, many households will be out of luck. Homes most reliant on over-the-air broadcasts may not get coupons while vacation homes may. Households that rely solely on over-the-air signals for their televisions may be left without a way to receive even one subsidized box. This could result in the very target of the subsidy—the 21 million consumers who rely solely on over-the-air television reception—having to pay $60 or more per television set to keep the set from going dark after the transition.

Also, the coupon program in the bill is also unnecessarily intrusive. Consumers will have to fill out an application and provide personal information to the Government just to watch television. The bill imposes numerous requirements for consumers, making it far less likely that the consumers most in need will participate. Consumers will have to apply for coupons, then wait an undetermined length of time to receive the coupon, and may have to provide credit card information to redeem the coupon. In addition, the bill restricts the converter boxes from having independent features or functions even if those features add little cost and would make the boxes more consumer friendly. This may further restrict demand for the boxes by preventing boxes from containing a remote control, the cable to connect the box to an analog TV set, an antenna to receive the digital signals, or other functions.

All told, this converter box program is woefully inadequate and needlessly complex. This program was carefully crafted to meet a budget goal, rather than help Americans make a smooth transition to digital television.

Democratic substitute

The Democratic substitute, as well as an amendment offered by Representative Markey, offered a far more simple and inclusive converter box program. Every household would receive a voucher redeemable for up to two free converter boxes. No one would have to apply and send personal information to the Government. Vouchers would be mailed to every household to minimize the inconvenience of the transition on consumers.

By providing two free boxes costing $60 each, the Democratic program was expected to cost between $3.5 to $4 billion. Given that the Government is expected to receive at least $10 billion from accelerating the transition, there will be more than sufficient funds to reimburse consumers for their full cost of the transition. It is only fair that the Government bears the costs of its decision to shut off analog broadcasting without making television viewers pay to continue to receive over-the-air signals.

In this way, the substitute measure would have reimbursed every household in the country with the full transition costs, ensuring that no household is left behind. Consumers deserve full restitution for the governmental choice to deprive them of the use of their television sets.

II. PUBLIC SAFETY COMMUNICATIONS ARE SHORTCHANGED

In order to protect Republican tax cuts, this bill shortchanges our first responders regarding interoperability funding. The inability of

first responders to communicate with each other during emergencies threatens the public's safety. It puts the lives of first responders and those in need of assistance at undue risk.

The problems with first responders not being able to communicate with each other are neither new nor rare. One needs only to watch the evening news to see examples of multi-jurisdictional emergencies, such as fighting large fires, searching for missing children, or responding to natural disasters, where interoperability among various public safety agencies is essential to protecting lives and property. Unfortunately, it takes extreme tragedies such as the collapse of the World Trade Center and the devastation of Hurricane Katrina to bring a sense of urgency to making interoperability a reality. This bill, however, does not reflect a proper sense of urgency.

Interoperability requires two elements, spectrum and funding to make use of the spectrum. We all agree that a hard date is necessary so public safety can receive the 24 megahertz of spectrum that it was promised years ago. But simply providing spectrum, without aggressive funding, will do little to ensure first responder interoperability.

The need is great. In 2003, the Office of Management and Budget estimated that interoperability would cost $15 billion or more. First responders need to replace their outdated equipment. They need to pay for the planning and coordinating among appropriate public safety officials. They need to build redundant communications networks—vitally important in situations such as Hurricane Katrina in which the primary communications infrastructure is damaged or destroyed. Despite talking about the need, the Administration has failed to follow through with money. Since the attacks on the World Trade Center in 2001, the Federal Government has spent just $1.3 billion on interoperable communications. This is wholly inadequate.

Democratic substitute

Both the Democratic Substitute and an amendment offered by Representative Bart Stupak provided for a real down payment for public safety interoperability. The measures provided from auction revenues $5.8 billion for first responders' interoperability needs. This money would be distributed through a grant program to local police, fire, and other emergency personnel and first responders across the country.

Unfortunately, this serious effort to fund an urgent national priority was rejected by the Committee, with the Stupak amendment failing by a vote of 24 to 24. Only after that rejection did the Republicans offer an amendment to commit a mere $500 million for first responder interoperability. We supported the amendment, but continue to believe that more funding is needed. First responders put their lives on the line for us on a daily basis. The least we can do is ensure that they have the basic tools they need to do their jobs safely.

In addition to consumers transition costs and public safety communications needs, the Substitute also would have funded an enhanced 911 system and provided funding to address the specific digital-television-related needs of low power television stations, television translators and stations in New York City and along the

Mexican border. The Substitute provided that any excess above $10 billion generated in the auction of the returned analog spectrum would be placed in a fund for broadband deployment in rural, underserved, and economically depressed areas and to promote the public use of advanced technologies and telecommunications for education and job training to ensure America's competitiveness in the 21st Century.

III. CONSUMER EDUCATION IS INADEQUATE

The bill's measures to warn and educate consumers also fall short. Ensuring that households understand the transition and how they will be affected is crucial to maintaining a firm deadline. The consequences of a failure to inform consumers are serious. Households that do not understand what will occur could be quite surprised as they watch the Times Square New Year's Eve ball drop and then their television set suddenly shuts off.

Unfortunately, the bill fails to take a comprehensive approach to consumer education. GAO has cited an alarmingly low public awareness of the DTV transition and the need to conduct specific and targeted outreach campaigns. Although the bill provides $5 million for public outreach, that figure is inadequate. In 2003, Berlin, Germany, successfully made the transition from analog to digital television. Notably, the Berlin Government spent more money on education ($984,160) than it did on providing consumers with converter boxes ($615,100 for 6,000 converter boxes). To cover all of America, with nearly 21 million over-the-air reliant homes, the bill commits to consumer education just five times what was spent for the Berlin region.

Additionally, the bill requires the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration to begin a consumer outreach campaign, but it fails to set specific targets and provide guidance to the agencies. The Government has been working to educate consumers about the DTV transition for some time. According to GAO, consumers appear to know little about the impending transition. We cannot afford to continue with more of the same.

The bill also requires the labeling of all analog-only televisions sold later than 180 days after enactment. The label is intended to make consumers aware of the need for additional equipment to view digital broadcast signals. Unfortunately, the content of the required label as set forth in the bill is cumbersome and unnecessarily confusing.

Democratic substitute

The Democratic Substitute added further efforts to educate and inform consumers about the transition. It required the FCC to create a DTV Transition Federal Advisory Committee to lead the effort to educate all consumers about the deadline for termination of analog television broadcasting and the equipment options consumers have after such termination. Getting the message out about the transition will not be easy. Many varied messages and distribution channels may be needed to reach various groups of individuals. For example, an information campaign to reach senior citizens will need to be structured differently than one to reach a

household that may have Spanish-language dominant viewers. To ensure that the Committee would have the expertise needed to reach all consumers, the substitute measure required that the Advisory Committee be comprised of representatives from commercial and noncommercial broadcasters, cable operators, satellite providers, retailers and manufacturers of consumer electronics equipment, minority groups, Hispanic Americans, disability groups, senior citizens, commercial advertisers, business and consumer groups.

The Substitute also offered a two-sentence label that would simplify the warning provided to consumers who continue to buy analog televisions. It also required this label to be printed in both English and Spanish so as to increase the awareness to all affected consumers. In addition, the substitute would have required other analog-only equipment such as VCRs and DVD players to be so labeled.

Given the desire to shut off analog broadcasting, the Substitute directed the FCC to complete a proceeding to apply the Emergency Alert System to stations' digital broadcasts. Until such a standard is implemented, consumers who watch digital broadcast programming may not receive emergency warnings as they do when they are watching analog broadcasts. It would be shameful to force consumers to switch to a system of broadcasting that denies them emergency alert warnings for severe weather or national and local emergencies.

IV. HARD DATE SELECTED IS IMPRACTICAL

The return of the broadcast spectrum for public safety and commercial wireless purposes is a critical goal. Every member of the Committee wholeheartedly supports a hard date. The certainty of a hard deadline to end analog transmission will focus consumers, industry, and government on the steps needed to transition to digital broadcasting. A hard deadline also will enable return of spectrum for critical public safety and commercial wireless uses. Once the broadcast spectrum is reclaimed, 24 MHz have already been earmarked for public safety use and another 60 MHz are available for advanced communications services such as wireless broadband. We all would like to see that spectrum reclaimed quickly. Some of us on the Committee are also committed to taking careful steps now so that any date that is set does not slip. Failure to accompany the hard date with a proper program to educate and equip consumers so they are not disenfranchised by Government actions could ultimately prolong the transition.

There is general agreement that 2009 is an appropriate time frame for the changeover. By 2009, it is anticipated that broadcasters will have received and made the transition to their final digital channel assignments, allowing for international coordination with Canada and Mexico. Given digital tuner requirements that phase in by 2007, consumers will have bought digital televisions for some time, reducing the inconvenience the transition will cause to some households. This time period also allows manufacturers to design and build digital-to-analog converter boxes in sufficient volume so that prices will fall from the current hundred-dollar levels. Most importantly, the window enables time for public outreach and comprehensive consumer education efforts about the transition.

The bill sets December 31, 2008, as the date for analog signals to cease. While this date is in an acceptable range, we question the wisdom of cutting off television on New Year's Eve prior to college football bowl games and other popular programming. This could force millions to go out on a holiday to find equipment to turn their television set back on. So, although we support a firm date in 2009, we note that the particular date selected in the bill is not practical.

Democratic substitute

The Democratic Substitute provided for a hard date of April 7, 2009, the same date proposed by the Senate Commerce Committee.

CONCLUSION

We remain concerned that this bill does little to provide Members of this Committee assurance that the transition will be smooth and easy for the American people. Without a fully-funded and well thought-out program to educate and equip consumers, we predict that the bill will impose a widely unpopular burden on millions of Americans. In our view, consumers should not have to pay out of pocket for this government-mandated transition. Moreover, first responders—not millionaires—should be next in line for much-needed funding out of the proceeds of the spectrum auction.

JOHN D. DINGELL.
HENRY A. WAXMAN.
EDWARD J. MARKEY.
RICK BOUCHER.
FRANK PALLONE, Jr.
SHERROD BROWN.
BART GORDON.
BART STUPAK.
GENE GREEN.
TED STRICKLAND.
DIANA DEGETTE.
LOIS CAPPS.
MICHAEL F. DOYLE.
TOM ALLEN.
JIM DAVIS.
JAN SCHAKOWSKY.
HILDA L. SOLIS.
CHARLES A. GONZALEZ.
TAMMY BALDWIN.
MIKE ROSS.

ADDITIONAL DISSENTING VIEWS OF MR. MARKEY OF MASSACHUSETTS, MS. ESHOO OF CALIFORNIA, MS. CAPPS OF CALIFORNIA, MR. WAXMAN OF CALIFORNIA, AND MS. SOLIS OF CALIFORNIA

In addition to the other concerns we have raised regarding Title I, we also wanted to focus attention on the Bono amendment dealing with the energy efficiency of digital television adapter boxes, which we strongly oppose.

The Bono amendment would preempt the California efficiency standard for digital adapter boxes, which is already in place, as well as any similar state standard on any digital television adapters on the flimsy basis of a federal "standard" that:

(1) Only applies to units that receive a federal subsidy,

(2) Puts no limit on energy use in active mode, when energy usage is highest, and

(3) Only limits standby energy use to that of a typical, inefficient product.

Thus the Bono amendment prevents California and other states from addressing the increased electric demand and strain on their electric grid due to tens of millions of these electric devices, even though there would be no real federal standard. This sets a bad precedent for preventing a number of states from using a key energy policy tool that they are relying on to meet their energy goals.

It will save little or no electricity across the country, but will cost consumers in California tens of millions of dollars in higher electric bills. We note that New York has adopted a law requiring a standard to be developed by the Department of State in consultation with the New York State Energy Research and Development Authority for adoption no later than June 30, 2006. The effectiveness date of the New York Standards will be set at that time, but are required to be issued no less than 12 months later. Under the Bono amendment, New York would be preempted from setting any new standard.

We also note that Congress has never previously preempted a state energy efficiency standard without replacing it with a federal standard. Under the Energy Policy and Conservation Act (which Congress most recently amended in the Energy Policy Act of 2005) preemption of state standards has always been limited to circumstances in which DOE has issued a new standard—either at the specific direction of Congress or using its general standard setting authorities. The Bono amendment, in contrast, would actually preempt the states without putting any federal standard in place applicable to the energy usage of all of the set top digital adapter boxes that may be out in the marketplace—including those that aren't being subsidized by the federal government.

We are also concerned that the preemption is written so broadly that it might be used to challenge state safety, electronic inter-

ference, or other regulations as well. The Bono amendment is opposed by the Natural Resources Defense Council, the Alliance to Save Energy and the American Council for and Energy Efficient Economy—all of the major national groups that work on appliance efficiency standards.

During the Committee's markup, Representative Markey offered a substitute amendment that we supported. The Markey amendment would require that digital adapter boxes subsidized under this bill consume no more than 8 watts when turned on and no more than 2 watts when turned "off" by the consumer—standby passive mode. In addition, the amendment would require an automatic sleep feature that would power down boxes from on mode to sleep mode after 4 hours of user inactivity—changing the channel, adjusting the volume, etc. This is critical to achieving energy savings, because many consumers will otherwise not power down their boxes into the low, 2-watt standby passive state.

Adoption of the Markey amendment would have ensured that as we set up a program that provides a federal subsidy to those who are forced to buy a set top box to ensure that their analog TV will still work after the digital transition, we make sure these set top boxes are actually energy efficient. The Substitute would not have preempted either the California standards, or any prospective state standard.

An estimated 73 million analog TV sets will have need a converter box of some type. Some of these TVs may already be hooked up to a set top box already, in order to receive cable or satellite TV. But we also know that there are 21 million households in America that rely exclusively on free over the air TV. These households have average of 2 TV sets each. That means that we could very easily have 42 million set top boxes being purchased by consumers.

The use of these digital adapter boxes will increase electricity usage. Since an Act of Congress is responsible for creating this additional electricity demand, we believe that the Congress also has a responsibility to ensure that *all* subsidized digital television adapter boxes available in the marketplace meet minimum energy efficiency specifications.

Today's typical digital television adapter box will consume about 18 watts of electricity when it is turned on and 9 watts of electricity even when the user thinks that the device is turned off. As is typical with cable and satellite boxes, consumers will leave the appliance turned on even when they are not watching TV, and so a single set top box will annually consume almost 160 kilowatt-hours (kWh) or about $14 of electricity. By mandating that these devices comply with an 8 watt active/2 watt passive standard, we can reduce the annual per box energy use to 53 kWh per year and provide the user with over $45 in electricity bill relief over the life of the product. This more than compensates for the projected incremental purchase cost of the more efficient boxes—which is less than $5.

If all 73 million TVs that actually needed a digital adapter box had one that met the 8 watt/2 watt standard we would save over a five year period, up to 38 billion kilowatt hours of electricity over a 5 year period. That is the equivalent of up to fifteen 300 mega-

watt power plants—power plants that won't ever have to be built. The financial savings to consumers would be up to $3.5 billion.

The environmental savings would also be substantial. We would be avoiding an estimated 26 million tons worth of CO_2 emissions, or the equivalent to taking nearly 4 million cars off the road.

The 8 watt active/2 watt standby mode number is based on standards already in place for the State of California—which has already adopted an 8 watt active power and a 1 watt standby power standard for digital adapter boxes. Other states are currently considering adoption of the California standard. The European Union has already adopted substantially similar standards—which call for 7 watts active mode and 2 watts in standby mode. Right now there are already manufacturers who are making digital adapters who meet these specifications—the Pace DTVA and the Nokia 121T—that were previously marketed in Great Britain.

Any manufacturer who wants to meet either the California standard or the EU standard will already have to meet or exceed this level of efficiency. The question before us now, is whether Congress is going to subsidize the purchase of inefficient converter boxes—boxes that consume 18 watts in active mode and 9 watts in passive mode? Are we going to build the up to 15 new 300 megawatt power plants needed to produce the electricity needed to power these devices? Are we going to reconcile ourselves to living with the additional CO_2 and other emissions that are spewed into the air we breathe by these up to 15 new 300 megawatt power plants? Or, are we going to work smarter, not harder? We believe the Majority erred in adopting the Bono amendment and in rejecting the Markey Substitute.

EDWARD J. MARKEY.
LOIS CAPPS.
HILDA L. SOLIS.
ANNA G. ESHOO.
HENRY A. WAXMAN.

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October 31, 2005

The Honorable Jim Nussle, Chairman
Committee on the Budget
U.S. House of Representatives
309 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Nussle:

Pursuant to section 201(a) of House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2006, I hereby transmit to the Committee on the Budget these recommendations which have been approved by vote of the Committee on Financial Services on October 27, 2005. This submission is for the purpose of complying with the reconciliation directives included in the concurrent resolution on the budget and is consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

In its meeting on October 27, the Committee adopted the recommendations for reconciliation for fiscal year 2006 contained in a committee print regarding Deposit Insurance Reform and in a committee print regarding FHA Asset Disposition. Those recommendations now appear as subtitle A and subtitle B, respectively, of title IV. I am also enclosing the appropriate accompanying material, including additional and dissenting views, as requested.

Yours truly,

Michael G. Oxley
Chairman

MGO/td

Enclosures

cc: The Honorable Barney Frank

SUBTITLE A—DEPOSIT INSURANCE REFORM

PURPOSE AND SUMMARY

The language contained in the Committee Print, now subtitle A of title IV, addressing deposit insurance reform is identical to H.R. 1185, the Federal Deposit Insurance Reform Act of 2005, which overwhelmingly passed the House on May 4, 2005. As did H.R. 1185, this proposal preserves the value of insured deposits at the nation's banks, thrifts, and credit unions; advance the national priority of enhancing retirement security for all Americans; and ensure that the value, benefit and costs of deposit insurance are allocated equitably and fairly.

The subtitle merges the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF); increases the standard maximum deposit insurance limit from $100,000 to $130,000, and indexes it every 5 years for inflation; doubles the new coverage level for certain retirement accounts; and increases the coverage amount for in-State municipal deposits. Federally chartered credit unions are provided with parity in general standard maximum deposit insurance coverage, coverage for retirement accounts and municipal deposits.

The subtitle removes legal constraints on the authority of the Federal Deposit Insurance Corporation (FDIC) to charge risk-based premium assessments, so that all insured depository institutions pay for the value and benefit of deposit insurance fairly and equitably.

The legislation authorizes the FDIC to set the ratio of reserves to estimated insured deposits within a range of 1.15 to 1.40 percent, replacing the 1.25 percent "hard target" mandated by current law.

The subtitle also returns assessments in the form of refunds, credits, and dividends to insured depository institutions. Dividends are provided to qualified insured depository institutions whenever specified reserve ratios are exceeded.

Finally, the legislation mandates studies of the FDIC's administrative and managerial processes and of alternative means for administering the deposit insurance system. These studies will ensure that the deposit insurance fund and the overall deposit insurance system are managed and operated as efficiently and as effectively as possible.

BACKGROUND AND NEED FOR LEGISLATION

Federal deposit insurance was created by Congress in 1934 and significantly modified in 1989 and 1991 in response to the savings and loan and bank crises. All banks and savings associations are required to carry Federal deposit insurance.

The National Credit Union Share Insurance Fund (NCUSIF) was created in 1970. This fund insures "share" accounts at credit unions and is administered by the National Credit Union Administration (NCUA). All Federally chartered credit unions must belong to NCUSIF; membership is optional for State-chartered credit unions.

Deposit insurance makes deposits safe by assuring depositors that up to $100,000 will be available to them to cover their deposits even if their insured depository institution fails. It protects depositors from suffering a sudden and unforeseen loss of wealth. It also protects the economy from the effects of a precipitous loss of liquidity in the financial services system.

Currently, the FDIC provides deposit insurance through two funds, the BIF and the SAIF. These funds are maintained in the U.S. Treasury and both earn interest income from investment in non-marketable Treasury securities.

The Federal deposit insurance system has served the United States economy well for over 70 years—public confidence and stability in the Nation's banking system were preserved through one of the largest banking crises since the Federally insured deposit system originated. During the crisis of the 1980's and the 1990's, the FDIC and the Resolution Trust Corporation (RTC) resolved 2,362 failures of insured depository institutions involving more than $700 billion in assets, with no bank runs, no panics, no disruptions to the financial markets, and no debilitating impact on overall economic activity.

After conducting a comprehensive study of the overall deposit insurance system, the FDIC published a report in 2001 (Keeping the Promise: Recommendations for Deposit Insurance Reform, April 2001), that identified four structural deficiencies that warranted legislative consideration:

(1) Deposit insurance is provided by two insurance funds at potentially different prices;

(2) Under current law, deposit insurance cannot be priced effectively to reflect risk;

(3) Deposit insurance premiums are highest at the wrong point in the business cycle; and

(4) The value of insurance coverage does not keep pace with inflation.

Hearings before the Subcommittee on Financial Institutions and Consumer Credit during the past several Congresses yielded a broad consensus among the Bush Administration, the Federal and State banking and thrift regulators, and industry and consumer groups that the deposit insurance system could be improved and strengthened to make it more responsive to the cyclical nature of lending and deposit taking activities and the post-Gramm-Leach-Bliley Act financial and economic environment.

Merging the BIF and the SAIF eliminates potential disparities in bank and thrift risk-based premium assessments and the administrative burden of maintaining and operating two separate funds.

Current law limits the ability of the FDIC to assess premiums on depository institutions above amounts needed to achieve and maintain the existing ratio of reserves to estimated insured deposits at 1.25 percent. Currently over 90 percent of the industry does not pay for deposit insurance, and more than 1,100 institutions that were chartered within the last 8 years have never paid any premiums. Current law also limits the FDIC's ability to charge riskier institutions, new entrants, and institutions growing at excessive rates appropriate premiums based on the risks they present to the fund. The current premium restrictions require safer institu-

tions to subsidize riskier institutions unnecessarily, and new entrants and institutions that undergo significant growth are allowed to avoid paying premiums.

Further, the current system's "pro-cyclical" bias results in sharply higher premiums being assessed at "down" points in the economic cycle, when banks can least afford to pay them and the economy could most benefit from additional liquidity in the banking system.

These inequities are addressed in the Committee Print by giving the FDIC greater discretion to identify the relative risks all institutions present to the deposit insurance fund and set appropriate risk-based premiums. With this authority, the FDIC can better manage the insurance fund relative to industry and economic conditions.

The current deposit insurance system's emphasis on maintaining the 1.25 percent designated reserve ratio (DRR) and the requirement that a 23-basis point premium be assessed whenever the DRR drops and remains below this level for a year is pro-cyclical and creates the potential for volatile premium swings. This problem would also more than likely result in the industry paying high premiums when both banks and the economy could least afford it, and it could sustain and deepen an economic downturn.

The legislation gives the FDIC the discretion to set the DRR within a range of 1.15 to 1.40 percent, addressing the system's volatility and avoiding sharp premium swings. This flexibility gives the FDIC better tools with which to manage the deposit insurance fund during various economic environments.

Deposit insurance coverage levels were last adjusted in 1980. The value of basic insurance coverage has eroded over the last 25 years. If the base coverage level had kept pace with inflation since 1980, when levels were last adjusted, it would now be at well over $200,000; if it were adjusted from the $40,000 coverage level in effect in 1974, the level would be more than $140,000. The Committee believes that increasing the maximum standard deposit insurance amount to $130,000 is a modest step and indexing the new amount every 5 years appropriately restores and maintains the value of deposit insurance coverage.

The current deposit insurance system provides inadequate protection for in-State municipal deposits and certain retirement account deposits. The legislation doubles the coverage limit for insured retirement account deposits in order to enhance the retirement security of senior citizens and those planning for retirement. Coverage limits for in-State municipal deposits are also significantly expanded to ensure that more municipal deposits can be kept in local financial institutions and used to meet local credit needs.

In sum, this legislation will respond to these issues by:

- preserving the value of insured deposits at insured depository institutions;
- strengthening the nation's insured depository institutions, especially small banks, thrifts, and credit unions;
- ensuring that the Federal deposit insurance system does not harm the ability of insured depository institutions to meet the nation's credit needs at all stages of the economic cycle;

• ensuring that the Federal deposit insurance system remains strong and complements the Federal and State regulatory structure that helps to maintain the safety and soundness of the nation's banks, thrifts, and credit unions;

• advancing the national priority of enhancing retirement security for all Americans;

• ensuring that the value, benefit and costs of deposit insurance are allocated equitably and fairly; and

• modernizing the Federal deposit insurance system by merging the BIF with the SAIF and reinforcing the risk-based nature of the system.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a legislative hearing on H.R. 1185, the Federal Deposit Insurance Reform Act of 2005, on March 17, 2005, at which the Chairman of the Federal Deposit Insurance Corporation, Donald E. Powell, testified.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 27, 2005, to consider a committee print entitled "Recommendations of the Committee on Financial Services for Reconciliation for FY06: Deposit Insurance Reform".

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation. No amendments were considered. A motion by Mr. Oxley to transmit the recommendations of the Committee as contained in the committee print, and all appropriate accompanying material, to the Committee on the Budget, in order to comply with the reconciliation directives contained in House Concurrent Resolution 95 was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

This will improve the deposit insurance system while keeping it well-funded, as well as reflect more accurately the risks to the fund that are imposed by institutions. As a result, the fund will be less susceptible to problems caused by changes in the economy and will better serve depository institutions and depositors.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 28, 2005.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation recommendations of the House Committee on Financial Services.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare to the reconciliation instructions in the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp and Susanne S. Mehlman (for federal costs), and Judith Ruud (for the private-sector impact).

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

Reconciliation Recommendations of the House Committee on Financial Services

Summary: Subtitle A of the legislation would amend laws governing banks and credit unions to modify the deposit insurance system. It would restructure the insurance funds administered by the Federal Deposit Insurance Corporation (FDIC), change the terms and conditions under which banks and savings associations pay insurance premiums, and increase insurance coverage for some of the accounts insured by the FDIC and the National Credit Union Administration (NCUA).

Subtitle B would make spending for certain activities associated with the sale of multifamily properties in the Federal Housing Ad-

ministration's (FHA's) inventory of defaulted mortgages subject to appropriation for fiscal years 2006 through 2010. FHA currently spends about $60 million a year performing those activities.

CBO estimates that enacting this legislation would reduce direct spending by $470 million over the 2006–2010 period and by $2.8 billion over the 2006–2015 period. Most of the savings would result from the changes in deposit insurance in subtitle A, particularly provisions giving the FDIC more flexibility in determining the size of the Deposit Insurance Fund and setting the premiums to be paid by banks and thrifts.

The legislation contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates it would impose minimal costs, if any, on state, local, or tribal governments. Those costs would not exceed the threshold established in UMRA ($62 million in 2005 adjusted annually for inflation).

This bill contains private-sector mandates, as defined in UMRA, primarily because the deposit insurance provisions (Subtitle A) would result in certain depository institutions paying higher premiums for federal deposit insurance. Subtitle B of the bill contains no private-sector mandates. Although CBO cannot determine the aggregate cost of all of the private-sector mandates in the bill, we expect that the direct cost of those mandates would exceed the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation) in most of the first five years the mandates are in effect.

Estimated Cost to the Federal Government: The estimated budgetary impact of the legislation is shown in the following table. The savings from this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—										
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING											
Subtitle A: Deposit Insurance:											
Changes in Costs to Resolve Failed Institutions Insured by FDIC and NCUA:											
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	100	100	100	100	100	200	200	200	300	400	1,400
Changes to FDIC and NCUA Premium Collections:											
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	−200	−300	100	−200	−700	−700	−700	−700	−500	−600	−3,900
Subtitle B: Federal Housing Administration:											
Termination of Certain FHA Multifamily Authorities:											
Estimated Budget Authority	−60	−60	−60	−60	0	0	0	0	0	−270	−270
Estimated Outlays	−60	−60	−60	−60	0	0	0	0	0	−270	−270
Total Changes Under Legislation:											
Estimated Budget Authority	−60	−60	−60	−60	0	0	0	0	0	−270	−270
Estimated Outlays	−160	−260	140	−160	−600	−500	−500	−500	−200	−470	−2,770

Notes.—FDIC = Federal Deposit Insurance Corporation; FHA = Federal Housing Administration; NCUA = National Credit Union Administration.

Basis of Estimate: This estimate assumes that the legislation will be enacted before the end of calendar year 2005.

Deposit insurance

Two federal agencies are primarily responsible for the deposit insurance system. The FDIC insures the deposits in banks (financed through the Bank Insurance Fund, BIF) and thrift institutions (financed through the Savings Association Insurance Fund, SAIF). The NCUA insures the deposits in credit unions (referred to as shares) with the Share Insurance Fund. When financial institutions fail, the FDIC and NCUA use the insurance funds to reimburse the insured depositors of the failed institutions. These agencies then sell the assets of the institutions and deposit any money recovered into the insurance funds.

The legislation would increase insurance coverage from $100,000 to $130,000 for standard accounts and to twice the standard amount for retirement accounts ($260,000); coverage for municipal deposits would rise to the lesser of $2 million or the sum of the standard coverage plus 80 percent of any amounts above that level. The standard coverage limit for insured deposits would be adjusted in 2008 and every five years thereafter to account for inflation; those future adjustments would be based on the rate of inflation in preceding years, as measured by the Personal Consumption Expenditures Chain-Type Index, and would be rounded to the nearest $10,000. The legislation would merge the BIF and the SAIF to create a new Deposit Insurance Fund (DIF). Other provisions would give the FDIC more flexibility in determining the appropriate size of the insurance fund and in setting the premiums to be paid by banks and thrifts.

CBO estimates that increasing deposit insurance coverage to the levels specified in the legislation would increase the net cost of resolving failed institutions by about $1.4 billion over the next 10 years. CBO also expects that the FDIC would use its new authority to collect about $3.8 billion more in net assessments than CBO estimates would be collected under current law. Over the same period, we estimate that NCUA would increase its net assessments by about $0.1 billion under the legislation. As a result, CBO estimates that the legislation would reduce net direct spending of the FDIC and NCUA by $0.2 billion over the 2006–2010 period and by $2.5 billion over the 2006–2015 period.

Increase in the Cost of Resolving Failed Financial Institutions. By insuring some current deposits that are now uninsured, the legislation would increase the liability of the FDIC and NCUA when institutions fail, without significantly increasing the assets of those institutions. Under current law, CBO estimates that the FDIC's insured deposits will total $3.8 trillion by the end of 2006 and that its net losses on failed institutions will total about $8.4 billion over the 2006–2015 period. (We project that gross losses of $38.6 billion would be offset, in part, by recoveries of $30.2 billion from selling the assets of the failed institutions over the 10-year period.)

Under this legislation, CBO estimates that deposit insurance coverage for most accounts would total $130,000 through 2012 and increase to $150,000 in 2013; the coverage levels for retirement accounts and in-state municipal deposits would be much higher. At

those levels, CBO estimates that deposits insured by the FDIC would increase by about 8 percent by 2007, or by about $330 billion. We estimate this change in the amount of insured deposits would lead to a net increase in losses of $1.4 billion over the next 10 years, mostly for the FDIC.

Effects on Premiums Paid to the FDIC By Financial Institutions. Three provisions of the legislation would affect the total amount of premiums collected by the FDIC. The legislation would allow the reserve ratio for the DIF to range between 1.15 percent and 1.4 percent—it currently is fixed at 1.25 percent—and would give the FDIC flexibility in setting the premiums needed to achieve the desired level. (The reserve ratio is calculated by dividing the amount in the fund by the amount of insured deposits.) Second, some financial institutions would be given one-time credits that could be used to pay the FDIC premium assessments in lieu of cash. Finally, the legislation would require the FDIC to merge the BIF and the SAIF. Overall, CBO estimates that the net effect of these provisions on deposit insurance premiums would be an increase in collections of about $3.8 billion over the next 10 years. The major provisions that would affect premium assessments are described below.

Increased FDIC Discretion Over the Reserve Ratio and Premiums. For this estimate, CBO assumes that the FDIC would initially adopt a reserve ratio close to the current level of 1.25 percent, but would allow the ratio to vary around that target depending on the outlook for losses and factors that affect the insurance fund. We also expect that the FDIC would attempt to limit volatility in premiums by setting the fees at levels considered likely to achieve the desired reserve ratio over several years. CBO expects that the FDIC would choose to charge all institutions some premiums all of the time because even the strongest institutions pose some risk. (Under current law, the vast majority of institutions do not pay any premiums if reserves of the BIF or the SAIF are greater than 1.25 percent of insured deposits.) Based on information from the FDIC, CBO expects that the existing category of least risky institutions—which currently account for 98 percent of assessable deposits—would be subdivided into three groups.

Assuming an initial target reserve ratio of about 1.25 percent, CBO expects that the lowest-risk group would be assessed at a base rate of 0.01 percent and that institutions in higher-risk categories would pay higher rates. CBO also expects, however, that the FDIC would have to levy additional premiums to offset the drop in the DIF reserve ratio that would result from the higher levels of insurance coverage specified in the legislation. (CBO estimates that the increase in insured deposits would reduce the reserve ratio by about 10 basis points.) For this estimate, CBO assumes that the FDIC would opt to rebuild the reserve gradually to avoid sharp swings in premiums. Because the legislation would cap the premiums paid by the strongest institutions at 0.01 percent of their deposits, any additional premiums would have to be paid by institutions in the higher-risk categories.

Other provisions would limit the FDIC's flexibility in setting premiums if the DIF's reserves fall below or above the 1.15 percent to 1.4 percent range. For example, it would direct the FDIC to pay varying levels of dividends to insured institutions if the reserve

ratio exceeds 1.35 percent. If the reserve ratio were to fall below 1.15 percent of insured deposits, the legislation would require the FDIC to implement a restoration plan to bring the ratio back to 1.15 percent within 10 years. Such restrictions could affect the amount or timing of premiums collected by the FDIC under some conditions, but their net effect would not be significant under CBO's current projections of the growth of insured deposits and losses, adjusted for the impact that the one-time credits would have on premium income.

Under such assumptions, CBO estimates that the FDIC's premium assessments—before the use of premium credits—would total $18.1 billion over the 2006–2015 period, compared to about $9.1 billion under current law. Because of the time needed to implement these changes, CBO assumes the new premium levels would not take effect until fiscal year 2007. The amounts paid by most banks and savings associations would be reduced by the availability of one-time premium credits authorized by the legislation (see below).

Credits for Future Premiums. The legislation would require the FDIC to provide certain banks and thrifts with one-time credits against future premiums, based on the amount of their payments to the BIF or SAIF prior to 1997. The credits would equal 12 basis points (0.12 percent) of the combined assessment base of the BIF and SAIF as of December 31, 2001, or a total of $5.4 billion. CBO estimates that eligible institutions would use $5.2 billion of the credits over the 2006–2015 period.

After adjusting for such credits, CBO estimates that implementing this legislation would increase net proceeds from premiums by a total of $3.8 billion relative to CBO's baseline over the next 10 years. Under CBO's current baseline assumptions regarding deposit growth and bank failures, the premium collections net of credits would result in an average reserve ratio of about 1.20 over the 2007–2015 period.

Merging BIF and SAIF. The legislation would require the FDIC to merge the Bank Insurance Fund and the Savings Association Insurance Fund and create a new Deposit Insurance Fund. When considered together with the other reforms in the legislation, CBO expects that merging the funds would have a negligible budgetary impact.

Increase in Premiums Paid to NCUA By Financial Institutions. Credit unions are required to pay NCUA 1 percent of the net change in deposits each year. Thus, increasing the amount of insured deposits would increase the amounts collected by the NCUA. Based on information on the characteristics of credit union deposits, CBO expects that the legislation would extend insurance coverage to about $8 billion in currently uninsured deposits by 2007. Thus, CBO estimates that NCUA's net premium collections would increase by about $100 million over the 2006–2015 period, most of which would be received over the 2006–2010 period.

Amending authority for certain FHA multifamily activities

Under subtitle B of this legislation, FHA's mandatory spending authority for rehabilitation grants and below-market sales would be suspended for fiscal years 2006 through 2010. Those activities could continue only if appropriations were provided to finance them

over that period. Under current law FHA has the authority to undertake these activities for properties financed by loans insured prior to 1992, using its permanent funding authority from the General and Special Risk Insurance Fund liquidating account. CBO estimates that these provisions would reduce direct spending by $30 million in 2006 and $270 million over the 2006–2010 period.

FHA often provides rehabilitation grants to purchasers when selling multifamily properties in the agency's inventory of defaulted properties. Based on the historical amount of those grants, CBO estimates that making them subject to appropriation would reduce direct spending by about $20 million in 2006 and $50 million annually over the 2007–2010 period.

To preserve a defaulted property as affordable housing, FHA may sell that property at below-market rates. Based on information from FHA, CBO estimates that the forgone proceeds associated with these sales average about $10 million annually. Enacting this legislation would end FHA's permanent authority to sell such properties at below-market prices over the 2006–2010 period. CBO expects that the resulting increase in sales receipts would average about $10 million annually over the next five years. Under this legislation FHA could continue to sell properties at below-market prices over the next five years if funds are appropriated in advance to the agency in amounts sufficient to offset forgone sales receipts.

Estimated impact on state, local, and tribal governments: The legislation contains an intergovernmental mandate as defined in UMRA. A provision in section 4003 would preempt New York state laws that bar savings banks and savings and loan associations from accepting municipal deposits. Complying with this mandate would impose minimal costs, if any, on the state of New York, and any such costs would not exceed the threshold established in UMRA ($62 million in 2005 adjusted annually for inflation). Enacting section 4003 could benefit municipalities in New York to the extent that more depository institutions may compete for their deposits and offer more favorable terms as part of that competition.

Other provisions of the legislation contain no mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: The legislation contains private-sector mandates, as defined in UMRA, primarily because it would require certain depository institutions to pay higher premiums for federal deposit insurance. CBO estimates that the direct cost of those mandates would exceed the annual threshold in UMRA ($123 million in 2005, adjusted annually for inflation) in most of the first five years the mandates are in effect. We do not have sufficient information to provide an estimate of the aggregate cost of all the mandates in the legislation.

Banks and savings associations

Commercial banks and savings associations must have federal deposit insurance. Changes in the federal deposit insurance system that increase requirements on those institutions are therefore private-sector mandates under UMRA. Specifically, the legislation would increase federal insurance coverage for certain insured depository accounts. It would increase coverage for standard accounts

from $100,000 to $130,000, increase coverage for retirement accounts to twice the standard coverage amount (from $100,000 to $260,000), increase coverage for in-state municipal deposit accounts, and direct the FDIC to increase the standard coverage level to adjust for inflation every five years. Because premiums are based in part on the amount of insured deposits, an increase in coverage would require banks and savings associations to pay more in deposit insurance premiums.

Three additional provisions of the legislation would affect the total amount of premiums collected by the FDIC. First, it would require the FDIC to merge the BIF and the SAIF insurance funds. Second, it would provide the FDIC with greater discretion to set premiums by allowing the agency to collect premiums from all banks and savings institutions regardless of their risk category. Under current law, banks and savings associations in the lowest risk category do not have to pay any deposit insurance premiums when their deposit insurance fund (BIF or SAIF) is above a designated reserve ratio of 1.25 percent of insured deposits. Third, the legislation would direct the FDIC to grant credits to some financial institutions that could be used to pay deposit insurance premiums in lieu of cash.

CBO estimates that banks and savings associations would pay (net of credits) about $1.1 billion more in premiums over the 2007–2011 period relative to current law. The incremental cost to the industry would depend, in part, on how the FDIC would use its new discretion under the bill to set premium rates. For this estimate, CBO assumes that the FDIC would begin to collect premiums from banks and savings associations that are not required to pay premiums under current law.

Credit unions

Because the legislation also would increase the coverage of insured accounts for federally insured credit unions, those credit unions would have to contribute more to the National Credit Union Insurance Fund. CBO estimates that those additional contributions would total about $100 million over the 2007–2011 period. All federally chartered and most state-chartered credit unions are required to have federal share (deposit) insurance. According to the National Association of Federal Credit Unions, 17 states do not require their state-chartered credit unions to purchase federal share insurance. The cost of the mandate would amount to the incremental premiums paid by those institutions required to have federal insurance and thus may be less than the total additional contributions collected from all federally insured credit unions.

Employee benefit plan deposits

The bill also would prohibit banks, savings associations, and credit unions that are not well capitalized or adequately capitalized from accepting deposits for employee benefit plans. CBO does not have sufficient information to assess the cost of this mandate.

Previous CBO estimate: On October 24, 2005, CBO transmitted a cost estimate for the reconciliation recommendations of the Senate Committee on Banking, Housing, and Urban Affairs, as approved by that committee on October 18, 2005, with a subsequent

amendment provided to CBO on October 21, 2005. The estimated net costs of the deposit insurance provisions in the House and Senate Committee versions are similar despite differences in some provisions, such as the level of deposit insurance coverage and the amount of one-time credits that FDIC-insured institutions can apply against future premium payments. Net outlays over the 2006–2010 period would be about $100 million lower under the Senate Committee's legislation, primarily because that version would provide a smaller amount of one-time credits for banks and thrifts.

The House legislation would make spending for certain activities associated with the sale of multifamily properties in FHA's inventory of defaulted mortgages subject to appropriation for fiscal years 2006 through 2010. In contrast, the Senate legislation would permanently end those spending authorities and authorize the appropriation of $100 million in 2006 to finance them.

Estimate prepared by: Federal Costs: Kathleen Gramp, Susanne S. Mehlman and Judith Ruud. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Judith Ruud and Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 4001. Short Title; Table of contents

This section establishes the short title, the 'Federal Deposit Insurance Reform Act of 2005'.

Section 4002. Merging the BIF and SAIF

This section amends provisions of the Federal Deposit Insurance Act to merge the Bank Insurance Fund and the Savings Association Insurance Fund. The section transfers each fund's respective assets and liabilities into a newly created Deposit Insurance Fund (DIF).

The section gives the FDIC at least 90 days after the bill is enacted to complete the merger of the BIF and SAIF. The effective date of the merger would be the first day of the next calendar quarter after the grace period elapses. For example, assuming the bill is enacted on March 10 the FDIC would have until June 8 to complete the merger, and all transactions would become operationally effective as of July 1.

Section 4003. Increase in deposit insurance coverage

This section provides for a higher level of deposit insurance coverage and an inflation index for general depositors, individual retirement accounts, and municipalities. Further, it expands coverage to employee benefit plans. Credit unions are provided with complete parity in coverage with other insured depository institutions.

The section also eliminates the $100,000 deposit insurance limit on accounts at insured depository institutions and replaces it with a new standard maximum deposit insurance limit of $130,000.

The section further provides that, beginning April 1, 2007, the new standard maximum deposit insurance limit would be subject to a 5 year cost of living adjustment, calculated according to the Personal Consumption Expenditures Chain-Type Index (PCE) published by the Department of Commerce and rounded to the nearest $10,000. The FDIC and National Credit Union Administration (NCUA) Boards of Directors are required to publish the new standard maximum deposit insurance amount in the Federal Register and provide a corresponding report to Congress within 6 months of the new calculation. Also, the 5-year inflation-adjusted standard maximum amount would automatically increase unless a Congressional act provides otherwise. The new standard amount would take effect on January 1 of the year immediately succeeding the calendar year in which the new amount is calculated.

The section also requires institutions to provide pass through coverage for employee benefit plans. However, institutions that are not well-capitalized or adequately-capitalized may not accept employee benefit plan deposits.

The section also doubles the new standard maximum deposit insurance limit for certain retirement accounts to $260,000.

Finally, this section increases coverage for in-State municipal deposits to $2 million or the sum of the new standard coverage amount plus 80 percent of the amount of deposits in excess of the new standard, whichever is lower, and provides that no State may deny to insured depository institutions within its jurisdiction the authority to accept insured in-State municipal deposits, or prohibit the making of such deposits in such institutions by any in-State municipal depositor.

Section 4004. Setting assessments and repeal of special rules relating to minimum assessments and free deposit insurance

This section allows the FDIC Board to set assessments in such amounts as it may determine to be necessary or appropriate in order to maintain the reserve ratio at the designated reserve ratio. This provision also eliminates the existing restrictions on the FDIC's authority to levy assessments on any institution above amounts needed to achieve and maintain the existing DRR of 1.25 percent. In effect, the minimum statutory rate (23 basis point cliff rate) is eliminated.

This section establishes a rate of not more than 1 basis point (exclusive of any credit or dividend) for those insured depository institutions in the lowest-risk category under the FDIC's risk-based assessment system. This section also provides that no depository institution will be barred from the lowest-risk category solely because of size. The one basis point rate does not apply during any period in which the DIF's reserve ratio is less than 1.15 percent of aggregate insured deposits.

In testimony before the Subcommittee on Financial Institutions and Consumer Credit, FDIC Chairman Donald Powell stated that:

> Using the current system as a starting point, I believe that the FDIC should consider additional objective financial indicators, based upon the kinds of information that banks and thrifts already report, to distinguish and price for risk more accurately within the existing least-risk (1A) category. The sample 'scorecard' included in the FDIC's April 2001 report represents the right kind of approach.

(Hearing before the Subcommittee on Financial Institutions and Consumer Credit, Viewpoints of the FDIC and Select Industry Experts on Deposit Insurance Reform, Oct. 17, 2001, Serial no. 107–47, p. 5.)

This scorecard example showed the lowest-risk category, 1A+, contained approximately 42 percent of all banks. The Committee looked to these examples, and the distribution of banks (including size, charter, and governance) within each of the 1A subcategories, as a basis for this provision. This section provides a necessary balance between the expanded authority and discretion of the FDIC to charge all institutions premiums and assuring that top-rated institutions are not excessively charged.

The Committee envisions that this rate will be the starting point or base premium for the risk-based assessment schedule to be developed by the FDIC (with higher premiums associated with higher risk categories being set relative to this base rate). Nothing in this provision precludes the FDIC from providing credits or dividends should the fund be at sufficient levels to warrant such an action.

The Committee is concerned that the FDIC's development and implementation of a new risk-based assessment system not negatively impact the cost of homeownership or community credit by charging higher premiums to prudently-managed and sufficiently-capitalized institutions simply because they fund mortgages and other types of lending through advances from Federal Home Loan Banks. The Gramm-Leach-Bliley Act took great care in trying to provide adequate funding resources for community financial insti-

tutions and insured housing lenders through expanding community institutions' access to Federal Home Loan Bank advances. The Committee expects the FDIC to take into consideration the goals of the Gramm-Leach-Bliley Act with respect to Federal Home Loan Bank advances and the objectives of this Act when developing a risk-based premium system.

The section also requires insured depository institutions to maintain all records that the FDIC may require for verifying the accuracy of any assessment for 3 years or, in the case of disputed assessments, until the dispute has been resolved, and increases the fees that the FDIC can impose for late payments of premium assessments from $100 to 1 percent of assessments per day, for institutions with assessments greater than $10,000. Institutions with assessments lower than $10,000 would face a maximum penalty of $100 for each day they were delinquent in paying their premium assessments

This section also provides for a 50 percent discount in the assessment rate for deposits attributable to "lifeline" deposit accounts and repeals section 232 of the Federal Deposit Insurance Corporation Improvement Act of 1991 that required that credits for such accounts be funded from congressional appropriations.

The legislation repeals a number of provisions requiring the FDIC to set premiums on a semi-annual basis, replacing them with a provision granting the FDIC greater flexibility in the timing of those evaluations, so long as they are done at least once in a 12-month period. In granting this flexibility, the Committee intends that the FDIC should make these changes, absent extraordinary circumstances, in a manner that provides insured depository institutions with sufficient lead time to make reasonable budget preparations.

Section 4005. Replacement of fixed designated reserve ratio with reserve range

This section eliminates the current 1.25 percent "hard target" DRR and provides the FDIC Board with the discretion to set the DRR within a range of 1.15 to 1.40 percent for any given year, using the following criteria as a basis for making these determinations:

(1) present and future risk of losses to the deposit insurance fund;

(2) economic conditions; and

(3) any other factors the Board may determine to be appropriate.

The more flexible range for setting the DRR is designed to prevent sharp swings in the assessment rates for insured depository institutions. In designating the reserve ratio, the FDIC must follow notice-and-comment rulemaking procedures, and is required to publish a thorough analysis of the data and projections on which the proposed DRR is based.

Section 4006. Requirements applicable to the risk-based assessment system

This section directs the FDIC to collect information from all appropriate sources in determining risk of losses to the DIF. This pro-

vision does not authorize the FDIC to impose additional recordkeeping requirements on insured depository institutions.

The FDIC is required to consult with the appropriate Federal banking agency in assessing the risk of loss to the DIF with respect to any insured depository institution. This risk of loss evaluation may be done on an aggregate basis for institutions that are determined to be well-capitalized and well-managed.

The FDIC is also required to provide notice and opportunity for comment prior to revising or modifying the risk-based assessment system.

Section 4007. Refunds, dividends, and credits from Deposit Insurance Fund

This section provides for refunds or credits of any assessment payment that was made by an insured depository institution in excess of the amount due the FDIC.

The section specifies two circumstances under which the FDIC is required to pay dividends to insured depository institutions: (1) whenever the reserve ratio of the DIF equals or exceeds 1.35 percent of estimated insured deposits and is less than or equal to 1.4 percent of such deposits, the FDIC is required to pay dividends equal to 50 percent of the amount in excess of what is required to maintain the reserve ratio at 1.35 percent; and (2) whenever the reserve ratio of the DIF exceeds 1.4 percent of estimated insured deposits, the FDIC is required to pay dividends in the amount of the excess of what is necessary to maintain the ratio at 1.4 percent.

The requirement that when the DIF exceeds 1.35 percent and is less than or equal to 1.4 percent, the FDIC must provide a cash dividend equal to one-half the difference between the actual fund balance and the fund balance required to maintain a reserve ratio of 1.35 percent is intended to slow the fund's growth automatically as it approaches its upper limit and return dividends to institutions that could be used for lending and to provide other financial services in their communities.

The section also provides for a transitional credit of 12 basis points of the total assessment base as of December 31, 2001 (or about $5.4 billion) to eligible insured depository institutions based on their respective share or percentage of total industry insured deposits held as of December 31, 1996. Eligible insured depository institutions had to be in existence at December 31, 1996, or be a successor to such an institution, and paid a deposit insurance assessment prior to that date.

In addition to the transitional credit, this section directs the FDIC to promulgate regulations establishing an ongoing system of credits to be applied against future premium assessments. Such credits will not be awarded, however, during any period in which (1) the reserve ratio of the DIF is less than the DRR; or (2) the reserve ratio is less than 1.25 percent of estimated insured deposits. In determining the amount of any ongoing assessment credits, the FDIC is required to consider the factors for designating the reserve ratio and setting assessments outlined elsewhere in the statute.

For purposes of allocating dividends and credits, the FDIC is required to determine each insured depository institution's relative contribution to the DIF (or any predecessor deposit insurance

fund), taking into account the institution's share of the assessment base as of December 31, 1996; the total amount of deposit insurance assessments paid by the institution after December 31, 1996; that portion of assessments paid by an institution that reflects higher levels of risk assumed by the institution; and such other factors as the FDIC deems appropriate. The FDIC's calculation, declaration and payment of dividends are made subject to notice-and-comment rulemaking.

For any insured depository institution that exhibits financial, operational or compliance weaknesses ranging from moderately severe to unsatisfactory at the beginning of the assessment period, credits may not exceed the amount equal to the average assessment on all insured depository institutions.

In promulgating regulations establishing a system for dividends and credits, the FDIC is required to include provisions allowing insured depository institutions a reasonable opportunity to challenge administratively the amount of their dividends or credits.

Nothing in this section precludes the FDIC from providing credits, over and above the mandated dividend requirement, should it so choose.

The Committee intends that the FDIC, in determining the appropriate distribution of dividends or ongoing credits, weigh a number of factors in its rulemaking process. The calculation should recognize past contributions to the deposit insurance funds by incorporating the ratio determined for an institution in the calculation of the institution's one-time credit based on total assessment base at year-end 1996, as well as the actual assessments paid since that time. In establishing the dividend and credit systems, the FDIC should also take into account and make adjustments that reflect the higher risk profiles of some institutions so that they are not rewarded for riskier behavior. The FDIC is given the discretion to incorporate additional factors, through the rulemaking process, as it deems appropriate.

Initially, the Committee anticipates that the FDIC will establish a dividend account or similar mechanism for each insured depository institution. It is contemplated that when a dividend is declared, each institution would receive the same proportion of the total dividend declared as its dividend account bears to the sum of all institutions' dividend accounts for that declaration. As an example of how this might work under such a scenario, the calculation of an institution's dividend account could be based on the balance in the fund multiplied by the institution's 1996 assessment base ratio (described above). In addition, after reducing the amount of assessments paid to account for an institution's higher risk profile, and after considering other factors, the Corporation would incorporate the remainder in the calculation of the dividend account. In sum, it is the Committee's intent that the FDIC create and implement a robust system of dividends and ongoing credits based upon the various factors set forth in the bill.

Section 4008. Deposit Insurance Fund restoration plans

Whenever the reserve ratio falls or is projected to fall below the low end of the range within which the FDIC is authorized to set the DRR, the FDIC is required, within 90 days, to establish and

implement a plan for restoring the DIF to that level within ten years. While such a restoration plan is in effect, the FDIC has the authority to restrict the use of assessment credits by insured depository institutions, but is required to apply to an institution's assessment an amount that is the lesser of the institution's assessment or 3 basis points of an institution's assessment base. The FDIC must publish the details of its restoration plan in the Federal Register within 30 days of its implementation.

Section 4009. Regulations required

This section provides that the FDIC has 270 days after the date of enactment to prescribe final regulations, after notice and opportunity for public comment, establishing the DRR, implementing increases in deposit insurance coverage, implementing the dividend requirement and the one-time assessment credit, and providing for premium assessments under the amended Act.

Section 4010. Studies of FDIC structure and expenses and certain activities and further possible changes to deposit insurance system

This section provides that within one year of enactment, reports must be submitted to Congress on the following issues:

(1) The efficiency and effectiveness of the administration of the prompt corrective action (PCA) program, including the degree of effectiveness of the Federal banking agencies in identifying troubled depository institutions and the degree of accuracy of the risk assessments made by the FDIC;

(2) The appropriateness of the FDIC's organizational structure for the mission of the FDIC, to take into account the current size and complexity of the business of insured depository institutions; the extent to which the organizational structure contributes to or reduces operational inefficiencies that increase operational costs; and the effectiveness of internal controls;

(3) The feasibility of establishing a voluntary deposit insurance system for deposits in excess of the maximum amount of deposit insurance for any depositor;

(4) The feasibility of privatizing all deposit insurance at insured depository institutions and insured credit unions; and,

(5) The feasibility of using actual domestic deposits rather than estimated insured deposits in calculating the DIF's reserve ratio and the DRR.

Finally, the section directs the FDIC to conduct a study of the reserve methodology and loss accounting for insured depository institutions in a troubled condition over the period January 1, 1992 through December 31, 2004, and report its findings and conclusions to Congress within 6 months of the date of enactment. The FDIC is required to obtain comments on the design of this study from the Government Accountability Office (GAO), and to provide a draft of the final report to GAO prior to its submission to Congress.

Section 4011. Bi-annual FDIC survey and report on increasing the deposit base by encouraging use of depository institutions by the unbanked

This section requires the FDIC to conduct a bi-annual survey on efforts by insured depository institutions to bring the "unbanked" into the conventional finance system, and report its findings and conclusions to the House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs, together with any recommendations for legislative or administrative action.

Section 4012. Technical and Conforming Amendments to the Federal Deposit Insurance Act relating to the merger of the BIF and SAIF

This section makes numerous amendments to ensure the technical conformity of the Federal Deposit Insurance Reform Act to various provisions in the Federal Deposit Insurance Act and other banking laws, to include the authority of the DIF to borrow from insured depository institutions and the Federal Home Loan Banks.

In particular, this section repeals section 5(d)(2) of the Federal Deposit Insurance Act, dealing with exit fees collected from institutions leaving the Savings Association Insurance Fund (SAIF). The Committee intends that those funds be returned to the DIF upon the repeal of this provision.

Section 4013. Other Technical and Conforming Amendments relating to the merger of the BIF and SAIF

This section ensures the technical conformity of the Federal Deposit Insurance Reform Act to various provisions in the Federal Deposit Insurance Act and other banking laws. Most notably, amendments conform the Federal Deposit Insurance Reform Act to the Balanced Budget and Emergency Control Act of 1985.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 2704 OF THE DEPOSIT INSURANCE FUNDS ACT OF 1996

[SEC. 2704. MERGER OF BIF AND SAIF.

[(a) IN GENERAL.—

[(1) MERGER.—The Bank Insurance Fund and the Savings Association Insurance Fund shall be merged into the Deposit Insurance Fund established by section 11(a)(4) of the Federal Deposit Insurance Act, as amended by this section.

[(2) DISPOSITION OF ASSETS AND LIABILITIES.—All assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund shall be transferred to the Deposit Insurance Fund.

[(3) NO SEPARATE EXISTENCE.—The separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund shall cease.

[(c) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on January 1, 1999, if no insured depository institution is a savings association on that date.

[(d) TECHNICAL AND CONFORMING AMENDMENTS.—

[(1) DEPOSIT INSURANCE FUND.—Section 11(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)) is amended—

[(A) by redesignating subparagraph (B) as subparagraph (C);

[(B) by striking subparagraph (A) and inserting the following:

["(A) ESTABLISHMENT.—There is established the Deposit Insurance Fund, which the Corporation shall—

["(i) maintain and administer;

["(ii) use to carry out its insurance purposes in the manner provided by this subsection; and

["(iii) invest in accordance with section 13(a).

["(B) USES.—The Deposit Insurance Fund shall be available to the Corporation for use with respect to Deposit Insurance Fund members."; and

[(C) by striking "(4) GENERAL PROVISIONS RELATING TO FUNDS.—" and inserting the following:

["(4) ESTABLISHMENT OF THE DEPOSIT INSURANCE FUND.—".

[(2) OTHER REFERENCES.—Section 11(a)(4)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(C), as redesignated by paragraph (1) of this subsection) is amended by striking "Bank Insurance Fund and the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund".

[(3) DEPOSITS INTO FUND.—Section 11(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)) is amended by adding at the end the following new subparagraph:

["(D) DEPOSITS.—All amounts assessed against insured depository institutions by the Corporation shall be deposited in the Deposit Insurance Fund.".

[(5) FEDERAL HOME LOAN BANK ACT.—Section 21B(f)(2)(C)(ii) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)(ii)) is amended—

[(A) in subclause (I), by striking "to Savings Associations Insurance Fund members" and inserting "to insured depository institutions, and their successors, which were Savings Association Insurance Fund members on September 1, 1995"; and

[(B) in subclause (II), by striking "to Savings Associations Insurance Fund members" and inserting "to insured depository institutions, and their successors, which were Savings Association Insurance Fund members on September 1, 1995".

[(6) REPEALS.—

[(A) SECTION 3.—Section 3(y) of the Federal Deposit Insurance Act (12 U.S.C. 1813(y)) is amended to read as follows:

[“(y) DEFINITIONS RELATING TO THE DEPOSIT INSURANCE FUND.—

[“(1) DEPOSIT INSURANCE FUND.—The term ‘Deposit Insurance Fund’ means the fund established under section 11(a)(4).

[“(2) RESERVE RATIO.—The term ‘reserve ratio’ means the ratio of the net worth of the Deposit Insurance Fund to aggregate estimated insured deposits held in all insured depository institutions.

[“(3) DESIGNATED RESERVE RATIO.—The designated reserve ratio of the Deposit Insurance Fund for each year shall be—

[“(A) 1.25 percent of estimated insured deposits; or

[“(B) a higher percentage of estimated insured deposits that the Board of Directors determines to be justified for that year by circumstances raising a significant risk of substantial future losses to the fund.”

[(B) SECTION 7.—Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

[(i) by striking subsection (*l*);

[(ii) by redesignating subsections (m) and (n) as subsections (*l*) and (m), respectively;

[(iii) in subsection (b)(2), by striking subparagraphs (B) and (F), and by redesignating subparagraphs (C), (E), (G), and (H) as subparagraphs (B) through (E), respectively.

[(C) SECTION 11.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended—

[(i) by striking paragraphs (5), (6), and (7); and

[(ii) by redesignating paragraph (8) as paragraph (5).”.

[(7) SECTION 5136 OF THE REVISED STATUTES.—The paragraph designated the “Eleventh” of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended in the 5th sentence, by striking “affected deposit insurance fund” and inserting “Deposit Insurance Fund”.

[(8) INVESTMENTS PROMOTING PUBLIC WELFARE; LIMITATIONS ON AGGREGATE INVESTMENTS.—The 23d undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 338a) is amended in the 4th sentence, by striking “affected deposit insurance fund” and inserting “Deposit Insurance Fund”.

[(9) ADVANCES TO CRITICALLY UNDERCAPITALIZED DEPOSITORY INSTITUTIONS.—Section 10B(b)(3)(A)(ii) of the Federal Reserve Act (12 U.S.C. 347b(b)(3)(A)(ii)) is amended by striking “any deposit insurance fund in” and inserting “the Deposit Insurance Fund of”.

[(10) AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended—

[(A) by striking “Bank Insurance Fund” and inserting “Deposit Insurance Fund”; and

[(B) by striking “Federal Deposit Insurance Corporation, Savings Association Insurance Fund;”.

[(11) FURTHER AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended—

[(A) in section 11(k) (12 U.S.C. 1431(k))—

[(i) in the subsection heading, by striking "SAIF" and inserting "THE DEPOSIT INSURANCE FUND"; and

[(ii) by striking "Savings Association Insurance Fund" each place such term appears and inserting "Deposit Insurance Fund";

[(B) in section 21A(b)(4)(B) (12 U.S.C. 1441a(b)(4)(B)), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund";

[(C) in section 21A(b)(6)(B) (12 U.S.C. 1441a(b)(6)(B))—

[(i) in the subparagraph heading, by striking "SAIF-INSURED BANKS" and inserting "CHARTER CONVERSIONS"; and

[(ii) by striking "Savings Association Insurance Fund member" and inserting "savings association";

[(D) in section 21A(b)(10)(A)(iv)(II) (12 U.S.C. 1441a(b)(10)(A)(iv)(II)), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

[(E) in section 21B(e) (12 U.S.C. 1441b(e))—

[(i) in paragraph (5), by inserting "as of the date of funding" after "Savings Association Insurance Fund members" each place such term appears;

[(ii) by striking paragraph (7); and

[(iii) by redesignating paragraph (8) as paragraph (7); and

[(F) in section 21B(k) (12 U.S.C. 1441b(k))—

[(i) by striking paragraph (8); and

[(ii) by redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively.

[(12) AMENDMENTS TO THE HOME OWNERS' LOAN ACT.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended—

[(A) in section 5—

[(i) in subsection (c)(5)(A), by striking "that is a member of the Bank Insurance Fund";

[(ii) in subsection (c)(6), by striking "As used in this subsection—" and inserting "For purposes of this subsection, the following definitions shall apply:";

[(iii) in subsection (o)(1), by striking "that is a Bank Insurance Fund member";

[(iv) in subsection (o)(2)(A), by striking "a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member" and inserting "insured by the Deposit Insurance Fund";

[(v) in subsection (t)(5)(D)(iii)(II), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund";

[(vi) in subsection (t)(7)(C)(i)(I), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund"; and

[(vii) in subsection (v)(2)(A)(i), by striking ", the Savings Association Insurance Fund" and inserting "or the Deposit Insurance Fund"; and

[(B) in section 10—

[(i) in subsection (e)(1)(A)(iii)(VII), by adding "or" at the end;

[(ii) in subsection (e)(1)(A)(iv), by adding "and" at the end;

[(iii) in subsection (e)(1)(B), by striking "Savings Association Insurance Fund or Bank Insurance Fund" and inserting "Deposit Insurance Fund";

[(iv) in subsection (e)(2), by striking "Savings Association Insurance Fund or the Bank Insurance Fund" and inserting "Deposit Insurance Fund"; and

[(v) in subsection (m)(3), by striking subparagraph (E), and by redesignating subparagraphs (F), (G), and (H) as subparagraphs (E), (F), and (G), respectively.

[(13) AMENDMENTS TO THE NATIONAL HOUSING ACT.—The National Housing Act (12 U.S.C. 1701 et seq.) is amended—

[(A) in section 317(b)(1)(B) (12 U.S.C. 1723i(b)(1)(B)), by striking "Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations" and inserting "Deposit Insurance Fund"; and

[(B) in section 526(b)(1)(B)(ii) (12 U.S.C. 1735f–14(b)(1)(B)(ii)), by striking "Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations" and inserting "Deposit Insurance Fund".

[(14) FURTHER AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

[(A) in section 3(a)(1) (12 U.S.C. 1813(a)(1)), by striking subparagraph (B) and inserting the following:

["(B) includes any former savings association.";

[(B) in section 5(b)(5) (12 U.S.C. 1815(b)(5)), by striking "the Bank Insurance Fund or the Savings Association Insurance Fund;" and inserting "Deposit Insurance Fund,";

[(C) in section 5(d) (12 U.S.C. 1815(d)), by striking paragraphs (2) and (3);

[(D) in section 5(d)(1) (12 U.S.C. 1815(d)(1))—

[(i) in subparagraph (A), by striking "reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund" and inserting "the reserve ratio of the Deposit Insurance Fund";

[(ii) by striking subparagraph (B) and inserting the following:

["(2) FEE CREDITED TO THE DEPOSIT INSURANCE FUND.—The fee paid by the depository institution under paragraph (1) shall be credited to the Deposit Insurance Fund.";

[(iii) by striking "(1) UNINSURED INSTITUTIONS.—"; and

[(iv) by redesignating subparagraphs (A) and (C) as paragraphs (1) and (3), respectively, and moving the margins 2 ems to the left;

[(E) in section 5(e) (12 U.S.C. 1815(e))—

[(i) in paragraph (5)(A), by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

[(ii) by striking paragraph (6); and

[(iii) by redesignating paragraphs (7), (8), and (9) as paragraphs (6), (7), and (8), respectively;

[(F) in section 6(5) (12 U.S.C. 1816(5)), by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

[(G) in section 7(b) (12 U.S.C. 1817(b))—

[(i) in paragraph (1)(D), by striking "each deposit insurance fund" and inserting "the Deposit Insurance Fund";

[(ii) in clauses (i)(I) and (iv) of paragraph (2)(A), by striking "each deposit insurance fund" each place such term appears and inserting "the Deposit Insurance Fund";

[(iii) in paragraph (2)(A)(iii), by striking "a deposit insurance fund" and inserting "the Deposit Insurance Fund";

[(iv) by striking clause (iv) of paragraph (2)(A);

[(v) in paragraph (2)(C) (as redesignated by paragraph (6)(B) of this subsection)—

[(I) by striking "any deposit insurance fund" and inserting "the Deposit Insurance Fund"; and

[(II) by striking "that fund" each place such term appears and inserting "the Deposit Insurance Fund";

[(vi) in paragraph (2)(D) (as redesignated by paragraph (6)(B) of this subsection)—

[(I) in the subparagraph heading, by striking "FUNDS ACHIEVE" and inserting "FUND ACHIEVES"; and

[(II) by striking "a deposit insurance fund" and inserting "the Deposit Insurance Fund";

[(vii) in paragraph (3)—

[(I) in the paragraph heading, by striking "FUNDS" and inserting "FUND";

[(II) by striking "members of that fund" where such term appears in the portion of subparagraph (A) which precedes clause (i) of such subparagraph and inserting "insured depository institutions";

[(III) by striking "that fund" each place such term appears (other than in connection with term amended in subclause (II) of this clause) and inserting "the Deposit Insurance Fund";

[(IV) in subparagraph (A), by striking "Except as provided in paragraph (2)(F), if" and inserting "If";

[(V) in subparagraph (A), by striking "any deposit insurance fund" and inserting "the Deposit Insurance Fund"; and

[(VI) by striking subparagraphs (C) and (D) and inserting the following:

["(C) AMENDING SCHEDULE.—The Corporation may, by regulation, amend a schedule prescribed under subparagraph (B)."; and

[(viii) in paragraph (6)—

[(I) by striking "any such assessment" and inserting "any such assessment is necessary";

[(II) by striking "(A) is necessary—";

[(III) by striking subparagraph (B);

[(IV) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively, and moving the margins 2 ems to the left; and

[(V) in subparagraph (C) (as redesignated), by striking "; and" and inserting a period;

[(H) in section 11(f)(1) (12 U.S.C. 1821(f)(1)), by striking ", except that—" and all that follows through the end of the paragraph and inserting a period;

[(I) in section 11(i)(3) (12 U.S.C. 1821(i)(3))—

[(i) by striking subparagraph (B);

[(ii) by redesignating subparagraph (C) as subparagraph (B); and

[(iii) in subparagraph (B) (as redesignated), by striking "subparagraphs (A) and (B)" and inserting "subparagraph (A)";

[(J) in section 11A(a) (12 U.S.C. 1821a(a))—

[(i) in paragraph (2), by striking "LIABILITIES.—" and all that follows through "Except" and inserting "LIABILITIES.—Except";

[(ii) by striking paragraph (2)(B); and

[(iii) in paragraph (3), by striking "the Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "the Deposit Insurance Fund";

[(K) in section 11A(b) (12 U.S.C. 1821a(b)), by striking paragraph (4);

[(L) in section 11A(f) (12 U.S.C. 1821a(f)), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

[(M) in section 13 (12 U.S.C. 1823)—

[(i) in subsection (a)(1), by striking "Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "Deposit Insurance Fund, the Special Reserve of the Deposit Insurance Fund,";

[(ii) in subsection (c)(4)(E)—

[(I) in the subparagraph heading, by striking "FUNDS" and inserting "FUND"; and

[(II) in clause (i), by striking "any insurance fund" and inserting "the Deposit Insurance Fund";

[(iii) in subsection (c)(4)(G)(ii)—

[(I) by striking "appropriate insurance fund" and inserting "Deposit Insurance Fund";

[(II) by striking "the members of the insurance fund (of which such institution is a member)" and inserting "insured depository institutions";

[(III) by striking "each member's" and inserting "each insured depository institution's"; and

[(IV) by striking "the member's" each place such term appears and inserting "the institution's";

[(iv) in subsection (c), by striking paragraph (11);

[(v) in subsection (h), by striking "Bank Insurance Fund" and inserting "Deposit Insurance Fund";

[(vi) in subsection (k)(4)(B)(i), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund"; and

[(vii) in subsection (k)(5)(A), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

[(N) in section 14(a) (12 U.S.C. 1824(a)) in the 5th sentence—

[(i) by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund"; and

[(ii) by striking "each such fund" and inserting "the Deposit Insurance Fund";

[(O) in section 14(b) (12 U.S.C. 1824(b)), by striking "Bank Insurance Fund or Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

[(P) in section 14(c) (12 U.S.C. 1824(c)), by striking paragraph (3);

[(Q) in section 14(d) (12 U.S.C. 1824(d))—

[(i) by striking "BIF" each place such term appears and inserting "DIF"; and

[(ii) by striking "Bank Insurance Fund" each place such term appears and inserting "Deposit Insurance Fund";

[(R) in section 15(c)(5) (12 U.S.C. 1825(c)(5))—

[(i) by striking "the Bank Insurance Fund or Savings Association Insurance Fund, respectively" each place such term appears and inserting "the Deposit Insurance Fund"; and

[(ii) in subparagraph (B), by striking "the Bank Insurance Fund or the Savings Association Insurance Fund, respectively" and inserting "the Deposit Insurance Fund";

[(S) in section 17(a) (12 U.S.C. 1827(a))—

[(i) in the subsection heading, by striking "BIF, SAIF," and inserting "THE DEPOSIT INSURANCE FUND"; and

[(ii) in paragraph (1), by striking "the Bank Insurance Fund, the Savings Association Insurance Fund," each place such term appears and inserting "the Deposit Insurance Fund";

[(T) in section 17(d) (12 U.S.C. 1827(d)), by striking "the Bank Insurance Fund, the Savings Association Insurance Fund," each place such term appears and inserting "the Deposit Insurance Fund";

[(U) in section 18(m)(3) (12 U.S.C. 1828(m)(3))—

[(i) by striking "Savings Association Insurance Fund" each place such term appears and inserting "Deposit Insurance Fund"; and

[(ii) in subparagraph (C), by striking "or the Bank Insurance Fund";

[(V) in section 18(p) (12 U.S.C. 1828(p)), by striking "deposit insurance funds" and inserting "Deposit Insurance Fund";

[(W) in section 24 (12 U.S.C. 1831a) in subsections (a)(1) and (d)(1)(A), by striking "appropriate deposit insurance fund" each place such term appears and inserting "Deposit Insurance Fund";

[(X) in section 28 (12 U.S.C. 1831e), by striking "affected deposit insurance fund" each place such term appears and inserting "Deposit Insurance Fund";

[(Y) by striking section 31 (12 U.S.C. 1831h);

[(Z) in section 36(i)(3) (12 U.S.C. 1831m(i)(3)) by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund";

[(AA) in section 38(a) (12 U.S.C. 1831o(a)) in the subsection heading, by striking "FUNDS" and inserting "FUND";

[(BB) in section 38(k) (12 U.S.C. 1831o(k))—

[(i) in paragraph (1), by striking "a deposit insurance fund" and inserting "the Deposit Insurance Fund"; and

[(ii) in paragraph (2)(A)—

[(I) by striking "A deposit insurance fund" and inserting "The Deposit Insurance Fund"; and

[(II) by striking "the deposit insurance fund's outlays" and inserting "the outlays of the Deposit Insurance Fund"; and

[(CC) in section 38(o) (12 U.S.C. 1831o(o))—

[(i) by striking "ASSOCIATIONS.—" and all that follows through "Subsections (e)(2)" and inserting "ASSOCIATIONS.—Subsections (e)(2)";

[(ii) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively, and moving the margins 2 ems to the left; and

[(iii) in paragraph (1) (as redesignated), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and moving the margins 2 ems to the left.

[(15) AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.—The Financial Institutions Reform, Recovery, and Enforcement Act is amended—

[(A) in section 951(b)(3)(B) (12 U.S.C. 1833a(b)(3)(B)), by striking "Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "Deposit Insurance Fund"; and

[(B) in section 1112(c)(1)(B) (12 U.S.C. 3341(c)(1)(B)), by striking "Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "Deposit Insurance Fund".

[(16) AMENDMENT TO THE BANK ENTERPRISE ACT OF 1991.—Section 232(a)(1) of the Bank Enterprise Act of 1991 (12 U.S.C. 1834(a)(1)) is amended by striking "section 7(b)(2)(H)" and inserting "section 7(b)(2)(G)".

[(17) AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 2(j)(2) of the Bank Holding Company Act of

1956 (12 U.S.C. 1841(j)(2)) is amended by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund".]

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 3. As used in this Act—

(a) DEFINITIONS OF BANK AND RELATED TERMS.—

(1) BANK.—The term "bank"—

(A) * * *

[(B) includes any former savings association that—

[(i) has converted from a savings association charter; and

[(ii) is a Savings Association Insurance Fund member.]

(B) includes any former savings association.

* * * * * * *

[(y) The term "deposit insurance fund" means the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate.]

(y) DEFINITIONS RELATING TO DEPOSIT INSURANCE FUND.—

(1) DEPOSIT INSURANCE FUND.—The term "Deposit Insurance Fund" means the Deposit Insurance Fund established under section 11(a)(4).

(2) DESIGNATED RESERVE RATIO.—The term "designated reserve ratio" means the reserve ratio designated by the Board of Directors in accordance with section 7(b)(3).

(3) RESERVE RATIO.—The term "reserve ratio", when used with regard to the Deposit Insurance Fund other than in connection with a reference to the designated reserve ratio, means the ratio of the net worth of the Deposit Insurance Fund to the value of the aggregate estimated insured deposits.

* * * * * * *

SEC. 5. DEPOSIT INSURANCE.

(a) * * *

(b) Subject to the provisions of this Act and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors, may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to—

(1) * * *

* * * * * * *

(5) the risk presented to [the Bank Insurance Fund or the Savings Association Insurance Fund,] *the Deposit Insurance Fund,*

* * * * * * *

(c)(1) * * *

* * * * * * *

(4) The purpose of the surety bonds and pledges of assets required under this subsection is to provide protection to the [deposit insurance fund] *Deposit Insurance Fund* against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the implementation of its authority under this subsection, however, the Corporation shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks.

* * * * * * *

(d) INSURANCE FEES.—

[(1) UNINSURED INSTITUTIONS.—]

[(A)] *(1)* IN GENERAL.—Any institution that becomes insured by the Corporation, and any noninsured branch that becomes insured by the Corporation, shall pay the Corporation any fee which the Corporation may by regulation prescribe, after giving due consideration to the need to establish and maintain [reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund as required by section 7] *the reserve ratio of the Deposit Insurance Fund*.

[(B) FEE CREDITED TO APPROPRIATE FUND.—The fee paid by the depository institution shall be credited to the Bank Insurance Fund if the depository institution becomes a Bank Insurance Fund member, and to the Savings Association Insurance Fund if the depository institution becomes a Savings Association Insurance Fund member.]

(2) FEE CREDITED TO THE DEPOSIT INSURANCE FUND.—The fee paid by the depository institution under paragraph (1) shall be credited to the Deposit Insurance Fund.

[(C)] *(3)* EXCEPTION FOR CERTAIN DEPOSITORY INSTITUTIONS.—Any depository institution that becomes an insured depository institution by operation of section 4(a) shall not pay any fee.

[(2) CONVERSIONS.—

[(A) IN GENERAL.—

[(i) PRIOR APPROVAL REQUIRED.—No insured depository institution may participate in a conversion transaction without the prior approval of the Corporation.

[(ii) 5-YEAR MORATORIUM ON CONVERSIONS.—Except as provided in subparagraph (C), the Corporation may not approve any conversion transaction before the later of the end of the 5-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 or the date on which the Savings Association Insurance Fund first meets or exceeds the designated reserve ratio for such fund.

[(B) CONVERSION DEFINED.—For purposes of this paragraph, the term "conversion transaction" means—

[(i) the change of status of an insured depository institution from a Bank Insurance Fund member to a Savings Association Insurance Fund member or from

a Savings Association Insurance Fund member to a Bank Insurance Fund member;

[(ii) the merger or consolidation of a Bank Insurance Fund member with a Savings Association Insurance Fund member;

[(iii) the assumption of any liability by—

[(I) any Bank Insurance Fund member to pay any deposits of a Savings Association Insurance Fund member; or

[(II) any Savings Association Insurance Fund member to pay any deposits of a Bank Insurance Fund member;

[(iv) the transfer of assets of—

[(I) any Bank Insurance Fund member to any Savings Association Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits of such Bank Insurance Fund member; or

[(II) any Savings Association Insurance Fund member to any Bank Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits of such Savings Association Insurance Fund member; and

[(v) the transfer of deposits—

[(I) from a Bank Insurance Fund member to a Savings Association Insurance Fund member; or

[(II) from a Savings Association Insurance Fund member to a Bank Insurance Fund member;

in a transaction in which the deposit is received from a depositor at an insured depository institution for which a receiver has been appointed and the receiving insured depository institution is acting as agent for the Corporation in connection with the payment of such deposit to the depositor at the institution for which a receiver has been appointed.

[(C) APPROVAL DURING MORATORIUM.—The Corporation may approve a conversion transaction at any time if—

[(i) the conversion transaction affects an insubstantial portion, as determined by the Corporation, of the total deposits of each depository institution participating in the conversion transaction;

[(ii) the conversion occurs in connection with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, and the Corporation determines that the estimated financial benefits to the Savings Association Insurance Fund or Resolution Trust Corporation equal or exceed the Corporation's estimate of loss of assessment income to such insurance fund over the remaining balance of the moratorium period established by subparagraph (A), and the Resolution Trust Corporation concurs in the Corporation's determination; or

[(iii) the conversion occurs in connection with the acquisition of a Bank Insurance Fund member in de-

fault or in danger of default and the Corporation determines that the estimated financial benefits to the Bank Insurance Fund equal or exceed the Corporation's estimate of the loss of assessment income to the insurance fund over the remaining balance of the moratorium period established by subparagraph (A).

[(D) CERTAIN TRANSFERS DEEMED TO AFFECT INSUBSTANTIAL PORTION OF TOTAL DEPOSITS.—For purposes of subparagraph (C)(i), any conversion transaction shall be deemed to affect an insubstantial portion of the total deposits of an insured depository institution, to the extent the aggregate amount of the total deposits transferred in such transaction and in all conversion transactions occurring after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 does not exceed 35 percent of the lesser of—

[(i) the amount which is equal to the sum of—

[(I) the total deposits of such insured depository institution on May 1, 1989; and

[(II) the total amount of net interest credited to the depository institution's deposits during the period beginning on May 1, 1989, and ending on the date of the transfer of deposits in connection with such transaction; or

[(ii) the amount which is equal to the total deposits of such insured depository institution on the date of the transfer of deposits in connection with such transaction.

[(E) EXIT AND ENTRANCE FEES.—Each insured depository institution participating in a conversion transaction shall pay—

[(i) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a Savings Association Insurance Fund member, an exit fee (in an amount to be determined and assessed in accordance with subparagraph (F)) which—

[(I) shall be deposited in the Savings Association Insurance Fund; or

[(II) shall be paid to the Financing Corporation, if the Secretary of the Treasury determines that the Financing Corporation has exhausted all other sources of funding for interest payments on the obligations of the Financing Corporation and orders that such fees be paid to the Financing Corporation;

[(ii) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a Bank Insurance Fund member, an exit fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)) which shall be deposited in the Bank Insurance Fund; and

[(iii) an entrance fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)), except that—

[(I) in the case of a conversion transaction in which the resulting or acquiring depository institution is a Bank Insurance Fund member, the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the Bank Insurance Fund, and shall be paid to the Bank Insurance Fund; and

[(II) in the case of a conversion transaction in which the resulting or acquiring depository institution is a Savings Association Insurance Fund member, the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the Savings Association Insurance Fund, and shall be paid to the Savings Association Insurance Fund.

[(F) ASSESSMENT OF EXIT AND ENTRANCE FEES.—

[(i) DETERMINATION OF AMOUNT OF EXIT FEES.—

[(I) CONVERSIONS BEFORE JANUARY 1, 1997.—In the case of any exit fee assessed under subparagraph (E)(i) for any conversion transaction consummated before January 1, 1997, the amount of such fee shall be determined jointly by the Corporation and the Secretary of the Treasury.

[(II) ASSESSMENTS AFTER DECEMBER, 31, 1996.—In the case of any exit fee assessed under subparagraph (E)(i) for any conversion transaction consummated after December 31, 1996, the amount of such fee shall be determined by the Corporation.

[(ii) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit or entrance fee under subparagraph (E).

[(G) CHARTER CONVERSION OF SAIF MEMBERS.—This subsection shall not be construed as prohibiting any savings association which is a Savings Association Insurance Fund member from converting to a bank charter during the period described in subparagraph (A)(ii) if the resulting bank remains a Savings Association Insurance Fund member.

[(3) OPTIONAL CONVERSIONS SUBJECT TO SPECIAL RULES ON DEPOSIT INSURANCE PAYMENTS.—

[(A) CONVERSIONS ALLOWED.—Notwithstanding paragraph (2)(A), and subject to the requirements of this paragraph, any insured depository institution may participate in a transaction described in clause (ii), (iii), or (iv) of paragraph (2)(B) if the transaction is approved by the responsible agency under section 18(c)(2).

[(B) ASSESSMENTS ON DEPOSITS ATTRIBUTABLE TO FORMER DEPOSITORY INSTITUTION.—

[(i) ASSESSMENTS BY SAIF.—In the case of any acquiring, assuming, or resulting depository institution which is a Bank Insurance Fund member, that portion of the deposits of such member for any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with re-

spect to the transaction) shall be treated as deposits which are insured by the Savings Association Insurance Fund.

[(ii) ASSESSMENTS BY BIF.—In the case of any acquiring, assuming, or resulting depository institution which is a Savings Association Insurance Fund member, that portion of the deposits of such member for any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with respect to the transaction) shall be treated as deposits which are insured by the Bank Insurance Fund.

[(C) DETERMINATION OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—Except as provided in subparagraph (K), the adjusted attributable deposit amount which shall be taken into account for purposes of determining the amount of the assessment under subparagraph (B) for any semiannual period by any acquiring, assuming, or resulting depository institution in connection with a transaction under subparagraph (A) is the amount which is equal to the sum of—

[(i) the amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction);

[(ii) the total of the amounts determined under clause (iii) for semiannual periods preceding the semiannual period for which the determination is being made under this subparagraph; and

[(iii) the amount by which the sum of the amounts described in clauses (i) and (ii) would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transaction) if such increase occurred at a rate equal to the annual rate of growth of deposits of the acquiring, assuming, or resulting depository institution minus the amount of any deposits acquired through the acquisition, in whole or in part, of another insured depository institution.

[(D) DEPOSIT OF ASSESSMENT.—That portion of any assessment under section 7 which—

[(i) is determined in accordance with subparagraph (B)(i) shall be deposited in the Savings Association Insurance Fund; and

[(ii) is determined in accordance with subparagraph (B)(ii) shall be deposited in the Bank Insurance Fund.

[(E) CONDITIONS FOR APPROVAL, GENERALLY.—

[(i) INFORMATION REQUIRED.—An application to engage in any transaction under this paragraph shall contain such information relating to the factors to be considered for approval as the responsible agency may require, by regulation or by specific request, in connection with any particular application.

[(ii) NO TRANSFER OF DEPOSIT INSURANCE PERMITTED.—This paragraph shall not be construed as au-

thorizing transactions which result in the transfer of any insured depository institution's Federal deposit insurance from 1 Federal deposit insurance fund to the other Federal deposit insurance fund.

[(iii) CAPITAL REQUIREMENTS.—A transaction described in this paragraph shall not be approved under section 18(c)(2) unless the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.

[(F) CERTAIN INTERSTATE TRANSACTIONS.—A Bank Insurance Fund member which is a subsidiary of a bank holding company may not be the acquiring, assuming, or resulting depository institution in a transaction under subparagraph (A) unless the transaction would comply with the requirements of section 3(d) of the Bank Holding Company Act of 1956 if, at the time of such transaction, the Savings Association Insurance Fund member involved in such transaction was a State bank that the bank holding company was applying to acquire.

[(G) ALLOCATION OF COSTS IN EVENT OF DEFAULT.—If any acquiring, assuming, or resulting depository institution is in default or danger of default at any time before this paragraph ceases to apply, any loss incurred by the Corporation shall be allocated between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the amount of insured deposits of such acquiring, assuming, or resulting depository institution assessed by the Bank Insurance Fund and the Savings Association Insurance Fund, respectively, under subparagraph (B).

[(H) SUBSEQUENT APPROVAL OF CONVERSION TRANSACTION.—This paragraph shall cease to apply if—

[(i) after the end of the moratorium period established by paragraph (2)(A), the Corporation approves an application by any acquiring, assuming, or resulting depository institution to treat the transaction described in subparagraph (A) as a conversion transaction; and

[(ii) the acquiring, assuming, or resulting depository institution pays the amount of any exit and entrance fee assessed by the Corporation under subparagraph (E) of paragraph (2) with respect to such transaction.

[(I) ACQUIRING, ASSUMING, OR RESULTING DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term "acquiring, assuming, or resulting depository institution" means any insured depository institution which—

[(i) results from any transaction described in paragraph (2)(B)(ii) and approved under this paragraph;

[(ii) in connection with a transaction described in paragraph (2)(B)(iii) and approved under this paragraph, assumes any liability to pay deposits of another insured depository institution; or

[(iii) in connection with a transaction described in paragraph (2)(B)(iv) and approved under this paragraph, acquires assets from any insured depository institution in consideration of the assumption of liability for any deposits of such institution.

[(K) ADJUSTMENT OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—The amount determined under subparagraph (C)(i) for deposits acquired by March 31, 1995, shall be reduced by 20 percent for purposes of computing the adjusted attributable deposit amount for the payment of any assessment for any semiannual period that begins after the date of the enactment of the Deposit Insurance Funds Act of 1996 (other than the special assessment imposed under section 2702(a) of such Act), for a Bank Insurance Fund member bank that, as of June 30, 1995—

[(i) had an adjusted attributable deposit amount that was less than 50 percent of the total deposits of that member bank; or

[(ii)(I) had an adjusted attributable deposit amount equal to less than 75 percent of the total assessable deposits of that member bank;

[(II) had total assessable deposits greater than $5,000,000,000; and

[(III) was owned or controlled by a bank holding company that owned or controlled insured depository institutions having an aggregate amount of deposits insured or treated as insured by the Bank Insurance Fund greater than the aggregate amount of deposits insured or treated as insured by the Savings Association Insurance Fund.]

(e) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS.—

(1) * * *

* * * * * * *

(5) WAIVER AUTHORITY.—

(A) IN GENERAL.—The Corporation, in its discretion, may exempt any insured depository institution from the provisions of this subsection if the Corporation determines that such exemption is in the best interests of the [Bank Insurance Fund or the Savings Association Insurance Fund] *Deposit Insurance Fund*.

* * * * * * *

[(6) 5-YEAR TRANSITION RULE.—During the 5-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

[(A) no Savings Association Insurance Fund member shall have any liability to the Corporation under this subsection arising out of assistance provided by the Corporation or any loss incurred by the Corporation as a result of the default of a Bank Insurance Fund member which was acquired by such Savings Association Insurance Fund member or any affiliate of such member before the date of the enactment of such Act; and

[(B) no Bank Insurance Fund member shall have such liability with respect to assistance provided by or loss incurred by the Corporation as a result of the default of a Savings Association Insurance Fund member which was acquired by such Bank Insurance Fund member or any affiliate of such member before the date of the enactment of such Act.]

[(7)] *(6)* EXCLUSION FOR INSTITUTIONS ACQUIRED IN DEBT COLLECTIONS.—Any depository institution shall not be treated as commonly controlled, for purposes of this subsection, during the 5-year period beginning on the date of an acquisition described in subparagraph (A) or such longer period as the Corporation may determine after written application by the acquirer, if—

(A) * * *

* * * * * * *

[(8)] *(7)* EXCEPTION FOR CERTAIN FSLIC ASSISTED INSTITUTIONS.—No depository institution shall have any liability to the Corporation under this subsection as the result of the default of, or assistance provided with respect to, an insured depository institution which is an affiliate of such depository institution if—

(A) * * *

* * * * * * *

[(9)] *(8)* COMMONLY CONTROLLED DEFINED.—For purposes of this subsection, depository institutions are commonly controlled if—

(A) * * *

* * * * * * *

SEC. 6. FACTORS TO BE CONSIDERED.

The factors that are required, under section 4, to be considered in connection with, and enumerated in, any certificate issued pursuant to section 4 and that are required, under section 5, to be considered by the Board of Directors in connection with any determination by such Board pursuant to section 5 are the following:

(1) * * *

* * * * * * *

(5) The risk presented by such depository institution to the [Bank Insurance Fund or the Savings Association Insurance Fund] *Deposit Insurance Fund*.

* * * * * * *

SEC. 7. (a)(1) * * *

* * * * * * *

(3) Each insured depository institution shall make to the appropriate Federal banking agency 4 reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision. The dates selected shall be the same for all insured depository institutions, except that when

any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. [Two dates shall be selected within the semiannual period of January to June inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in July pursuant to subsection (c) of this section, and two dates shall be selected within the semiannual period of July to December inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in January pursuant to subsection (c) of this section.] *Such reports of condition shall be the basis for the certified statements to be filed pursuant to subsection (c).* The deposit liabilities shall be reported in said reports of condition in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depository institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of conditions shall be attested by the signatures of at least two directors or trustees of the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or savings associations under its jurisdiction to make additional reports of condition at any time.

* * * * * * *

(b) ASSESSMENTS.—

(1) RISK-BASED ASSESSMENT SYSTEM.—

(A) * * *

(B) PRIVATE REINSURANCE AUTHORIZED.—In carrying out this paragraph, the Corporation may—

(i) * * *

(ii) base that institution's [semiannual] assessment (in whole or in part) on the cost of the reinsurance.

(C) RISK-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term "risk-based assessment system" means a system for calculating a depository institution's [semiannual] assessment based on—

(i) the probability that the [deposit insurance fund] *Deposit Insurance Fund* will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) * * *

* * * * * * *

(iii) the revenue needs of the [deposit insurance fund] *Deposit Insurance Fund*.

(D) SEPARATE ASSESSMENT SYSTEMS.—The Board of Directors may establish separate risk-based assessment sys-

tems for large and small members of [each deposit insurance fund] *the Deposit Insurance Fund.*

(E) INFORMATION CONCERNING RISK OF LOSS AND ECONOMIC CONDITIONS.—

(i) SOURCES OF INFORMATION.—For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, such as reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from credit rating entities, and other private economic or business analysts.

(ii) CONSULTATION WITH FEDERAL BANKING AGENCIES.—

(I) IN GENERAL.—Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

(II) TREATMENT ON AGGREGATE BASIS.—In the case of insured depository institutions that are well capitalized (as defined in section 38) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

(iii) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation.

(F) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT.—In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2003, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.

(2) SETTING ASSESSMENTS.—

[(A) ACHIEVING AND MAINTAINING DESIGNATED RESERVE RATIO.—

[(i) IN GENERAL.—The Board of Directors shall set semiannual assessments for insured depository institutions when necessary, and only to the extent necessary—

[(I) to maintain the reserve ratio of each deposit insurance fund at the designated reserve ratio; or

[(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio as provided in paragraph (3).

[(ii) FACTORS TO BE CONSIDERED.—In carrying out clause (i), the Board of Directors shall consider the deposit insurance fund's—

[(I) expected operating expenses,

[(II) case resolution expenditures and income,

[(III) the effect of assessments on members' earnings and capital, and

[(IV) any other factors that the Board of Directors may deem appropriate.

[(iii) LIMITATION ON ASSESSMENT.—Except as provided in clause (v), the Board of Directors shall not set semiannual assessments with respect to a deposit insurance fund in excess of the amount needed—

[(I) to maintain the reserve ratio of the fund at the designated reserve ratio; or

[(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio.

[(iv) DESIGNATED RESERVE RATIO DEFINED.—The designated reserve ratio of each deposit insurance fund for each year shall be—

[(I) 1.25 percent of estimated insured deposits; or

[(II) a higher percentage of estimated insured deposits that the Board of Directors determines to be justified for that year by circumstances raising a significant risk of substantial future losses to the fund.

[(v) EXCEPTION TO LIMITATION ON ASSESSMENTS.—The Board of Directors may set semiannual assessments in excess of the amount permitted under clauses (i) and (iii) with respect to insured depository institutions that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or are not well capitalized, as that term is defined in section 38.

[(B) INDEPENDENT TREATMENT OF FUNDS.—The Board of Directors shall—

[(i) set semiannual assessments for members of each deposit insurance fund independently from semiannual assessments for members of any other deposit insurance fund; and

[(ii) set the designated reserve ratio of each deposit insurance fund independently from the designated reserve ratio of any other deposit insurance fund.]

(A) IN GENERAL.—The Board of Directors shall set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph (D).

(B) FACTORS TO BE CONSIDERED.—In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) the risk factors and other factors taken into account pursuant to paragraph (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

(v) Any other factors the Board of Directors may determine to be appropriate.

(C) NOTICE OF ASSESSMENTS.—The Corporation shall notify each insured depository institution of that institution's [semiannual] assessment.

(D) BASE RATE FOR ASSESSMENTS.—

(i) IN GENERAL.—In setting assessment rates pursuant to subparagraph (A), the Board of Directors shall establish a base rate of not more than 1 basis point (exclusive of any credit or dividend) for those insured depository institutions in the lowest-risk category under the risk-based assessment system established pursuant to paragraph (1). No insured depository institution shall be barred from the lowest-risk category solely because of size.

(ii) SUSPENSION.—Clause (i) shall not apply during any period in which the reserve ratio of the Deposit Insurance Fund is less than the amount which is equal to 1.15 percent of the aggregate estimated insured deposits.

[(E) MINIMUM ASSESSMENTS.—The Corporation shall design the risk-based assessment system for any deposit insurance fund so that, if the Corporation has borrowings outstanding under section 14 on behalf of that fund or the reserve ratio of that fund remains below the designated reserve ratio, the total amount raised by semiannual assessments on members of that fund shall be not less than the total amount that would have been raised if—

[(i) section 7(b) as in effect on July 15, 1991 remained in effect;

[(ii) the assessment rate in effect on July 15, 1991 remained in effect; and

[(iii) notwithstanding any other provision of this subsection, during the period beginning on the date of enactment of the Deposit Insurance Funds Act of 1996, and ending on December 31, 1998, the assessment rate for a Savings Association Insurance Fund member may not be less than the assessment rate for a Bank Insurance Fund member that poses a comparable risk to the deposit insurance fund.

[(F) TRANSITION RULE FOR SAVINGS ASSOCIATION INSURANCE FUND.—With respect to the Savings Association Insurance Fund, during the period beginning on the effective date of the amendments made by section 302(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 and ending on December 31, 1997—

[(i) subparagraph (A)(i)(II) shall apply as if such subparagraph did not include "as provided in paragraph (3)"; and

[(ii) subparagraph (E) shall be applied by substituting "if section 7(b) as in effect on July 15, 1991 remained in effect." for "if—" and all that follows through clause (ii).

[(G) SPECIAL RULE UNTIL THE INSURANCE FUNDS ACHIEVE THE DESIGNATED RESERVE RATIO.—Until a deposit insurance fund achieves the designated reserve ratio, the Corporation may limit the maximum assessment on insured depository institutions under the risk-based assessment system authorized under paragraph (1) to not less than 10 basis points above the average assessment on insured depository institutions under that system.]

[(H)] *(E)* BANK ENTERPRISE ACT REQUIREMENT.—The Corporation shall design the risk-based assessment system so that, insofar as the system bases assessments, directly or indirectly, on deposits, the portion of the deposits of any insured depository institution which are attributable to lifeline accounts established in accordance with the Bank Enterprise Act of 1991 shall be subject to assessment [at a rate determined in accordance with such Act] *at ½ the assessment rate otherwise applicable for such insured depository institution*.

[(3) SPECIAL RULE FOR RECAPITALIZING UNDERCAPITALIZED FUNDS.—

[(A) IN GENERAL.—Except as provided in paragraph (2)(F), if the reserve ratio of any deposit insurance fund is less than the designated reserve ratio under paragraph (2)(A)(iv), the Board of Directors shall set semiannual assessment rates for members of that fund—

[(i) that are sufficient to increase the reserve ratio for that fund to the designated reserve ratio not later than 1 year after such rates are set; or

[(ii) in accordance with a schedule promulgated by the Corporation under subparagraph (B).

[(B) RECAPITALIZATION SCHEDULES.—For purposes of subparagraph (A)(ii), the Corporation shall by regulation promulgate a schedule that specifies, at semiannual inter-

vals, target reserve ratios for that fund, culminating in a reserve ratio that is equal to the designated reserve ratio not later than 15 years after the date on which the schedule is implemented.

[(C) AMENDING SCHEDULE.—The Corporation may, by regulation, amend a schedule promulgated under subparagraph (B) and such amendment may extend the date specified in subparagraph (B) to such later date as the Corporation determines will, over time, maximize the amount of semiannual assessments received by the Savings Association Insurance Fund, net of insurance losses incurred by the Fund.

[(D) APPLICATION TO SAIF MEMBERS.—This paragraph shall become applicable to Savings Association Insurance Fund members on January 1, 1998.

[(4) SEMIANNUAL PERIOD DEFINED.—For purposes of this section, the term "semiannual period" means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.

[(5) RECORDS TO BE MAINTAINED.—Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of the institution's semiannual assessments. No insured depository institution shall be required to retain those records for that purpose for a period of more than 5 years from the date of the filing of any certified statement, except that when there is a dispute between the insured depository institution and the Corporation over the amount of any assessment, the depository institution shall retain the records until final determination of the issue.]

(3) DESIGNATED RESERVE RATIO.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—The Board of Directors shall designate, by regulation after notice and opportunity for comment, the reserve ratio applicable with respect to the Deposit Insurance Fund.

(ii) NOT LESS THAN ANNUAL REDETERMINATION.—A determination under clause (i) shall be made by the Board of Directors at least before the beginning of each calendar year, for such calendar year, and at such other times as the Board of Directors may determine to be appropriate.

(B) RANGE.—The reserve ratio designated by the Board of Directors for any year—

(i) may not exceed 1.4 percent of estimated insured deposits; and

(ii) may not be less than 1.15 percent of estimated insured deposits.

(C) FACTORS.—In designating a reserve ratio for any year, the Board of Directors shall—

(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

(D) PUBLICATION OF PROPOSED CHANGE IN RATIO.—In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published proposal a thorough analysis of the data and projections on which the proposal is based.

(E) DIF RESTORATION PLANS.—

(i) IN GENERAL.—Whenever—

(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made,

the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

(ii) REQUIREMENTS OF RESTORATION PLAN.—A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 10-year period beginning upon the implementation of the plan.

(iii) RESTRICTION ON ASSESSMENT CREDITS.—As part of any restoration plan under this subparagraph, the Corporation may elect to restrict the application of assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

(iv) LIMITATION ON RESTRICTION.—Notwithstanding clause (iii), while any restoration plan under this subparagraph is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed

on the institution for any assessment period in an amount equal to the lesser of—

(I) the amount of the assessment; or

(II) the amount equal to 3 basis points of the institution's assessment base.

(v) TRANSPARENCY.—Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(4) DEPOSITORY INSTITUTION REQUIRED TO MAINTAIN ASSESSMENT-RELATED RECORDS.—Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of—

(A) the end of the 3-year period beginning on the due date of the assessment; or

(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.

[(6)**]** *(5)* EMERGENCY SPECIAL ASSESSMENTS.—In addition to the other assessments imposed on insured depository institutions under this subsection, the Corporation may impose 1 or more special assessments on insured depository institutions in an amount determined by the Corporation if the amount of **[**any such assessment**]** *any such assessment is necessary—*

[(A) is necessary—**]**

[(i)**]** *(A)* to provide sufficient assessment income to repay amounts borrowed from the Secretary of the Treasury under section 14(a) in accordance with the repayment schedule in effect under section 14(c) during the period with respect to which such assessment is imposed;

[(ii)**]** *(B)* to provide sufficient assessment income to repay obligations issued to and other amounts borrowed from **[**Bank Insurance Fund members**]** *insured depository institutions* under section 14(d); or

[(iii)**]** *(C)* for any other purpose *that* the Corporation may deem necessary**[**; and**]**.

[(B) is allocated between Bank Insurance Fund members and Savings Association Insurance Fund members in amounts which reflect the degree to which the proceeds of the amounts borrowed are to be used for the benefit of the respective insurance funds.**]**

[(7)**]** *(6)* COMMUNITY ENTERPRISE CREDITS.—The Corporation shall allow a credit against any semiannual assessment to any insured depository institution which satisfies the requirements of the Community Enterprise Assessment Credit Board under section 233(a)(1) of the Bank Enterprise Act of 1991 in the amount determined by such Board by regulation.

(c) CERTIFIED STATEMENTS; PAYMENTS.—

(1) CERTIFIED STATEMENTS REQUIRED.—

(A) IN GENERAL.—Each insured depository institution shall file with the Corporation a certified statement containing such information as the Corporation may require for determining the institution's [semiannual] assessment.

* * * * * * *

(2) PAYMENTS REQUIRED.—

(A) IN GENERAL.—Each insured depository institution shall pay to the Corporation the [semiannual] assessment imposed under subsection (b).

* * * * * * *

(3) NEWLY INSURED INSTITUTIONS.—To facilitate the administration of this section, the Board of Directors may waive the requirements of paragraphs (1) and (2) for the [semiannual period] *initial assessment period* in which a depository institution becomes insured.

* * * * * * *

[(e) REFUNDS.—

[(1) OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

[(A) refund the amount of the excess payment to the insured depository institution; or

[(B) credit such excess amount toward the payment of subsequent semiannual assessments until such credit is exhausted.

[(2) BALANCE IN INSURANCE FUND IN EXCESS OF DESIGNATED RESERVE.—

[(A) IN GENERAL.—Subject to subparagraphs (B) and (C), if, as of the end of any semiannual assessment period beginning after the date of the enactment of the Deposit Insurance Funds Act of 1996, the amount of the actual reserves in—

[(i) the Bank Insurance Fund (until the merger of such fund into the Deposit Insurance Fund pursuant to section 2704 of the Deposit Insurance Funds Act of 1996); or

[(ii) the Deposit Insurance Fund (after the establishment of such fund),

exceeds the balance required to meet the designated reserve ratio applicable with respect to such fund, such excess amount shall be refunded to insured depository institutions by the Corporation on such basis as the Board of Directors determines to be appropriate, taking into account the factors considered under the risk-based assessment system.

[(B) REFUND NOT TO EXCEED PREVIOUS SEMIANNUAL ASSESSMENT.—The amount of any refund under this paragraph to any member of a deposit insurance fund for any semiannual assessment period may not exceed the total amount of assessments paid by such member to the insurance fund with respect to such period.

[(C) REFUND LIMITATION FOR CERTAIN INSTITUTIONS.—No refund may be made under this paragraph with respect to the amount of any assessment paid for any semiannual assessment period by any insured depository institution described in clause (v) of subsection (b)(2)(A).]

(e) REFUNDS, DIVIDENDS, AND CREDITS.—

(1) REFUNDS OF OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

(A) refund the amount of the excess payment to the insured depository institution; or

(B) credit such excess amount toward the payment of subsequent assessments until such credit is exhausted.

(2) DIVIDENDS FROM EXCESS AMOUNTS IN DEPOSIT INSURANCE FUND.—

(A) RESERVE RATIO IN EXCESS OF 1.4 PERCENT OF ESTIMATED INSURED DEPOSITS.—Whenever the reserve ratio of the Deposit Insurance Fund exceeds 1.4 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.4 percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

(B) RESERVE RATIO EQUAL TO OR IN EXCESS OF 1.35 PERCENT OF ESTIMATED INSURED DEPOSITS AND NOT MORE THAN 1.4 PERCENT.—Whenever the reserve ratio of the Deposit Insurance Fund equals or exceeds 1.35 percent of estimated insured deposits and is not more than 1.4 percent of such deposits, the Corporation shall declare the amount in the Fund that is equal to 50 percent of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent of the estimated insured deposits as dividends to be paid to insured depository institutions.

(C) BASIS FOR DISTRIBUTION OF DIVIDENDS.—

(i) IN GENERAL.—Solely for the purposes of dividend distribution under this paragraph and credit distribution under paragraph (3)(B), the Corporation shall determine each insured depository institution's relative contribution to the Deposit Insurance Fund (or any predecessor deposit insurance fund) for calculating such institution's share of any dividend or credit declared under this paragraph or paragraph (3)(B), taking into account the factors described in clause (ii).

(ii) FACTORS FOR DISTRIBUTION.—In implementing this paragraph and paragraph (3)(B) in accordance with regulations, the Corporation shall take into account the following factors:

(I) The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date.

(II) The total amount of assessments paid on or after January 1, 1997, by an insured depository in-

stitution (including any predecessor) to the Deposit Insurance Fund (and any predecessor deposit insurance fund).

(III) That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by such institution.

(IV) Such other factors as the Corporation may determine to be appropriate.

(D) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe by regulation, after notice and opportunity for comment, the method for the calculation, declaration, and payment of dividends under this paragraph.

(3) CREDIT POOL.—

(A) ONE-TIME CREDIT BASED ON TOTAL ASSESSMENT BASE AT YEAR-END 1996.—

(i) IN GENERAL.—Before the end of the 270-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2003, the Board of Directors shall, by regulation, provide for a credit to each eligible insured depository institution, based on the assessment base of the institution (including any predecessor institution) on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

(ii) CREDIT LIMIT.—The aggregate amount of credits available under clause (i) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 12 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

(iii) ELIGIBLE INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term "eligible insured depository institution" means any insured depository institution that—

(I) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or

(II) is a successor to any insured depository institution described in subclause (II).

(iv) APPLICATION OF CREDITS.—

(I) IN GENERAL.—The amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(e), to the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under clause (i).

(II) REGULATIONS.—The regulations prescribed under clause (i) shall establish the qualifications and procedures governing the application of assessment credits pursuant to subclause (I).

(v) LIMITATION ON AMOUNT OF CREDIT FOR CERTAIN DEPOSITORY INSTITUTIONS.—In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 38) at the beginning of an assessment period, the amount of any credit allowed under this paragraph against the assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

(vi) PREDECESSOR DEFINED.—For purposes of this paragraph, the term "predecessor", when used with respect to any insured depository institution, includes any other insured depository institution acquired by or merged with such insured depository institution.

(B) ON-GOING CREDIT POOL.—

(i) IN GENERAL.—In addition to the credit provided pursuant to subparagraph (A) and subject to the limitation contained in clause (v) of such subparagraph, the Corporation shall, by regulation, establish an ongoing system of credits to be applied against future assessments under subsection (b)(1) on the same basis as the dividends provided under paragraph (2)(C).

(ii) LIMITATION ON CREDITS UNDER CERTAIN CIRCUMSTANCES.—No credits may be awarded by the Corporation under this subparagraph during any period in which—

(I) the reserve ratio of the Deposit Insurance Fund is less than the designated reserve ratio of such Fund; or

(II) the reserve ratio of the Fund is less than 1.25 percent of the amount of estimated insured deposits.

(iii) CRITERIA FOR DETERMINATION.—In determining the amounts of any assessment credits under this subparagraph, the Board of Directors shall take into account the factors for designating the reserve ratio under subsection (b)(3) and the factors for setting assessments under subsection (b)(2)(B).

(4) ADMINISTRATIVE REVIEW.—

(A) IN GENERAL.—The regulations prescribed under paragraph (2)(D) and subparagraphs (A) and (B) of paragraph (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

(B) ADMINISTRATIVE REVIEW.—Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.

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(i) INSURANCE OF TRUST FUNDS.—

(1) IN GENERAL.—Trust funds held on deposit by an insured depository institution in a fiduciary capacity as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed [$100,000] *the standard maximum deposit insurance amount (as determined under section 11(a)(1))* for each trust estate.

* * * * * * *

(3) BANK DEPOSIT FINANCIAL ASSISTANCE PROGRAM.—Notwithstanding paragraph (1), funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy shall be separately insured in an amount not to exceed [$100,000] *the standard maximum deposit insurance amount (as determined under section 11(a)(1))* for each insured depository institution depositing such funds.

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(j)(1) * * *

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(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) * * *

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(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the [Bank Insurance Fund or the Savings Association Insurance Fund] *Deposit Insurance Fund*.

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SEC. 8. (a) * * *

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(p) Notwithstanding any other provision of law, whenever the Board of Directors shall determine that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds as herein defined, the Corporation shall notify the depository institution that its insured status will terminate at the expiration of the first full [semiannual] assessment period following such notice. A finding by the Board of Directors that a depository institution is not engaged in the business of receiving deposits, other than such trust funds, shall be conclusive. The Board of Directors shall prescribe the notice to be given by the depository institution of such termination and the Corporation may publish notice thereof. Upon the termination of the insured status of any such depository institution, its deposits shall thereupon cease to be insured and the depository institution shall thereafter be relieved

of all future obligations to the Corporation, including the obligation to pay future assessments.

(q) Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. Where the deposits of an insured depository institution are assumed by a newly insured depository institution, the depository institution whose deposits are assumed shall not be required to pay any assessment with respect to the deposits which have been so assumed after the [semiannual period] *assessment period* in which the assumption takes effect.

* * * * * * *

(t) AUTHORITY OF FDIC TO TAKE ENFORCEMENT ACTION AGAINST INSURED DEPOSITORY INSTITUTIONS AND INSTITUTION-AFFILIATED PARTIES.—

(1) * * *

(2) FDIC'S AUTHORITY TO ACT IF APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—If the appropriate Federal banking agency does not, before the end of the 60-day period beginning on the date on which the agency receives the recommendation under paragraph (1), take the enforcement action recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the Corporation's concerns, the Corporation may take the recommended enforcement action if the Board of Directors determines, upon a vote of its members, that—

(A) * * *

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(C) the conduct or threatened conduct (including any acts or omissions) poses a risk to the [deposit insurance fund] *Deposit Insurance Fund*, or may prejudice the interests of the institution's depositors.

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SEC. 11. (a) DEPOSIT INSURANCE.—

(1) INSURED AMOUNTS PAYABLE.—

(A) * * *

[(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount due to any depositor at an insured depository institution shall not exceed $100,000 as determined in accordance with subparagraphs (C) and (D).]

(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance

amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).

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[(D) COVERAGE ON PRO RATA OR "PASS-THROUGH" BASIS.—

[(i) IN GENERAL.—Except as provided in clause (ii), for the purpose of determining the amount of insurance due under subparagraph (B), the Corporation shall provide deposit insurance coverage with respect to deposits accepted by any insured depository institution on a pro rata or "pass-through" basis to a participant in or beneficiary of an employee benefit plan (as defined in section 11(a)(8)(B)(ii)), including any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

[(ii) EXCEPTION.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, the Corporation shall not provide insurance coverage on a pro rata or "pass-through" basis pursuant to clause (i) with respect to deposits accepted by any insured depository institution which, at the time such deposits are accepted, may not accept brokered deposits under section 29.

[(iii) COVERAGE UNDER CERTAIN CIRCUMSTANCES.—Clause (ii) shall not apply with respect to any deposit accepted by an insured depository institution described in such clause if, at the time the deposit is accepted—

[(I) the institution meets each applicable capital standard; and

[(II) the depositor receives a written statement from the institution that such deposits at such institution are eligible for insurance coverage on a pro rata or "pass-through" basis.]

(D) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—

(i) PASS-THROUGH INSURANCE.—The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

(ii) PROHIBITION ON ACCEPTANCE OF BENEFIT PLAN DEPOSITS.—An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(iii) DEFINITIONS.—For purposes of this subparagraph, the following definitions shall apply:

(I) CAPITAL STANDARDS.—The terms "well capitalized" and "adequately capitalized" have the same meanings as in section 38.

(II) EMPLOYEE BENEFIT PLAN.—The term "employee benefit plan" has the same meaning as in paragraph (8)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

(III) PASS-THROUGH DEPOSIT INSURANCE.—The term "pass-through deposit insurance" means, with respect to an employee benefit plan, deposit insurance coverage provided on a pro rata basis to the participants in the plan, in accordance with the interest of each participant.

(E) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.—For purposes of this Act, the term "standard maximum deposit insurance amount" means—

(i) until the effective date of final regulations prescribed pursuant to section 9(a)(2) of the Federal Deposit Insurance Reform Act of 2003, $100,000; and

(ii) on and after such effective date, $130,000, adjusted as provided under subparagraph (F).

(F) INFLATION ADJUSTMENT.—

(i) IN GENERAL.—By April 1 of 2005, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 207(k) of the Federal Credit Union Act) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

(I) $130,000; and

(II) the ratio of the value of the Personal Consumption Expenditures Chain-Type Index (or any successor index thereto), published by the Department of Commerce, as of December 31 of the year preceding the year in which the adjustment is calculated under this clause, to the value of such index as of the date this subparagraph takes effect.

(ii) ROUNDING.—If the amount determined under clause (ii) for any period is not a multiple of $10,000, the amount so determined shall be rounded to the nearest $10,000.

(iii) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 207(k)(3) of the Federal Credit Union Act, as so calculated; and

(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

(iv) 6-MONTH IMPLEMENTATION PERIOD.—Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

[(2)(A) Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, in the case of a depositor who is—**]**

(2) MUNICIPAL DEPOSITORS.—

(A) IN GENERAL.—Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available to any 1 depositor—

(i) a municipal depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed to be a depositor separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in subparagraph (E); and

(ii) except as provided in subparagraph (B), the deposits of a municipal depositor shall be insured in an amount equal to the standard maximum deposit insurance amount (as determined under paragraph (1)).

(B) IN-STATE MUNICIPAL DEPOSITORS.—In the case of the deposits of an in-State municipal depositor described in clause (ii), (iii), (iv), or (v) of subparagraph (E) at an insured depository institution, such deposits shall be insured in an amount not to exceed the lesser of—

(i) $2,000,000; or

(ii) the sum of the standard maximum deposit insurance amount and 80 percent of the amount of any deposits in excess of the standard maximum deposit insurance amount.

(C) MUNICIPAL DEPOSIT PARITY.—No State may deny to insured depository institutions within its jurisdiction the authority to accept deposits insured under this paragraph, or prohibit the making of such deposits in such institutions by any in-State municipal depositor.

(D) IN-STATE MUNICIPAL DEPOSITOR DEFINED.—For purposes of this paragraph, the term "in-State municipal depositor" means a municipal depositor that is located in the same State as the office or branch of the insured depository institution at which the deposits of that depositor are held.

(E) MUNICIPAL DEPOSITOR.—In this paragraph, the term "municipal depositor" means a depositor that is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or polit-

ical subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Virgin Islands, of American Samoa, of the Trust Territory of the Pacific Islands, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution**[**;**]**.

[such depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in clause (ii), (iii), (iv), or (v) and the deposit of any such depositor shall be insured in an amount not to exceed $100,000 per account in an amount not to exceed $100,000 per account.**]**

[(B) The**]**

(F) AUTHORITY TO LIMIT DEPOSITS.—The Corporation may limit the aggregate amount of funds that may be invested or deposited in deposits in any insured depository institution by any **[**depositor referred to in subparagraph (A) of this paragraph**]** *municipal depositor* on the basis of the size of any such bank in terms of its assets: *Provided, however,* such limitation may be exceeded by the pledging of acceptable securities to the **[**depositor referred to in subparagraph (A) of this paragraph**]** *municipal depositor* when and where required.

(3) CERTAIN RETIREMENT ACCOUNTS.—

(A) IN GENERAL.—Notwithstanding any limitation in this Act relating to the amount of deposit insurance available for the account of any 1 depositor, deposits in an insured depository institution made in connection with—

(i) * * *

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shall be aggregated and insured in an amount not to exceed **[**$100,000**]** *2 times the standard maximum deposit in-*

surance amount (as determined under paragraph (1)) per participant per insured depository institution.

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[(4) GENERAL PROVISIONS RELATING TO FUNDS.—

[(A) MAINTENANCE AND USE OF FUNDS.—The Bank Insurance Fund established under paragraph (5) and the Savings Association Insurance Fund established under paragraph (6) shall each be—

[(i) maintained and administered by the Corporation;

[(ii) maintained separately and not commingled; and

[(iii) used by the Corporation to carry out its insurance purposes in the manner provided in this subsection.

[(B) LIMITATION ON USE.—Notwithstanding any provision of law other than section 13(c)(4)(G), the Bank Insurance Fund and the Savings Association Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of—

[(i) any insured depository institution for which the Corporation or the Resolution Trust Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation or the Resolution Trust Corporation;

[(ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation or the Resolution Trust Corporation; or

[(iii) any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B)) another insured depository institution.

[(5) BANK INSURANCE FUND.—

[(A) ESTABLISHMENT.—There is established a fund to be known as the Bank Insurance Fund.

[(B) TRANSFER TO FUND.—On the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Permanent Insurance Fund shall be dissolved and all assets and liabilities of the Permanent Insurance Fund shall be transferred to the Bank Insurance Fund.

[(C) USES.—The Bank Insurance Fund shall be available to the Corporation for use with respect to Bank Insurance Fund members.

[(D) DEPOSITS.—All amounts assessed against Bank Insurance Fund members by the Corporation shall be deposited into the Bank Insurance Fund.

[(6) SAVINGS ASSOCIATION INSURANCE FUND.—

[(A) ESTABLISHMENT.—There is established a fund to be known as the Savings Association Insurance Fund.

[(B) USES.—The Savings Association Insurance Fund shall be available to the Corporation for use with respect to Savings Association Insurance Fund members.

[(C) DEPOSITS.—All amounts assessed against Savings Association Insurance Fund members which are not required for the Financing Corporation, the Resolution Funding Corporation, or the FSLIC Resolution Fund shall be deposited in the Savings Association Insurance Fund.

[(D) TREASURY PAYMENTS TO FUND.—To the extent of the availability of amounts provided in appropriation Acts and subject to subparagraphs (E) and (G), the Secretary of the Treasury shall pay to the Savings Association Insurance Fund such amounts as may be needed to pay losses incurred by the Fund in fiscal years 1994 through 1998.

[(E) CERTIFICATION CONDITIONS ON AVAILABILITY OF FUNDING.—No amount appropriated for payments by the Secretary of the Treasury in accordance with subparagraph (D) for any fiscal year may be expended unless the Chairperson of the Board of Directors certifies to the Congress, at any time before the beginning of or during such fiscal year, that—

[(i) such amount is needed to pay for losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund;

[(ii) the Board of Directors has determined that—

[(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) at the assessment rates which would be required in order to cover, from such additional assessments, losses which have been incurred or can reasonably be expected to be incurred by the Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain the members' assessment base; and

[(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government;

[(iii) the Board of Directors has determined that—

[(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) at the assessment rates which would be required in order to meet the repayment schedule required under section 14(c) for any amount borrowed under section 14(a) to cover losses which have been incurred or can reasonably be expected to be incurred by the Fund without adversely affecting the ability of such members to raise and maintain

capital or to maintain the members' assessment base; and

[(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government;

[(iv) as of the date of certification, the Corporation has in effect procedures designed to ensure that the activities of the Savings Association Insurance Fund and the affairs of any Savings Association Insurance Fund member for which a conservator or receiver has been appointed are conducted in an efficient manner and the Corporation is in compliance with such procedures;

[(v) with respect to the most recent audit of the Savings Association Insurance Fund by the Comptroller General of the United States before the date of the certification—

[(I) the Corporation has taken or is taking appropriate action to implement any recommendation made by the Comptroller General; or

[(II) no corrective action is necessary or appropriate;

[(vi) the Corporation has provided for the appointment of a chief financial officer who—

[(I) does not have other operating responsibilities;

[(II) will report directly to the Chairperson of the Corporation; and

[(III) will have such authority and duties of chief financial officers under section 902 of title 31, United States Code, as the Board of Directors of the Corporation determines to be appropriate with respect to the Corporation;

[(vii) the Corporation has provided for the appointment of a senior officer whose responsibilities shall include setting uniform standards for contracting and contracting enforcement in connection with the administration of the Fund;

[(viii) the Corporation is implementing the minority outreach provisions mandated by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

[(ix) the Corporation has provided for the appointment of a senior attorney, at the assistant general counsel level or above, responsible for professional liability cases; and

[(x) the Corporation has improved the management of legal services by—

[(I) utilizing staff counsel when such utilization would provide the same level of quality in legal services as the use of outside counsel at the same or a lower estimated cost; and

[(II) employing outside counsel only if the use of outside counsel would provide the most practicable, efficient, and cost-effective resolution to the action and only under a negotiated fee, contingent fee, or competitively bid fee agreement.

[(F) AVAILABILITY OF RTC FUNDING.—At any time before the end of the 2-year period beginning on the date of the termination of the Resolution Trust Corporation, the Secretary of the Treasury shall provide, out of funds appropriated to the Resolution Trust Corporation pursuant to section 21A(i)(3) of the Federal Home Loan Bank Act and not expended by the Resolution Trust Corporation, to the Savings Association Insurance Fund, for any year such amounts as are needed by the Fund and are not needed by the Resolution Trust Corporation, if the Chairperson of the Board of Directors has certified to the Congress that—

[(i) such amount is needed to pay for losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund;

[(ii) the Board of Directors has determined that—

[(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) at the assessment rates which would be required in order to cover, from such additional assessments, losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain the members' assessment base; and

[(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government;

[(iii) the Board of Directors has determined that—

[(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) at the assessment rates which would be required in order to meet the repayment schedule required under section 14(c) for any amount borrowed under section 14(a) to cover losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain such members' assessment base; and

[(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government;

[(iv) the Corporation has provided for the appointment of a chief financial officer who—

[(I) does not have other operating responsibilities;

[(II) will report directly to the Chairperson of the Corporation; and

[(III) will have such authority and duties of chief financial officers under section 902 of title 31, United States Code, as the Board of Directors of the Corporation determines to be appropriate with respect to the Corporation;

[(v) the Corporation has provided for the appointment of a senior officer whose responsibilities shall include setting uniform standards for contracting and contracting enforcement in connection with the administration of the Fund;

[(vi) the Corporation is implementing the minority outreach provisions mandated by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

[(vii) the Corporation has provided for the appointment of a senior attorney, at the assistant general counsel level or above, responsible for professional liability cases; and

[(viii) the Corporation has improved the management of legal services by—

[(I) utilizing staff counsel when such utilization would provide the same level of quality in legal services as the use of outside counsel at the same or a lower estimated cost; and

[(II) employing outside counsel only if the use of outside counsel would provide the most practicable, efficient, and cost-effective resolution to the action and only under a negotiated fee, contingent fee, or competitively bid fee agreement.

[(G) EXCEPTION TO SUBPARAGRAPH (D).—Notwithstanding subparagraph (D), no payment may be made pursuant to such subparagraphs after the Savings Association Insurance Fund achieves a reserve ratio of 1.25 percent.

[(H) APPEARANCE UPON REQUEST.—The Secretary of the Treasury and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives or the Committee on Banking, Housing, and Urban Affairs of the Senate, upon the request of the chairman of the committee, to report on any certification made to the Congress under subparagraph (E) or (F).

[(I) BORROWING AUTHORITY.—

[(i) IN GENERAL.—The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal Housing Finance Board, such funds as the Corporation considers necessary for the use of the Savings Association Insurance Fund.

[(ii) TERMS AND CONDITIONS.—Any loan from any Federal home loan bank under clause (i) to the Savings Association Insurance Fund shall—

[(I) bear a rate of interest of not less than such bank's current marginal cost of funds, taking into account the maturities involved;

[(II) be adequately secured, as determined by the Federal Housing Finance Board;

[(III) be a direct liability of such Fund; and

[(IV) be subject to the limitations of section 15(c).

[(J) AUTHORIZATION OF APPROPRIATIONS.—Subject to subparagraph (E), there are authorized to be appropriated to the Secretary of the Treasury, such sums as may be necessary to carry out the provisions of subparagraph (D) for fiscal years 1994 through 1998, except that the aggregate amount appropriated pursuant to this authorization may not exceed $8,000,000,000.

[(K) RETURN TO TREASURY.—If the aggregate amount of funds transferred to the Savings Association Insurance Fund under subparagraph (D) or (F) exceeds the amount needed to cover losses incurred by the Fund, such excess amount shall be deposited in the general fund of the Treasury.

[(7) PROVISIONS APPLICABLE TO MAINTENANCE OF ACCOUNTS.—

[(A) CORPORATION'S AUTHORITY.—Any provision of this Act forbidding the commingling of the Bank Insurance Fund with the Savings Association Insurance Fund, or requiring the separate maintenance of the Bank Insurance Fund and the Savings Association Insurance Fund, is not intended—

[(i) to limit or impair the authority of the Corporation to use the same facilities and resources in the course of conducting supervisory, regulatory, conservatorship, receivership, or liquidation functions with respect to banks and savings associations, or to integrate such functions; or

[(ii) to limit or impair the Corporation's power to combine assets or liabilities belonging to banks and savings associations in conservatorship or receivership for managerial purposes, or to limit or impair the Corporation's power to dispose of such assets or liabilities on an aggregate basis.

[(B) ACCOUNTING REQUIREMENTS.—

[(i) ACCOUNTING FOR USE OF FACILITIES AND RESOURCES.—The Corporation shall keep a full and complete accounting of all costs and expenses associated with the use of any facility or resource used in the course of any function specified in subparagraph (A)(i) and shall allocate, in the manner provided in subparagraph (C), any such costs and expenses incurred by the Corporation—

[(I) with respect to Bank Insurance Fund members to the Bank Insurance Fund; and

[(II) with respect to Savings Association Insurance Fund members to the Savings Association Insurance Fund.

[(ii) ACCOUNTING FOR HOLDING AND MANAGING ASSETS AND LIABILITIES.—The Corporation shall keep a full and complete accounting of all costs and expenses associated with the holding and management of any asset or liability specified in subparagraph (A)(ii).

[(iii) ACCOUNTING FOR DISPOSITION OF ASSETS AND LIABILITIES.—The Corporation shall keep a full and complete accounting of all expenses and receipts associated with the disposition of any asset or liability specified in subparagraph (A)(ii).

[(iv) ALLOCATION OF COST, EXPENSES AND RECEIPTS.—The Corporation shall allocate any cost, expense, and receipt described in clause (ii) or clause (iii) which is associated with any asset or liability belonging to—

[(I) any Bank Insurance Fund member to the Bank Insurance Fund; and

[(II) any Savings Association Insurance Fund member to the Savings Association Insurance Fund.

[(C) ALLOCATION OF ADMINISTRATIVE EXPENSES.—Any personnel, administrative, or other overhead expense of the Corporation shall be allocated—

[(i) fully to the Bank Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Bank Insurance Fund members;

[(ii) fully to the Savings Association Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Savings Association Insurance Fund members;

[(iii) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative degree to which the expense was incurred as a result of the activities of Bank Insurance Fund and Savings Association Insurance Fund members; or

[(iv) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative total assets as of the end of the preceding calendar year of Bank Insurance Fund members and Savings Association Insurance Fund members, to the extent that the Board of Directors is unable to make a determination under clause (i), (ii), or (iii).]

(4) DEPOSIT INSURANCE FUND.—

(A) ESTABLISHMENT.—There is established the Deposit Insurance Fund, which the Corporation shall—

(i) maintain and administer;

(ii) use to carry out its insurance purposes, in the manner provided by this subsection; and

(iii) invest in accordance with section 13(a).

(B) USES.—The Deposit Insurance Fund shall be available to the Corporation for use with respect to insured depository institutions the deposits of which are insured by the Deposit Insurance Fund.

(C) LIMITATION ON USE.—Notwithstanding any provision of law other than section 13(c)(4)(G), the Deposit Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of—

(i) any insured depository institution for which the Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation;

(ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation; or

(iii) any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B)) another insured depository institution.

(D) DEPOSITS.—All amounts assessed against insured depository institutions by the Corporation shall be deposited into the Deposit Insurance Fund.

[(8)] *(5)* CERTAIN INVESTMENT CONTRACTS NOT TREATED AS INSURED DEPOSITS.—

(A) * * *

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(c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) * * *

* * * * * * *

(5) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER.—The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

(A) * * *

* * * * * * *

(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) * * *

* * * * * * *

(iii) otherwise seriously prejudice the interests of the institution's depositors or the [deposit insurance fund] *Deposit Insurance Fund*.

* * * * * * *

(10) CORPORATION MAY APPOINT ITSELF AS CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTION TO PREVENT LOSS TO [DEPOSIT INSURANCE FUND] *DEPOSIT INSURANCE FUND*.—The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

(A) * * *

(B) the appointment is necessary to reduce—

(i) the risk that the [deposit insurance fund] *Deposit Insurance Fund* would incur a loss with respect to the insured depository institution, or

(ii) any loss that the [deposit insurance fund] *Deposit Insurance Fund* is expected to incur with respect to that institution.

* * * * * * *

(e) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) * * *

* * * * * * *

(14) SELLING CREDIT CARD ACCOUNTS RECEIVABLE.—

(A) * * *

(B) WAIVER BY CORPORATION.—The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

(i) determines that the waiver is in the best interests of the [deposit insurance fund] *Deposit Insurance Fund*; and

(ii) provides a written waiver to the selling institution.

* * * * * * *

(f) PAYMENT OF INSURED DEPOSITS.—

(1) IN GENERAL.—In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g), either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor, [except that—

[(A) all payments made pursuant to this section on account of a closed Bank Insurance Fund member shall be made only from the Bank Insurance Fund, and

[(B) all payments made pursuant to this section on account of a closed Savings Association Insurance Fund

member shall be made only from the Savings Association Insurance Fund.].

* * * * * * *

(i) VALUATION OF CLAIMS IN DEFAULT.—

(1) * * *

* * * * * * *

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) * * *

[(B) SOURCE OF FUNDS.—If the depository institution in default is a Bank Insurance Fund member, the Corporation may only make such payments out of funds held in the Bank Insurance Fund. If the depository institution in default is a Savings Association Insurance Fund member, the Corporation may only make such payments out of funds held in the Savings Association Insurance Fund.]

[(C)] *(B)* MANNER OF PAYMENT.—The Corporation may make the payments or credit the amounts specified in [subparagraphs (A) and (B)] *subparagraph (A)* directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

* * * * * * *

(m) NEW BANKS.—

(1) * * *

* * * * * * *

(6) NEW DEPOSITS.—The new bank may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new bank is the only bank in the community, shall not exceed [$100,000] *an amount equal to the standard maximum deposit insurance amount* from any depositor.

* * * * * * *

(p) CERTAIN SALES OF ASSETS PROHIBITED.—

(1) * * *

(2) CONVICTED DEBTORS.—Except as provided in paragraph (3), any person who—

(A) * * *

(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid, will cause substantial loss to the [institution, any deposit insurance fund] *institution, the Deposit Insurance Fund*, the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,

* * * * * * *

SEC. 11A. FSLIC RESOLUTION FUND.

(a) ESTABLISHED.—

(1) * * *

(2) TRANSFER OF FSLIC ASSETS AND [LIABILITIES.—

[(A) IN GENERAL.—Except] *LIABILITIES.—Except* as provided in section 21A of the Federal Home Loan Bank Act,

all assets and liabilities of the Federal Savings and Loan Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 shall be transferred to the FSLIC Resolution Fund.

[(B) ADDITIONAL CLAIMS ON ASSETS.—The FSLIC Resolution Fund shall pay to the Savings Association Insurance Fund such amounts as are needed for administrative and supervisory expenses from the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 through September 30, 1992.]

(3) SEPARATE HOLDING.—Assets and liabilities transferred to the FSLIC Resolution Fund shall be the assets and liabilities of the Fund and not of the Corporation and shall not be consolidated with the assets and liabilities of [the Bank Insurance Fund, the Savings Association Insurance Fund,] *the Deposit Insurance Fund* or the Corporation for accounting, reporting, or any other purpose.

* * * * * * *

(b) SOURCE OF FUNDS.—The FSLIC Resolution Fund shall be funded from the following sources to the extent funds are needed in the listed priority:

(1) * * *

* * * * * * *

[(4) During the period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and ending on December 31, 1992, amounts assessed against Savings Association Insurance Fund members by the Corporation pursuant to section 7 which are not required by the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act or by the Resolution Funding Corporation pursuant to section 21B of the Federal Home Loan Bank Act.]

* * * * * * *

(f) DISSOLUTION.—The FSLIC Resolution Fund shall be dissolved upon satisfaction of all debts and liabilities and sale of all assets. Upon dissolution any remaining funds shall be paid into the Treasury. Any administrative facilities and supplies, including offices and office supplies, shall be transferred to the Corporation for use by and to be held as assets of the [Savings Association Insurance Fund] *Deposit Insurance Fund*.

* * * * * * *

SEC. 12. (a) * * *

* * * * * * *

(f) CONFLICT OF INTEREST.—

(1) * * *

* * * * * * *

(4) DISAPPROVAL OF CONTRACTORS.—

(A) * * *

* * * * * * *

(E) PROHIBITION REQUIRED IN CERTAIN CASES.—The standards established under subparagraph (A) shall require the Corporation to prohibit any person who has—

(i) * * *

* * * * * * *

(iv) caused a substantial loss to [Federal deposit insurance funds] *the Deposit Insurance Fund (or any predecessor deposit insurance fund)*;

from performing any service on behalf of the Corporation.

* * * * * * *

SEC. 13. (a) INVESTMENT OF CORPORATION'S FUNDS.—

(1) AUTHORITY.—Funds held in the [Bank Insurance Fund, the Savings Association Insurance Fund,] *Deposit Insurance Fund* or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

* * * * * * *

(c)(1) * * *

* * * * * * *

(4) LEAST-COST RESOLUTION REQUIRED.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Corporation may not exercise any authority under this subsection or subsection (d), (f), (h), (i), or (k) with respect to any insured depository institution unless—

(i) * * *

(ii) the total amount of the expenditures by the Corporation and obligations incurred by the Corporation (including any immediate and long-term obligation of the Corporation and any direct or contingent liability for future payment by the Corporation) in connection with the exercise of any such authority with respect to such institution is the least costly to the [deposit insurance fund] *Deposit Insurance Fund* of all possible methods for meeting the Corporation's obligation under this section.

(B) DETERMINING LEAST COSTLY APPROACH.—In determining how to satisfy the Corporation's obligations to an institution's insured depositors at the least possible cost to the [deposit insurance fund] *Deposit Insurance Fund*, the Corporation shall comply with the following provisions:

(i) * * *

(ii) FOREGONE TAX REVENUES.—Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, shall be treated as if they were revenues foregone by the [deposit insurance fund] *Deposit Insurance Fund*.

* * * * * * *

(E) DEPOSIT INSURANCE [FUNDS] *FUND* AVAILABLE FOR INTENDED PURPOSE ONLY.—

(i) IN GENERAL.—After December 31, 1994, or at such earlier time as the Corporation determines to be appropriate, the Corporation may not take any action, directly or indirectly, with respect to any insured depository institution that would have the effect of increasing losses to [any insurance fund] *the Deposit Insurance Fund* by protecting—

(I) * * *

* * * * * * *

(G) SYSTEMIC RISK.—

(i) * * *

(ii) REPAYMENT OF LOSS.—The Corporation shall recover the loss to the [appropriate insurance fund] *Deposit Insurance Fund* arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) expeditiously from 1 or more emergency special assessments on [the members of the insurance fund (of which such institution is a member)] *insured depository institutions* equal to the product of—

(I) an assessment rate established by the Corporation; and

(II) the amount of [each member's] *each insured depository institution's* average total assets during the [semiannual period] *assessment period*, minus the sum of the amount of the [member's] *institution's* average total tangible equity and the amount of the [member's] *institution's* average total subordinated debt.

* * * * * * *

[(11) Payments made under this subsection shall be made—

[(A) from the Bank Insurance Fund in the case of payments to or on behalf of a member of such Fund; or

[(B) from the Savings Association Insurance Fund or from funds made available by the Resolution Trust Corporation in the case of payments to or on behalf of any Savings Association Insurance Fund member.]

* * * * * * *

(h) The powers conferred on the Board of Directors and the Corporation by this section to take action to reopen an insured depository institution in default or to avert the default of an insured depository institution may be used with respect to an insured branch of a foreign bank if, in the judgment of the Board of Directors, the public interest in avoiding the closing of such branch substantially outweighs any additional risk of loss to the [Bank Insurance Fund] *Deposit Insurance Fund* which the exercise of such powers would entail.

* * * * * * *

(k) EMERGENCY ACQUISITIONS.—

(1) * * *

* * * * * * *

(4) BRANCHING PROVISIONS.—

(A) * * *

(B) RESTRICTIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if—

(I) * * *

* * * * * * *

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the [Savings Association Insurance Fund member] *savings association* is located.

* * * * * * *

(5) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(A) ASSISTANCE PROPOSALS.—The Corporation shall consider proposals by [Savings Association Insurance Fund members] *savings associations* for assistance pursuant to subsection (c) before grounds exist for appointment of a conservator or receiver for such member under the following circumstances:

(i) * * *

* * * * * * *

SEC. 14. BORROWING AUTHORITY.

(a) BORROWING FROM TREASURY.—The Corporation is authorized to borrow from the Treasury, and the Secretary of the Treasury is authorized and directed to loan to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are from time to time required for insurance purposes, not exceeding in the aggregate $30,000,000,000 outstanding at any one time, subject to the approval of the Secretary of the Treasury: *Provided,* That the rate of interest to be charged in connection with any loan made pursuant to this subsection shall not be less than an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. For such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the Second Liberty Bond Act, as amended, are extended to include such loans. Any such loan shall be used by the Corporation solely in carrying out its functions with respect to such insurance. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States. The Corporation may employ any funds obtained under this section for purposes of the [Bank Insurance Fund or the Savings Association Insurance Fund] *Deposit Insurance Fund* and the borrowing shall become a liability of [each such fund] *the Deposit Insurance Fund* to the extent funds are employed therefor. There are hereby appropriated to the Secretary, for

fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this subsection.

(b) BORROWING FROM FEDERAL FINANCING BANK.—The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the [Bank Insurance Fund or Savings Association Insurance Fund] *Deposit Insurance Fund*, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the Federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 15(c) of this Act. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.

(c) REPAYMENT SCHEDULES REQUIRED FOR ANY BORROWING.—

(1) * * *

* * * * * * *

[(3) INDUSTRY REPAYMENT.—

[(A) BIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Bank Insurance Fund member for funds obtained under subsection (a) for purposes of the Savings Association Fund.

[(B) SAIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Savings Association Insurance Fund member for funds obtained under subsection (a) for purposes of the Bank Insurance Fund.]

[(d) BORROWING FOR BIF FROM BIF MEMBERS.—]

(d) BORROWING FOR THE DEPOSIT INSURANCE FUND FROM INSURED DEPOSITORY INSTITUTIONS.—

(1) BORROWING AUTHORITY.—The Corporation may issue obligations to [Bank Insurance Fund members] *insured depository institutions*, and may borrow from [Bank Insurance Fund members] *insured depository institutions* and give security for any amount borrowed, and may pay interest on (and any redemption premium with respect to) any such obligation or amount to the extent—

(A) the proceeds of any such obligation or amount are used by the Corporation solely for purposes of carrying out the Corporation's functions with respect to the [Bank Insurance Fund] *Deposit Insurance Fund*; and

(B) the terms of the obligation or instrument limit the liability of the Corporation or the [Bank Insurance Fund] *Deposit Insurance Fund* for the payment of interest and the repayment of principal to the amount which is equal to the amount of assessment income received by the Fund from assessments under section 7.

(2) LIMITATIONS ON BORROWING.—

(A) APPLICABILITY OF PUBLIC DEBT LIMIT.—For purposes of the public debt limit established in section 3101(b) of title 31, United States Code, any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an obligation to which such limit applies.

(B) APPLICABILITY OF FDIC BORROWING LIMIT.—For purposes of the dollar amount limitation established in section 14(a) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a)), any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an amount borrowed from the Treasury under such section.

(C) INTEREST RATE LIMIT.—The rate of interest payable in connection with any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall not exceed an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(D) OBLIGATIONS TO BE HELD ONLY BY BIF MEMBERS.—The terms of any obligation issued by the Corporation under paragraph (1) shall provide that the obligation will be valid only if held by a [Bank Insurance Fund member] *insured depository institution*.

(3) LIABILITY OF [BIF] *THE DEPOSIT INSURANCE FUND*.—Any obligation issued or amount borrowed under paragraph (1) shall be a liability of the [Bank Insurance Fund] *Deposit Insurance Fund*.

(4) TERMS AND CONDITIONS.—Subject to paragraphs (1) and (2), the Corporation shall establish the terms and conditions for obligations issued or amounts borrowed under paragraph (1), including interest rates and terms to maturity.

(5) INVESTMENT BY [BIF MEMBERS] *INSURED DEPOSITORY INSTITUTIONS*.—

(A) AUTHORITY TO INVEST.—Subject to subparagraph (B) and notwithstanding any other provision of Federal law or the law of any State, any [Bank Insurance Fund member] *insured depository institution* may purchase and hold for investment any obligation issued by the Corporation under paragraph (1) without limitation, other than any limitation the appropriate Federal banking agency may impose specifically with respect to such obligations.

(B) INVESTMENT ONLY FROM CAPITAL AND RETAINED EARNINGS.—Any [Bank Insurance Fund member] *insured depository institution* may purchase obligations or make loans to the Corporation under paragraph (1) only to the extent the purchase money or the money loaned is derived from the member's capital or retained earnings.

(6) ACCOUNTING TREATMENT.—In accounting for any investment in an obligation purchased from, or any loan made to, the Corporation for purposes of determining compliance with any capital standard and preparing any report required pursuant to section 7(a), the amount of such investment or loan shall be treated as an asset.

(e) BORROWING FOR THE DEPOSIT INSURANCE FUND FROM FEDERAL HOME LOAN BANKS.—

(1) IN GENERAL.—The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal

Housing Finance Board, such funds as the Corporation considers necessary for the use of the Deposit Insurance Fund.

(2) TERMS AND CONDITIONS.—Any loan from any Federal home loan bank under paragraph (1) to the Deposit Insurance Fund shall—

(A) bear a rate of interest of not less than the current marginal cost of funds to that bank, taking into account the maturities involved;

(B) be adequately secured, as determined by the Federal Housing Finance Board;

(C) be a direct liability of the Deposit Insurance Fund; and

(D) be subject to the limitations of section 15(c).

SEC. 15. (a) * * *

* * * * * * *

(c) LIMITATION ON BORROWING.—

(1) * * *

* * * * * * *

(5) MAXIMUM AMOUNT LIMITATION ON OUTSTANDING OBLIGATIONS.—Notwithstanding any other provisions of this Act, the Corporation may not issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of obligations of [the Bank Insurance Fund or Savings Association Insurance Fund, respectively] *the Deposit Insurance Fund*, outstanding would exceed the sum of—

(A) the amount of cash or the equivalent of cash held by [the Bank Insurance Fund or Savings Association Insurance Fund, respectively] *the Deposit Insurance Fund*;

(B) the amount which is equal to 90 percent of the Corporation's estimate of the fair market value of assets held by [the Bank Insurance Fund or the Savings Association Insurance Fund, respectively] *the Deposit Insurance Fund*, other than assets described in subparagraph (A); and

(C) the total of the amounts authorized to be borrowed from the Secretary of the Treasury pursuant to section 14(a).

* * * * * * *

SEC. 17. (a) ANNUAL REPORTS ON [BIF, SAIF,] *THE DEPOSIT INSURANCE FUND* AND THE FSLIC RESOLUTION FUND.—

(1) IN GENERAL.—The Corporation shall annually submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include, with respect to [the Bank Insurance Fund, the Savings Association Insurance Fund,] *the Deposit Insurance Fund* and the FSLIC Resolution Fund, an analysis by the Corporation of—

(A) * * *

* * * * * * *

(D) the exposure of [each insurance fund] *the Deposit Insurance Fund* to changes in those economic factors most likely to affect the condition of that fund;

(E) a current estimate of the resources needed for [the Bank Insurance Fund, the Savings Association Insurance Fund,] *the Deposit Insurance Fund* or the FSLIC Resolution Fund to achieve the purposes of this Act; and

(F) any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to future resolution activities by the Corporation.

* * * * * * *

(d) AUDIT.—

(1) AUDIT REQUIRED.—The Comptroller General shall audit annually the financial transactions of the Corporation, [the Bank Insurance Fund, the Savings Association Insurance Fund,] *the Deposit Insurance Fund* and the FSLIC Resolution Fund in accordance with generally accepted government auditing standards.

(2) ACCESS TO BOOKS AND RECORDS.—All books, records, accounts, reports, files, and property belonging to or used by the Corporation, [the Bank Insurance Fund, the Savings Association Insurance Fund,] *the Deposit Insurance Fund* and the FSLIC Resolution Fund, or by an independent certified public accountant retained to audit the Fund's financial statements, shall be made available to the Comptroller General.

* * * * * * *

SEC. 18. [(a) INSURANCE LOGO.—

[(1) INSURED SAVINGS ASSOCIATIONS.—Each insured savings association shall display at each place of business maintained by such association a sign containing only the following items:

[(A) A statement that insured deposits are backed by the full faith and credit of the United States Government.

[(B) A statement that deposits are federally insured to $100,000.

[(C) The symbol of an eagle.

The sign shall not contain any reference to a Government agency and shall accord each item substantially equal prominence.

[(2) INSURED BANKS.—Not later than 30 days after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, each insured bank shall display at each place of business maintained by such bank one of the following:

[(A) The sign required to be displayed by insured banks under regulations prescribed by the Corporation in effect on January 1, 1989.

[(B) The sign prescribed under paragraph (1).

[(3) REGULATIONS.—The Corporation shall prescribe regulations to carry out the purposes of this subsection, including regulations governing the manner of display or use of such signs, except that the size of the sign prescribed under paragraph (1) shall be similar to that prescribed under paragraph (2)(A). Initial regulations under this subsection shall be prescribed on the date of enactment of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989. For each day an insured depository institution continues to violate any pro-

visions of this subsection or any lawful provisions of said regulations, it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.]

(a) INSURANCE LOGO.—

(1) INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—Each insured depository institution shall display at each place of business maintained by that institution a sign or signs relating to the insurance of the deposits of the institution, in accordance with regulations to be prescribed by the Corporation.

(B) STATEMENT TO BE INCLUDED.—Each sign required under subparagraph (A) shall include a statement that insured deposits are backed by the full faith and credit of the United States Government.

(2) REGULATIONS.—The Corporation shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) PENALTIES.—For each day that an insured depository institution continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.

* * * * * * *

[(h) Any insured depository institution which willfully fails or refuses to file any certified statement or pay any assessment required under this Act shall be subject to a penalty of not more than $100 for each day that such violations continue, which penalty the Corporation may recover for its use: *Provided,* That this subsection shall not be applicable under the circumstances stated in the proviso of subsection (b) of this section.]

(h) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—

(1) IN GENERAL.—Subject to paragraph (3), any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(2) EXCEPTION IN CASE OF DISPUTE.—Paragraph (1) shall not apply if—

(A) the failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(3) SPECIAL RULE FOR SMALL ASSESSMENT AMOUNTS.—If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (1) shall not exceed $100 for each day that such violation continues.

(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess

or has already assessed under paragraph (1) upon a finding that good cause prevented the timely payment of an assessment.

* * * * * * *

(m) ACTIVITIES OF SAVINGS ASSOCIATIONS AND THEIR SUBSIDIARIES.—

(1) * * *

* * * * * * *

(3) ACTIVITIES INCOMPATIBLE WITH DEPOSIT INSURANCE.—

(A) IN GENERAL.—The Corporation may determine by regulation or order that any specific activity poses a serious threat to the [Savings Association Insurance Fund] *Deposit Insurance Fund*. Prior to adopting any such regulation, the Corporation shall consult with the Director of the Office of Thrift Supervision and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5, United States Code. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no [Savings Association Insurance Fund member] *savings association* may engage in the activity directly.

* * * * * * *

(C) ADDITIONAL AUTHORITY OF FDIC TO PREVENT SERIOUS RISKS TO INSURANCE FUND.—Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the [Savings Association Insurance Fund or the Bank Insurance Fund] *Deposit Insurance Fund*.

* * * * * * *

(o) REAL ESTATE LENDING.—

(1) * * *

(2) STANDARDS.—

(A) CRITERIA.—In prescribing standards under paragraph (1), the agencies shall consider—

(i) the risk posed to the [deposit insurance funds] *Deposit Insurance Fund* by such extensions of credit;

* * * * * * *

(B) VARIATIONS PERMITTED.—In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—

(i) as may be required by Federal statute;

(ii) as may be warranted, based on the risk to the [deposit insurance fund] *Deposit Insurance Fund*; or

* * * * * * *

(p) PERIODIC REVIEW OF CAPITAL STANDARDS.—Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for

insured depository institutions to determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the [deposit insurance funds] *Deposit Insurance Fund*, consistent with section 38.

* * * * * * *

SEC. 24. ACTIVITIES OF INSURED STATE BANKS.

(a) PERMISSIBLE ACTIVITIES.—

(1) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

(A) the Corporation has determined that the activity would pose no significant risk to the [appropriate deposit insurance fund] *Deposit Insurance Fund*; and

(B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

* * * * * * *

(d) SUBSIDIARIES OF INSURED STATE BANKS.—

(1) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, a subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

(A) the Corporation has determined that the activity poses no significant risk to the [appropriate deposit insurance fund] *Deposit Insurance Fund*; and

* * * * * * *

(e) SAVINGS BANK LIFE INSURANCE.—

(1) * * *

(2) FDIC FINDING AND ACTION REGARDING RISK.—

(A) FINDING.—Before the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, the Corporation shall make a finding whether savings bank life insurance activities of insured banks pose or may pose any significant [risk to the insurance fund of which such banks are members.] *risk to the Deposit Insurance Fund.*

(B) ACTIONS.—

(i) * * *

(ii) AUTHORIZED ACTIONS.—Actions the Corporation may take under this subparagraph include requiring the modification, suspension, or termination of insurance activities conducted by any insured bank if the Corporation finds that the activities pose a significant risk to any insured bank described in paragraph (1)(A) or to [the insurance fund of which such bank is a member] *the Deposit Insurance Fund*.

(f) COMMON AND PREFERRED STOCK INVESTMENT.—

(1) * * *

* * * * * * *

(6) NOTICE AND APPROVAL.—An insured State bank may only engage in any investment pursuant to paragraph (2) if—

(A) the bank has filed a 1-time notice of the bank's intention to acquire and retain investments described in paragraph (1); and

(B) the Corporation has determined, within 60 days of receiving such notice, that acquiring or retaining such investments does not pose a significant risk to [the insurance fund of which such bank is a member] *the Deposit Insurance Fund*.

* * * * * * *

SEC. 28. ACTIVITIES OF SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—On and after January 1, 1990, a savings association chartered under State law may not engage as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless—

(1) the Corporation has determined that the activity would pose no significant risk to the [affected deposit insurance fund] *Deposit Insurance Fund*; and

* * * * * * *

(b) DIFFERENCES OF MAGNITUDE BETWEEN STATE AND FEDERAL POWERS.—Notwithstanding subsection (a)(1), if an activity (other than an activity described in section 5(c)(2)(B) of the Home Owners' Loan Act) is permissible for a Federal savings association, a savings association chartered under State law may engage as principal in that activity in an amount greater than the amount permissible for a Federal savings association if—

(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the [affected deposit insurance fund] *Deposit Insurance Fund*; and

* * * * * * *

(c) EQUITY INVESTMENTS BY STATE SAVINGS ASSOCIATIONS.—

(1) * * *

(2) EXCEPTION FOR SERVICE CORPORATIONS.—Paragraph (1) does not prohibit a savings association from acquiring or retaining shares of one or more service corporations if—

(A) the Corporation has determined that no significant risk to the [affected deposit insurance fund] *Deposit Insurance Fund* is posed by—

(i) * * *

* * * * * * *

[SEC. 31. SAVINGS ASSOCIATION INSURANCE FUND INDUSTRY ADVISORY COMMITTEE.

[(a) ESTABLISHMENT.—There is hereby established the Savings Association Insurance Fund Industry Advisory Committee (hereinafter referred to in this section as the "Committee").

[(b) MEMBERSHIP.—The Committee shall consist of 18 members, appointed as follows:

[(1) 1 member elected from each Federal home loan bank district (by the members of the board of directors of each such bank who were elected by the members of such bank) from among individuals residing therein who are officers of insured depository institutions that are Savings Association Insurance Fund members.

[(2) 6 members appointed by the Corporation from among individuals who shall represent the public interest.

[(c) VACANCIES.—Any vacancy on the Committee shall be filled in the same manner in which the original appointment was made.

[(d) PAY AND EXPENSES.—Members of the Committee shall serve without pay, but each member shall be reimbursed, in such manner as the Corporation shall prescribe by regulation, for expenses incurred in connection with attendance of such members at meetings of the Committee.

[(e) TERMS.—Members shall be appointed or elected for terms of 1 year.

[(f) AUTHORITY OF THE COMMITTEE.—The Committee may select its Chairperson, Vice Chairperson, and Secretary, and adopt methods of procedure, and shall have power—

[(1) to confer with the Board of Directors on general and special business conditions and regulatory and other matters affecting insured financial institutions that are members of the Savings Association Insurance Fund; and

[(2) to request information, and to make recommendations, with respect to matters within the jurisdiction of the Corporation.

[(g) MEETINGS.—The Committee shall meet 4 times each year, and more frequently if requested by the Corporation.

[(h) REPORTS.—The Committee shall submit a semiannual written report to the Committee on Banking, Finance and Urban Affairs of the House and to the Committee on Banking, Housing, and Urban Affairs of the Senate. Such report shall describe the activities of the Committee for such semiannual period and contain such recommendations as the Committee considers appropriate.

[(i) PROVISION OF STAFF AND OTHER RESOURCES.—The Corporation shall provide the Committee with the use of such resources, including staff, as the Committee reasonably shall require to carry out its duties, including the preparation and submission of reports to Congress, under this section.

[(j) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act shall not apply to the Committee.

[(k) SUNSET.—The Committee shall cease to exist 10 years after the enactment of this section.]

* * * * * * *

SEC. 36. EARLY IDENTIFICATION OF NEEDED IMPROVEMENTS IN FINANCIAL MANAGEMENT.

(a) * * *

* * * * * * *

(i) REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—

(1) * * *

* * * * * * *

(3) APPLICABILITY BASED ON RISK TO FUND.—The appropriate Federal banking agency may require an institution with total assets in excess of $9,000,000,000 to comply with this section, notwithstanding the exemption provided by this subsection, if it determines that such exemption would create a significant risk to the [affected deposit insurance fund] *Deposit Insurance Fund* if applied to that institution.

* * * * * * *

SEC. 37. ACCOUNTING OBJECTIVES, STANDARDS, AND REQUIREMENTS.

(a) IN GENERAL.—

(1) OBJECTIVES.—Accounting principles applicable to reports or statements required to be filed with Federal banking agencies by insured depository institutions should—

(A) * * *

* * * * * * *

(C) facilitate prompt corrective action to resolve the institutions at the least cost to the [insurance funds] *Deposit Insurance Fund*.

* * * * * * *

SEC. 38. PROMPT CORRECTIVE ACTION.

(a) RESOLVING PROBLEMS TO PROTECT DEPOSIT INSURANCE [FUNDS] *FUND*.—

(1) PURPOSE.—The purpose of this section is to resolve the problems of insured depository institutions at the least possible long-term loss to [the deposit insurance fund] *the Deposit Insurance Fund*.

* * * * * * *

(k) REVIEW REQUIRED WHEN DEPOSIT INSURANCE FUND INCURS MATERIAL LOSS.—

(1) IN GENERAL.—If [a deposit insurance fund] *the Deposit Insurance Fund* incurs a material loss with respect to an insured depository institution on or after July 1, 1993, the inspector general of the appropriate Federal banking agency shall—

(A) make a written report to that agency reviewing the agency's supervision of the institution (including the agency's implementation of this section), which shall—

(i) ascertain why the institution's problems resulted in a material loss to [the deposit insurance fund] *the Deposit Insurance Fund*; and

(ii) make recommendations for preventing any such loss in the future; and

* * * * * * *

(2) MATERIAL LOSS INCURRED.—For purposes of this subsection:

(A) LOSS INCURRED.—[A deposit insurance fund] *The Deposit Insurance Fund* incurs a loss with respect to an insured depository institution—

(i) if the Corporation provides any assistance under section 13(c) with respect to that institution; and—

(I) * * *

* * * * * * *

(ii) if the Corporation is appointed receiver of the institution, and it is or becomes apparent that the present value of [the deposit insurance fund's outlays] *the outlays of the Deposit Insurance Fund* with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

* * * * * * *

(3) DEADLINE FOR REPORT.—The inspector general of the appropriate Federal banking agency shall comply with paragraph (1) expeditiously, and in any event (except with respect to paragraph (1)(B)(iv)) as follows:

(A) * * *

(B) If the institution is described in paragraph (2)(A)(ii), during the 6-month period beginning on the date on which it becomes apparent that the present value of [the deposit insurance fund's outlays] *the outlays of the Deposit Insurance Fund* with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

* * * * * * *

(o) TRANSITION RULES FOR SAVINGS [ASSOCIATIONS.—

[(1) RTC'S ROLE DOES NOT DIMINISH CARE REQUIRED OF OTS.—

[(A) IN GENERAL.—In implementing this section, the appropriate Federal banking agency (and, to the extent applicable, the Corporation) shall exercise the same care as if the Savings Association Insurance Fund (rather than the Resolution Trust Corporation) bore the cost of resolving the problems of insured savings associations described in clauses (i) and (ii)(II) of section 21A(b)(3)(A) of the Federal Home Loan Bank Act.

[(B) REPORTS.—Subparagraph (A) does not require reports under subsection (k).

[(2) ADDITIONAL FLEXIBILITY FOR CERTAIN SAVINGS ASSOCIATIONS.—Subsections (e)(2)] *ASSOCIATIONS.—Subsections (e)(2)*, (f), and (h) shall not apply before July 1, 1994, to any insured savings association if—

[(A)] *(1)* before the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991—

[(i)] *(A)* the savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act; and

[(ii)] *(B)* the Director of the Office of Thrift Supervision had accepted the plan;

[(B)] *(2)* the plan remains in effect; and

[(C)] *(3)* the savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

* * * * * * *

SEC. 43. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

(a) * * *

* * * * * * *

(d) EXCEPTIONS FOR INSTITUTIONS NOT RECEIVING RETAIL DEPOSITS.—The Federal Trade Commission may, by regulation or order, make exceptions to subsection (b) for any depository institution that, within the United States, does not receive initial deposits of less than [$100,000] *an amount equal to the standard maximum deposit insurance amount* from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

* * * * * * *

SEC. 49. BI-ANNUAL FDIC SURVEY AND REPORT ON ENCOURAGING USE OF DEPOSITORY INSTITUTIONS BY THE UNBANKED.

(a) SURVEY REQUIRED.—

(1) IN GENERAL.—The Corporation shall conduct a bi-annual survey on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the "unbanked") into the conventional finance system.

(2) FACTORS AND QUESTIONS TO CONSIDER.—In conducting the survey, the Corporation shall take the following factors and questions into account:

(A) To what extent do insured depository institutions promote financial education and financial literacy outreach?

(B) Which financial education efforts appear to be the most effective in bringing "unbanked" individuals and families into the conventional finance system?

(C) What efforts are insured institutions making at converting "unbanked" money order, wire transfer, and international remittance customers into conventional account holders?

(D) What cultural, language and identification issues as well as transaction costs appear to most prevent "unbanked" individuals from establishing conventional accounts?

(E) What is a fair estimate of the size and worth of the "unbanked" market in the United States?

(b) REPORTS.—The Chairperson of the Board of Directors shall submit a bi-annual report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the Corporation's findings and conclusions with respect to the survey conducted

pursuant to subsection (a), together with such recommendations for legislative or administrative action as the Chairperson may determine to be appropriate.

SECTION 6 OF THE INTERNATIONAL BANKING ACT OF 1978

INSURANCE OF DEPOSITS

SEC. 6. (a) * * *

(b) No foreign bank may establish or operate a Federal branch which receives deposits of less than [$100,000] *an amount equal to the standard maximum deposit insurance amount* unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act, or unless the Comptroller determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

(c)(1) After the date of enactment of this Act no foreign bank may establish a branch, and after one year following such date no foreign bank may operate a branch, in any State in which the deposits of a bank organized and existing under the laws of that State would be required to be insured, unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act, or unless the branch will not thereafter accept deposits of less than [$100,000] *an amount equal to the standard maximum deposit insurance amount* or unless the Federal Deposit Insurance Corporation determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

* * * * * * *

(d) RETAIL DEPOSIT-TAKING BY FOREIGN BANKS.—

(1) IN GENERAL.—After the date of enactment of this subsection, notwithstanding any other provision of this Act or any provision of the Federal Deposit Insurance Act, in order to accept or maintain domestic retail deposit accounts having balances of less than [$100,000] *an amount equal to the standard maximum deposit insurance amount*, and requiring deposit insurance protection, a foreign bank shall—

(A) * * *

* * * * * * *

(2) EXCEPTION.—Domestic retail deposit accounts with balances of less than [$100,000] *an amount equal to the standard maximum deposit insurance amount* that require deposit insurance protection may be accepted or maintained in a branch of a foreign bank only if such branch was an insured branch on the date of the enactment of this subsection.

* * * * * * *

(e) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.—For purposes of this section, the term "standard maximum deposit insurance amount" means the amount of the maximum

amount of deposit insurance as determined under section 11(a)(1) of the Federal Deposit Insurance Act.

SECTION 207 OF THE FEDERAL CREDIT UNION ACT

PAYMENT OF INSURANCE

SEC. 207. (a) * * *

* * * * * * *

[(k)(1) Subject to the provisions of paragraph (2), for the purposes of this subsection, the term "insured account" means the total amount of the account in the member's name (after deducting offsets) less any part thereof which is in excess of $100,000. Such amount shall be determined according to such regulations as the Board may prescribe, and, in determining the amount due to any member, there shall be added together all accounts in the credit union maintained by him for his own benefit either in his own name or in the names of others. The Board may define, with such classifications and exceptions as it may prescribe, the extent of the insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.]

(k) INSURED AMOUNTS PAYABLE.—

(1) NET INSURED AMOUNT.—

(A) IN GENERAL.—Subject to the provisions of paragraph (2), the net amount of share insurance payable to any member at an insured credit union shall not exceed the total amount of the shares or deposits in the name of the member (after deducting offsets), less any part thereof which is in excess of the standard maximum share insurance amount, as determined in accordance with this paragraph and paragraphs (5) and (6), and consistently with actions taken by the Federal Deposit Insurance Corporation under section 11(a) of the Federal Deposit Insurance Act.

(B) AGGREGATION.—Determination of the net amount of share insurance under subparagraph (A), shall be in accordance with such regulations as the Board may prescribe, and, in determining the amount payable to any member, there shall be added together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others.

(C) AUTHORITY TO DEFINE THE EXTENT OF COVERAGE.—The Board may define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.

[(2)(A) Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, in the case of a depositor or member who is—]

(2) MUNICIPAL DEPOSITORS OR MEMBERS.—

(A) IN GENERAL.—Notwithstanding any limitation in this Act or in any other provision of law relating to the amount

of insurance available to any 1 depositor or member, deposits or shares of a municipal depositor or member shall be insured in an amount equal to the standard maximum share insurance amount (as determined under paragraph (5)), except as provided in subparagraph (B).

(B) IN-STATE MUNICIPAL DEPOSITORS.—In the case of the deposits of an in-State municipal depositor described in clause (ii), (iii), (iv), or (v) of subparagraph (E) at an insured credit union, such deposits shall be insured in an amount equal to the lesser of—

(i) $2,000,000; or

(ii) the sum of the standard maximum deposit insurance amount and 80 percent of the amount of any deposits in excess of the standard maximum deposit insurance amount.

(C) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as authorizing an insured credit union to accept the deposits of a municipal depositor in an amount greater than such credit union is authorized to accept under any other provision of Federal or State law.

(D) IN-STATE MUNICIPAL DEPOSITOR DEFINED.—For purposes of this paragraph, the term "in-State municipal depositor" means a municipal depositor that is located in the same State as the office or branch of the insured credit union at which the deposits of that depositor are held.

(E) MUNICIPAL DEPOSITOR.—In this paragraph, the term "municipal depositor" means a depositor that is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this title;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this title in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this title in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Panama Canal Zone, or of any territory or possession of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this title in the Commonwealth of Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof having official custody of

tribal funds and lawfully investing the same in a credit union insured in accordance with this title[;].

[his account shall be insured in an amount not to exceed $100,000 per account.]

[(B) The]

(F) AUTHORITY TO LIMIT DEPOSITS.—The Board may limit the aggregate amount of funds that may be invested or deposited in any credit union insured in accordance with this title by any [depositor or member referred to in subparagraph (A)] *municipal depositor or member* on the basis of the size of any such credit union in terms of its assets.

(3) Notwithstanding any limitation in this title or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, funds invested in a credit union insured in accordance with this title pursuant to a pension or profit-sharing plan described in section 401(d) of the Internal Revenue Code of 1954, as amended, and funds invested in such an insured credit union in the form of individual retirement accounts as described in section 408(a) of the Internal Revenue Code of 1954, as amended, shall be insured in the amount of [$100,000] *2 times the standard maximum share insurance amount (as determined under paragraph (1))* per account. As to any plan qualifying under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, the term "per account" means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—

(A) PASS-THROUGH INSURANCE.—The Administration shall provide pass-through share insurance for the deposits or shares of any employee benefit plan.

(B) PROHIBITION ON ACCEPTANCE OF DEPOSITS.—An insured credit union that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(C) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) CAPITAL STANDARDS.—The terms "well capitalized" and "adequately capitalized" have the same meanings as in section 216(c).

(ii) EMPLOYEE BENEFIT PLAN.—The term "employee benefit plan"—

(I) has the meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974;

(II) includes any plan described in section 401(d) of the Internal Revenue Code of 1986; and

(III) includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

(iii) PASS-THROUGH SHARE INSURANCE.—The term "pass-through share insurance" means, with respect to an employee benefit plan, insurance coverage provided on a pro rata basis to the participants in the plan, in accordance with the interest of each participant.

(D) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as authorizing an insured credit union to accept the deposits of an employee benefit plan in an amount greater than such credit union is authorized to accept under any other provision of Federal or State law.

(5) STANDARD MAXIMUM SHARE INSURANCE AMOUNT DEFINED.—For purposes of this Act, the term "standard maximum share insurance amount" means—

(A) until the effective date of final regulations prescribed pursuant to section 9(a)(2) of the Federal Deposit Insurance Reform Act of 2003, $100,000; and

(B) on and after such effective date, $130,000, adjusted as provided under section 11(a)(1)(F) of the Federal Deposit Insurance Act.

* * * * * * *

SECTION 232 OF THE FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991

SEC. 232. REDUCED ASSESSMENT RATE FOR DEPOSITS ATTRIBUTABLE TO LIFELINE ACCOUNTS.

(a) QUALIFICATION OF LIFELINE ACCOUNTS BY FEDERAL RESERVE BOARD.—

(1) IN GENERAL.—The [Board of Governors of the Federal Reserve System, and the] Federal Deposit Insurance Corporation shall establish minimum requirements for accounts providing basic transaction services for consumers at insured depository institutions in order for such accounts to qualify as lifeline accounts for purposes of this section and section 7(b)(2)(G) of the Federal Deposit Insurance Act.

(2) FACTORS TO BE CONSIDERED.—In determining the minimum requirements under paragraph (1) for lifeline accounts at insured depository institutions, [the Board and] the Corporation shall consider the following factors:

(A) * * *

* * * * * * *

(J) Such other factors as [the Board] *the Corporation* may determine to be appropriate.

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

[(A) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.]

(A) CORPORATION.—The term "Corporation" means the Federal Deposit Insurance Corporation.

* * * * * * *

(C) LIFELINE ACCOUNT.—The term "lifeline account" means any transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) which meets the

minimum requirements established by the [Board] *Corporation* under this subsection.

* * * * * * *

[(c) AVAILABILITY OF FUNDS.—The provisions of this section shall not take effect until appropriations are specifically provided in advance. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.]

SECTION 5136 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

* * * * * * *

Eleventh. To make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs). A national banking association may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. An association shall not make any such investment if the investment would expose the association to unlimited liability. The Comptroller of the Currency shall limit an association's investments in any 1 project and an association's aggregate investments under this paragraph. An association's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association's capital stock actually paid in and unimpaired and 5 percent of the association's unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the [affected deposit insurance fund] *Deposit Insurance Fund*, and the association is adequately capitalized. In no case shall an association's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the association's capital stock actually paid in and unimpaired and 10 percent of the association's unimpaired surplus fund.

* * * * * * *

FEDERAL RESERVE ACT

* * * * * * *

STATE BANKS AS MEMBERS

SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a

member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

* * * * * * *

State member banks may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs), to the extent permissible under State law, and subject to such restrictions and requirements as the Board of Governors of the Federal Reserve System may prescribe by regulation or order. A bank shall not make any such investment if the investment would expose the bank to unlimited liability. The Board shall limit a bank's investments in any 1 project and bank's aggregate investments under this paragraph. A bank's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the bank's capital stock actually paid in and unimpaired and 5 percent of the bank's unimpaired surplus fund, unless the Board determines by order that the higher amount will pose no significant risk to the [affected deposit insurance fund] *Deposit Insurance Fund*, and the bank is adequately capitalized. In no case shall a bank's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the bank's capital stock actually paid in and unimpaired and 10 percent of the bank's unimpaired surplus fund.

* * * * * * *

SEC. 10B. (a) * * *

(b) LIMITATIONS ON ADVANCES.—

(1) * * *

* * * * * * *

(3) ADVANCES TO CRITICALLY UNDERCAPITALIZED DEPOSITORY INSTITUTIONS.—

(A) LIABILITY FOR INCREASED LOSS.—Notwithstanding any other provision of this section, if—

(i) * * *

(ii) after the end of that 5-day period, [any deposit insurance fund in] *the Deposit Insurance Fund of* the Federal Deposit Insurance Corporation incurs a loss exceeding the loss that the Corporation would have in-

curred if it had liquidated that institution as of the end of that period,

* * * * * * *

SECTION 255 OF THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

SEC. 255. EXEMPT PROGRAMS AND ACTIVITIES.

(a) * * *

* * * * * * *

(g) OTHER PROGRAMS AND ACTIVITIES.—

(1)(A) The following budget accounts and activities shall be exempt from reduction under any order issued under this part:

Activities resulting from private donations, bequests, or voluntary contributions to the Government;

Activities financed by voluntary payments to the Government for goods or services to be provided for such payments;

* * * * * * *

Federal Deposit Insurance Corporation, [Bank Insurance Fund] *Deposit Insurance Fund* (51–4064–0–3–373);

* * * * * * *

[Federal Deposit Insurance Corporation, Savings Association Insurance Fund (51–4066–0–3–373);]

* * * * * * *

FEDERAL HOME LOAN BANK ACT

* * * * * * *

GENERAL POWERS AND DUTIES OF BANKS

SEC. 11. (a) * * *

* * * * * * *

(k) BANK LOANS TO [SAIF] *THE DEPOSIT INSURANCE FUND*.—

(1) LOANS AUTHORIZED.—Subject to paragraph (3), the Federal Home Loan Banks may, upon the request of the Federal Deposit Insurance Corporation, make loans to such Corporation for the use of the [Savings Association Insurance Fund] *Deposit Insurance Fund*.

(2) LIABILITY OF THE FUND.—Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall be a direct liability of the [Savings Association Insurance Fund] *Deposit Insurance Fund*.

* * * * * * *

SEC. 21. FINANCING CORPORATION.

(a) * * *

* * * * * * *

(f) SOURCES OF FUNDS FOR INTEREST PAYMENTS; FINANCING CORPORATION ASSESSMENT AUTHORITY.—The Financing Corporation shall obtain funds for anticipated interest payments, issuance costs, and custodial fees on obligations issued hereunder from the following sources:

(1) * * *

(2) NEW ASSESSMENT AUTHORITY.—In addition to the amounts obtained pursuant to paragraph (1), the Financing Corporation, with the approval of the Board of Directors of the Federal Deposit Insurance Corporation, shall assess against each insured depository institution an assessment (in the same manner as assessments are assessed against such institutions by the Federal Deposit Insurance Corporation under section 7 of the Federal Deposit Insurance Act)[, except that—

[(A) the assessments imposed on insured depository institutions with respect to any BIF-assessable deposit shall be assessed at a rate equal to ⅕ of the rate of the assessments imposed on insured depository institutions with respect to any SAIF-assessable deposit; and

[(B) no limitation under clause (i) or (iii) of section 7(b)(2)(A) of the Federal Deposit Insurance Act shall apply for purposes of this paragraph].

* * * * * * *

(k) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) * * *

* * * * * * *

[(4) DEPOSIT TERMS.—

[(A) BIF-ASSESSABLE DEPOSITS.—The term "BIF-assessable deposit" means a deposit that is subject to assessment for purposes of the Bank Insurance Fund under the Federal Deposit Insurance Act (including a deposit that is treated as a deposit insured by the Bank Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act).

[(B) SAIF-ASSESSABLE DEPOSIT.—The term "SAIF-assessable deposit" has the meaning given to such term in section 2710 of the Deposit Insurance Funds Act of 1996.]

* * * * * * *

SEC. 21A. THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD AND RESOLUTION TRUST CORPORATION.

(a) * * *

(b) RESOLUTION TRUST CORPORATION ESTABLISHED.—

(1) * * *

* * * * * * *

(4) CONSERVATORSHIP, RECEIVERSHIP, AND ASSISTANCE POWERS.—

(A) * * *

(B) MANNER OF APPLICATION OF LEAST-COST RESOLUTION.—For purposes of applying section 13(c)(4) of the Federal Deposit Insurance Act to the Corporation under sub-

paragraph (A), the Corporation shall be treated as the [affected deposit insurance fund] *Deposit Insurance Fund*.

* * * * * * *

(6) CONTINUATION OF RTC RECEIVERSHIP OR CONSERVATORSHIP.—

(A) * * *

(B) [SAIF-INSURED BANKS] *CHARTER CONVERSIONS*.—Notwithstanding any other provision of Federal or State law, if the Federal Deposit Insurance Corporation is appointed as conservator or receiver for any [Savings Association Insurance Fund member] *savings association* that has converted to a bank charter and otherwise meets the criteria in paragraph (3)(A) or (6)(A), the Federal Deposit Insurance Corporation may tender such appointment to the Corporation, and the Corporation shall accept such appointment, if the Corporation is authorized to accept such appointment under this section.

* * * * * * *

(10) SPECIAL POWERS.—

(A) IN GENERAL.—In addition to the powers of the Corporation described in paragraph (9), the Corporation shall have the following powers:

(i) * * *

* * * * * * *

(iv) ORGANIZATION OF SAVINGS ASSOCIATIONS.—The Corporation may organize 1 or more Federal savings associations—

(I) * * *

(II) the deposits of which, if any, shall be insured by the Federal Deposit Insurance Corporation through the [Savings Association Insurance Fund] *Deposit Insurance Fund*, and

* * * * * * *

(n) CONFLICT OF INTEREST.—

(1) * * *

* * * * * * *

(6) DISAPPROVAL OF CONTRACTORS.—

(A) * * *

* * * * * * *

(E) PROHIBITION REQUIRED IN CERTAIN CASES.—The standards established under subparagraph (A) shall require the Corporation to prohibit any person who has—

(i) * * *

* * * * * * *

(iv) caused a substantial loss to [Federal deposit insurance funds] *the Deposit Insurance Fund*,

* * * * * * *

SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) * * *

* * * * * * *

(e) CAPITALIZATION OF FUNDING CORPORATION, ETC.—

(1) * * *

* * * * * * *

(5) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE INVESTED IN EXCESS OF $1,000,000,000.—Of any amount which the Thrift Depositor Protection Oversight Board may require the Federal Home Loan Banks to invest in capital stock of the Funding Corporation under this subsection in excess of the $1,000,000,000 amount referred to in paragraph (4), the amount which each Federal Home Loan Bank (or any successor to such Bank) shall invest shall be determined by the Thrift Depositor Protection Oversight Board by multiplying the excess amount by the percentage arrived at by dividing—

(A) the sum of the total assets (as of the most recent December 31) held by all Savings Association Insurance Fund members *as of the date of funding* which are members of such Bank; by

(B) the sum of the total assets (as of such date) held by all Savings Association Insurance Fund members *as of the date of funding* which are members of a Federal Home Loan Bank.

* * * * * * *

[(7) ADDITIONAL SOURCES.—If each Federal Home Loan Bank has exhausted the amount applicable with respect to the Bank under paragraph (3) after purchases under paragraphs (4), (5), and (6), the amounts necessary to provide additional funding for the Funding Corporation Principal Fund shall be obtained from the following sources:

[(A) ASSESSMENTS.—The Funding Corporation, with the approval of the Board of Directors of the Federal Deposit Insurance Corporation, shall assess against each Savings Association Insurance Fund member an assessment (in the same manner as assessments are assessed against such members by the Federal Deposit Insurance Corporation pursuant to section 7 of the Federal Deposit Insurance Act) except that—

[(i) the maximum amount of the aggregate amount assessed shall be the amount of additional funds necessary to fund the Funding Corporation Principal Fund;

[(ii) the sum of—

[(I) the amount assessed under this subparagraph; and

[(II) the amount assessed by the Financing Corporation under section 21;

shall not exceed the amount authorized to be assessed against Savings Association Insurance Fund members pursuant to section 7 of the Federal Deposit Insurance Act;

[(iii) the Financing Corporation shall have first priority to make the assessment; and

[(iv) the amount of the applicable assessment determined under such section 7 shall be reduced by the sum described in clause (ii) of this subparagraph.

[(B) RECEIVERSHIP PROCEEDS.—To the extent the amounts available pursuant to subparagraph (A) are insufficient to fund the Funding Corporation Principal Fund, the Federal Deposit Insurance Corporation shall transfer amounts to the Funding Corporation from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships.

[(8) TRANSFER TO RTC.—The Funding Corporation shall transfer to the Resolution Trust Corporation $1,200,000,000 in fiscal year 1989.]

* * * * * * *

(k) DEFINITIONS.—For purposes of this section*, the following definitions shall apply*:

(1) * * *

* * * * * * *

[(8) SAVINGS ASSOCIATION INSURANCE FUND MEMBER.—The term "Savings Association Insurance Fund member" means a Savings Association Insurance member as such term is defined by section 7(l) of the Federal Deposit Insurance Act.]

[(9)] *(8)* SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

[(10)] *(9)* UNDIVIDED PROFITS.—The term "undivided profits" means earnings retained after dividends have been paid minus the sum of—

(A) that portion required to be added to reserves maintained pursuant to the first 2 sentences of section 16; and

(B) the dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves on December 31, 1985, as determined by the table set forth in section 21(d)(7).

* * * * * * *

HOME OWNERS' LOAN ACT

* * * * * * *

SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.

(a) * * *

* * * * * * *

(c) LOANS AND INVESTMENTS.—To the extent specified in regulations of the Director, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

(1) * * *

* * * * * * *

(5) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—

(A) IN GENERAL.—If, under section 5(d)(3) of the Federal Deposit Insurance Act, a savings association acquires all or substantially all of the assets of a bank [that is a member of the Bank Insurance Fund], the Director may permit the savings association to retain any such asset during the 2-year period beginning on the date of the acquisition.

* * * * * * *

(6) DEFINITIONS.—[As used in this subsection—] *For purposes of this subsection, the following definitions shall apply:*

(A) * * *

* * * * * * *

(o) CONVERSION OF STATE SAVINGS BANKS.—(1) Subject to the provisions of this subsection and under regulations of the Director, the Director may authorize the conversion of a State-chartered savings bank [that is a Bank Insurance Fund member] into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the organization, incorporation, operation, examination, and regulation of such institution.

(2)(A) Any Federal savings bank chartered pursuant to this subsection shall continue to be [a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member] *insured by the Deposit Insurance Fund*.

* * * * * * *

(t) CAPITAL STANDARDS.—

(1) * * *

* * * * * * *

(5) SEPARATE CAPITALIZATION REQUIRED FOR CERTAIN SUBSIDIARIES.—

(A) * * *

* * * * * * *

(D) TRANSITION RULE.—

(i) * * *

* * * * * * *

(iii) AGENCY DISCRETION TO PRESCRIBE GREATER PERCENTAGE.—Subject to clauses (iv), (v), and (vi), the Director may prescribe by order, with respect to a particular qualified savings association, an applicable percentage greater than that provided in clause (ii) if the Director determines, in the Director's sole discretion, that the use of the greater percentage, under the circumstances—

(I) would not constitute an unsafe or unsound practice;

(II) would not increase the risk to the [affected deposit insurance fund] *Deposit Insurance Fund*; and

* * * * * * *

(7) EXEMPTION FROM CERTAIN SANCTIONS.—

(A) * * *

* * * * * * *

(C) STANDARDS FOR APPROVAL OR DISAPPROVAL.—

(i) APPROVAL.—The Director may approve an application for an exemption if the Director determines that—

(I) such exemption would pose no significant risk to the [affected deposit insurance fund] *Deposit Insurance Fund*;

* * * * * * *

(v) REPORTS OF CONDITION.—

(1) * * *

(2) PUBLIC DISCLOSURE.—

(A) Reports required under paragraph (1) and all information contained therein shall be available to the public upon request, unless the Director determines—

(i) that a particular item or classification of information should not be made public in order to protect the safety or soundness of the institution concerned or institutions concerned, [the Savings Association Insurance Fund] *or the Deposit Insurance Fund*; or

* * * * * * *

SEC. 10. REGULATION OF HOLDING COMPANIES.

(a) * * *

* * * * * * *

(c) HOLDING COMPANY ACTIVITIES.—

(1) * * *

* * * * * * *

(6) SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES AFFECTED BY 1987 AMENDMENTS.—

(A) * * *

* * * * * * *

(D) ORDER BY DIRECTOR TO TERMINATE SUBPARAGRAPH (B) ACTIVITY.—Any activity described in subparagraph (B) may also be terminated by the Director, after opportunity for hearing, if the Director determines, having due regard for the purposes of this [title] *Act*, that such action is necessary to prevent conflicts of interest or unsound practices or is in the public interest.

* * * * * * *

(e) ACQUISITIONS.—

(1) IN GENERAL.—It shall be unlawful for—

(A) * * *

(B) any other company, without the prior written approval of the Director, directly or indirectly, or through one or more subsidiaries or through one or more transactions, to acquire the control of one or more savings associations, except that such approval shall not be required in connection with the control of a savings association, (i) acquired by devise under the terms of a will creating a trust which is excluded from the definition of "savings and loan holding company" under subsection (a) of this section, (ii) ac-

quired in connection with a reorganization in which a person or group of persons, having had control of a savings association for more than 3 years, vests control of that association in a newly formed holding company subject to the control of the same person or group of persons, or (iii) acquired by a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company. The Director shall approve an acquisition of a savings association under this subparagraph unless the Director finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the association or the insurance risk of the [Savings Association Insurance Fund or Bank Insurance Fund] *Deposit Insurance Fund*, and shall render a decision within 90 days after submission to the Director of the complete record on the application.

* * * * * * *

(2) FACTORS TO BE CONSIDERED.—The Director shall not approve any acquisition under subparagraph (A)(i) or (A)(ii), or of more than one savings association under subparagraph (B) of paragraph (1) of this subsection, any acquisition of stock in connection with a qualified stock issuance, any acquisition under paragraph (4)(A), or any transaction under section 13(k) of the Federal Deposit Insurance Act, except in accordance with this paragraph. In every case, the Director shall take into consideration the financial and managerial resources and future prospects of the company and association involved, the effect of the acquisition on the association, the insurance risk to the [Savings Association Insurance Fund or the Bank Insurance Fund] *Deposit Insurance Fund*, and the convenience and needs of the community to be served, and shall render a decision within 90 days after submission to the Director of the complete record on the application. Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association. Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Director shall request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved. The Director shall not approve any proposed acquisition—

(A) * * *

* * * * * * *

(4) ACQUISITIONS BY CERTAIN INDIVIDUALS.—

(A) * * *

(B) TREATMENT OF CERTAIN HOLDING COMPANIES.—If any individual referred to in subparagraph (A) controls more than 1 savings and loan holding company or more than 1 savings association, any savings and loan holding company controlled by such individual shall be subject to the activi-

ties limitations contained in subsection (c) to the same extent such limitations apply to multiple savings and loan holding companies, unless all or all but 1 of the savings associations (including any institution deemed to be a savings association under subsection [(1)] *(l)* of this section) controlled directly or indirectly by such individual was acquired pursuant to an acquisition described in subclause (I) or (II) of subsection (c)(3)(B)(i).

* * * * * * *

(g) ADMINISTRATION AND ENFORCEMENT.—

(1) * * *

* * * * * * *

(3) PROCEEDINGS.—(A) In any proceeding under subsection (a)(2)(D) or under paragraph (5) of this [section] *subsection*, the Director may administer oaths and affirmations, take or cause to be taken depositions, and issue subpenas. The Director may make regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to such proceedings may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

* * * * * * *

(i) PENALTIES.—

(1) * * *

* * * * * * *

[(5)] *(4)* NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a savings and loan holding company or subsidiary thereof (including a separation caused by the deregistration of such a company or such a subsidiary) shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company or its subsidiary (whether such date occurs before, on, or after the date of the enactment of this paragraph).

* * * * * * *

(m) QUALIFIED THRIFT LENDER TEST.—

(1) * * *

* * * * * * *

(3) FAILURE TO BECOME AND REMAIN A QUALIFIED THRIFT LENDER.—

(A) * * *

* * * * * * *

[(E) DEPOSIT INSURANCE ASSESSMENTS.—Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay to the Savings Association Insurance Fund the assessments assessed on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status from a Savings Association Insurance Fund member, the exit fee and entrance fee provided in section 5(d) of the Federal Deposit Insurance Act. Such institution shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until—

[(i) December 31, 1993, or

[(ii) the institution's change of status from a Savings Association Insurance Fund member to a Bank Insurance Fund member,

whichever is later.]

[(F)] *(E)* EXEMPTION FOR SPECIALIZED SAVINGS ASSOCIATIONS SERVING CERTAIN MILITARY PERSONNEL.—Subparagraph (A) shall not apply to a savings association subsidiary of a savings and loan holding company if at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former members in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such members.

[(G)] *(F)* EXEMPTION FOR CERTAIN FEDERAL SAVINGS ASSOCIATIONS.—This paragraph shall not apply to any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(i) that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law; or

(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

[(H)] *(G)* NO CIRCUMVENTION OF EXIT MORATORIUM.—Subparagraph (A) of this paragraph shall not be construed as permitting any insured depository institution to engage in any conversion transaction prohibited under section 5(d) of the Federal Deposit Insurance Act.

* * * * * * *

(7) TRANSITIONAL RULE FOR CERTAIN SAVINGS ASSOCIATIONS.—

(A) IN GENERAL.—If any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(i) that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982; or

(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law,

meets the requirements of subparagraph (B), such savings association shall be treated as a qualified thrift lender [during period] *during the period* ending on September 30, 1995.

* * * * * * *

(o) MUTUAL HOLDING COMPANIES.—

(1) * * *

* * * * * * *

(3) NOTICE TO THE DIRECTOR; DISAPPROVAL PERIOD.—

(A) * * *

* * * * * * *

(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), a savings association may, subject to the approval of the Director, retain capital assets at the holding company level to the extent that such capital exceeds the association's capital requirement established by the Director pursuant to [sections 5 (s) and (t) of this Act] *subsections (s) and (t) of section 5*.

* * * * * * *

NATIONAL HOUSING ACT

* * * * * * *

TITLE III—NATIONAL MORTGAGE ASSOCIATIONS

* * * * * * *

CIVIL MONEY PENALTIES AGAINST ISSUERS

SEC. 317. (a) * * *

(b) VIOLATIONS FOR WHICH A PENALTY MAY BE IMPOSED.—

(1) VIOLATIONS.—The violations by an issuer or a custodian for which the Secretary may impose a civil money penalty under subsection (a) are the following:

(A) * * *

(B) Failure to segregate cash flow from pooled mortgages or to deposit either principal and interest funds or escrow funds into special accounts with a depository institution whose accounts are insured by the National Credit Union Administration or by the Federal Deposit Insurance Corporation through the [Bank Insurance Fund for banks or

through the Savings Association Insurance Fund for savings associations] *Deposit Insurance Fund*.

* * * * * * *

TITLE V—MISCELLANEOUS

* * * * * * *

SEC. 536. CIVIL MONEY PENALTIES AGAINST MORTGAGEES, LENDERS, AND OTHER PARTICIPANTS IN FHA PROGRAMS.

(a) * * *

(b) VIOLATIONS FOR WHICH A PENALTY MAY BE IMPOSED.—

(1) VIOLATIONS.—The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a mortgagee or lender, as follows:

(A) * * *

(B) Failure of a nonsupervised mortgagee, as defined by the Secretary—

(i) * * *

(ii) to deposit these funds in a special account with a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation through the [Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations] *Deposit Insurance Fund*, or by the National Credit Union Administration.

* * * * * * *

FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989

* * * * * * *

TITLE IX—REGULATORY ENFORCEMENT AUTHORITY AND CRIMINAL ENHANCEMENTS

* * * * * * *

Subtitle E—Civil Penalties For Violations Involving Financial Institutions

SEC. 951. CIVIL PENALTIES.

(a) * * *

(b) MAXIMUM AMOUNT OF PENALTY.—

(1) * * *

* * * * * * *

(3) SPECIAL RULE FOR VIOLATIONS CREATING GAIN OR LOSS.—

(A) * * *

(B) As used in this paragraph, the term "person" includes the Bank Insurance Fund, the Savings Association Insurance

Fund, *and after the merger of such funds, the Deposit Insurance Fund,* and the National Credit Union Share Insurance Fund.

* * * * * * *

TITLE XI—REAL ESTATE APPRAISAL REFORM AMENDMENTS

* * * * * * *

SEC. 1112. FUNCTIONS OF THE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES RELATING TO APPRAISER QUALIFICATIONS.

(a) * * *

* * * * * * *

(c) GAO STUDY OF APPRAISALS IN CONNECTION WITH REAL ESTATE RELATED FINANCIAL TRANSACTIONS BELOW THE THRESHOLD LEVEL.—

(1) GAO STUDIES.—The Comptroller General of the United States may conduct, under such conditions as the Comptroller General determines appropriate, studies on the adequacy and quality of appraisals or evaluations conducted in connection with real estate related financial transactions below the threshold level established under subsection (b), taking into account—

(A) * * *

(B) the possibility of losses to the [Bank Insurance Fund, the Savings Association Insurance Fund,] *Deposit Insurance Fund* or the National Credit Union Share Insurance Fund;

* * * * * * *

BANK HOLDING COMPANY ACT OF 1956

* * * * * * *

DEFINITIONS

SEC. 2. (a) * * *

* * * * * * *

(j) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERM.—The term "savings association" or "insured institution" means—

(1) any Federal savings association or Federal savings bank;

(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the [Savings Association Insurance Fund] *Deposit Insurance Fund*; and

* * * * * * *

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) * * *

* * * * * * *

(d) INTERSTATE BANKING.—

(1) APPROVALS AUTHORIZED.—

(A) * * *

* * * * * * *

(D) EFFECT ON STATE CONTINGENCY LAWS.—No provision of this subsection shall be construed as affecting the applicability of a State law that makes an acquisition of a bank contingent upon a requirement to hold a portion of such bank's assets available for call by a State-sponsored housing entity established pursuant to State law, if—

(i) * * *

* * * * * * *

(iii) the Federal Deposit Insurance Corporation has not determined that compliance with such State law would result in an unacceptable risk to the [appropriate deposit insurance fund] *Deposit Insurance Fund*; and

* * * * * * *

SECTION 114 OF THE GRAMM-LEACH-BLILEY ACT

SEC. 114. PRUDENTIAL SAFEGUARDS.

(a) COMPTROLLER OF THE CURRENCY.—

(1) IN GENERAL.—The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank that the Comptroller finds are—

(A) * * *

(B) appropriate to avoid any significant risk to the safety and soundness of insured depository institutions or [any Federal deposit insurance fund] *the Deposit Insurance Fund* or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

* * * * * * *

(b) BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(1) * * *

(2) FINDING.—The Board of Governors of the Federal Reserve System may exercise authority under paragraph (1) if the Board finds that the exercise of such authority is—

(A) * * *

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or [any Federal deposit insurance fund] *the Deposit Insurance Fund* or other adverse effects, such as undue

concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

* * * * * * *

(4) FOREIGN BANKS.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank that the Board finds are—

(A) * * *

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or [any Federal deposit insurance fund] *the Deposit Insurance Fund* or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act) and a subsidiary of the State nonmember bank that the Corporation finds are—

(A) * * *

(B) appropriate to avoid any significant risk to the safety and soundness of depository institutions or [any Federal deposit insurance fund] *the Deposit Insurance Fund* or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

* * * * * * *

SECTION 204 OF THE DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1997

SEC. 204. DISPOSITION OF HUD-OWNED PROPERTIES. (a) FLEXIBLE AUTHORITY FOR MULTIFAMILY PROJECTS.—During fiscal year 1997 and fiscal years thereafter, the Secretary may manage and dispose of multifamily properties owned by the Secretary, including, for fiscal years 1997, 1998, 1999, 2000, and thereafter, the provision of grants and loans from the General Insurace Fund (12 U.S.C. 1735(c)) for the necessary costs of rehabilitation, demolition, or construction on the properties (which shall be eligible whether vacant or occupied) and multifamily mortgages held by the Secretary on such terms and conditions as the Secretary may determine, notwithstanding any other provision of law. *A grant provided under this subsection during fiscal years 2006 through 2010 shall be available only to the extent that appropriations are made in ad-*

vance for such purposes and shall not be derived from the General Insurance Fund.

* * * * * * *

SECTION 203 OF THE HOUSING AND COMMUNITY DEVELOPMENT AMENDMENTS OF 1978

SEC. 203. MANAGEMENT AND DISPOSITION OF MULTIFAMILY HOUSING PROJECTS.

(a) * * *

* * * * * * *

(f) DISCRETIONARY ASSISTANCE.—In addition to the actions required under subsection (e) for a subsidized, formerly subsidized, or unsubsidized multifamily housing project, the Secretary may, pursuant to the disposition plan and the goals in subsection (a), take one or more of the following actions:

(1) * * *

* * * * * * *

(4) UP-FRONT GRANTS.—If the Secretary determines that action under this paragraph is more cost-effective than establishing rents pursuant to subsection (h)(2), the Secretary may utilize the budget authority provided for contracts issued under this section for project-based assistance under section 8 of the United States Housing Act of 1937 to (in addition to providing project-based section 8 rental assistance) provide up-front grants for the necessary cost of rehabilitation and other related development costs. *This paragraph shall be effective during fiscal years 2006 through 2010 only to the extent that such budget authority is made available for use under this paragraph in advance in appropriation Acts.*

* * * * * * *

SUBTITLE B—FHA ASSET DISPOSITION

PURPOSE AND SUMMARY

The FHA Asset Disposition Act of 2005 would make several FHA multifamily authorities subject to appropriations, including (1) discount property sales; (2) discount loan sales; and (3) up-front grant assistance. While beneficial to making a property financially and physically viable, these currently mandatory FHA spending authorities represent an open-ended liability. These authorities are costly, with few restrictions. In recognizing the importance and usefulness of these authorities along with the need for greater financial accountability, these FHA authorities would be subject to appropriations to allow for greater oversight by Congress, which will reduce costs and provide for stronger Congressional control. This legislation would be effective 2006 through 2010.

Since 1934, FHA and HUD have insured almost 33 million home mortgages and multifamily project mortgages. Within HUD, FHA provides mortgage insurance to lenders to protect against losses as a result of borrower default. Currently, FHA has the authority to

sell, at below-market rates, properties taken over by the agency because of mortgage defaults. FHA also has the authority to sell discount loans. Additionally, FHA can provide up-front grants to rehabilitate dilapidated multifamily properties. Funding for the grants currently comes from the General Insurance Fund, which collects money from premiums and servicing of insured mortgages. The amount spent on the grants is left to the discretion of FHA.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 27, 2005, to consider the committee print entitled "Recommendations of the Committee on Financial Services for Reconciliation for FY06: FHA Asset Disposition".

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation. An amendment offered by Mr. Gutierrez, No. 1, reverting to the current status quo in fiscal year 2011, was agreed to by voice vote. A motion by Mr. Oxley to transmit the recommendations of the Committee as contained in the committee print, as amended, and all appropriate accompanying material, to the Committee on the Budget, in order to comply with the reconciliation directives contained in House Concur- rent Resolution 95, was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

While recognizing the importance and usefulness of these authorities, along with the need for greater financial accountability, subjecting these FHA authorities to the appropriations process will allow for greater oversight by Congress, resulting in reduced costs and providing for stronger Congressional control.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 28, 2005.

Hon. MICHAEL G. OXLEY,
Chairman Committee on Financial Services,
House of Representatives Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation recommendations of the House Committee on Financial Services.

CBO understands tbat the Committee on the Budget will be responsible for interpreting how these proposals compare to the reconciliation instructions in the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp and Susanne S. Mehlman (for federal costs), who can be reached at 226–2860, and Judith Ruud (for the private-sector impact).

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

RECONCILIATION RECOMMENDATIONS OF THE HOUSE COMMITTEE ON FINANCIAL SERVICES

Summary: Subtitle A of the legislation would amend laws governing banks and credit unions to modify the deposit insurance system. It would restructure the insurance funds administered by the Federal Deposit Insurance Corporation (FDIC), change the terms and conditions under which banks and savings associations pay insurance premiums, and increase insurance coverage for some of the accounts insured by the FDIC and the National Credit Union Administration (NCUA).

Subtitle B would make spending for certain activities associated with the sale of multifamily properties in the Federal Housing Administration's (FHA's) inventory of defaulted mortgages subject to appropriation for fiscal years 2006 through 2010. FHA currently spends about $60 million a year performing those activities.

CBO estimates that enacting this legislation would reduce direct spending by $470 million over the 2006–2010 period and by $2.8 billion over the 2006–2015 period. Most of the savings would result from the changes in deposit insurance in subtitle A, particularly provisions giving the FDIC more flexibility in determining the size

of the Deposit Insurance Fund and setting the premiums to be paid by banks and thrifts.

The legislation contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates it would impose minimal costs, if any, on state, local, or tribal governments. Those costs would not exceed the threshold established in UMRA ($62 million in 2005 adjusted annually for inflation).

This bill contains private-sector mandates, as defined in UMRA, primarily because the deposit insurance provisions (Subtitle A) would result in certain depository institutions paying higher premiums for federal deposit insurance. Subtitle B of the bill contains no private-sector mandates. Although CBO cannot determine the aggregate cost of all of the private-sector mandates in the bill, we expect that the direct cost of those mandates would exceed the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation) in most of the first five years the mandates are in effect.

Estimated cost to the Federal Government: The estimated budgetary impact of the legislation is shown in the following table. The savings from this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—										
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING											
Subtitle A: Deposit Insurance											
Changes in Costs to Resolve Failed Institutions Insured by FDIC and NCUA											
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	100	100	100	100	100	200	200	200	300	400	1,400
Changes to FDIC and NCUA Premium Collections											
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	−200	−300	100	−200	−700	−700	−700	−700	−500	−600	−3,900
Subtitle B: Federal Housing Administration											
Termination of Certain FHA Multifamily Authorities											
Estimated Budget Authority	−60	−60	−60	−60	0	0	0	0	0	−270	−270
Estimated Outlays	−60	−60	−60	−60	0	0	0	0	0	−270	−270
Total Changes Under Legislation											
Estimated Budget Authority	−60	−60	−60	−60	0	0	0	0	0	−270	−270
Estimated Outlays	−160	−260	140	−160	−600	−500	−500	−500	−200	−470	−2,770

Notes.—FDIC = Federal Deposit Insurance Corporation; FHA = Federal Housing Administration; NCUA = National Credit Union Administration.

Basis of estimate: This estimate assumes that the legislation will be enacted before the end of calendar year 2005.

Deposit insurance

Two federal agencies are primarily responsible for the deposit insurance system. The FDIC insures the deposits in banks (financed through the Bank Insurance Fund, BIF) and thrift institutions (financed through the Savings Association Insurance Fund, SAIF). The NCUA insures the deposits in credit unions (referred to as shares) with the Share Insurance Fund. When financial institutions fail, the FDIC and NCUA use the insurance funds to reimburse the insured depositors of the failed institutions. These agencies then sell the assets of the institutions and deposit any money recovered into the insurance funds.

The legislation would increase insurance coverage from $100,000 to $130,000 for standard accounts and to twice the standard amount for retirement accounts ($260,000); coverage for municipal deposits would rise to the lesser of $2 million or the sum of the standard coverage plus 80 percent of any amounts above that level. The standard coverage limit for insured deposits would be adjusted in 2008 and every five years thereafter to account for inflation; those future adjustments would be based on the rate of inflation in preceding years, as measured by the Personal Consumption Expenditures Chain-Type Index, and would be rounded to the nearest $10,000. The legislation would merge the BIF and the SAIF to create a new Deposit Insurance Fund (DIF). Other provisions would give the FDIC more flexibility in determining the appropriate size of the insurance fund and in setting the premiums to be paid by banks and thrifts.

CBO estimates that increasing deposit insurance coverage to the levels specified in the legislation would increase the net cost of resolving failed institutions by about $1.4 billion over the next 10 years. CBO also expects that the FDIC would use its new authority to collect about $3.8 billion more in net assessments than CBO estimates would be collected under current law. Over the same period, we estimate that NCUA would increase its net assessments by about $0.1 billion under the legislation. As a result, CBO estimates that the legislation would reduce net direct spending of the FDIC and NCUA by $0.2 billion over the 2006–2010 period and by $2.5 billion over the 2006–2015 period.

Increase in the Cost of Resolving Failed Financial Institutions. By insuring some current deposits that are now uninsured, the legislation would increase the liability of the FDIC and NCUA when institutions fail, without significantly increasing the assets of those institutions. Under current law, CBO estimates that the FDIC's insured deposits will total $3.8 trillion by the end of2006 and that its net losses on failed institutions will total about $8.4 billion over the 2006–2015 period. (We project that gross losses of $38.6 billion would be offset, in part, by recoveries of $30.2 billion from selling the assets of the failed institutions over the 10-year period.)

Under this legislation, CBO estimates that deposit insurance coverage for most accounts would total $130,000 through 2012 and increase to $150,000 in 2013; the coverage levels for retirement accounts and in-state municipal deposits would be much higher. At

those levels, CBO estimates that deposits insured by the FDIC would increase by about 8 percent by 2007, or by about $330 billion. We estimate this change in the amount of insured deposits would lead to a net increase in losses of $1.4 billion over the next 10 years, mostly for the FDIC.

Effects on Premiums Paid to the FDIC By Financial Institutions. Three provisions of the legislation would affect the total amount of premiums collected by the FDIC. The legislation would allow the reserve ratio for the DIF to range between 1.15 percent and 1.4 percent-it currently is fixed at 1.25 percent-and would give the FDIC flexibility in setting the premiums needed to achieve the desired level. (The reserve ratio is calculated by dividing the amount in the fund by the amount of insured deposits.) Second, some financial institutions would be given one-time credits that could be used to pay the FDIC premium assessments in lieu of cash. Finally, the legislation would require the FDIC to merge the BIF and the SAIF. Overall, CBO estimates that the net effect of these provisions on deposit insurance premiums would be an increase in collections of about $3.8 billion over the next 10 years. The major provisions that would affect premium assessments are described below.

Increased FDIC Discretion Over the Reserve Ratio and Premiums. For this estimate, CBO assumes that the FDIC would initially adopt a reserve ratio close to the current level of 1.25 percent, but would allow the ratio to vary around that target depending on the outlook for losses and factors that affect the insurance fund. We also expect that the FDIC would attempt to limit volatility in premiums by setting the fees at levels considered likely to achieve the desired reserve ratio over several years. CBO expects that the FDIC would choose to charge all institutions some premiums all of the time because even the strongest institutions pose some risk. (Under current law, the vast majority of institutions do not pay any premiums if reserves of the BIF or the SAIF are greater than 1.25 percent of insured deposits.) Based on information from the FDIC, CBO expects that the existing category of least risky institutions-which currently account for 98 percent of assessable deposits would be subdivided into three groups.

Assuming an initial target reserve ratio of about 1.25 percent, CBO expects that the lowest risk group would be assessed at a base rate of 0.01 percent and that institutions in higher-risk categories would pay higher rates. CBO also expects, however, that the FDIC would have to levy additional premiums to offset the drop in the DIF reserve ratio that would result from the higher levels of insurance coverage specified in the legislation. (CBO estimates that the increase in insured deposits would reduce the reserve ratio by about 10 basis points.) For this estimate, CBO assumes that the FDIC would opt to rebuild the reserve gradually to avoid sharp swings in premiums. Because the legislation would cap the premiums paid by the strongest institutions at 0.01 percent of their deposits, any additional premiums would have to be paid by institutions in the higher-risk categories.

Other provisions would limit the FDIC's flexibility in setting premiums if the DIF's reserves fall below or above the 1.15 percent to 1.4 percent range. For example, it would direct the FDIC to pay varying levels of dividends to insured institutions if the reserve

ratio exceeds 1.35 percent. If the reserve ratio were to fall below 1.15 percent of insured deposits, the legislation would require the FDIC to implement a restoration plan to bring the ratio back to 1.15 percent within 10 years. Such restrictions could affect the amount or timing of premiums collected by the FDIC under some conditions, but their net effect would not be significant under CBO's current projections of the growth of insured deposits and losses, adjusted for the impact that the one-time credits would have on premium income.

Under such assumptions, CBO estimates that the FDIC's premium assessments—before the use of premium credits—would total $18.1 billion over the 2006–2015 period, compared to about $9.1 billion under current law. Because of the time needed to implement these changes, CBO assumes the new premium levels would not take effect until fiscal year 2007. The amounts paid by most banks and savings associations would be reduced by the availability of one-time premium credits authorized by the legislation (see below).

Credits for Future Premiums. The legislation would require the FDIC to provide certain banks and thrifts with one-time credits against future premiums, based on the amount of their payments to the BIF or SAIF prior to 1997. The credits would equal 12 basis points (0.12 percent) of the combined assessment base of the BIF and SAIF as of December 31, 2001, or a total of $5.4 billion. CBO estimates that eligible institutions would use $5.2 billion of the credits over the 2006–2015 period.

After adjusting for such credits, CBO estimates that implementing this legislation would increase net proceeds from premiums by a total of $3.8 billion relative to CBO's baseline over the next 10 years. Under CBO's current baseline assumptions regarding deposit growth and bank failures, the premium collections net of credits would result in an average reserve ratio of about 1.20 over the 2007–2015 period.

Merging ElF and SAIF. The legislation would require the FDIC to merge the Bank Insurance Fund and the Savings Association Insurance Fund and create a new Deposit Insurance Fund. When considered together with the other reforms in the legislation, CBO expects that merging the funds would have a negligible budgetary impact.

Increase in Premiums Paid to NCVA By Financial Institutions. Credit unions are required to pay NCUA 1 percent of the net change in deposits each year. Thus, increasing the amount of insured deposits would increase the amounts collected by the NCUA. Based on information on the characteristics of credit union deposits, CBO expects that the legislation would extend insurance coverage to about $8 billion in currently uninsured deposits by 2007.

Thus, CBO estimates that NCUA's net premium collections would increase by about $100 million over the 2006–2015 period, most of which would be received over the 2006–2010 period.

Amending authority for certain FHA multifamily activities

Under subtitle B of this legislation, FHA's mandatory spending authority for rehabilitation grants and below-market sales would be suspended for fiscal years 2006 through 2010. Those activities could continue only if appropriations were provided to finance them

over that period. Under current law FHA has the authority to undertake these activities for properties financed by loans insured prior to 1992, using its permanent funding authority from the General and Special Risk Insurance Fund liquidating account. CBO estimates that these provisions would reduce direct spending by $30 million in 2006 and $270 million over the 2006–2010 period.

FHA often provides rehabilitation grants to purchasers when selling multifamily properties in the agency's inventory of defaulted properties. Based on the historical amount of those grants, CBO estimates that making them subject to appropriation would reduce direct spending by about $20 million in 2006 and $50 million annually over the 2007–2010 period.

To preserve a defaulted property as affordable housing, FHA may sell that property at below market rates. Based on information from FHA, CBO estimates that the forgone proceeds associated with these sales average about $10 million annually. Enacting this legislation would end FHA's permanent authority to sell such properties at below-market prices over the 2006–2010 period. CBO expects that the resulting increase in sales receipts would average about $10 million annually over the next five years. Under this legislation FHA could continue to sell properties at below-market prices over the next five years if funds are appropriated in advance to the agency in amounts sufficient to offset forgone sales receipts.

Estimated impact on State, Local, and Tribal Governments: The legislation contains an intergovernmental mandate as defined in UMRA. A provision in section 4003 would preempt New York state laws that bar savings banks and savings and loan associations from accepting municipal deposits. Complying with this mandate would impose minimal costs, if any, on the state of New York, and any such costs would not exceed the threshold established in UMRA ($62 million in 2005 adjusted annually for inflation). Enacting section 4003 could benefit municipalities in New York to the extent that more depository institutions may compete for their deposits and offer more favorable terms as part of that competition.

Other provisions of the legislation contain no mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: The legislation contains private-sector mandates, as defined in UMRA, primarily because it would require certain depository institutions to pay higher premiums for federal deposit insurance. CBO estimates that the direct cost of those mandates would exceed the annual threshold in UMRA ($123 million in 2005, adjusted annually for inflation) in most of the first five years the mandates are in effect. We do not have sufficient information to provide an estimate of the aggregate cost of all the mandates in the legislation.

Banks and savings associations

Commercial banks and savings associations must have federal deposit insurance. Changes in the federal deposit insurance system that increase requirements on those institutions are therefore private-sector mandates under UMRA. Specifically, the legislation would increase federal insurance coverage for certain insured depository accounts. It would increase coverage for standard accounts

from $100,000 to $130,000, increase coverage for retirement accounts to twice the standard coverage amount (from $100,000 to $260,000), increase coverage for in-state municipal deposit accounts, and direct the FDIC to increase the standard coverage level to adjust for inflation every five years. Because premiums are based in part on the amount of insured deposits, an increase in coverage would require banks and savings associations to pay more in deposit insurance premiums.

Three additional provisions of the legislation would affect the total amount of premiums collected by the FDIC. First, it would require the FDIC to merge the BIF and the SAIF insurance funds. Second, it would provide the FDIC with greater discretion to set premiums by allowing the agency to collect premiums from all banks and savings institutions regardless of their risk category. Under current law, banks and savings associations in the lowest risk category do not have to pay any deposit insurance premiums when their deposit insurance fund (BIF or SAIF) is above a designated reserve ratio of 1.25 percent of insured deposits. Third, the legislation would direct the FDIC to grant credits to some financial institutions that could be used to pay deposit insurance premiums in lieu of cash.

CBO estimates that banks and savings associations would pay (net of credits) about $1.1 billion more in premiums over the 2007–2011 period relative to current law. The incremental cost to the industry would depend, in part, on how the FDIC would use its new discretion under the bill to set premium rates. For this estimate, CBO assumes that the FDIC would begin to collect premiums from banks and savings associations that are not required to pay premiums under current law.

Credit unions

Because the legislation also would increase the coverage of insured accounts for federally insured credit unions, those credit unions would have to contribute more to the National Credit Union Insurance Fund. CBO estimates that those additional contributions would total about $100 million over the 2007–2011 period. All federally chartered and most state chartered credit unions are required to have federal share (deposit) insurance. According to the National Association of Federal Credit Unions, 17 states do not require their state chartered credit unions to purchase federal share insurance. The cost of the mandate would amount to the incremental premiums paid by those institutions required to have federal insurance and thus may be less than the total additional contributions collected from all federally insured credit unions.

Employee benefit plan deposits

The bill also would prohibit banks, savings associations, and credit unions that are not well capitalized or adequately capitalized from accepting deposits for employee benefit plans. CBO does not have sufficient information to assess the cost of this mandate.

Previous CBO estimate: On October 24, 2005, CBO transmitted a cost estimate for the reconciliation recommendations of the Senate Committee on Banking, Housing, and Urban Affairs, as approved by that committee on October 18, 2005, with a subsequent

amendment provided to CBO on October 21, 2005. The estimated net costs of the deposit insurance provisions in the House and Senate Committee versions are similar despite differences in some provisions, such as the level of deposit insurance coverage and the amount of one-time credits that FDIC-insured institutions can apply against future premium payments. Net outlays over the 2006–2010 period would be about $100 million lower under the Senate Committee's legislation, primarily because that version would provide a smaller amount of one-time credits for banks and thrifts.

The House legislation would make spending for certain activities associated with the sale of multifamily properties in FHA's inventory of defaulted mortgages subject to appropriation for fiscal years 2006 through 2010. In contrast, the Senate legislation would permanently end those spending authorities and authorize the appropriation of $100 million in 2006 to finance them.

Estimate prepared by: Federal Costs: Kathleen Gramp and Susanne S. Mehlman; Judith Ruud; Impact on State, Local, and Tribal Governments: Sarah Puro; Impact on the Private Sector: Judith Ruud and Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation. [If the legislation creates an advisory commission, please see Hugh for language.]

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 4101. Short Title. The short title of this legislation is the "FHA Asset Disposition Act of 2005"

Sec. 4102. Definitions. This section defines many key terms cited in the legislation including "affordability requirements," "discount sale," "discount loan sale," "loan market value," "multifamily real property," "multifamily loan," "property market value," and "Secretary."

Sec. 4103. Appropriated Funds Requirement for Below Market Sales. This section would shift FHA's authority to sell, at discount prices, properties and loans acquired by the agency because of borrower default from mandatory to discretionary, making funding subject to appropriations. Under this section, if a property or loan is sold for a price that is at least market value, that property will not be subject to appropriations. Transactions covered under this section that formally begin within one year before enactment are excluded from this section and can receive mandatory funding as before. This provision is effective 2006 through 2010.

Sec. 4104. Up-Front Grants. This section would make FHA's authority to provide up-front grant assistance discretionary, making funding subject to appropriations.

These grants would be limited to cases where appropriations have been made in advance. Funding for the grants would no longer be drawn from the General Insurance Fund. Transactions covered under this section that formally begin within one year before enactment are excluded from this section and can receive mandatory funding as before. This provision is effective 2006 through 2010.

SECTION 204 OF THE DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1997

SEC. 204. DISPOSITION OF HUD-OWNED PROPERTIES. (a) FLEXIBLE AUTHORITY FOR MULTIFAMILY PROJECTS.—During fiscal year 1997 and fiscal years thereafter, the Secretary may manage and dispose of multifamily properties owned by the Secretary, including, for fiscal years 1997, 1998, 1999, 2000, and thereafter, the provision of grants and loans from the General Insurace Fund (12 U.S.C. 1735(c)) for the necessary costs of rehabilitation, demolition, or construction on the properties (which shall be eligible whether vacant or occupied) and multifamily mortgages held by the Secretary on such terms and conditions as the Secretary may determine, notwithstanding any other provision of law. *A grant provided under this subsection during fiscal years 2006 through 2010 shall be available only to the extent that appropriations are made in advance for such purposes and shall not be derived from the General Insurance Fund.*

* * * * * * *

SECTION 203 OF THE HOUSING AND COMMUNITY DEVELOPMENT AMENDMENTS OF 1978

SEC. 203. MANAGEMENT AND DISPOSITION OF MULTIFAMILY HOUSING PROJECTS.

(a) * * *

* * * * * * *

(f) DISCRETIONARY ASSISTANCE.—In addition to the actions required under subsection (e) for a subsidized, formerly subsidized, or unsubsidized multifamily housing project, the Secretary may, pursuant to the disposition plan and the goals in subsection (a), take one or more of the following actions:

(1) * * *

* * * * * * *

(4) UP-FRONT GRANTS.—If the Secretary determines that action under this paragraph is more cost-effective than establishing rents pursuant to subsection (h)(2), the Secretary may utilize the budget authority provided for contracts issued under this section for project-based assistance under section 8 of the United States Housing Act of 1937 to (in addition to providing project-based section 8 rental assistance) provide up-front grants for the necessary cost of rehabilitation and other related development costs. *This paragraph shall be effective during fiscal years 2006 through 2010 only to the extent that such budget authority is made available for use under this paragraph in advance in appropriation Acts.*

* * * * * * *

ADDITIONAL VIEWS ON RECOMMENDATIONS OF THE COMMITTEE ON FINANCIAL SERVICES FOR FISCAL YEAR 2006: FHA ASSET DISPOSITION

As part of this year's Budget Reconciliation process, the Fiscal Year (FY) 2006 Budget Resolution directed the Financial Services Committee to make $470 million in cuts to mandatory programs within the Committee's jurisdiction. There are few mandatory programs within the Committee's jurisdiction other than those administered by the Federal Housing Administration (FHA). Consequently, the Committee had few options to choose from to achieve the arbitrary cuts required by the FY 2006 Budget Resolution.

Unfortunately, the Committee has decided to recommend adoption of several misguided legislative provisions included in the President's Fiscal Year (FY) 2006 Budget that undermine efforts to preserve the Nation's diminishing supply of affordable housing. The President's budget proposed to convert the FHA's Up Front Grant, Discount Property Sales and Discount Loan Sales programs from mandatory programs to discretionary programs but failed to propose any funding for these programs. Presently, these mandatory programs are funded by the Mutual Mortgage Insurance Fund (MMIF), which is not supported by annual appropriations but by annual insurance premiums. By making these programs discretionary, the proposal would subject these programs to uncertain annual appropriations and force them to compete with other important housing programs for very limited resources. Assertions by the Administration and others that this proposal will bring greater oversight of the program are misleading. While in theory these programs could still receive discretionary funding through the annual appropriations process, the fact that the President's budget requested no funds for these programs signals to Congress that these programs are not a priority. If Congress follows the President's recommendation by providing no funds for these programs, their very existence will be in jeopardy.

The President's proposal could delay much-needed rehabilitation of HUD-owned properties. In addition, it may increase the government's cost to preserve these properties because HUD will be responsible for paying security and maintenance on the properties and will likely hold them in its portfolio longer. Ironically, the proposal to make the program discretionary contradicts the program's original purpose—to take the redevelopment expense "off budget" while utilizing the private sector's ability to rehabilitate HUD-owned properties more promptly and efficiently than HUD.

The recent devastation wrought by Hurricanes Katrina, Rita and Wilma have reminded us of how important it is for everyone to have a safe and affordable place to live and how important it is for the Federal government to support and promote efforts to preserve and expand the Nation's supply of safe and affordable housing. One

way in which the Federal government promotes affordable housing is through the Up Front Grant Program. The FHA's Up Front Grant program provides grants for rehabilitation, demolition, rebuilding and other costs related to the disposition of multifamily housing projects that are owned by HUD. The Up Front Grant program has been a valuable tool in efforts to preserve and rehabilitate properties intended to serve the very poor where HUD has taken title as a result of default or foreclosure on the FHA loan. The program has strengthened the ability of the affordable housing community to revitalize these properties. Under current HUD regulations, HUD has the discretion to provide up front grants to public entities or other purchasers equal to the lesser of 50% of the total development costs or $40,000 per unit. More than 1,000 buildings serving 120,700 families have been sold through HUD foreclosure sales over the past ten years. Buildings across the country, including those in Ohio, Texas, Louisiana, Baltimore, Chicago, New York City, and Washington, D.C. have been substantially revitalized as a result of below market acquisition costs and up front rehabilitation grants. Without these programs, it will become even more difficult for non-profit organizations, faith-based organizations and others to rehabilitate these units and preserve them as affordable.

In addition, the President's proposal removes a valuable tool that could be used to assist families displaced by Hurricane Katrina, Rita and Wilma. In fact, the President's proposal would appear to directly undermine the Urban Homesteading Initiative, which he announced at a press conference in Jackson Square on September 15, 2005. Under the proposed Initiative, HUD would identify properties in the region owned by the Federal government and provide building sites to low-income citizens through a lottery. Ironically, whereas the Urban Homesteading Initiative would dispose of federally-owned properties in their current "as is" condition without providing any assistance to the potential homeowner to make them habitable, the Up Front Grant, Discount Sales and Discount Loans Sales programs would make the same properties both safe and affordable for those whom the President is trying to assist through the Initiative.

Sadly, those most affected by the Committee's decision to adopt the President's recommendations are residents living in HUD-owned properties under substandard conditions and responsible non-profit developers seeking to preserve these properties. The likely result of the Committee's decision is that HUD-owned properties will remain in substandard condition or be purchased by developers who have no intention of keeping the units affordable for the existing low-income residents.

While we were disappointed with the Committee's acceptance of the President's proposal, we are pleased that the Committee accepted an amendment offered by U.S. Representative Luis V. Gutierrez. The Gutierrez amendment helps to limit the damage of the reconciliation legislation by restoring these programs to mandatory funding status in FY2011, ensuring that we capture the savings for the prescribed five years in order to get us through this short term budget crunch, while still allowing the possibility for these programs to have a real future.

In conclusion, we urge the Budget Committee to reject the recommendation of this Committee to make the Up Front Grant Program, Discount Property Sales Program Discount Loan Sales Program a discretionary program subject to annual appropriations.

BARNEY FRANK.
MICHAEL E. CAPUANO.
GARY ACKERMAN.
CAROLYN B. MALONEY.
HAROLD E. FORD, Jr.
STEVE ISRAEL.
EMANUEL CLEAVER.
DEBBIE WASSERMAN SCHULTZ.
MELVIN L. WATT.
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NYDIA M. VELÁZQUEZ.
JOE BACA.
LUIS V. GUTIERREZ.
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JOSEPH CROWLEY.
JULIA CARSON.
BRAD MILLER.
RUBÉN HINOJOSA.
ARTUR DAVIS.
PAUL E. KANJORSKI.
CAROLYN MCCARTHY.
AL GREEN.
BERNARD SANDERS.

DISSENTING VIEWS OF RON PAUL

The purpose of reconciliation is to identify suitable targets for budget reductions in order to reduce spending. Therefore, it is quite odd that the Financial Services Committee would use reconciliation as a vehicle to consider the Federal Deposit Insurance Reform Act, as this act could increase the possibility of future bank failures, and thus increase federal expenditures. The bill does this by expanding the federal government's unconstitutional control over the financial services industry. This bill also raises taxes on all financial institutions. Furthermore, this legislation Therefore, I must oppose this bill.

I primarily object to the provisions in this legislation which may increase the premiums assessed on participating financial institutions. These "premiums," which are actually taxes, are the premier sources of funds for the Deposit Insurance Fund. This fund is used to bail out banks who experience difficulties meeting their commitments to their depositors. Thus, the deposit insurance system transfers liability for poor management decisions from those who made the decisions, to their competitors. This system punishes those financial institutions which follow sound practices, as they are forced to absorb the losses of their competitors. This also compounds the moral hazard problem created whenever government socializes business losses.

In the event of a severe banking crisis, Congress will likely transfer funds from the general revenue into the Deposit Insurance Fund, which could make all taxpayers liable for the mistakes of a few. Of course, such a bailout would require separate authorization from Congress, but can anyone imagine Congress saying "No" to banking lobbyists pleading for relief from the costs of bailing out their weaker competitors?

Government subsidies lead to government control, as regulations are imposed on the recipients of the subsidies in order to address the moral hazard problem. This is certainly the case in banking, which is one of the most heavily regulated industries in America. However, as George Kaufman, the John Smith Professor of Banking and Finance at Loyola University in Chicago, and co-chair of the Shadow Financial Regulatory Committee, pointed out in a study for the CATO Institutes, the FDIC's history of poor management exacerbated the banking crisis of the eighties and nineties. Professor Kaufman properly identifies a key reason for the FDIC's poor track record in protecting individual depositors: regulators have incentives to downplay or even cover-up problems in the financial system such as banking facilities. Banking failures are black marks on the regulators' records. In addition, regulators may be subject to political pressure to delay imposing sanctions on failing institutions, thus increasing the magnitude of the loss.

Immediately after a problem in the banking industry comes to light, the media and Congress will inevitably blame it on regulators who were "asleep at the switch." Yet, most politicians continue to believe that giving the very regulators whose incompetence (or worst) either caused or contributed to the problem will somehow prevent future crises!

The presence of deposit insurance and government regulations removes incentives for individuals to act on their own to protect their deposits or even inquire as to the health of their financial institutions. After all, why should individuals be concerned with the health of their financial institutions when the federal government is insuring banks following sound practices and has insured their deposits?

I would also like to reiterate the irony that this is being considered as part of reconciliation designed to achieve budget savings. While the technical changes made in the deposit insurance program may provide some minor budget savings, increasing the risk of a taxpayer bailout of financial institutions is the equivalent of recommending someone take up smoking to avoid lung cancer. If this committee, and Congress, really wanted to cut spending, they would look at ending the numerous subsidies to large corporations and financial institutions provided by programs under this committee's jurisdiction.

Finally, I would remind my colleagues that the federal deposit insurance program lacks constitutional authority. Congress' only mandate in the area of money, and banking is to maintain the value of the money. Unfortunately, Congress abdicated its responsibility over monetary policy with the passage of the Federal Reserve Act of 1913, which allows the federal government to erode the value of the currency at the will of the central bank. Congress' embrace of fiat money is directly responsible for the instability in the banking system that created the justification for deposit insurance.

In conclusion, this Deposit Insurance "Reform" imposes new taxes on financial institutions, forces sound institutions to pay for the mistakes of their reckless competitors, increases the chances of taxpayers being forced to bailout unsound financial institutions, reduces individual depositors' incentives to take action to protect their deposits, and exceeds Congress's constitutional authority. I therefore urge my colleagues to reject this bill. Instead of extending this federal program, Congress should work to de fund programs that distort the market and enrich powerful special interests and work to prevent the crises which justify government programs like deposit insurance, by fulfilling our constitutional responsibility to pursue sound monetary policies.

F. JAMES SENSENBRENNER, JR., Wisconsin
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ONE HUNDRED NINTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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October 28, 2005

The Honorable Jim Nussle
Chairman
The Committee on the Budget
U.S. House of Representatives
309 Cannon House Office Building
Washington, DC 20515

Dear Chairman Nussle:

Pursuant to obligations outlined in H.Con.Res 95, the "Budget FY2006 Appropriations Resolution," the Committee on the Judiciary is required to submit modifications to existing programs within its jurisdiction to reduce the level of direct spending. To comply with these obligations, the Committee has approved two pieces of legislation: H.R. 3648, to impose additional fees with respect to immigration services for intracompany transferees; and H.R. 4093, the "Federal Judgeship and Administrative Efficiency Act of 2005." According to the estimates provided by the Congressional Budget Office (CBO), these bills will yield a net savings of $428 million over the next five fiscal years. These savings reflect a $43 million surplus over the reconciliation directives of the House Committee on the Budget.

H.R. 3648 was approved by the House Committee on the Judiciary by a vote of 20-6 on September 29, 2005. This legislation raises fees for L visas, which are reserved for foreign intracompany workers wishing to transfer to a domestic facility. These fees were raised to prevent potential abuse of the L visa program and to assist the Committee in meeting its budgetary obligations. The CBO score for this legislation estimated $500 million savings over the next six years.

H.R. 4093 was approved by the House Committee on the Judiciary by a vote of 22-12 on October 27, 2005. This legislation creates a number of national judgeships and reorganizes the Ninth Circuit of Appeals. The judgeships created by H.R. 4093 are in accordance with requests made by the U.S. Judicial Conference of 2005. The reorganization of the Ninth Circuit is in response to documented impediments to an efficient judicial process by the current organizational structure. The CBO estimates the direct fiscal impact of this legislation to be $72 during fiscal years 2006-2010.

Chairman Nussle
October 28, 2005
Page Two

I hereby transmit these recommendations and appropriate accompanying material including additional, supplemental or dissenting views, to the House Committee on the Budget. This submission is for the purpose of complying with reconciliation directives included in H. Con. Res. 95, the fiscal year 2006 budget resolution and is consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974. Thank you for your leadership throughout this budget reconciliation process.

Sincerely,

F. JAMES SENSENBRENNER, JR.

FJS/rt/ag

PURPOSE AND SUMMARY

H.R. 3648 establishes a $1,500 L visa fee in order to meet the reconciliation obligations of the House Committee on the Judiciary.

BACKGROUND AND NEED FOR THE LEGISLATION

Overview of the budget reconciliation process

Under the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. No. 93–344, as amended), the House and Senate are required to adopt at least one budget resolution each year. The budget resolution is a concurrent resolution that is not sent to the President for his approval or veto. Rather, it serves as a broad congressional statement regarding the appropriate revenue, spending, and debt policies, as well as a guide to the subsequent consideration of legislation implementing such policies at agency and programmatic levels. Budget resolution policies are enforced through a variety of mechanisms, including points of order. The House and Senate Budget Committees, which were created by the 1974 Act, exercise exclusive jurisdiction over budget resolutions and are responsible for monitoring their enforcement.

In developing a budget resolution, the House and Senate Budget Committees rely on baseline budget projections prepared by the Congressional Budget Office (CBO). A budget resolution typically reflects many different assumptions regarding legislative action expected to occur during a session that would cause revenue and spending levels to be changed from baseline amounts. However, most revenue and direct spending occurs automatically each year under permanent law; therefore, if the committees with jurisdiction over the revenue and direct spending programs do not report legislation to carry out the budget resolution policies by amending existing law, revenue and direct spending for these programs likely will continue without change.

The budget reconciliation process is an optional procedure that operates as an adjunct to the budget resolution process. The chief purpose of the reconciliation process is to enhance Congress' ability to change current law in order to bring revenue and spending levels into conformity with the policies of the budget resolution. Accordingly, reconciliation probably is the most effective budget enforcement tool available to Congress for a significant portion of the budget. Reconciliation is a two-stage process. First, reconciliation instructions are included in the budget resolution, directing the appropriate committees to develop legislation achieving the desired budgetary outcomes. The instructed committees submit their legislative recommendations to their respective Budget Committees by the deadline prescribed in the budget resolution; the Budget Committees incorporate them into an omnibus budget reconciliation bill without making any substantive revisions.

The second step involves consideration of the resulting reconciliation legislation by the House and Senate under expedited procedures. Among other things, debate in the Senate on any reconciliation measure is limited to 20 hours (and 10 hours on a conference report) and amendments must be germane. The House Rules Committee typically sets limitations on debate and the offering of

amendments during consideration of reconciliation measures in the House.[1]

The L Visa program

L visas are available for "intracompany transferees"—they allow employees working at a company's overseas branch to be shifted to the company's worksites in the United States. A L visa is available to an alien who: within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm . . . or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him . . . .[2]

"Specialized knowledge" with respect to a company is special knowledge of the company product and its application in international markets or an advanced level of knowledge of processes and procedures of the company.[3]

An alien can stay in L status for up to five years if admitted to render services in a capacity that involves specialized knowledge and for up to seven years if admitted to render services in a managerial or executive capacity.[4] The initial period of admission is no longer than three years.[5] Extensions of stay may be authorized in increments of up to two years—new petitions must be filed for all applicants seeking an extension of stay (including aliens who were the beneficiaries of blanket petitions).[6]

To make the L visa program more convenient for established and frequent users of the program, "blanket" L visas are available.[7] If an employer meets certain qualifications—it (1) is engaged in commercial trade or services; (2) has an office in the U.S. that has been doing business for at least one year; (3) has three or more domestic and foreign branches, subsidiaries; or affiliates; and (4) has received approval for at least 10 L visa professionals during the past year or has U.S. subsidiaries or affiliates with annual combined sales of at least $25 million or has a U.S. workforce of at least 1,000 employees[8]—it can receive pre-approval for an unlimited number of L visas from the Department of Homeland Security. Individual aliens seeking visas (within six months of the blanket petition approval[9]) to work for the company simply have to go to a U.S. consular office abroad and show that the job they will be employed in qualifies for the L visa program and that they are qualified for the job.[10]

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[1] See Robert Keith, Congressional Research Service, The Budget Reconciliation Process: Timing of Legislative Action (2005), *http://www.congress.gov/erp/rl/html/RL30458.html#TOC3* 3.
[2] See 8 U.S.C. 1101(a)(15)(L).
[3] See 8 U.S.C. 1184(c)(2)(B).
[4] See 8 U.S.C. 1184(c)(2)(D).
[5] See 8 C.F.R. §214.2(l)(11).
[6] See 8 C.F.R. §214.2(l)(15).
[7] See 8 U.S.C. 1184(c)(2)(A).
[8] See 8 C.F.R. §214.2(l)(4)(i).
[9] See 8 C.F.R. §214.2(l)(5)(ii).
[10] See 8 C.F.R. §214.2(l)(5).

In 2004, the State Department issued 62,700 L visas (not including visas for family members). In 2004, the Department of Homeland Security approved petitions (including petitions for extension of stay) for 49,696 aliens (not including family members), including 28,840 managers and executives and 20,261 aliens with "specialized knowledge."

In 2004, because of a history of fraud in the L and H–1B visa programs,[11] a $500 fee per alien was added to the L visa and H–1B visa programs to fund anti-fraud initiatives.[12]

"Specialized knowledge" L visas are somewhat comparable to "H–1B" visas, which are available for workers coming temporarily to the United States to perform services in a specialty occupation.[13] Such an occupation is one that requires "theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific speciality (or its equivalent) as a minimum for entry into the occupation in the United States."[14]

However, unlike L visas, H–1B visas are numerically limited (65,000 annual cap),[15] require payment of at least the prevailing occupational wage level,[16] and require special attestations for heavy users of the program,[17] among other requirements not found in the L program. In addition, in 2004, a $1,500 per alien fee was added to the H–1B program.[18] This fee originated in 1998 as a $500 fee to fund scholarship assistance for students studying mathematics, computer science, and engineering, for Federal job training services, and for administrative and enforcement expenses.[19] It has been alleged that certain employers have been intentionally evading the requirements of the H–1B program by instead seeking "specialized knowledge" L visas for aliens and then "contracting out" these aliens to other companies, especially after the H–1B program's numerical caps were hit in 2004 and 2005.[20]

H.R. 3648

In order to meet the Judiciary Committee's obligations in the reconciliation process to reduce direct spending by at least $60 million in fiscal year 2006 and $300 million in fiscal years 2006–10, H.R. 3648 would implement a $1,500 per alien L visa fee.[21] The bill will

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[11] See Nonimmigrant Visa Fraud: Hearing Before the Subcomm. on Immigration and Claims of the House Judiciary Comm., 106th Cong. (1999).

[12] See Pub. L. No. 108–447 § 426 (codified at INA sec. 214(c)(12)).

[13] See 8 U.S.C. 1101(a)(15)(H)(i)(b).

[14] See 8 U.S.C. 1184(i)(1).

[15] See 8 U.S.C. 1184(g) (certain employers are exempt from the cap).

[16] See 8 U.S.C. 1182(n)(1)(A)(i).

[17] See 8 U.S.C. 1182(n)(1)(E).

[18] See Pub. L. No. 108–447 § 422 (codified at INA sec. 214(c)(9)). The fee is imposed on employers (other than primary or secondary education institutions, institutions of higher education, nonprofit entities related to or affiliated with such institutions, nonprofit entities which engage in established curriculum related clinical training of students registered at such institutions, nonprofit research organizations, or governmental research organizations) initially to grant an alien H–1B status, to extend the stay of an alien having such status (unless the employer previously has obtained an extension for such alien), or to obtain authorization for an H–1B alien to change employers. A smaller $750 fee is charged to employers having not more than 25 full-time equivalent employees who are employed in the U.S.

[19] See Pub. L. No. 105–277 §421. In 2000, the fee was raised to $1,000 (Pub. L. No. 106–311).

[20] See, e.g., Brian Grow and Manjeet Kripalani, A Visa Loophole as Big as a Mainframe, Business Week, March 10, 2003.

[21] See H. Con. Res. 95. Reconciliation obligations may be met by increasing mandatory fees. See letter from Jim Nussle, Chairman, House Committee on the Budget, to F. James Sensenbrenner, Jr., Chairman, House Committee on the Judiciary (June 24, 2005).

also have the salutary effect of reducing the incentive of employers to utilize the L visa program rather than the H–1B program by equalizing the fees charged under the two programs.

The bill provides that a $1,500 fee will be imposed on an employer when: (1) an alien files an application abroad for a visa authorizing initial admission to the U.S. under the L visa program pursuant to a "blanket" L petition; (2) the employer files a petition initially to grant an alien status under the L visa program; and (3) the employer files a petition to extend the stay (for the first time) of an alien having status under the L visa program. The fee applies only to principal aliens, and not to spouses and children. Fees shall be deposited in the Treasury. An employer may not require an alien to reimburse the employer for the cost of the fee.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 3648.

COMMITTEE CONSIDERATION

On September 29, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 3648 with an amendment to the House by a recorded vote of 20 to 6, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee sets forth the following rollcall votes that occurred during the Committee's consideration of H.R. 3648:

Final Passage. The motion to report the bill, H.R. 3648, favorably as amended to the House was agreed to by a rollcall vote of 20 yeas to 6 nays.

Subject: Motion to report H.R. 3648 favorably as amended. By a rollcall vote of 20 yeas to 6 nays, the motion was agreed to.

Date: 9–29–2005.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			—
Mr. Coble	X		—
Mr. Smith			—
Mr. Gallegly	X		—
Mr. Goodlatte			—
Mr. Chabot	X		—
Mr. Lungren	X		—
Mr. Jenkins	X		—
Mr. Cannon	X		—
Mr. Bachus			—
Mr. Inglis	X		—
Mr. Hostettler	X		—
Mr. Green	X		—
Mr. Keller	X		—
Mr. Issa	X		—
Mr. Flake	X		—
Mr. Pence			—
Mr. Forbes	X		—
Mr. King	X		—
Mr. Feeney	X		—
Mr. Franks	X		—

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Gohmert	X		—
Mr. Conyers		X	—
Mr. Berman			—
Mr. Boucher			—
Mr. Nadler		X	—
Mr. Scott	X		—
Mr. Watt	X		—
Ms. Lofgren			—
Ms. Jackson-Lee			—
Ms. Waters		X	—
Mr. Meehan			—
Mr. Delahunt		X	—
Mr. Wexler			—
Mr. Weiner			—
Mr. Schiff		X	—
Ms. Sanchez		X	—
Mr. Van Hollen			—
Mrs. Wasserman Schultz			—
Mr. Sensenbrenner, Chairman	X		
TOTAL	20	6	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 3648, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

OCTOBER 21, 2005.

Hon. F. JAMES SENSENBRENNER, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3648, a bill to impose additional fees with respect to immigration services for intracompany transferees.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 3648—A bill to impose additional fees with respect to immigration services for intracompany transferees

Summary: H.R. 3648 would impose a fee of $1,500 on multinational employers that seek temporary admission to the United States for certain intracompany transferees, known as L–1 nonimmigrants, who work in managerial or executive capacities or who provide services that involve specialized knowledge. CBO estimates that enacting the bill would increase offsetting receipts (a credit against direct spending) by $80 million in fiscal year 2006 and by about $1 billion over the 2006–2015 period. (The bill would direct these collections to be recorded as offsetting receipts.)

H.R. 3648 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 3648 would impose a new private-sector mandate, as defined in UMRA, by requiring employers to pay when a petition is made for an L–1 visa allowing their foreign employees to transfer to work for companies in the United States. CBO estimates that the direct cost of complying with the mandate would fall below the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation) in each of the next five years.

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 3648 is shown in the following table. The effects of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	−80	−105	−105	−105	−105	−105	−105	−105	−105	−105
Estimated Outlays	−80	−105	−105	−105	−105	−105	−105	−105	−105	−105

Basis of estimate: H.R. 3648 would impose a fee of $1,500 on multinational employers that seek temporary admission to the United States for certain intracompany transferees, known as L–1 nonimmigrants. Employers would have to pay the fee for each employee who is admitted to the United States as an L–1 nonimmigrant, including individuals who change their nonimmigrant status to L–1, and for each employee who extends L–1 status for the first time. The fee would not be charged for subsequent extensions.

Based on information from the Department of State and the Department of Homeland Security about the number of U.S. admissions and extensions for L–1 nonimmigrants in recent years, CBO estimates that the new fee would apply to about 70,000 persons annually. We expect the added fee would cause only a minor decrease

in such admissions and extensions because the fee is primarily paid for by major employers. We estimate that enacting H.R. 3648 would increase collections by $80 million in fiscal year 2006 and by about $1 billion over the 2006–2015 period, assuming the bill is enacted by the end of calendar year 2005.

Similar to the budget classification of other visa fees, the bill would direct these collections to be deposited in the Treasury as offsetting receipts (a credit against direct spending). The new fees collected under H.R. 3648 would not be available for spending unless provided in an appropriations act.

Estimated Impact on State, Local, and Tribal Governments: H.R. 3648 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated Impact on the Private Sector: H.R. 3648 would impose a new private-sector mandate, as defined in UMRA, by requiring employers to pay for an L–1 visa allowing their foreign employees to transfer to work for companies in the United States. The bill would require such employers to pay a $1,500 fee when a petition is made for a transfer or for a first time extension of an L–1 visa. The bill also would prohibit employers from passing along the fee to their L–1 visa employees. The cost of the mandate would be the total fees paid by those employers. Based on information from the Department of State, CBO estimates that the direct cost of complying with the mandate would range from approximately $80 million in 2006 to $105 million in 2010, and thus would fall below the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation) in each of the next five years.

Estimate Prepared by: Federal Costs: Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Paige Piper/Bach.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3648 establishes a $1,500 L visa fee in order to meet the reconciliation obligations of the Judiciary Committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. I, § 8, cl. 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 5101. Fees With Respect to Immigration Services for Intracompany Transferees

This section amends section 214(c) of the Immigration and Nationality Act by adding a new paragraph (15). Subparagraph A provides that the Secretary of State shall impose a fee on an employer when an alien files an application abroad for a visa authorizing initial admission to the U.S. as a "L" visa nonimmigrant (section

101(a)(15)(L) of the INA) in order to be employed by the employer, if the alien is covered by a blanket petition.

Subparagraph B provides that the Secretary of Homeland Security shall impose a fee on an employer filing a petition initially to grant an alien L nonimmigrant status or to extend for the first time the stay of an alien having such status.

Subparagraph C provides that the amount of the fee shall be $1,500.

Subparagraph D provides that the fee shall only apply to principal aliens and not to spouses or children who are accompanying or following to join such principal aliens.

Subparagraph E provides that fees collected shall be deposited as offsetting receipts in the Treasury, and shall not be available for expenditure until appropriated.

Subparagraph F provides that an employer may not require an alien who is the beneficiary of the visa or petition for which a fee is imposed to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. In addition, civil penalties under section 274A(g)(2) of the INA—which provides a penalty against any person or entity who is determined to have in the hiring, recruiting, or referring for employment of any individual, required the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under section 274A relating to the hiring, recruiting, or referring of the individual—shall apply to a violation of this subparagraph.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(15)(A) The Secretary of State shall impose a fee on an employer when an alien files an application abroad for a visa authorizing initial admission to the United States as a nonimmigrant described in section 101(a)(15)(L) in order to be employed by the employer, if the alien is covered under a blanket petition described in paragraph (2)(A).

(B) The Secretary of Homeland Security shall impose a fee on an employer filing a petition under paragraph (1) initially to grant an alien nonimmigrant status described in section 101(a)(15)(L) or to extend for the first time the stay of an alien having such status.

(C) The amount of the fee imposed under subparagraph (A) or (B) shall be $1,500.

(D) The fees imposed under subparagraphs (A) and (B) shall only apply to principal aliens and not to spouses or children who are accompanying or following to join such principal aliens.

(E) Fees collected under this paragraph shall be deposited as offsetting receipts in the Treasury, and shall not be available for expenditure until appropriated.

(F)(i) An employer may not require an alien who is the beneficiary of the visa or petition for which a fee is imposed under this paragraph to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee.

(ii) Section 274A(g)(2) shall apply to a violation of clause (i) in the same manner as it applies to a violation of section 274A(g)(1).

SECTION 203 OF THE JUDICIAL IMPROVEMENTS ACT OF 1990

SEC. 203. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) * * *

* * * * * * *

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) * * *

* * * * * * *

Except with respect to the western district of Michigan, the eastern district of Pennsylvania, and the northern district of Ohio, the first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 10 years or more after the confirmation date of the judge named to fill the temporary judgeship created by this subsection, shall not be filled. The first vacancy in the office of district judge in the western district of Michigan, occurring after December 1, 1995, shall not be filled. The first vacancy in the office of district judge in the eastern district of Pennsylvania, occurring 5 years or more after the confirmation date of the judge named to fill the temporary judgeship created for such district under this subsection, shall not be filled. The first vacancy in the office of district judge in the northern district of Ohio occurring [15 years] *20 years* or more after the confirmation date of the judge named to fill the temporary judgeship created under this subsection shall not be filled. For districts named in this subsection for which multiple judgeships are created by this Act, the last of those judgeships filled shall be the judgeships created under this section.

109TH CONGRESS

PURPOSE AND SUMMARY

The purpose of Title I of H.R. 4093, the "Federal Judgeship Act of 2005," is to authorize the President to appoint, by and with the advice and consent of the Senate, additional circuit and district court judges. These authorizations were developed in coordination

with the U.S. Judicial Conference and substantially based on their recommendations. The circuit and district judgeship requirements have been updated from the 108th Congress and are considered meritorious. Congress last enacted an omnibus judgeship bill in 1990.

Subtitle C of Title V entitled, the "Enhanced Bankruptcy Judgeship Act of 2005," authorizes the appointment of additional bankruptcy judges, subject to the provisions of 28 U.S.C. § 152. The request for additional bankruptcy judgeships was developed in coordination with the U.S. Judicial Conference and is substantially based on their recommendations.

Subtitle III of Title V entitled, the "Judicial Administration and Improvements Act of 2005," realigns the existing Ninth Circuit Court of Appeals into two circuits: a newly-created Twelfth Circuit that is comprised of judicial districts in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington; and a streamlined new Ninth Circuit, which includes all judicial districts in California, Hawaii, the Northern Mariana Islands, and Guam.

Congress has considered proposals to realign the Ninth Circuit for more than 60 years. The Ninth is by far the largest of the thirteen courts of appeals. The size of the Ninth—as measured by the geography of the Circuit, the number of persons it serves, and the volume of cases before it—prevents litigants from receiving timely legal redress. With 28 authorized judgeships, the Ninth is substantially larger than any other circuit court. The U.S. Judicial Conference has requested that Congress authorize five new permanent circuit judgeships and two additional temporary circuit judgeships for the Ninth.

The Committee believes the addition of new judgeships without needed structural reform will exacerbate the unstable development of case law, delays in the adjudication and disposition of cases, and the perpetuation of conditions that have led the Ninth Circuit to be widely recognized as having both an extraordinary number of decisions that the U.S. Supreme Court must hear on appeal as well as a high rate of reversals. The Committee also notes that the Ninth Circuit is notorious for having an excessive number of cases summarily or unanimously reversed by the U.S. Supreme Court. The Committee concurs with the recommendations of two independent commissions, the former Chief Justice of the United States, William Rehnquist, and four Associate Justices of the U.S. Supreme Court that the Ninth should be reorganized. The Committee believes the only viable long-term solution is a structural realignment.

Sutitle E of Title V contains language that was requested by the Administrative Office of the Courts, which authorizes such appropriations as are necessary to implement the provisions of the H.R. 4093.

BACKGROUND AND NEED FOR LEGISLATION

Constitutional Authority to Organize Inferior Courts

Art. I, § 8, cl. 9 of the U.S. Constitution grants to the Congress of the United States the sole authority and responsibility "[t]o constitute Tribunals inferior to the Supreme Court."

Art. III, § 1, reiterates Congress' unique role in providing for the organization and effective functioning of the "judicial Power of the United States" by declaring that such power "shall be vested . . . in such inferior Courts as the Congress may from time to time ordain and establish." Pursuant to its Constitutional authority, Congress has enacted numerous laws to organize and provide for the creation, composition, and from time to time, the reorganization of inferior courts. These laws are designed to ensure that the "judicial Power of the United States" is administered efficiently and effectively and that its operations protect the rights of the American people. The principal statutes that regulate and organize the Courts of Appeals are codified with great specificity in title 28 of the United States Code. In 28 U.S.C. § 40, the Congress has prescribed, inter alia, the creation and composition of circuit courts of appeals, the number and composition of circuits, the number of judges authorized to be appointed to each circuit, and the places where the courts of appeals shall hold regular sessions.

The Creation of New Judgeships for the Realigned Ninth and Other Circuits Will Greatly Enhance the Operations of the Federal Judiciary

The House Committee on the Judiciary received the submission of the Judicial Conference of the United States, which requests Congress to authorize additional Art. III judgeships. The request of the Conference was based upon a biennial review of the judgeship needs of all U.S. Courts of Appeals and U.S. District Courts that was completed in March 2005. The Committee concurs that the creation of 12 new judgeships in five courts of appeals and 56 new judgeships in 29 district courts will enhance the ability of the Federal court system to administer civil and criminal justice matters appropriately. Additionally, the Committee supports the creation of 17 new permanent bankruptcy judgeships and eight new temporary bankruptcy judgeships.

The Creation of the Court of Appeals System and the Ninth Circuit

In 1891, Congress created the regional court of appeals system and the Ninth Circuit by enacting the Evarts Act. Describing the Act's significance, Associate Justice O'Connor has written, "[t]he establishment of a court of appeals and the expansion of the discretionary power of the Supreme Court to grant or deny review in many cases meant that from 1891 on the great majority of Federal court appellate decision making would be made at the level of the circuit court of appeals. That effect is still felt today as the Supreme Court on which I sit accepts for review less than 2 percent of the petitions filed. The great bulk of Federal case law is developed and made in the courts of appeals."

With the great bulk of Federal case law emanating from regional courts of appeals and a recognition that, as a practical matter, courts of appeals are the courts of last resort for the overwhelming majority of litigants, the Committee takes seriously its obligation to ensure that the regional courts of appeals system functions appropriately and effectively.

Historically, Congress has exercised this obligation in a number of ways to include, from time to time, adding territories and states

to existing circuits and periodically re-aligning circuits to improve the administration of judicial functions. Two recent examples include the realignment by Congress of the Eighth Circuit by creating the Tenth Circuit in 1929, and similarly, the creation of the Eleventh Circuit from the Fifth in 1981.

When the Ninth Circuit was established, the American West was characterized by a vast geography that was sparsely populated. The continental contours of the circuit have been unchanged since 1912 when Arizona was added to the Ninth. According to census figures from 1910, the combined population of the states that comprise the Ninth today constituted less than 6 percent of the total U.S. population. In stark contrast, today the circuit encompasses more than 58 million people, nearly 20 percent of the total U.S. population. This figure exceeds by 27million the number of people in the next most populous Circuit, the Sixth, and by 37 million the average population of the other circuits.

There is no foreseeable end to the phenomenal population growth in the region. Three of the five fastest-growing American cities with populations that exceed 1,000,000 and seven of the ten fastest-growing cities with populations that exceed 100,000 lie within the Ninth's confines.

The Ninth's enormity dominates over the other regional circuits. The Ninth is 25 times larger than the smallest of the circuits, the First. The Committee believes that a regional court of appeals system that places one in five Americans and 40 percent of the nation's geographic area in a single regional circuit with the ten remaining regional courts of appeals dividing 60 percent of the nation's land mass is unwieldy and inefficient.

The Ninth Circuit: Structure and Concerns

The U.S. Courts of Appeals for the Ninth Circuit is comprised of nine states and includes the districts of Alaska, Arizona, Central California, Eastern California, Northern California, Southern California, Hawaii, Idaho, Montana, Nevada, Oregon, Eastern Washington, Western Washington, Guam, and Northern Mariana Islands. The Committee notes that the average number of states in the other circuits is 4.25 and that the Ninth's composition is more than twice as large.

Twenty-four of its 28 authorized judgeships are filled and there are 23 senior judges assigned to the circuit. Currently, the Ninth Circuit has 47 serving judges, four vacancies, and a request for seven additional judgeships, for a total of 58. This figure approaches twice the number of total serving judges in the next largest circuit, the Sixth, with 29 serving judges and a request for one additional judgeship for a total of 30. The Committee notes the average total number of judges among all other circuits is 20 and that the Ninth's requirements approach three times that figure.

During the year ending June 30, 2005, 15,685 appeals were filed in the Ninth. This number represents three times the average of other circuits and approximately one-quarter of all appeals heard by U.S. Courts of Appeals. The Committee notes that the median time for disposing of an appeal from filing is approximately 40 percent longer in the Ninth than the average of the other Courts of Appeals. This delay increases both the expenses incurred by parties

and the uncertainty associated with the ultimate resolution of the case. The lives of the individuals involved are seriously and negatively impacted when the Federal court system fails to dispense justice in a swift, unbiased, and equitable manner. The Committee is convinced that it can no longer be maintained, and that the enormity of the Ninth Circuit presents unique administrative challenges that are responsible for the persistent inability of the Ninth to meet the legitimate needs and expectations of its citizens.

The Committee is concerned that these delays may imperil the spirit of fundamental guarantees that are provided by the U.S. Constitution. Specifically, the Committee is concerned that the Sixth Amendment guarantee to an accused of a "speedy ? trial" in all criminal prosecutions and the Equal Protection clause's requirement that all American citizens receive equal treatment under the law in every Federal court are unduly placed in jeopardy by the size, scope, and failure of the Ninth to eliminate needless delays and materially reduce its backlog.

The Committee notes that the Ninth's backlog of total appeals pending recently stood at 13,417 cases. This number exceeded by almost three times the number of total appeals pending in the circuit with the second-highest total, the Fifth. Further, the Committee notes that the Ninth's 56.1 percent increase in appeals filed in the four years that ended September 30, 2004 far outpaced the rate of increase in any other district.

The following chart summarizes the workload of the Ninth relative to the other circuits.

Data	D.C.	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th
App. Filed 04	1,390	1,723	7,008	3,871	4,957	8,509	4,841	3,377	3,101	14,274	2,646	7,065
Percent Chg. Prv. Yr	24.0	−6.6	10.2	−2.2	1.4	−1.2	−2.5	−4.0	−2.8	10.9	4.2	1.2
Percent Chg. Prv. Four Yrs	−7.7	17.8	43.3	11.2	5.7	3.1	−1.5	−2.4	−2.0	56.1	−0.4	0.0
App. Trm. 04	1,155	1,643	4,611	2,047	4,713	8,100	4,655	3,294	2,916	12,151	2,448	6,908
Tot. App. Pnd	1,266	1,601	4,240	3,332	2,766	4,854	4,534	2,375	1,993	13,417	2,151	3,542
Med. Time Disp	10.5	11.2	11.0	11.6	7.5	8.5	16.8	10.3	9.8	14.0	11.7	8.8

Data key

App. Filed 04—The number of appeals filed for 12-month period ending 9–30–04.

Percent Chg. Prv. Yr.—The percentage increase or decrease of appeals filed from the previous year.

Percent Chg. Prv. Four Yrs.—The percentage increase or decrease of appeals filed from 9–30–00 to 9–30–04.

App. Term. 04—The number of appeals terminated for the 12-month period ending 9–30–04.

Tot. App. Pnd.—The total number of appeals still pending for the 12-month period ending 9–30–04.

Med. Time Disp.—The median time from filing notice of appeal to disposition (in months) for the 12-month period ending 9–30–04.

The Ninth Circuit is the preferred venue for the filing of administrative appeals. A large increase in immigration appeals accounts for an inordinate percentage, approximately half, of the Ninth's workload. The Committee is presently engaged in a major restructuring of our nation's immigration laws. Ensuring that sensible and uniform immigration policies are enacted and applied equitably throughout the nation is a major component. Nevertheless, the Committee notes it is the Ninth's broad and well-earned reputation for the lenient enforcement of our current immigration laws that has directly contributed to this increased caseload—a condition that some seek to assert as a justification for Congress suspending necessary action to restructure the circuit.

Like other circuits, the Ninth is administered generally by a chief judge and circuit judicial council supported by a circuit executive. A clerk's office handles the administration of the court of appeals. The Ninth has adopted unique practices to facilitate the processing of the voluminous number of cases that it must handle. Among these practices is the extensive use of staff attorneys and the exclusive reliance on "limited" en banc panels.

While the court employs six to eight attorneys who serve as mediators, the court conducts most of its work through the use of three-judge panels. Each active judge serves on oral argument panels seven or eight weeks each year, hearing approximately 32 to 36 cases in each of those weeks. When there are not enough active and senior judges to create argument panels, the court fills out panels with district court judges.

Judges have frequently commented on the importance of "collegiality" when sitting on a three-judge panel. Frequent interaction among judges can enhance understanding of one another's reasoning and decrease the possibility of misinformation and misunderstandings. There are more than 3,000 possible combinations of panels in the Ninth. This incredible number prevents individual judges from becoming better acquainted with the personalities and jurisprudence of their colleagues.

The Ninth has been criticized for permitting its jurisprudence to be developed by three-judge panels with the outcome of particular cases riding subjectively on the makeup of a given panel rather than objectively on general principles of circuit law. This erodes confidence in the law-declaring role, one of a circuit's two primary functions (the other being to correct errors on appeal).

Circuit judges also serve for one or two months each year on screening panels that review cases that were preliminarily screened by court staff. The Committee is informed that it is customary for circuit judges to rely heavily on the recommendations of staff attorneys and that the time spent by a judge on a prescreened matter may be measured in mere minutes. Such a cursory review may lead to an erosion of confidence in the public perception of the judiciary.

Like other circuits, the Ninth may sit en banc to maintain the uniformity of its decisions and to decide cases involving questions of exceptional importance. The Ninth differs from other circuits, however, in that it is the only Circuit to ever use a "limited" en banc court consisting of the Chief Judge and, pursuant to a recently approved local Circuit rule, 14 others (until this year, the procedure was limited to 11 judges total). The effect of the Ninth's long-standing practice was that a majority of six judges (now eight) can establish circuit-wide precedent for one-fifth of the nation's population and on behalf of a court authorized 28 judges in full-time active service. The Committee notes the Ninth adopted this local rule change only seven years after the Commission on Structural Alternatives for the Federal Courts of Appeals, also known as the White Commission, issued its final report that called upon the circuit to abolish its en banc practice. Further, the Committee notes that it was a desire to ensure that a full en banc hearing was available to appellants that motivated the judges of the former Fifth Circuit to unanimously support the realignment that resulted in the creation of the Eleventh Circuit.

The Ninth's rules do permit a judge dissatisfied with the decision of a "limited" en banc court to call for a vote on whether the full court should convene to reconsider the case. However, the Committee notes the court has never voted in favor of a "full-court" rehearing. The Committee considers the Ninth's exclusive and extensive reliance on "limited" en banc hearings to be a direct function of the size, geography, and extraordinary number of judgeships of the court.

The Committee notes that commentators have observed that full en banc hearings can be extraordinarily useful in serving a court's development of coherent, consistent, and predictable case law, in promoting familiarity and collegiality among colleagues, and in eliminating intra-circuit conflicts. The Committee notes the fact that the Ninth's "limited" en banc practice has resulted in denying appellants the opportunity to have all circuit judges in regular active service participate in an en banc hearing. The Committee recognizes that the Ninth's practice is more convenient for the Chief Judge and the limited number of judges selected to participate but the Committee, nevertheless, urges the Ninth Circuit to reconsider this practice and to instead adopt the normal en banc process utilized in all other circuits. The goals of an appellate court must include the provision of well-reasoned, predictable, timely, and uniform decisions. Towards this end, the Committee notes another benefit of a re-aligned Ninth will be to facilitate the practice of precirculating opinions, a practice common to the Supreme Court and the other circuit Courts of Appeals. This could prevent intra-circuit

conflicts and foster greater awareness of the body of law created by a circuit.

Extraordinary History of Congressional Review of Realignment

Even before the passage of the Evarts Act, Congress was informed the enormous size of the proposed Ninth Circuit would create inefficiencies, delays, and administrative burdens. In 1890, Frank M. Stone, a San Francisco attorney, wrote to Senator George F. Edmunds asking the Senate to give further thought to the massive geographical jurisdiction of the proposed Ninth. Presciently, he wrote that such a large circuit "would be more than any one such court of appeals . . . could possibly attend to without the business running behind, and the calendar becoming clogged."

Forewarned, Congress nevertheless created the Ninth largely along the continental boundaries that exist today. In 1937, Ninth Circuit Judge William Denman testified before the Senate on the need to add two additional judges to the court in order to process the number of appeals and clear the court's backlog. He stated, "[w]e need these two judges now," but acknowledged to Congress that, "you will have to divide the circuit and have still more judges" later, adding, "it is inevitable that the northern part of the circuit will eventually be separated from the southern part."

David C. Frederick, the author of Rugged Justice, a history of the Ninth's first half century, describes the situation in familiar terms, "the Ninth Circuit's geographical size suggested two competing options: one, to increase the number of judges on the court; the other, to divide the circuit, as Congress had done with the Eighth. . . . The predominant issue . . . was whether administrative need justified division. Denman did not think so. In 1937, when the threat of division was low, he estimated the number of appeals . . . [to not be] significant enough to warrant a split."

By 1941, Senator Bone and Representative Magnuson from Washington introduced legislation in each chamber to divide the circuit into two, creating a new Eleventh Circuit that would have contained Alaska, Idaho, Montana, Oregon, and Washington. A furious debate was ignited but Congress chose not to act after the Ninth Circuit adopted a new operating rule and issued a well-timed announcement that they would increase sittings in Seattle and Portland. Despite his earlier pronouncements about the inevitability of a split, Judge Denman orchestrated the opposition among California-based Ninth Circuit judges and successfully defeated the proposal.

The next serious attempt to deal with streamlining the Ninth Circuit came in 1973 when Congress created the so-called "Hruska" Commission to study circuit realignment and the appellate courts" internal operating procedures. The Hruska Commission filed a report in 1973 that recommended a split of both the Fifth and the Ninth Circuits but Congress did not act for seven years. In 1978, it passed an omnibus judgeship bill that authorized the use of divisions for certain administrative tasks as well as limited en banc functions, along with new judgeships for the Fifth and Ninth. Judges from the Fifth, however, chose to preserve the rights of appellants to seek a full court en banc review and determined it was

better to realign than to insist on a continued expansion of the size of the court.

In 1989, Senator Slade Gorton of Washington and seven other Senators introduced legislation to create a new Twelfth Circuit composed of Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands. Similar proposals were made in succeeding Congresses.

Responding to ongoing interest in the subject, the 105th Congress created the Commission on Structural Alternatives for the Federal Courts of Appeals. The statute directed the Commission to study the present circuit configuration and the structure and alignment of the courts of appeals, with particular reference to the Ninth.

In its report issued on December 18, 1988, the Commission proposed that the Ninth be organized into three regionally-based adjudicative divisions which would hear and decide all appeals from the district courts. The Committee's Subcommittee on Courts and Intellectual Property conducted a hearing on the Commission's report during the 106th Congress. Witnesses and other interested parties roundly criticized the findings because they maintained an implementation of intra-circuit divisions would lead to the abandonment of circuit-wide stare decisis and ultimately to the creation of more intra-circuit conflicts.

Notably, five Justices of the U.S. Supreme Court, including then Chief Justice Rehnquist, wrote the chair of the White Commission to offer their suggestions. According to the final report, "[o]f the four who commented on the Ninth Circuit, all were of the opinion that it is time for a change. In general, the Justices expressed concern about the ability of judges . . . to keep abreast of the court's jurisprudence and about the risks of intra-circuit conflicts in a court with an output as large as that court's. Some expressed concern about the adequacy of the Ninth Circuit's en banc process to resolve intra-circuit conflicts." Chief Justice Rehnquist wrote favorably of the Commission's "division" proposal but added that he "share[d] many of the concerns expressed by my colleagues [Justices O'Connor, Kennedy, Scalia, and Stevens] on the Court who previously corresponded with the Commission and advocated that some change in the structure of the Court of Appeals for the Ninth Circuit is needed."

In addition to the two independent commissions that have studied and provided to Congress their recommendations, which were to re-organize the Ninth Circuit structurally to improve the circuit's ability to render quality decisions and to quickly and efficiently dispose of cases, the Committee has identified no fewer than 23 hearings that have been conducted in Congress since 1983 and at least 16 bills that have been introduced since the 1973.

The Committee finds no basis for any assertion that there has been inadequate process devoted to this serious public policy matter by Congress nor can the Committee support any implication that the voluminous record, which has been developed over decades ought to be disregarded so the existing Ninth Circuit may enjoy another two years of unchecked growth.

Delays in adjudicating cases may be more understandable to litigants if the quality of final decisions were enhanced. Unfortu-

nately, there is ample evidence that something is systemically amiss with Ninth Circuit decision-making. The Committee notes it is statistically incorrect to equate the reversal rate of the Ninth, which typically has a high number of cases granted certiorari by the Supreme Court, with that of a smaller circuit, such as the Eleventh, which may average only one or two cases before the Court in a given term.

Two other phenomena are of more serious concern than the rate of reversals: the large number of Ninth Circuit cases that the Supreme Court feels consistently obliged to grant discretionary review; and the extraordinary number of summary reversals and unanimous reversals of Ninth decisions. Illustrative of this is the fact that during one recent five-year term, the Supreme Court heard nearly twice as many cases from the Ninth as the next "nearest" circuit, the Sixth.

The Committee notes that the new Twelfth Circuit will have the ability to adopt the precedents that currently exist in the present Ninth and expects little confusion as to what the controlling precedents will be in the new circuit.

The Committee notes that there may be confusion about the resources that are currently authorized to the states that would be in the new Ninth Circuit and those that will be made available under H.R. 4093. According to the Administrative Office of the Courts, the jurisdictions that will be in the new Ninth account for 72 percent of the caseload and are currently authorized 15 active service judgeships or 54 percent of judicial resources in the existing Ninth. When fully implemented, the new Ninth will have 22 such judgeships and its relative share of judicial resources will rise to 63 percent. To accommodate the caseload demands in California, H.R. 4093 directs 100 percent of the seven new judgeships to that state. Again, it is worth noting that California will receive seven new judgeships under H.R. 4093. This number exceeds the number of new judgeships allotted to the rest of the nation.

The Committee is committed to securing all reasonable and necessary appropriations to fully implement H.R. 4093. Towards that end, the Committee included in the reported measure the appropriations language requested by the Administrative Office of the Courts. The Committee also prepared for the realignment and new judgeships in its submission to the Budget Committee.

The Committee understands there to be a number of vacant and underutilized court facilities that may be used to assist in the operations of the new Twelfth Circuit. The Committee strongly encourages the efficient use of such facilities. While the Committee is always conscious of the necessity to maximize budget savings, the Committee considers increasing the quality of the Federal court system and improving the public's access to justice to be benefits that are of equal or more importance.

The Committee notes that some may have concern that the new Ninth will still have a large caseload. Discussing a different realignment, Professor Arthur Hellman testified before the Subcommittee on Courts, the Internet and Intellectual Property in the 108th Congress that he believed that if a realignment was otherwise acceptable that, "the fact that the new Ninth Circuit would

still be a very large circuit is not I think a reason for not doing it."

The Committee notes that H.R. 4093 provides authority to the Chief Judges of the realigned circuits to temporarily assign, upon request, and consistent with the public interest, a judge or judges to the other circuit.

The creation of more judgeships in the absence of necessary reform will not improve the administration of justice in the United States. Circuit Courts of Appeals must be organized in a manner to promote administrative efficiencies and with an eye towards distributing judgeships to achieve structural coherence within each circuit. The realigned Ninth and Twelfth Circuits will result in greater proximity and access by litigants, increased productivity, reduced travel expenses for judges and the public, enhanced collegiality among judges, and more consistency and coherence in the development of circuit-wide case law.

The Committee notes the current Ninth Circuit far surpasses the size of the pre-1980 Fifth Circuit that Congress re-aligned into the present Fifth and Eleventh Circuits. In fact, the Ninth's 2004 population of 58.3 million equals more than 96 percent of the 60.6 million people that reside in the present Fifth and Eleventh Circuits combined.

The Committee considers the question before Congress to be not whether the Ninth Circuit provides an adequate or minimally acceptable level of judicial process but whether justice may be better served by re-aligning the circuit into two or more circuits. There are limits to how large a circuit court ought to grow. The Committee is convinced the only feasible long-term solution is for the Ninth to be re-structured rather than to grow inexorably.

Finally, the Committee notes again that it is the province of the Congress to provide for the organization of the inferior courts. Recognizing this, the Judicial Conference Committee on Court Administration and Case Management recommended in September 2005 that the "Conference not take a position either endorsing or opposing legislation providing for the division of the Ninth Circuit. The committee added, [t]hese . . . decisions are rightly the province of the legislative and executive branches."

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 4093.

COMMITTEE CONSIDERATION

On October 27, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 4093 with an amendment to the House by a recorded vote of 22 to 12, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth the following rollcall votes that occurred during the Committee's consideration of H.R. 4093:

Date: 10–27–05.

Subject: Rep. Berman's amendment to Rep. Issa's amendment in the nature of a substitute to H.R. 4093, was not agreed to by a vote of 14 ayes to 21 nays.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson-Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sanchez	X		
Mr. Van Hollen	X		
Mrs. Wasserman Schultz	X		
Mr. Sensenbrenner, Chairman			
TOTAL	14	21	

Final Passage. The motion to report the bill, H.R. 4093, favorably as amended to the House was agreed to by a roll call vote of 22 yeas to 12 nays.

Date: 10–27–05.

Subject: Motion to Report H.R. 4093, as amended, was agreed to by a vote of 22 ayes to 12 nays.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus	X		
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson-Lee			
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sanchez		X	
Mr. Van Hollen		X	
Mrs. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman			
TOTAL	22	12	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 4093, the following estimate and comparison prepared by the

Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 28, 2005.

Hon. F. JAMES SENSENBRENNER, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional budget Office has prepared the enclosed cost estimate for reconciliation recommendations of the House Committee on the Judiciary.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare to the reconciliation instructions in the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Gregory Waring.

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

Reconciliation Recommendations of the House Committee on the Judiciary

Summary: The legislation would impose a new visa fee, and authorize several new judgeships. CBO estimates that enacting the House Judiciary Committee's reconciliation instructions would reduce direct spending by $76 million in 2006, $428 million over the 2006–2010 period, and $868 million over the 2006–2015 period.

The legislation would impose a fee of $1,500 on multinational employers that seek temporary admission to the United States for certain intracompany transferees, known as L–1 nonimmigrants, who work in managerial or executive capacities or who provide services that involve specialized knowledge.

The legislation also would authorize 93 new permanent and temporary judgeships and extend the authority for specific judgeships in various circuit, district, and bankruptcy courts. It would modify the composition of the Ninth Circuit Court by redistributing states in that court among the Ninth Circuit and a newly created, Twelfth Judicial Circuit.

The legislation contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no cost on state, local, or tribal governments.

The legislation would impose a new private-sector mandate, as defined in UMRA, by requiring employers to pay when a petition is made for an L–1 visa allowing their foreign employees to transfer to work for companies in the United States. CBO estimates that the direct cost of complying with the mandate would fall below the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation) in each of the next five years.

Estimated cost to the Federal Government: The estimated budgetary impact of the legislation is shown in the following table. The

effects of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
L–1 Nonimmigrant Visa Fees:												
Estimated Budget Authority	−80	−105	−105	−105	−105	−105	−105	−105	−105	−105	−500	−1,025
Estimated Outlays	−80	−105	−105	−105	−105	−105	−105	−105	−105	−105	−500	−1,025
Additional Judgeships: [1]												
Estimated Budget Authority	4	17	17	17	17	17	17	17	17	17	72	157
Estimated Outlays	4	17	17	17	17	17	17	17	17	17	72	157
Total:												
Estimated Budget Authority	−76	−88	−88	−88	−88	−88	−88	−88	−88	−88	−428	−868
Estimated Outlays	−76	−88	−88	−88	−88	−88	−88	−88	−88	−88	−428	−868

[1] By authorizing new judgeships and creating a new circuit court the legislation would also authorize administrative costs associated with those judgeships. CBO estimates such costs would exceed $400 million over the 2006–2010 period, subject to appropriation of the necessary amounts.

Basis of Estimate

For this estimate CBO assumes the legislation will be enacted in December 2005.

L–1 Nonimmigrant visa fees

The legislation would impose a fee of $1,500 on multinational employers that seek temporary admission to the United States for certain intracompany transferees, known as L–1 nonimmigrants. Employers would have to pay the fee for each employee who is admitted to the United States as an L–1 nonimmigrant, including individuals who change their nonimmigrant status to L–1, and for each employee who extends L–1 status for the first time. The fee would not be charged for subsequent extensions.

Based on information from the Department of State and the Department of Homeland Security about the number of U.S. admissions and extensions for L–1 nonimmigrants in recent years, CBO estimates that the new fee would apply to about 70,000 persons annually. We expect the added fee would cause only a minor decrease in such admissions and extensions because the fee is primarily paid for by major employers. We estimate that enacting this legislation would increase collections by $80 million in fiscal year 2006 and by about $1 billion over the 2006–2015 period.

Similar to the budget classification of other visa fees, the bill would direct these collections to be deposited in the Treasury as offsetting receipts (a credit against direct spending). The new fees collected under this legislation would not be available for spending unless provided in an appropriations act.

Additional judgeships–Direct spending

The legislation would authorize 12 new circuit judgeships, 56 new district judgeships, and 25 new Bankruptcy judgeships. Those figures include both permanent and temporary judgeships. Based on information from the Administrative Office of the United States Courts (AOUSC) about the cost of benefits for judges, and using the current law salaries of judges, CBO estimates that the mandatory costs of those judgeships would be $71 million over the 2006–2010 period and $156 million over the 2006–2015 period. That estimate does not include any cost for a provision that would convert of 17 bankruptcy judgeships from temporary to permanent status. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109–8) created those temporary judgeships with a term through 2015, thus converting them to permanent status would not affect federal costs over the next 10 years.

Spending subject to appropriation

The 93 judgeships authorized in the legislation would, require administrative support, and office space. Based on information from the AOUSC, CBO expects that discretionary expenditures for support costs associated with each judge would amount to $560,000 a year (in 2006 dollars). In addition, each judge would need equipment and furniture. CBO estimates that the administrative expenses of the additional judgeships in the legislation would cost $9 million in fiscal year 2006 and $270 million over the 2006–2010 period.

The additional District judgeships in the bill would also require staffing from the U.S. Marshals Service for court security and prisoner transportation. Based on information from the U.S. Marshals Service, CBO estimates that under the legislation the agency would provide 180 deputy marshals, 45 support staff, and an additional security inspector. CBO estimates the additional personnel would cost $10 million in fiscal year 2006 and about $110 million over the 2006–2010 period.

The legislation would redistribute the states under the jurisdiction of the Ninth Judicial Circuit among a modified Ninth Circuit and a new Twelfth Circuit. Based on information from the AOUSC, the discretionary expenditures associated with the new Twelfth Circuit would include severance pay for current staff unable to relocate, relocation expenses for some current staff and equipment, and additional staff and equipment that are necessary for responsibilities of each Judicial Circuit. CBO estimates that such additional staff and support for the new Twelfth Circuit would cost $6 million in fiscal year 2006 and $27 million over the 2006–2010 period.

CBO cannot estimate the cost of new office space for the new Twelfth Judicial Circuit, because the legislation does not specify where the new court would be located. According to the AOUSC, two possible locations would involve renovating and using an existing facility in Seattle, Washington, or constructing a new facility in Phoenix, Arizona.

Estimated Impact on State, Local, and Tribal Governments: This legislation contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated Impact on the Private Sector: This legislation would impose a new private-sector mandate, as defined in UMRA, by requiring employers to pay for an L–1 visa allowing their foreign employees to transfer to work for companies in the United States. The bill would require such employers to pay a $1,500 fee when a petition is made for a transfer or for a first time extension of an L–1 visa. The bill also would prohibit employers from passing along the fee to their L–1 visa employees. The cost of the mandate would be the total fees paid by those employers. Based on information from the Department of State, CBO estimates that the direct cost of complying with the mandate would range from approximately $80 million in 2006 to $105 million in 2010, and thus would fall below the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation) in each of the next five years.

Previous CBO Estimate: On October 21, 2005, CBO transmitted a cost estimate for H.R. 3648, a bill to impose additional fees with respect to immigration services for intracompany transferees, as ordered reported by the House Committee on the Judiciary on September 29, 2005. Like the provision described above for this legislation, H.R. 3648 would impose a fee of $1,500 on employers that hire L–1 nonimmigrants and CBO estimated that enacting that bill would increase offsetting receipts by $80 million in fiscal year 2006 and by about $1 billion over the 2006–2015 period.

Estimate prepared by: Federal costs: Mark Grabowicz and Gregory Waring; impact on state, local, and tribal governments: Melissa Merrell; impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4093 will authorize additional circuit, district, and bankruptcy judgeships and realign the current Ninth Circuit Court of Appeals by creating a new Ninth Circuit and a new Twelfth Circuit.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. I, § 8, cl. 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

TITLE I—CIRCUIT AND DISTRICT JUDGESHIPS

Sec. 5201. Short title

Section 101 sets forth the short title of Title I as the "Federal Judgeship Act of 2005."

Sec. 5202. Circuit judges for the circuit courts of appeals

Section 5202 provides for the creation of nine permanent judgeships and three temporary judgeships for the United States Courts of Appeals. The creation of these judgeships reflects the recommendations of the Judicial Conference of the United States, which conducts a biennial review of the judgeship needs of all U.S. Courts of Appeals to determine if any of the courts require additional judges to appropriately administer civil and criminal justice in the federal court system. This title reflects the recommendations presented to the Congress in March 2005.

Subsection 5202(a) creates nine additional permanent judgeships for the U.S. Courts of Appeals. The allocation of these positions is as follows: one for the First Circuit Court of Appeals; two for the Second Circuit Court of Appeals; one for the Sixth Circuit Court of Appeals; and five for the Ninth Circuit Court of Appeals.

Subsection 5202(b) creates three additional temporary judgeships for the U.S. Courts of Appeals. The allocation of these positions is as follows: one for the Eighth Circuit Court of Appeals; and two for the Ninth Circuit Court of Appeals.

Such additional judgeships are "temporary" in that, beginning ten years after the temporary judgeship or judgeships on a given court of appeals are initially filled, a number of vacancies occurring on the court, equal to the number of positions authorized under this subsection, will not be filled so that the court will fall back to the number of authorized judgeships specified for that circuit in 28 U.S.C. § 44.

Subsection 5202(c) amends the table contained in 28 U.S.C. §44(a) to reflect the additional permanent appellate judgeships created by section 5202(a).

Sec. 5203. District judges for the district courts

Section 103 provides for the creation of forty-four permanent judgeships and twelve (12) temporary judgeships for the United States District Courts. The creation of these judgeships reflects the recommendations of the Judicial Conference of the United States, which conducts a biennial review of the judgeship needs of all United States District Courts to determine if any of the courts require additional judges to appropriately administer civil and criminal justice in the federal court system. This title reflects the recommendations presented to the Congress in March 2005.

Subsection 103(a) creates 44 additional permanent judgeships for the U.S. District Courts. The allocation of these positions is as follows: one for the Northern District of Alabama; four for the District of Arizona; four for the Central District of California; four for the Eastern District of California; three for the Northern District of California; one for the Southern District of California; one for the District of Colorado; four for the Middle District of Florida; three for the Southern District of Florida; one for the District of Idaho; one for the Northern District of Illinois; one for the Southern District of Indiana; one for the Western District of Missouri; one for the District of Nebraska; one for the District of Nevada; one for the District of New Mexico; three for the Eastern District of New York; one for the Western District of New York; one for the District of Oregon; one for the District of South Carolina; three for the Southern District of Texas; two for the Eastern District of Virginia; and one for the Western District of Washington.

Subsection 5203(b) creates 12 additional temporary judgeships for the U.S. District Courts. The allocation is as follows: one for the Middle District of Alabama; one for the District of Arizona; one for the Northern District of California; one for the District of Colorado; one for the Middle District of Florida; one for the Northern District of Iowa; one for the District of Minnesota; one for the District of New Jersey; one for the District of New Mexico; one for the Southern District of Ohio; one for the District of Oregon; and one for the District of Utah.

Such additional judgeships are "temporary" in that, beginning ten years after the temporary judgeship or judgeships on a given district court are initially filled, a number of vacancies occurring on the court, equal to the number of positions authorized under this subsection, will not be filled so that the court will fall back to the number of authorized judgeships specified for that district in 28 USC § 133.

Subsection 5203(c)(1) converts to permanent status the following three temporary judgeships created by Public Law 101–650, the Judicial Improvements Act of 1990: one in the District of Hawaii; one in the District of Kansas; and one in the Eastern District of Missouri.

Subsection 5203(c)(2) extends the existing judgeship for the Northern District of Ohio authorized by Public Law 101–650. The first vacancy in the office of district judge in this district occurring

20 years or more after the confirmation date of the judge named to fill the temporary judgeship created by Section 203(c) of Public Law 101–650 shall not be filled.

Subsection 5203(d) amends the table contained in 28 U.S.C. § 133 to reflect the additional permanent district judgeships created by sections 103(a) and 103(c)(1).

Sec. 5204. Establishment of article III court in the Virgin Islands

Section 104 establishes an Article III court in the United States Virgin Islands, in place of the current territorial court.

Subsection 5204(a) adds 28 U.S.C. § 126A to include the Virgin Islands among the United States judicial districts.

Subsection 5204(b) amends 28 U.S.C. § 133(a), which authorizes the number of judges in each district. The number of judges is maintained at its current level of two in the Virgin Islands.

Subsection 5204(c) amends 28 U.S.C. § 152(a) to make clear that bankruptcy judges for the Virgin Islands will be appointed in the same manner as bankruptcy judges in other United States district courts. At this time, the bankruptcy caseload is not sufficient to justify creating bankruptcy judgeships in the Virgin Islands. The district court can handle the caseload with its other judicial resources.

Subsection 5204(d) amends 28 U.S.C. § 333 by eliminating the references to judges of the territorial District Court of the Virgin Islands with respect to attendance at circuit judicial conferences. These references are unnecessary since the new Article III court will be a "district court" as defined in 28 U.S.C. § 451.

Subsection 5204(e) amends 28 U.S.C. § 373 by deleting references to the territorial District Court of the Virgin Islands in the provisions governing the territorial judges' retirement system. Judges of the new Article III court will be included in the Article III judges' retirement system provided in sections 371 and 372 of title 28.

Subsection 5204(f) amends section 28 U.S.C. § 376, concerning annuities for judges' survivors, by deleting the references to judges of the territorial District Court of the Virgin Islands. Judges of the new Article III court will be covered by section 376 by virtue of their positions as "judges of the United States" as defined in 28 U.S.C. § 451.

Subsection 5204(g) amends section 28 U.S.C. § 526(a)(2) by eliminating the reference to the territorial District Court of the Virgin Islands in the context of the investigating authority of the Attorney General. This reference is unnecessary since the new Article III court will be covered by that provision as a "court of the United States" as defined in 28 U.S.C. § 451.

Subsection 5204(h) amends the definition of "courts" in 28 U.S.C. § 610 to delete the reference to the territorial District Court of the Virgin Islands since the new Article III court will be a "district court" as defined in 28 U.S.C. § 451. An obsolete reference to the Canal Zone is also deleted.

Subsection 5204(i) amends 28 U.S.C. § 631(a), authorizing appointment of United States magistrate judges by the territorial District Court of the Virgin Islands, since the new Article III court will be a "district court" as defined in 28 U.S.C. § 451.

Subsection 5204(j) amends 28 U.S.C. § 753(a), regarding court reporters, to delete the reference to the territorial District Court of the Virgin Islands since the new Article III court will be a "district court" as defined in 28 U.S.C. § 451. An obsolete reference to the Canal Zone is also deleted.

Subsection 5204(k) amends 28 U.S.C. § 1291, regarding final decisions of district courts, to delete the reference to the territorial District Court of the Virgin Islands since the new Article III court will be a "district court" as defined in 28 U.S.C. § 451. An obsolete reference to the Canal Zone is also deleted.

Subsection 5204(l) amends subsections (a) and (d)(4) of section 1292 of title 28, regarding interlocutory decisions, by deleting the references to the territorial District Court of the Virgin Islands since the new Article III court will be a "district court" as defined in 28 U.S.C. § 451. An obsolete reference to the Canal Zone is also deleted from section 1292(a).

Subsection 5204(m) amends 28 U.S.C. § 1295(a), regarding the jurisdiction of the United States Court of Appeals for the Federal Circuit, by deleting the reference to the territorial District Court of the Virgin Islands since the new Article III court will be a "district court" as defined in 28 U.S.C. § 451. Obsolete references to the Canal Zone are also deleted.

Subsection 5204(n) amends 28 U.S.C. § 1346(b), regarding the United States as defendant, by deleting the reference to the territorial District Court of the Virgin Islands since the new Article III court will be a "district court" as defined in 28 U.S.C. § 451. An obsolete reference to the Canal Zone is also deleted.

Subsection 5204(o) amends 18 U.S.C. § 3006A(j), the Criminal Justice Act, to delete the reference to the territorial District Court of the Virgin Islands since the new Article III court will be a "district court of the United States created by chapter 5 of title 28," within the meaning of section 3006A(j).

Subsection 5204(p) ensures that the amendments made by this section do not affect the tenure in office of an incumbent judge of the District Court of the Virgin Islands, and do not affect the rights under the territorial judges' retirement system (28 U.S.C. § 373) and the Judicial Survivors' Annuities System (28 U.S.C. § 376) of any former judge who has retired, or will retire, before the effective date of this section. It also guarantees that judges who have accrued service under the territorial judges' retirement system will receive credit for the time served under the Article III judges' retirement systems (28 U.S.C. §§ 371, 372) if they are reappointed as Article III judges of their courts.

Subsection 5204(q) makes conforming amendments to the judicial provisions of the Revised Organic Act of the Virgin Islands in order to reflect the creation of an Article III court and the abolishment of the territorial District Court for the Virgin Islands. The territorial court's existing appellate jurisdiction over local court decisions is transferred to the Article III court until a local appellate court is established by the Virgin Islands legislature. This legislation also retains the existing jurisdiction of the United States Court of Appeals for the Third Circuit over final decisions of the highest local court for fifteen years following establishment of a local appellate court.

Subsection 5204(r) provides that any existing reference to the "District Court of the Virgin Islands" will be deemed to refer to the new Article III court.

Subsection 5204(s) provides that the amendments made by section 104 of this Act will take effect 90 days after the date of enactment of this Act and that cases pending on the effective date may be pursued to final determination in the Article III court.

Sec. 5205. Effective date

The section provides that the provisions of Title I, with the exception of section 5204, will take effect on the date of enactment of the Act.

TITLE II—BANKRUPTCY JUDGESHIPS

Sec. 5301. Short title

Section 5301 sets forth the short title of Title II as the "Enhanced Bankruptcy Judgeship Act of 2005."

Sec. 5302. Authorization for additional bankruptcy judgeships

Section 5302 would authorize the creation of sixteen additional permanent bankruptcy judgeships in 12 judicial districts. This section reflects the recommendations of the Judicial Conference of the United States, which has the duty under 28 U.S.C. § 152(b)(2) to make recommendations to Congress regarding the authorization of additional bankruptcy judgeships. The most recent Conference recommendation for 47 additional bankruptcy judgeships was transmitted to Congress in February 2005.

Section 1223 of Pub. L. No. 109–8, enacted in April 2005, authorized only 28 additional bankruptcy judgeships based upon a superceded Conference recommendation, leaving authorization of 24 of the additional judgeships recommended in 2005 pending. The 16 permanent judgeships that this section would authorize are justified by those districts' workload, and continue to be necessary for the districts involved to manage their caseloads. The allocation of these new judgeships is as follows: three for the eastern district of Michigan; two for the middle district of Florida; two for the northern district of Georgia; one for the southern district of New York; one for the western district of Pennsylvania; one for the district of Maryland; one for the eastern district of Texas; one for the eastern district of Kentucky; one for the western district of Tennessee; one for the eastern district of Arkansas; one for the western districts of Arkansas; one for the district of Utah, and one for the southern district of Georgia.

The Judicial Conference's 2005 recommendation comprised a combination of temporary and permanent judgeships based upon each district's caseload and circumstances. For two districts, the Conference recommended a combination of judgeships. The Conference recommended that the middle district of Florida and the district of Maryland receive two permanent and two temporary judgeships each. Although the district of Maryland received three temporary judgeships under section 1223 of Pub. L. No. 109–8, the additional permanent judgeship that would be authorized by section 2 of this bill is recommended by the Judicial Conference of the

United States, and continues to be necessary for the administration of the bankruptcy system in the district of Maryland. Combined with the conversion of one temporary judgeship in the district of Maryland pursuant to section 4 of this bill, the district of Maryland would be authorized 2 permanent and 2 temporary additional bankruptcy judgeships, as recommended by the Conference in 2005.

Sec. 5303. Temporary bankruptcy judgeships

Section 203 would authorize the creation of eight (8) additional temporary bankruptcy judgeships in seven (7) judicial districts, as follows: two for the middle district of Florida; one for the western district of North Carolina; one for the northern district of Mississippi; one for the southern district of Ohio; one for the northern district of Indiana; one for the district of Nevada; and one for the northern district of Florida.

These additional temporary bankruptcy judgeships were not enacted as part of section 1223 of Pub. L. No. 109–8 because that section of the recently enacted bankruptcy act was based upon a superceded Judicial Conference recommendation, and did not reflect the Judicial Conference's most recent recommendation. These additional judgeships are necessary for the administration of the bankruptcy system in the enumerated districts.

Sec. 5304. Conversion of existing temporary bankruptcy judgeships

Subsection 5304(a) of this bill would convert the existing temporary bankruptcy judgeships in the district of Delaware, the district of Puerto Rico, and the southern district of Illinois (authorized by Pub. L. No. 102–361, as amended by Pub. L. No. 104–317, title III, § 307 (28 U.S.C. § 152 note)) to permanent bankruptcy judgeships under 28 U.S.C. § 152(a)(2). Conversion of these three temporary bankruptcy judgeships was recommended to Congress by the Judicial Conference in February 2005. Section 1223 of Pub. L. No. 109–8 only extends the date after which the next vacancy in the district of Puerto Rico and the district of Delaware would not be filled. The Judicial Conference's evaluation of these districts resulted in the 2005 recommendation that conversion of these three temporary judgeships, not mere extension of the lapse date, is necessary for these districts to have adequate judicial resources both at present and in the future.

Subsection 5304(b) of this bill would convert the existing temporary bankruptcy judgeships authorized by section 1223 of Pub. L. No. 109–8 to permanent bankruptcy judgeships under 28 U.S.C. § 152(a)(2) of title 28, United States Code, in the following districts: the northern district of New York, the southern district of New York, the eastern district of Pennsylvania, the district of Delaware, the district of New Jersey, the district of Maryland, the eastern district of North Carolina, the eastern district of Michigan, the western district of Tennessee, and the southern district of Georgia.

In its February 2005 recommendation to Congress, the Judicial Conference of the United States specifically recommended that these judgeships be created as permanent based upon these districts' case filings, workloads, and unique circumstances. However, section 1223 of Pub. L. No. 109–8 created these judgeships as only

temporary. This means that at any point in time five years from the date each of these new judgeships is filled, each of these districts will permanently lose the new judgeship(s) and will be reduced to the judgeship resource levels that have existed since at least 1999. Based on the workload and case filings of the districts that are the subject of this section of the bill, the Conference specifically recommended that these additional judgeships be authorized as permanent to continuously provide these districts with the necessary judicial resources now and in the future. Therefore, this section would convert these judgeships to permanent to effect that goal.

Sec. 5305. General provisions

Section 5305(a) would make technical amendments to 28 U.S.C. § 152(a)(2), to reflect the additional permanent bankruptcy judgeships created by this bill, by both new authorization and conversion of temporary judgeships. Section 205(b) provides that it is the sense of the Congress that bankruptcy judges in the eastern district of California should conduct bankruptcy proceedings on a daily basis in Bakersfield, California.

Sec. 5306. Effective date

Section 5306 provides that Title II and the amendments to current law contained therein will take effect on the date of the enactment of this Act.

TITLE III—NINTH CIRCUIT REORGANIZATION

Sec. 5401. Short title

Section 5401 sets forth the short title for Title III as the "Judicial Administration and Improvements Act of 2005."

Sec. 5402. Definitions

Section 5402 sets forth the definitions for Title III. For the purposes of this title, the term "Former Ninth Circuit" means the ninth judicial circuit of the United States as it exists on the day before the effective date of this title. The term "New Ninth Circuit" means the ninth judicial circuit as established in section 5403(2)(A) of this bill, which includes California, Guam, Hawaii, and the Northern Mariana Islands. The term "Twelfth Circuit" means the twelfth judicial circuit as established in section 5403(2)(B) of the bill, which includes Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

Sec. 5403. Number and composition of circuits

Section 5403 amends the table contained in 28 U.S.C. § 41 to provide for one additional circuit court of appeals and reallocates the jurisdiction of the current Ninth Circuit Court of Appeals between the New Ninth Circuit and the newly formed Twelfth Circuit Court of Appeals. The Ninth Circuit Court of Appeals would consist of California, Guam, Hawaii, and the Northern Mariana Islands. The Twelfth Circuit Court of Appeals would consist of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

Sec. 5404. Number of circuit judges

Section 5404 amends the table contained in 28 U.S.C. § 44(a) to reflect the number of circuit court judges for the Ninth and Twelfth Circuit Court of Appeals. The New Ninth Circuit would have 19 circuit court judges; the Twelfth Circuit would have 14 circuit court judges.

Sec. 5405. Places of circuit court

Section 5405 amends 28 U.S.C. § 48(a) to set forth the places where the New Ninth Circuit and the Twelfth Circuit will hold regular sessions. The New Ninth Circuit will hold regular sessions in Honolulu, Hawaii; Pasadena, California; and San Francisco, California. The Twelfth Circuit will hold regular sessions in Las Vegas, Nevada; Missoula, Montana; Phoenix, Arizona; Portland, Oregon; and Seattle, Washington.

Sec. 5406. Assignment of circuit judges

Section 5406 provides that the circuit judges that are in regular active service and whose official duty station on the day before the effective date of this title in California, Guam, Hawaii, or the Northern Mariana Islands will become circuit judges of the New Ninth Circuit. Section 306 also provides that the circuit judges that are in regular active service and whose official duty station on the day before the effective date of this title in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington will become circuit judges of the Twelfth Circuit.

Sec. 5407. Election of assignment by senior judges

Section 5407 provides that senior judges of the Former Ninth Circuit can elect to be assigned to either the New Ninth Circuit or the Twelfth Circuit.

Sec. 5408. Seniority of judges

Section 5408 provides that the seniority of the judges of the New Ninth Circuit and the Twelfth Circuit shall run from the date of commission of the judge in the Former Ninth Circuit.

Sec. 5409. Application to cases

Section 5409 provides for the disposition of cases of the Former Ninth Circuit after realignment. Cases submitted for decision prior to the effective date of this title will proceed as if the title had not been enacted, with the exception that a petition for a rehearing en banc that is pending on or after the effective date of this title will be heard by the circuit court of appeal that would have had jurisdiction if this title had been in effect at the time of filing the appeal. For cases that have not been submitted for decision prior to the effective date of this title, the appeal or proceeding, together with the original papers, records, and record entries, will be transferred to the circuit court of appeal that would have had jurisdiction if this title had been in effect at the time of the appeal.

Sec. 5410. Temporary assignment of circuit judges among circuits

Section 5410 amends 28 U.S.C. § 291 to allow the Chief Judge of either the New Ninth Circuit or the Twelfth Circuit to designate

and temporarily assign any circuit court judge to the other circuit of the Former Ninth Circuit if the chief judge of the other circuit requests such assistance and it serves the public interest.

Sec. 5411. Temporary assignment of district judges among circuits

Section 5411 amends 28 U.S.C. § 292 to allow the Chief Judge of the New Ninth Circuit to designate and assign any district court judge to sit on the Twelfth Circuit, or a division thereof, if the Chief Judge of the Twelfth Circuit requests such assistance and it serves the public interest. The section allows the Chief Judge of the New Ninth Circuit to designate and temporarily assign a district court judge to hold a district court in any district of the Twelfth Circuit if it serves the public interest. Section 5411 gives identical powers to the Chief Judge of the Twelfth Circuit. Section 5411 further provides that any such designations or assignments shall be made in accordance with the rules of the court of appeals or district court to which the judge has been designated or assigned.

Sec. 5412. Administration

Section 5412 provides that the Former Ninth Circuit can take such administrative action as is required to carry out this title and amendments thereto. Section 5412 provides further that the Former Ninth Circuit shall cease to exist for administrative purposes two years after the date of enactment of this Act.

Sec. 5413. Effective date

Section 5413 provides that Title III shall take effect no later than December 31, 2006.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

Sec. 5501. Authorization of appropriations

Section 5501 authorizes such funds as may be necessary to carry out this Act for FY 2006–2009, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this Act.

TITLE 28, UNITED STATES CODE

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PART I—ORGANIZATION OF COURTS

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CHAPTER 3—COURTS OF APPEALS

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§ 41. Number and composition of circuits

The [thirteen] *fourteen* judicial circuits of the United States are constituted as follows:

Circuits	Composition
District of Columbia	District of Columbia.
First	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.

Circuits	Composition
Second	Connecticut, New York, Vermont.
Third	Delaware, New Jersey, Pennsylvania, Virgin Islands.
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
Fifth	District of the Canal Zone, Louisiana, Mississippi, Texas.
Sixth	Kentucky, Michigan, Ohio, Tennessee.
Seventh	Illinois, Indiana, Wisconsin.
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
[Ninth	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.]
Ninth	*California, Guam, Hawaii, Northern Mariana Islands.*
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.
Eleventh	Alabama, Florida, Georgia.
Twelfth	*Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.*
Federal	All Federal judicial districts.

* * * * * * *

§ 44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

[Circuits	Number of Judges
District of Columbia	12
First	6
Second	13
Third	14
Fourth	15
Fifth	17
Sixth	16
Seventh	11
Eighth	11
Ninth	28
Tenth	12
Eleventh	12
Federal	12]

Circuits	***Number of Judges***
District of Columbia	*12*
First	*7*

Second	*15*
Third	*14*
Fourth	*15*
Fifth	*17*
Sixth	*17*
Seventh	*11*
Eighth	*11*
Ninth	*19*
Tenth	*12*
Eleventh	*12*
Twelfth	*14*
Federal	*12]*

* * * * * * *

§ 48. Terms of court

(a) The courts of appeals shall hold regular sessions at the places listed below, and at such other places within the respective circuit as each court may designate by rule.

Circuits	*Places*
District of Columbia	Washington.
First	Boston.
Second	New York.
Third	Philadelphia.
Fourth	Richmond, Asheville.
Fifth	New Orleans, Fort Worth, Jackson.
Sixth	Cincinnati.
Seventh	Chicago.
Eighth	St. Louis, Kansas City, Omaha, St. Paul.
[Ninth	San Francisco, Los Angeles, Portland, Seattle.]
Ninth	*Honolulu, Pasadena, San Francisco.*
Tenth	Denver, Wichita, Oklahoma City.
Eleventh	Atlanta, Jacksonville, Montgomery.
Twelfth	*Las Vegas, Missoula, Phoenix, Portland, Seattle.*
Federal	District of Columbia, and in any other place listed above as the court by rule directs.

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CHAPTER 5—DISTRICT COURTS

Sec. 81. Alabama.

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126A. Virgin Islands.

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§ 126A. Virgin Islands

The Virgin Islands constitutes 1 judicial district comprising 2 divisions.

(1) The Saint Croix Division comprises the Island of Saint Croix and adjacent islands and cays.

Court for the Saint Croix Division shall be held at Christiansted.

(2) The Saint Thomas and Saint John Division comprises the islands of Saint Thomas and Saint John and adjacent islands and cays.

Court for the Saint Thomas and Saint John Division shall be held at Charlotte-Amalie.

* * * * * * *

§ 133. Appointment and number of district judges

(a) The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

[Districts	**Judges**
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	12
Arkansas:	
Eastern	5
Western	3
California:	
Northern	14
Eastern	6
Central	27
Southern	13
Colorado	7
Connecticut	8
Delaware	4
District of Columbia	15
Florida:	
Northern	4
Middle	15
Southern	17
Georgia:	
Northern	11
Middle	4
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	22
Central	4
Southern	4
Indiana:	
Northern	5
Southern	5
Iowa:	
Northern	2
Southern	3
Kansas	5
Kentucky:	
Eastern	5
Western	4
Eastern and Western	1

Lousiana:	
Eastern	12
Middle	3
Western	7
Maine	3
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	
Northern	3
Southern	6
Missouri:	
Eastern	6
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	7
New Hampshire	3
New Jersey	17
New Nexico	6
New York:	
Northern	5
Southern	28
Eastern	15
Western	4
North Carolina:	
Eastern	4
Middle	4
Western	4
North Dakota	2
Ohio:	
Northern	11
Southern	8
Oklahoma:	
Northern	3
Southern	1
Western	6
Northern, Eastern, and Western	1
Oregon	6
Pennsylvania:	
Eastern	22
Middle	6
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	10
South Dakota	3
Tennessee:	
Eastern	5
Middle	4
Western	5
Texas:	
Northern	12
Southern	19
Eastern	7
Western	13
Utah	5
Vermont	2
Virginia:	
Eastern	11
Western	4
Washington:	
Eastern	4
Western	7

West Virginia:	
Northern	3
Southern	5
Wisconsin:	
Eastern	5
Western	2
Wyoming	3]

Districts	***Judges***
Alabama:	
Northern	*8*
Middle	*3*
Southern	*3*
Alaska	*3*
Arizona	*16*
Arkansas:	
Eastern	*5*
Western	*3*
California:	
Northern	*17*
Eastern	*10*
Central	*31*
Southern	*14*
Colorado	*8*
Connecticut	*8*
Delaware	*4*
District of Columbia	*15*
Florida:	
Northern	*4*
Middle	*19*
Southern	*20*
Georgia:	
Northern	*11*
Middle	*4*
Southern	*3*
Hawaii	*4*
Idaho	*3*
Illinois:	
Northern	*23*
Central	*4*
Southern	*4*
Indiana:	
Northern	*5*
Southern	*6*
Iowa:	
Northern	*2*
Southern	*3*
Kansas	*6*
Kentucky:	
Eastern	*5*
Western	*4*
Eastern and Western	*1*
Louisiana:	
Eastern	*12*
Middle	*3*
Western	*7*
Maine	*3*
Maryland	*10*
Massachusetts	*13*
Michigan:	
Eastern	*15*
Western	*4*
Minnesota	*7*
Mississippi:	
Northern	*3*
Southern	*6*
Missouri:	
Eastern	*7*

Western	*6*
Eastern and Western	*2*
Montana	*3*
Nebraska	*4*
Nevada	*8*
New Hampshire	*3*
New Jersey	*17*
New Mexico	*7*
New York:	
Northern	*5*
Southern	*28*
Eastern	*18*
Western	*5*
North Carolina:	
Eastern	*4*
Middle	*4*
Western	*4*
North Dakota	*2*
Ohio:	
Northern	*11*
Southern	*8*
Oklahoma:	
Northern	*3*
Eastern	*1*
Western	*6*
Northern, Eastern, and Western	*1*
Oregon	*7*
Pennsylvania:	
Eastern	*22*
Middle	*6*
Western	*10*
Puerto Rico	*7*
Rhode Island	*3*
South Carolina	*11*
South Dakota	*3*
Tennessee:	
Eastern	*5*
Middle	*4*
Western	*5*
Texas:	
Northern	*12*
Southern	*22*
Eastern	*7*
Western	*13*
Utah	*5*
Vermont	*2*
Virgin Islands	*2*
Virginia:	
Eastern	*13*
Western	*4*
Washington:	
Eastern	*4*
Western	*8*
West Virginia:	
Northern	*3*
Southern	*5*
Wisconsin:	
Eastern	*5*
Western	*2*
Wyoming	*3.*

* * * * * * *

CHAPTER 6—BANKRUPTCY JUDGES

* * * * * * *

§ 152. Appointment of bankruptcy judges

(a)(1) * * *

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	2
Arizona	7
Arkansas:	
Eastern and Western	3
California:	
Northern	9
Eastern	6
Central	21
Southern	4
Colorado	5
Connecticut	3
Delaware	1
District of Columbia	1
Florida:	
Northern	1
Middle	8
Southern	5
Georgia:	
Northern	8
Middle	3
Southern	2
Hawaii	1
Idaho	2
Illinois:	
Northern	10
Central	3
Southern	1
Indiana:	
Northern	3
Southern	4
Iowa:	
Northern	2
Southern	2
Kansas	4
Kentucky:	
Eastern	2
Western	3
Louisiana:	
Eastern	2
Middle	1
Western	3
Maine	2
Maryland	4
Massachusetts	5
Michigan:	
Eastern	4
Western	3
Minnesota	4
Mississippi:	
Northern	1
Southern	2
Missouri:	
Eastern	3
Western	3
Montana	1
Nebraska	2
Nevada	3

New Hampshire	1
New Jersey	8
New Mexico	2
New York:	
Northern	2
Southern	9
Eastern	6
Western	3
North Carolina:	
Eastern	2
Middle	2
Western	2
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	2
Eastern	1
Western	3
Oregon	5
Pennsylvania:	
Eastern	5
Middle	2
Western	4
Puerto Rico	2
Rhode Island	1
South Carolina	2
South Dakota	2
Tennessee:	
Eastern	3
Middle	3
Western	4
Texas:	
Northern	6
Eastern	2
Southern	6
Western	4
Utah	3
Vermont	1
Virginia:	
Eastern	5
Western	3
Washington:	
Eastern	2
Western	5
West Virginia:	
Northern	1
Southern	1
Wisconsin:	
Eastern	4
Western	2
Wyoming	1]

Districts	***Judges***
Alabama:	
Northern	*5*
Middle	*2*
Southern	*2*
Alaska	*2*
Arizona	*7*
Arkansas:	
Eastern and Western	*4*
California:	
Northern	*9*
Eastern	*7*
Central	*21*
Southern	*4*

Colorado	*5*
Connecticut	*3*
Delaware	*6*
District of Columbia	*1*
Florida:	
Northern	*1*
Middle	*10*
Southern	*5*
Georgia:	
Northern	*10*
Middle	*3*
Southern	*4*
Hawaii	*1*
Idaho	*2*
Illinois:	
Northern	*10*
Central	*3*
Southern	*2*
Indiana:	
Northern	*3*
Southern	*4*
Iowa:	
Northern	*2*
Southern	*2*
Kansas	*4*
Kentucky:	
Eastern	*3*
Western	*3*
Louisiana:	
Eastern	*2*
Middle	*1*
Western	*3*
Maine	*2*
Maryland	*6*
Massachusetts	*5*
Michigan:	
Eastern	*8*
Western	*3*
Minnesota	*4*
Mississippi:	
Northern	*1*
Southern	*2*
Missouri:	
Eastern	*3*
Western	*3*
Montana	*1*
Nebraska	*2*
Nevada	*3*
New Hampshire	*1*
New Jersey	*9*
New Mexico	*2*
New York:	
Northern	*3*
Southern	*11*
Eastern	*6*
Western	*3*
North Carolina:	
Eastern	*3*
Middle	*2*
Western	*2*
North Dakota	*1*
Ohio:	
Northern	*8*
Southern	*7*
Oklahoma:	
Northern	*2*
Eastern	*1*
Western	*3*

Oregon	*5*
Pennsylvania:	
Eastern	*6*
Middle	*2*
Western	*5*
Puerto Rico	*3*
Rhode Island	*1*
South Carolina	*3*
South Dakota	*2*
Tennessee:	
Eastern	*3*
Middle	*3*
Western	*6*
Texas:	
Northern	*6*
Eastern	*6*
Southern	*3*
Western	*4*
Utah	*4*
Vermont	*1*
Virgin Islands	*0*
Virginia:	
Eastern	*5*
Western	*3*
Washington:	
Eastern	*2*
Western	*5*
West Virginia:	
Northern	*1*
Southern	*1*
Wisconsin:	
Eastern	*4*
Western	*2*
Wyoming	*1.*

* * * * * * *

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

* * * * * * *

§ 291. Circuit judges

(a) * * *

* * * * * * *

(c) The chief judge of the Ninth Circuit may, in the public interest and upon request by the chief judge of the Twelfth Circuit, designate and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit.

(d) The chief judge of the Twelfth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit.

§ 292. District judges

(a) * * *

* * * * * * *

(f) The chief judge of the United States Court of Appeals for the Ninth Circuit may, in the public interest—

(1) upon request by the chief judge of the Twelfth Circuit, designate and assign 1 or more district judges within the Ninth

Circuit to sit upon the Court of Appeals of the Twelfth Circuit, or a division thereof, whenever the business of that court so requires; and

(2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit.

(g) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest—

(1) upon request by the chief judge of the Ninth Circuit, designate and assign 1 or more district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit, or a division thereof, whenever the business of that court so requires; and

(2) designate and assign temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit.

(h) Any designations or assignments under subsection (f) or (g) shall be in conformity with the rules or orders of the court of appeals of, or the district within, as applicable, the circuit to which the judge is designated or assigned.

* * * * * * *

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

* * * * * * *

§ 333. Judicial conferences of circuits

The chief judge of each circuit may summon biennially, and may summon annually, the circuit, district, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit. He may preside at such conference, which shall be known as the Judicial Conference of the circuit. The judges of the District Court of Guam**[**, the District Court of the Virgin Islands,**]** and the District Court of the Northern Mariana Islands may also be summoned biennially, and may be summoned annually, **[**to the conferences of their respective circuits**]** *to the conference of the ninth circuit*.

Every judge summoned may attend, and unless excused by the chief judge, shall remain throughout the conference.

The court of appeals for each circuit shall provide by its rules for representation and active participation at such conference by members of the bar of such circuit.

* * * * * * *

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

* * * * * * *

§ 373. Judges in territories and possessions

(a) Any judge of the District Court of Guam[, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands] *or the District Court of the Northern Mariana Islands* who retires from office after attaining the age and meeting the service requirements whether continuous or otherwise, of subsection (b) shall, during the remainder of his lifetime, receive an annuity equal to the salary he is receiving at the time he retires.

* * * * * * *

(e) Any judge of the District Court of Guam[, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islandsd] *the District Court of the Northern Mariana Islands* who is removed by the President of the United States upon the sole ground of mental or physical disability, or who is not reappointed (as judge of such court), shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (1) if his judicial service, continuous or otherwise, aggregates fifteen years or more, to receive during the remainder of his life an annuity equal to the salary he received when he left office, or (2) if his judicial service, continuous or otherwise, aggregated less than fifteen years but not less than ten years, to receive during the remainder of his life an annuity equal to that proportion of such salary which the aggregate number of his years of his judicial service bears to fifteen.

* * * * * * *

§ 376. Annuities for survivors of certain judicial officials of the United States

(a) For the purposes of this section—

(1) "judicial official" means:

(A) * * *

(B) a judge of the District Court of Guam[, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands] *or the District Court of the Northern Mariana Islands*;

* * * * * * *

(2) "retirement salary" means:

(A) * * *

(B) in the case of a judge of the District Court of Guam[, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands] *or the District Court of the Northern Mariana Islands*, (i) an annuity paid under subsection (a) of section *373* of this title or (ii) compensation paid under paragraph (4) of subsection (c) of section 373 of this title;

* * * * * * *

PART II—DEPARTMENT OF JUSTICE

* * * * * * *

CHAPTER 31—THE ATTORNEY GENERAL

* * * * * * *

§ 526. Authority of Attorney General to investigate United States attorneys, marshals, trustees, clerks of court, and others

(a) The Attorney General may investigate the official acts, records, and accounts of—

(1) * * *

(2) at the request and on behalf of the Director of the Administrative Office of the United States Courts, the clerks of the United States courts [and of the district court of the Virgin Islands], probation officers, United States magistrate judges, and court reporters;

* * * * * * *

PART III—COURT OFFICERS AND EMPLOYEES

* * * * * * *

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

* * * * * * *

§ 610. Courts defined

As used in this chapter the word "courts" includes the courts of appeals and district courts of the United States, [the United States District Court for the District of the Canal Zone,] the District Court of Guam, [the District Court of the Virgin Islands,] the United States Court of Federal Claims, and the Court of International Trade.

* * * * * * *

CHAPTER 43—UNITED STATES MAGISTRATE JUDGES

* * * * * * *

§ 631. Appointment and tenure

(a) The judges of each United States district court and the district courts of [the Virgin Islands, Guam,] *Guam* and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the district court of [the Virgin Islands, Guam,] *Guam* or the Northern Mariana Islands, this chapter shall apply as though the court appointing such a magistrate judge were a United States district court. Where there is more than one judge of a district court, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge. Where the conference deems it desirable, a magistrate judge may be designated to serve in one or more districts adjoining the district for which he is appointed. Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts

involved and shall specify the duties to be performed by the magistrate judge in the adjoining district or districts.

* * * * * * *

CHAPTER 49—DISTRICT COURTS

* * * * * * *

§ 753. Reporters

(a) Each district court of the United States[, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands,] *and the District Court of Guam,* shall appoint one or more court reporters.

* * * * * * *

PART IV—JURISDICTION AND VENUE

* * * * * * *

CHAPTER 83—COURTS OF APPEALS

* * * * * * *

§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States[, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands,] *and the District Court of Guam,* except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

§ 1292. Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States[, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands,] *and the District Court of Guam,* or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

* * * * * * *

(d)(1) * * *

* * * * * * *

(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, [the District Court of the Virgin Islands,] or the District

Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Court of Federal Claims under section 1631 of this title.

* * * * * * *

§ 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) of an appeal from a final decision of a district court of the United States, [the United States District Court for the District of the Canal Zone,] the District Court of Guam, [the District Court of the Virgin Islands,] or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1338 of this title, except that a case involving a claim arising under any Act of Congress relating to copyrights, exclusive rights in mask works, or trademarks and no other claims under section 1338(a) shall be governed by sections 1291, 1292, and 1294 of this title;

(2) of an appeal from a final decision of a district court of the United States, [the United States District Court for the District of the Canal Zone,] the District Court of Guam, [the District Court of the Virgin Islands,] or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title, except that jurisdiction of an appeal in a case brought in a district court under section 1346(a)(1), 1346(b), 1346(e), or 1346(f) of this title or under section 1346(a)(2) when the claim is founded upon an Act of Congress or a regulation of an executive department providing for internal revenue shall be governed by sections 1291, 1292, and 1294 of this title;

* * * * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

* * * * * * *

§ 1346. United States as defendant

(a) * * *

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts[, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands,] shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

* * * * * * *

SECTION 3006A OF TITLE 18, UNITED STATES CODE

§ 3006A. Adequate representation of defendants

(a) * * *

* * * * * * *

(j) DISTRICTS INCLUDED.—As used in this section, the term "district court" means each district court of the United States created by chapter 5 of title 28, [the District Court of the Virgin Islands,] the District Court for the Northern Mariana Islands, and the District Court of Guam.

* * * * * * *

REVISED ORGANIC ACT OF THE VIRGIN ISLANDS

* * * * * * *

BILL OF RIGHTS

SEC. 3. No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

* * * * * * *

The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; *article III;* article IV, section 1 and section 2, clause 1; *article VI, clause 3;* the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth the nineteenth amendments: *Provided,* [That all offenses against the law of the United States and the laws of the Virgin Islands which are prosecuted in the district court pursuant to sections 22 (a) and (c) of this Act may be held by indictment by grand jury or by information, and that all offenses against the laws of the Virgin Islands which are prosecuted in the district court pursuant to section 22(b) of this Act or] *That all offenses against the laws of the Virgin Islands which are prosecuted* in the courts established by local law shall continue to be prosecuted by information, except such as may be required by local law to be prosecuted by indictment by grand jury.

* * * * * * *

[SEC. 21. The judicial power of the Virgin Islands shall be vested in a court of record designated the "District Court of the Virgin Islands" established by Congress, and in such appellate court and

lower local courts as may have been or may hereafter be established by local law.

[(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the concurrent jurisdiction conferred on the District Court of the Virgin Islands by section 22 (a) and (c) of this Act.

[(c) The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.

[SEC. 22. (a) The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1954 shall constitute an offense against the government of the Virgin Islands and may be prosecuted in the name of the government of the Virgin Islands by the appropriate officers thereof in the District Court of the Virgin Islands without the request or the consent of the United States attorney for the Virgin Islands, notwithstanding the provisions of section 27 of this Act.

[(b) In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands: *Provided,* That the jurisdiction of the District Court of the Virgin Islands under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100, or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by local law for the purposes of determining the availability of indictment by grand jury or trial by jury.

[(c) The District Court of the Virgin Islands shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over those offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which

are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the District Court of the Virgin Islands has jurisdiction pursuant to subsections (a) and (b) of this section.]

SEC. 21. JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.

(a) JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.—The judicial power of the Virgin Islands shall be vested in such trial and appellate courts as may have been or may hereafter be established by local law. The local courts of the Virgin Islands shall have jurisdiction over all causes of action in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.

(b) PRACTICE AND PROCEDURE.—The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.

SEC. 22. JURISDICTION OVER INCOME TAX MATTERS.

The United States District Court for the District of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1986 shall constitute an offense against the Government of the Virgin Islands and may be prosecuted in the name of the Government of the Virgin Islands by the appropriate officers thereof in the United States District Court for the District of the Virgin Islands without the request or consent of the United States attorney for the Virgin Islands.

* * * * * * *

SEC. 23A. (a) Prior to the establishment of the appellate court authorized by section 21(a) of this Act, the [District Court of the Virgin Islands] *United States District Court for the District of the Virgin Islands* shall have such appellate jurisdiction over the courts of the Virgin Islands established by local law to the extent now or hereafter prescribed by local law: *Provided*, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Virgin Islands or of any order or regulation issued or action taken by the executive branch of the government of the Virgin Islands with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

(b) Appeals to the [District Court of the Virgin Islands] *United States District Court for the District of the Virgin Islands* shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The chief judge of the district court shall be presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time [pursuant to section 24(a) of this Act: *Provided*, That no more than one of them may be a judge of a court established by local law.] *pursuant to chapter 13 of title 28, United States Code, or a recalled senior judge of the former District Court of the Virgin Islands. The chief judge of the United States Court of Appeals for the Third Circuit may assign to the appellate division a judge of a court of record of the Virgin Islands, except that no more than 1 of the judges sitting in the appellate division at any session may be a judge of a court established by local law.* The concurrence of two judges shall be necessary to any decision by the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedures. Appeals pending in the district court on the effective date of this Act shall be heard and determined by a single judge.

* * * * * * *

[SEC. 24. (a) The President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for terms of ten years and until their successors are chosen and qualified, unless sooner removed by the President for cause. The judge of the district court who is senior in continuous service and who otherwise qualifies under section 136(a) of title 28, United States Code, shall be the chief judge of the court. The salary of a judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the district court, the chief judge of the Third Judicial Circuit of the United States may assign a judge of a court of record of the Virgin Islands established by local law, or a circuit or district judge of the Third Judicial Circuit, or a recalled senior judge of the District Court of the Virgin Islands, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judges of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States.

[(b) Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provisions of rule 7(a) and of rule 54(a) of the Federal Rules of Criminal Procedure relating to the requirement of indictment and to the pros-

ecution of criminal offenses in the Virgin Islands by information, respectively, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18 and 28, United States Code, shall apply to the district court and appeals therefrom: *Provided*, That the terms 'Attorney for the government' and 'United States attorney' as used in the Federal Rules of Criminal Procedure, shall, when applicable to causes arising under the income tax laws applicable to the Virgin Islands, mean the Attorney General of the Virgin Islands or such other person or persons as may be authorized by the laws of the Virgin Islands to act therein: *Provided further*, That in the district court all criminal prosecutions under the laws of the United States, under local law under section 22(c) of this Act, and under the income tax laws applicable to the Virgin Islands may be had by indictment by grand jury or by information: *Provided further*, That an offense which has been investigated by or presented to a grand jury may be prosecuted by information only by leave of court or with the consent of the defendant. All criminal prosecutions arising under local law which are tried in the district court pursuant to section 22(b) of this Act shall continue to be had by information, except such as may be required by the local law to be prosecuted by indictment by grand jury.

[(c) The Attorney General shall appoint a United States marshal for the Virgin Islands, to whose office the provisions of chapter 33 of title 28, United States Code, shall apply.

[SEC. 25. The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays.

[SEC. 26. All criminal cases originating in the district court shall be tried by jury upon demand by the defendant or by the Government. If no jury is demanded the case shall be tried by the judge of the district court without a jury, except that the judge may, on his own motion, order a jury for the trial of any criminal action. The legislature may provide for trial in misdemeanor cases by a jury of six qualified persons.

[SEC. 27. The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the Virgin Islands to whose office the provisions of chapter 35 of title 28, United States Code, shall apply. Except as otherwise provided by law it shall be the duty of the United States attorney to prosecute all offenses against the United States and to conduct all legal proceedings, civil and criminal, to which the Government of the United States is a party in the district court and in the *courts established by local law*. He shall also prosecute in the district court in the name of the government of the Virgin Islands all offenses against the laws of the Virgin Islands which are cognizable by that court unless, at his request or with his consent, the prosecution of any such case is conducted by the attorney general of the Virgin Islands. The United States attorney may, when requested by the Governor or the attorney general of the Virgin Islands, conduct any other legal proceedings to which the government of the Virgin Is-

lands is a party in the district court or the *courts established by local law*.]

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ADDITIONAL VIEWS

While we support the provisions of the bill that authorize new federal judgeships, and thus raise mandatory spending, we object to title III of the bill, which would divide the U.S. Court of Appeals for the Ninth Circuit and raise discretionary spending. The division is unwarranted and would occur at great cost to taxpayers.

Title III of the legislation proposes to divide the Ninth Circuit into two separate circuit courts.[1] The Administrative Office of the United States Courts ("AO") developed cost estimates for implementation of the H.R. 4093's suggested split.[2] Two locations have been suggested for implementing H.R. 4093's new Twelfth Circuit's headquarters and, regardless of which location is selected, the estimated *start up* costs (which do not include recurring, annual, duplicated costs) range in the double-digit millions of dollars. Importantly, the Congressional Budget Office has stated officially that it cannot estimate the total cost of the split because the legislation does not specify the location of the new headquarters; as a result, the cost estimate of $25 million per year it has prepared for H.R. 4093 is incomplete and, therefore, significantly lower than the likely actual cost.

The AO, however, has prepared cost estimates based upon the two possible headquarters. To implement the split of the Ninth Circuit by creating a new Twelfth Circuit headquartered in Phoenix, Arizona, the total estimated *start up* cost would be $94,698,936, not including the cost of new judgeships. This figure does not even begin to take into account the *duplicated costs* that also would be an *annual consequence* of the unnecessary creation of a new Twelfth Circuit. In addition, this amount does not account for the *additional staff space* that would be required to deal with the geographic configuration that has been proposed in H.R. 4093. As a result, the $94 million dollar figure, which does not include the duplicated, recurring, annual costs, would need to be increased for the additional staff space that would be required.

The expenditure is considerably higher if the additional costs are considered. If the split includes the seven additional judgeships, headquartered in Phoenix, the estimated *start up* costs for the new Twelfth Circuit would increase by another $1,156,236.00. In addition, the *duplicated costs* of having a new Twelfth Circuit in Phoenix would be $10,257.784.000, *annually*, without the seven additional judgeships, and $15,914,180.00, annually, with the seven additional judgeships. Therefore, at the close of first operating year

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of the new Twelfth Circuit in Phoenix, the total bill for the Ninth Circuit split will be between $106,112,956 and $111,769,352.

At a minimum, if the split of the Ninth Circuit goes forward without headquarters in Phoenix, but with headquarters in Seattle, Washington, the total estimated *start up* costs, with the seven additional judgeships, will be $13,815,801, and without the seven additional judgeships, $12,659,565. Depending on whether the additional seven judgeships are accepted on the bill, the duplicated costs of having a new Twelfth Circuit in Seattle will be between $7,483,654 and $13,140,050 annually. Therefore, at the close of the first operating year of a new Twelfth Circuit in Seattle, the total bill for the Ninth Circuit split will be between $26,955,851 and $20,143,219.

These figures contrast starkly with the costs required to implement the only truly necessary changes, supported by the Minority, that address the legitimate concerns that have been raised about the Ninth Circuit. To implement the additional seven judgeships in the Ninth Circuit, the estimated start up costs will be $1,156,236, and the annual, recurring costs will be $5,656,396, which will include the judges' and chambers' staffs' salaries, operating expenses for the new judges and their chambers, and courtroom security. The start up costs will be in the nature of the expenses to operate the new courts, the necessary information technology and telecommunications equipment, and security.

For these reasons, we object to the proposed division of the Ninth Circuit. At the outset, it would be inappropriate to restructure the courts through the budget process. Policy considerations aside, the split would impose significant, unwarranted costs upon taxpayers.

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MINORITY VIEWS

We object to the Majority's effort to enshrine permanently the Republican tax cuts for the wealthy, which is the underlying purpose of H.R. 3648. This legislation represents the Majority's implementation of the Republican budget resolution, which calls for reconciliation, or adjustment of federal spending and revenue programs. The budget resolution specifically directs the Judiciary Committee to reduce direct expenditures through cuts in mandatory spending or increases in mandatory fees. Through H.R. 3648, the Majority has opted to raise fees with respect to one area of visa processing.

At the outset, we believe that the entire premise of the budget resolution, and thus the reconciliation process, is misguided. The Republican budget plan ignores the reality of the nation's economic situation. While economists predicted a healthy ten-year surplus when President Clinton left office, President Bush and Republican leaders in Congress have saddled the American people with an annual deficit of more than $300 billion. Ultimately, the budget resolution is the Majority's ill-considered attempt to address the country's rising deficits.

The budget resolution and H.R. 3648, however, fail to rectify the Majority's maladministration of the country's economy. The culprit behind these deficits clearly is the Republican tax cut for the wealthy, which deprived the country of needed revenue. Instead of reversing course and rolling back those tax cuts, the Republican Congress has decided that the best way to resolve this dilemma is to preserve the tax cuts by cutting spending for social programs for those most in need. The Democratic leader of the House Budget Committee has indicated that the Republican budget resolution would cut Medicaid spending by $10 billion over the next five years.[1] Cuts also would have to be made to student loans, child nutrition, vocational rehabilitation, pension guarantee funds, farm programs, and food stamps.[2]

What makes the pending legislation even more egregious is that the nation is in the middle of a humanitarian and economic crisis as a result of the devastating effects of hurricanes Katrina and Rita. Our focus should be on rebuilding the devastated areas and easing the human suffering of this tragedy, not on safeguarding tax cuts for the wealthy.

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[1] The Honorable John M. Spratt, Jr., Ranking Member, U.S. House Comm. on the Budget, Summary and Analysis of FY2006 Budget Resolution Conference Report 2 (Apr. 28, 2005).

[2] *Id.*

A. BACKGROUND ON THE REPUBLICAN BUDGET RESOLUTION

The conference report for the fiscal year 2006 budget resolution, H. Con. Res. 95, passed the House on April 28, 2005, by a vote of 214–211 over bipartisan objections.[3] The purpose of the resolution was to provide budgetary levels that would guide Congress's spending and revenue decisions. Among other things, it instructs the Judiciary Committee to report changes in laws sufficient to reduce direct spending within its jurisdiction by $60,000,000 in outlays for fiscal year 2006. To comply with this instruction, the Committee could either reduce spending by $60 million or raise mandatory fees by that amount; spending reductions must apply to direct/mandatory accounts, rather than appropriated/discretionary accounts.[4]

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[3] Not a single Democratic Member voted "Yes" on the conference report, but fifteen Republican Members voted "No."

[4] The following is a list of mandatory spending accounts within the Judiciary Committee's jurisdiction:

Radiation Exposure Compensation Act Trust Fund: from the 1940's through the 1970's individuals in the United States were exposed to radiation through the government's atmospheric nuclear testing and through work in uranium mines. The Trust Fund authorizes the Department of Justice to compensate exposed individuals (or their survivors) who were found to have contracted certain diseases after exposure. In his FY06 budget request, the President indicates $42.8 million will be necessary for this account.

Independent Counsel Act: section 101(a) of public law 100–202 provides a permanent indefinite appropriation for certain counsels investigating matters on behalf of the Department of Justice. A Government Accountability Office report indicates that there are two such counsels in existence today: Independent Counsel David M. Barrett for the investigation of the U.S. Department of Housing Urban Development, and Special Counsel Patrick Fitzgerald for the Central Intelligence Agency name leak investigation. In his FY06 budget request, the President indicates $9.5 million will be necessary for this account.

Private Claims: as a result of specific legislation that may be enacted into law, the Department of Justice may be required to make payments for claims against the United States.

Foreign Claims Settlement Commission: the Commission is a quasi-judicial body within the Department of Justice that adjudicates claims by U.S. nationals against foreign governments. In his FY06 budget request, the President indicates $1.27 million will be necessary for this account.

U.S. Trustee Fund: this program is design to protect the integrity of the bankruptcy system by regulating the conduct of the parties through compliance programs and litigation. In his FY06 budget request, the President indicates $185 million will be necessary for this account.

Witness Fees and Expenses: the Department of Justice pays fees to and expenses of witnesses who appear on behalf of the government in litigation in which the United States is a party. In his FY06 budget request, the President indicates $139 million will be necessary for this account.

Public Safety Officer Death Benefits: the Department of Justice pays benefits to the survivors of state and local law enforcement officers who are killed in the line of duty. In his FY06 budget request, the President indicates $49.7 million will be necessary for this account.

9/11 Victim Compensation Fund: the Air Transportation Safety and Safety Stabilization Act of 2001 made available such sums as are necessary to compensate victims of the September 11 attacks. The statutory deadline for submitting claims was December 22, 2003. The Department of Justice indicates that payments for all valid claims have been issued.

Administrative Conference of the United States: the Administrative Conference is designed to study the efficacy of administrative processes and procedures. 5 U.S.C. §§591–96. It is comprised of employees of regulatory agencies and individuals in the private sector. Budgetary amounts for this purpose are not available.

U.S. Attorney Health Care Fraud: the Department of Justice has a health care fraud task force to assist with federal prosecutions of pharmaceutical health care fraud. In his FY06 budget request, the President indicates $49.4 million will be necessary for this account.

FBI Health Care Fraud: the Department of Justice also has a health care fraud task force to assist with investigations of pharmaceutical health care fraud. In his FY06 budget request, the President indicates $114 million will be necessary for this account.

Assets Forfeiture Fund: forfeited cash and the proceeds of sales of forfeited property are deposited into this fund, which is then used to pay for expenses related to the detention, safeguarding, and sale of forfeited assets. In his FY06 budget request, the President indicates $528.5 million will be added to this account.

Crime Victims Fund: the Victims of Crime Act provides that criminal fines collected from those who commit offenses against the United States shall be paid into a fund that is then used to issue grants and other assistance to eligible crime victims. In his FY06 budget request, the President indicates $650 million will be necessary for this account.

The budget resolution also permits a committee to cut spending by raising mandatory fees. The following is a list of mandatory fees within the Judiciary Committee's jurisdiction:

The Majority proposal solely establishes a fee for L visas, which are used for intra-company transfers for transnational corporations. The Majority believes that adding a fee for L visas would prevent employers from choosing Ls over H–1Bs, which are used for highly-skilled workers. Currently, each H–1B application costs $1500 for the employer, with a sliding scale for smaller companies. The Majority is suggesting a $1500 fee for L visas, without a sliding scale, on the theory that multinationals can afford it and do not need the sliding scale that exists for H–1Bs. Based on estimates of L visa use, this would raise $70 million per year.

B. THE REPUBLICAN BUDGET RESOLUTION PRESERVES TAX CUTS FOR THE WEALTHY AT THE EXPENSE OF WORKING AMERICANS

The Republican budget resolution is the Majority's careless attempt to make up for its failed economic policies. The purpose of the proposed spending cuts is to offset the cost of the Republican tax cuts and other fiscal policies that have led to an annual federal budget deficit of more than $300 billion. In fact, the Republican talking points for the conference report state that the resolution accommodates total tax cuts of $106 billion for more than five years, helps cut taxes by $70 billion, and would permit extension of the 2001 and 2003 tax cuts.[5]

These tax cuts undid the Clinton administration's economic policies that drove a period of unparalleled growth in this country. At the end of the Clinton administration, economists estimated that over the course of ten years, the nation would have a budget surplus of $5.6 trillion.[6] Bush administration policies, however, quickly reversed this trend.

The Republican tax cuts, which went to the wealthiest Americans in the midst of an economic downturn, have turned the surplus into a significant deficit. The New York Times noted that "the deficit—now at $412 billion—is largely due to the tax cuts that President Bush and Congress have lavished on the most affluent

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Drug Enforcement Administration: doctors, hospitals, and others seeking permission to dispense controlled substances must pay a fee to the DEA every three years as part of its Diversion Control Program. In its FY06 request, the Department of Justice indicates that it expects to receive $198.6 million in fees.

U.S. Trustee Fund: this bankruptcy regulation program is funded with fees from individuals and businesses seeking bankruptcy protection. In its FY06 request, the Department indicates that it expects to collect $185 million in fees.

Patent and Trademark Office: the PTO is a fully funded by fees from patent and trademark applicants; it receives no money from taxpayers or the appropriations process. In FY06, the PTO expects to collect $1.7 billion in fees.

Copyright Office: applicants for copyright registration must pay a fee to the Office. In FY06, the Copyright Office expects to collect $30.7 million in fees.

Antitrust: under the Clayton Act, businesses intending to acquire specified amounts of assets of another company must file a Hart-Scott-Rodino pre-merger notification with the Federal Trade Commission and the Justice Department prior to merging with other companies. A fee must be paid along with the notification. Under current law, businesses that would have less than $50 million of another entity's assets after a merger are exempt from pre-merger notification requirements, including the fee. In its FY06 request, the Department indicates that it expects to receive $116 million in fees.

Immigration Fees: individuals seeking visas or changes of status usually must pay a fee to the Department of Homeland Security. The amount of the fee varies with the visa or status in question.

[5] U.S. House Comm. on the Budget, FY2006 Budget Resolution: Overview (Mar. 9, 2005).

[6] Congressional Budget Office, The Budget and Economic Outlook: Fiscal Years 2002–2011 xiv (Jan. 2001).

over the past four years."[7] Even though a recent Congressional Budget Office ("CBO") estimate shows the deficit is closer to $325 billion per year for the coming fiscal years,[8] the tax cuts have not been vindicated. The *Washington Post* also supported this view when it wrote, "it would be dangerous—and wrong—to take this news [lower than expected deficits] as evidence that President Bush's tax cuts were wise policy, that the tax cuts should be made permanent or that deficit worries can be safely ignored."[9] Testifying before the House Budget Committee in 2005, Federal Reserve Chairman Alan Greenspan indirectly criticized Republican fiscal policies. He stated, "unless we do something to ameliorate [rising debt levels] we will be in a state of stagnation."[10]

Unfortunately, the latest economic statistics have proven Chairman Greenspan's prediction true and have contradicted Republican claims of economic growth. This past summer, the U.S. Census Bureau released a report showing that "real median household income remained unchanged between 2003 and 2004 at $44,389."[11] In the same time period, the poverty rate rose from 12.5% in 2003 to 12.7% in 2004, an increase of 1.1 million people.[12] Finally, the number of Americans without health coverage increased by 800,000 to 45.8 million.[13] It also has been noted that "it's not just that funds may have gone to Iraq rather than to the levees in New Orleans; it's also that money went to tax cuts for the wealthiest rather than vaccinations for children."[14]

The nonpartisan Center on Budget and Policy Priorities ("CBPP") and the Economic Policy Institute collected additional data showing the decline in purchasing power of the minimum wage. Because Republicans have refused to increase the $5.15 per hour minimum wage since September 1997, the spending power of minimum-wage workers has diminished dramatically relative to other workers.[15] The minimum wage is only 32% of the average wage for the private sector; this reflects the lowest share since 1949.[16]

The Republican response to this economic situation has been to pass a budget resolution that not only cuts spending for vital social programs but also raises deficits. Democratic Members of the House Budget Committee have indicated that H. Con. Res. 95 would cut Medicaid spending by $10 billion over the next five years. Also, cuts would have to be made to student loan programs, child nutrition, vocational rehabilitation, and pension guarantee funds.[17] Finally, cuts to programs within Agriculture Committee jurisdiction could lead to cuts in farm programs and food stamps.[18]

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[7] *Greenspan Talks Tax Increases,* N.Y. TIMES, Mar. 4, 2005, at A20.

[8] Congressional Budget Office, The Budget and Economic Outlook: An Update (Aug. 2005).

[9] *Budget Boost,* WASH. POST, July 14, 2005, at A24 (editorial).

[10] *The Economic Outlook and Current Fiscal Issues: Hearing before the U.S. House Comm. on the Budget,* 109th Cong., 1st Sess. (Mar. 2, 2005).

[11] U.S. Census Bureau, Income Stable, Poverty Rate Increases, Percentage of Americans without Health Insurance Unchanged (Aug. 30, 2005) (press release).

[12] *Id.*

[13] *Id.*

[14] Nicholas D. Kristof, *The Larger Shame,* N.Y. TIMES, Sept. 6, 2005, at A27.

[15] *See* Center on Budget and Policy Priorities & Economic Policy Institute, Unhappy Anniversary: Federal Minimum Wage Remains Unchanged for Eighth Straight Year (Sept. 1, 2005) (press release).

[16] *Id.*

[17] *See* Jonathan Weisman, *Critical Votes Loom for Hill Republicans,* WASH. POST, Aug. 28, 2005, at A4.

[18] *Id.*

The CBPP has noted that the resolution would be counterproductive and actually would raise deficits. In its May 2005 analysis of the conference report, CBPP states that it "would increase deficits over the next five years by $168 billion, compared with the deficits the CBO estimates would occur if there were no changes in policies."[19]

As a final note, even the Republican leadership does not agree that federal spending can be cut more than they already have cut it. Speaking at his weekly press briefing in mid-September 2005, then-House Majority Leader Tom DeLay (R–TX) said there was no areas of federal spending that could receive cuts.[20]

C. THE MAJORITY BARRED CONSIDERATION OF OTHER PROPOSALS

H.R. 3648 was narrowly drafted to raising L visa fees and, as result, only amendments directed toward such fees could be offered during the Committee's consideration of the legislation.[21] This tactic by the Majority effectively resulted in a prohibition of debate on other measures to raise fees and cut spending. Democratic Members were not even able to debate essential reforms of temporary guest worker programs that give employers unrestricted powers of the immigration status and workplace rights of workers in America.[22]

Members also were prohibited from offering measures to protect crime victims, to ensure that prosecutors have sufficient funds to investigate health care fraud, and to safeguard other important government programs. In addition, this tactic precluded an amendment to authorize the President's request for a new Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") fee to be imposed on users of imported and exported explosives could not be considered.[23]

CONCLUSION

We object to the Majority's manipulation of vital government programs to shore up its failed economic plan. In light of a rising poverty rate, a diminution in value of the minimum wage, and the crisis on the Gulf Coast, now is not the time to safeguard tax cuts

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[19] James Horney, Center on Budget and Policy Priorities, Assessing the Conference Agreement on the Budget Resolution (May 6, 2005).

[20] *See* Amy Fagan & Stephen Dinan, *DeLay Declares 'Victory' in War on Budget Fat,* WASH. TIMES, Sept. 14, 2005, *available at* http://www.washingtontimes.com/national/20050914–120153–3878r.htm.

[21] Congressional rule permit to be offered only those amendments that are related to the purpose of, or germane to, the underlying legislation. See Clerk of the House of Representatives, Rules of the House of Representatives: 109th Congress XVI(7) (Jan. 4, 2005).

[22] While labor advocates have recommended increasing fees on companies that make use of the L visa, they also have emphasized the need to enact other critical reforms to ensure workplace equity. Advocates have sought a requirement that the sponsoring company pay temporary workers a prevailing wage and offer the same benefits offered to u.S. workers. Without such a requirement, the economic incentives to replace U.S. workers with foreign guest workers will continue. Labor advocates also have argued for limits on the total number of foreign workers permitted per year and protections against the layoffs of U.S. workers.

Furthermore, advocates believe that the fees collected from the program should be dedicated to oversight of and data collection efforts on the use of L visas, as well as to fund the training of U.S. workers as is done with fees from other visa programs. Without the opportunity to fully debate all of the necessary reforms to the L visa program, the Majority was negligent in its attempt to reform it.

[23] See Office of Management and Budget, Exec. Office of the President, Fiscal Year 2006 Budget of the U.S. Government: Appendix 699 (2005).

for the wealthiest of Americans. If the Majority truly wished to revitalize the nation's economy and protect our children and grandchildren from the burden of burgeoning deficits, it would repeal the tax cuts for the wealthy and leave vital social programs intact.

DEBBIE WASSERMAN SCHULTZ.
ANTHONY D. WEINER.
CHRIS VAN HOLLEN.
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DISSENTING VIEWS BY REPRESENTATIVE LOFGREN

Although a conflicting meeting caused me to arrive just minutes after the final vote on H.R. 3648 in the Judiciary Committee, I dissent from H.R. 3648 and would have voted "no" on this bill in had arrived in time to cast my vote at the mark-up. A piecemeal approach to visa fees that singles out foreign employees of multinational companies is inappropriate and may result in unintended consequences. Raising visa fees for foreign employees of multinational companies could cause even more U.S. businesses with multinational connections to move abroad to nations with friendlier visa policies, thereby aggravating the loss of U.S. jobs and the slow recovery of the U.S. economy.

ZOE LOFGREN.

ADDITIONAL VIEWS

While we support the provisions of the bill that authorize new federal judgeships, and thus raise mandatory spending, we object to title III of the bill, which would divide the U.S. Court of Appeals for the Ninth Circuit and raise discretionary spending. The division is unwarranted and would occur at great cost to taxpayers.

Title III of the legislation proposes to divide the Ninth Circuit into two separate circuit courts.[1] The Administrative Office of the United States Courts ("AO") developed cost estimates for implementation of the H.R. 4093's suggested split.[2] Two locations have been suggested for implementing H.R. 4093's new Twelfth Circuit's headquarters and, regardless of which location is selected, the estimated start up costs (which do not include recurring, annual, duplicated costs) range in the double-digit millions of dollars. Importantly, the Congressional Budget Office has stated officially that it cannot estimate the total cost of the split because the legislation does not specify the location of the new headquarters; as a result, the cost estimate of $25 million per year it has prepared for H.R. 4093 is incomplete and, therefore, significantly lower than the likely actual cost.

The AO, however, has prepared cost estimates based upon the two possible headquarters. To implement the split of the Ninth Circuit by creating a new Twelfth Circuit headquartered in Phoenix, Arizona, the total estimated start up cost would be $94,698,936, not including the cost of new judgeships. This figure does not even begin to take into account the duplicated costs that also would be an annual consequence of the unnecessary creation of a new Twelfth Circuit. In addition, this amount does not account for the additional staff space that would be required to deal with the geographic configuration that has been proposed in H.R. 4093. As a result, the $94 million dollar figure, which does not include the duplicated, recurring, annual costs, would need to be increased for the additional staff space that would be required.

The expenditure is considerably higher if the additional costs are considered. If the split includes the seven additional judgeships, headquartered in Phoenix, the estimated start up costs for the new Twelfth Circuit would increase by another $1,156,236.00. In addition, the duplicated costs of having a new Twelfth Circuit in Phoenix would be $15,914,180, annually, without the seven additional judgeships, and $10,257,784.00, with the seven additional judgeships. Therefore, at the close of first operating year of the new

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Twelfth Circuit in Phoenix, the total bill for the Ninth Circuit split will be between $104,956,720 and $111,769,352.

At a minimum, if the split of the Ninth Circuit goes forward without headquarters in Phoenix, but with headquarters in Seattle, Washington, the total estimated start up costs, with the seven additional judgeships, will be $13,815,801, and without the seven additional judgeships, $12,659,565. Depending on whether the additional seven judgeships are accepted on the bill, the duplicate costs of having a new Twelfth Circuit in Seattle will be between $7,486;653 and $13,140,0749 annually. Therefore, at the close of the first operating year of a new Twelfth Circuit in Seattle, the total bill for the Ninth Circuit split will be between $26,955,850 and $20,143,218.

These figures contrast starkly with the costs required to implement the only truly necessary changes, supported by the Minority, that address the legitimate concerns that have been raised about the Ninth Circuit. To implement the additional seven judgeships in the Ninth Circuit, the estimated start up costs will be $1,156,236, and the annual, recurring costs will be $4,435,306, which will include the judges' and chambers' staffs' salaries, operating expenses for the new judges and their chambers, and courtroom security. The start up costs will be in the nature of the expenses to operate the new courts, the necessary information technology and telecommunications equipment, and security.

For these reasons, we object to the proposed division of the Ninth Circuit. At the outset, it would be inappropriate to restructure the courts through the budget process. Policy considerations aside, the split would impose significant, unwarranted costs upon taxpayers.

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DEBBIE WASSERMAN SCHULTZ.

STATEMENT OF CONGRESSWOMAN JACKSON LEE

This bill is the Majority's response to the Republican budget resolution, H. Con. Res. 95, that was passed on April 28, 2005. Among other things, the resolution instructs the Judiciary Committee to report changes in laws sufficient to reduce direct spending within its jurisdiction by $60 million in outlays for FY2006. To comply with this instruction, the Committee can either reduce spending by $60 million for FY2006 or raise mandatory fees by that amount. The Majority has chosen to raise the $60 million by establishing a fee of $1,500 for filing a visa petition under section 101(a)(15)(L) of the Immigration and Nationality Act (INA).

Congress established the L visa in 1970, in response to unintended consequences of the Immigration Amendments of 1965 that made multinational corporations unable to transfer top-level personnel to offices in the United States as easily as they had prior to the implementation of the 1965 Immigration Amendments. Because many of the employees that firms sought to bring to the United States were not intending to stay and were likely to be transferred abroad in a few years, Congress opted to create a nonimmigrant L visa category for aliens who performed in a managerial/executive capacity or who had specialized knowledge.

We presently have a $1,500 fee for visa petitions filed under section 101(a)(15)(H) of the INA. The filing fee for H visas, however, has a sliding scale for smaller companies. Apparently, this bill was drafted without a sliding scale on the theory that multinational companies can afford the $1,500 filing fee and do not need the sliding scale.

It may be true that the companies who use L visas can afford a $1,500 filing fee, but that does not justify the creation of such a fee. It basically would be a tax on intracompany transfers. L visas are only for people transferring from an overseas office to a United States office or plant with the same company. If we impose such a tax in this situation, other countries are likely to do the same thing to American companies that have offices abroad.

This particular bill, however, is only part a larger problem. Republican tax cuts and other fiscal policies have turned the budget surplus from the Clinton administration into an annual deficit of more than $300 billion. The Republican response to this deficit has been to pass a budget resolution that would cut spending for vital social programs and raise the deficit. Now we will have to find a way to provide financial assistance to the victims of Hurricane Katrina. Will we make further cuts in social programs to provide those funds too?

I urge you to vote against this bill and find a better way to address our budget deficit. Thank you.

SHEILA JACKSON-LEE.

RICHARD W. POMBO, CA
Chairman
DON YOUNG, AK
JIM SAXTON, NJ
ELTON GALLEGLY, CA
JOHN J. DUNCAN, JR., TN
WAYNE T. GILCHREST, MD
KEN CALVERT, CA
BARBARA CUBIN, WY
GEORGE P. RADANOVICH, CA
WALTER B. JONES, NC
CHRIS CANNON, UT
JOHN E. PETERSON, PA
JIM GIBBONS, NV
GREG WALDEN, OR
THOMAS G. TANCREDO, CO
J.D. HAYWORTH, AZ
JEFF FLAKE, AZ
RICK RENZI, AZ
STEVAN PEARCE, NM
DEVIN NUNES, CA
HENRY BROWN, JR., SC
THELMA DRAKE, VA
LUIS G. FORTUÑO, PR
CATHY MCMORRIS, WA
BOBBY JINDAL, LA
LOUIE GOHMERT, TX
MARILYN N. MUSGRAVE, CO

STEVEN J. DING
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U.S. House of Representatives
Committee on Resources
Washington, DC 20515

NICK J. RAHALL II, WV
Ranking Democrat Member
DALE E. KILDEE, MI
ENI F.H. FALEOMAVAEGA, AS
NEIL ABERCROMBIE, HI
SOLOMON P. ORTIZ, TX
FRANK PALLONE, JR., NJ
DONNA M. CHRISTENSEN, VI
RON KIND, WI
GRACE F. NAPOLITANO, CA
TOM UDALL, NM
RAUL GRIJALVA, AZ
MADELEINE Z. BORDALLO, GU
JIM COSTA, CA
CHARLIE MELANCON, LA
DAN BOREN, OK
GEORGE MILLER, CA
EDWARD J. MARKEY, MA
PETER DEFAZIO, OR
JAY INSLEE, WA
MARK UDALL, CO
DENNIS CARDOZA, CA
STEPHANIE HERSETH, SD

JAMES H. ZOIA
Democratic Staff Director

28 October 2005

The Honorable Jim Nussle
Chairman
Committee on the Budget
U.S. House of Representatives
309 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to section 201(a) of the Concurrent Resolution on the Budget, I hereby transmit these recommendations which have been approved by vote of the Committee on Resources with the appropriate accompanying material including additional, supplementary or dissenting views, to the House Committee on the Budget. This submission is for the purpose of complying with reconciliation directives included in House Concurrent Resolution 95, the fiscal year 2006 budget resolution and is consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

Sincerely,

Richard Pombo

RICHARD W. POMBO
Chairman

PURPOSE OF THE COMMITTEE PRINT

The purpose of the committee print approved by the Committee on Resources is to reduce the budget deficit by increasing reliable domestic energy supplies, selling surplus federal lands to aid local communities in economic development, and modernizing the Nation's mining laws by increasing patent and claim maintenance fees.

BACKGROUND AND NEED FOR LEGISLATION

The committee print is comprised of new provisions as well as provisions already debated and approved by the full Resources Committee and/or the House of Representatives during recent energy bill debate, including the National Energy Supply Diversification and Disruption Prevention Act approved by the Committee on Resources on September 28, 2005, by a vote of 27 to 16.

The committee print would reduce the budget deficit in future years by requiring the government to sell certain federal lands to support local economic development, lease a portion of the Arctic Coastal Plain for oil and natural gas development, establish new fees and increase existing fees for the use of resources on public lands, lease new areas of the outer Continental Shelf for oil, natural gas and alternative energy development, and lease portions of federal oil shale resources for oil and natural gas development.

SUBTITLE A—ARCTIC COASTAL PLAIN DOMESTIC ENERGY

Subtitle A facilitates production of an estimated 10.4 billion barrels of domestic oil from the Arctic Coastal Plain by requiring the Secretary of the Interior to lease a portion of the 1002 area of the Arctic National Wildlife Refuge (ANWR) for responsible oil and natural gas development under the world's most stringent environmental standards. These include limiting the total surface disturbance to 2,000 acres (this would be the same area as 1/5th the size of Dulles Airport). In fact, Subtitle A contains the most stringent environmental protection requirements ever applied to federal energy production, according to the Secretary of the Interior. Subtitle A also expressly prohibits export of oil produced from the coastal plain—this oil is designated for U.S. consumption only. The Congressional Budget Office has determined that this provision will generate $2.5 billion in receipts to the federal treasury over the next five years.

SUBTITLE B—MISCELLANEOUS AMENDMENTS RELATING TO MINING

Subtitle B modernizes federal minerals policies to promote sustainable economic development in rural Western communities, encourages domestic investment, creates high paying jobs and ensures a fair return to the U.S. taxpayer. The Subtitle increases the location fee (a filing fee to record mining claims with the federal government) more than three-fold, and addresses an issue of U.S. competitive disadvantage by establishing a tiered claim maintenance fee (annual fee paid to keep mining claim) to encourage domestic investment and the creation of jobs. Subtitle B also establishes a small miner claim maintenance fee; current law waives this annual fee for these small miners that are defined as holding

10 claims or less. Most importantly, this Subtitle eliminates the patent moratorium and increases the patent fee. Patenting is the process of "privatizing" or taking title to the land surface associated with mining claims. Subtitle B increases the patent fee from the current $2.50–$5.00/acre price to $1,000/acre or fair market value, whichever is greater. Patent fees are distributed as follows: 70 percent to the federal treasury; 20 percent to the hardrock abandoned mine land reclamation program to restore mined lands; and 10 percent to education and job training in the mining and petroleum fields. Subtitle B further provides for the opportunity of purchase of certain federal lands for $1,000/acre or fair market value, whichever is greater, to facilitate sustainable economic development in resource- dependent communities. The Congressional Budget Office concluded that modernizing the Nation's mining laws—first enacted in 1872 and little changed since—will result in over $150 million flowing to federal coffers.

SUBTITLE C—DISPOSAL OF PUBLIC LANDS

Subtitle C provides for the sale of certain federal lands in Nevada and Idaho for continued economic development in rural communities. More specifically, in Nevada, 7,000 acres of Bureau of Land Management land in Pershing County, Nevada, would be sold to the Coeur Rochester Mining Company for $3.5 million, with the funds being split $2.9 million to the federal treasury, $500,000 to Nevada's abandoned mine reclamation program to restore mined lands, and $100,000 to Pershing County. The Rochester Mine—the largest employer and economic driver in Pershing County—is at the end of its mine life and will be closing within two years. The Coeur Rochester Mining Company is developing plans for post-mining projects on-site, including a land fill, which would not be an allowable use on federal lands. This directed sale is supported by the County and will help sustain the economy of the region. Absent this sale authority, the Bureau of Land Management indicated it would take a minimum of five years to complete a sales transaction for the land fill project to move forward.

In Idaho, the Bureau of Land Management will sell 519.7 acres in Custer County to L&W Stone Corporation for $519,700. Of this amount, $120,000 will go to the federal government, $200,000 to the State of Idaho for State parks, and $200,000 to Custer County. L&W Stone is one of the largest employers and economic drivers in Custer County. Without this directed sale, the company will be required to scale back production, forcing it to lay off 50 percent or more of it employees, jeopardizing the long-term economic viability of the project and severely affecting the economy of the surrounding community.

The composite Congressional Budget Office score for this Subtitle is $3 million over the next 5 years.

SUBTITLE D—OIL SHALE

Subtitle D expedites the development of much-needed oil and natural gas from federal oil shale resources located in the western U.S. The United States is the Saudi Arabia of oil shale, with estimated reserves of 1.5 trillion barrels of oil and natural gas locked up in primarily three States: Colorado, Utah and Wyoming. Under

the existing Mineral Leasing Act, there is no royalty framework in place for oil shale. This Subtitle establishes one based on the successful model utilized to develop the Alberta, Canada, oil sands into an oil production leader currently producing approximately 1 million barrels of oil per day. Subtitle D requires the Secretary of the Interior to conduct a commercial lease sale of at least 35 percent of the federal lands that contain oil shale and oil sands resources, and establishes "host" State and county compensation for their support of oil shale and oil sands resource development. Of the non-federal share of oil shale and oil sand lease receipts, two-thirds goes to host States, and one- third goes to host counties. Subtitle D also provides that during the first ten years of production from a lease the "host" States and counties will receive 80 percent of the federal share of lease revenue. These funds may be used by the State and counties to support infrastructure related to oil shale and oil sands production. All told, during the first 10 years, the host States and counties would receive 90 percent of all the money generated. The Congressional Budget Office estimates that this Subtitle would bring $50 million over the next 5 years to the federal treasury.

SUBTITLE E—OCEAN ENERGY RESOURCES

Subtitle E encourages responsible domestic investment and development of oil, natural gas and alternative energy on the outer Continental Shelf (OCS), the creation of jobs, coastal States self-determination and just compensation for supporting energy development, as well as the assurance of domestic energy and economic security for the future.

The Subtitle codifies the existing Presidential withdrawal prohibiting leasing on portions of the OCS through its current expiration date of June 30, 2012. It further establishes a 125-mile OCS coastal State self-determination zone giving the Governor and State Legislature the sole authority to lease or not lease in ths area. If a State decides to allow leasing, the Secretary of the Interior is to lease new areas of the outer Continental Shelf for oil, natural gas and alternative energy development. Once this is done, the Subtitle establishes an equitable system of revenue-sharing for States that support energy development in their State Adjacent Zones. Moreover, Subtitle E allows for the issuance of a new class of leases—natural gas leases—within 125 miles of the coastline within currently withdrawn areas.

Subtitle E also promotes wildlife conservation by establishing and funding the Federal Energy Natural Resources Enhancement Fund; promotes education and job training at the university, community college and vocational technical levels by establishing and funding the Federal Energy and Mineral Resources Professional Development Fund; and promotes geologic mapping and the preservation and use of geologic data by establishing and funding the National Geologic Data and Mapping Fund. These Funds are all capitalized by receipts from the OCS. Furthermore, Subtitle E promotes marine life by establishing a federal "Rigs to Reefs" program where offshore structures can be made safe and used to support colonies of marine life.

The Congressional Budget Office estimates that Subtitle E will provide more than $800 million to the federal government over the next five years.

SUBTITLE F—SALE AND CONVEYANCE OF FEDERAL LAND

On July 15, 2005, the Office of Management and Budget submitted to Congress a legislative proposal to provide for the conveyance of underutilized federal lands by the United States to the District of Columbia and for the conveyance to the United States by the District of Columbia several buildings and the underlying real property. The proposal also provided for the transfer of administrative jurisdiction of certain federal lands from the federal government to the District of Columbia and from the District to the National Park Service. The Administration believes that the properties to be conveyed to the District are not providing substantial value to the federal government and that some in fact are unnecessary burdens. The National Park Service believes that the land could be better used by the District for economic development.

In an effort to meet its 2005 Budget Reconciliation instructions, the Committee on Resources elected to make available 19 parcels of underutilized federal land (approximately 122 acres) for competitive sale while still conveying title to 13 parcels of National Park Service land (approximately 20 acres) to the District of Columbia. Proceeds from the sale of the 19 parcels would be directed to the U.S. treasury for debt reduction, and the District of Columbia will benefit from the increased tax revenue as a result of future development on these lands. The Congressional Budget Office has estimated that the revenue collected from the sale of the 19 parcels would over $120 million for the United States.

COMMITTEE ACTION

On October 26, 2005, the full Committee on Resources met in open session to consider a Committee Print entitled "Recommendation for Budget Reconciliation." The following amendments were considered:

Chairman Richard Pombo (R–CA) offered three technical amendments en bloc to Subtitles B, E and F. The en bloc amendment was adopted by voice vote.

Congressman Edward Markey (D–MA) offered an amendment to strike Subtitle A (Arctic Coastal Plain Domestic Energy) and require instead that the Secretary of the Interior raise royalties, rents and other fees on existing federal domestic onshore and offshore oil and gas development to total $2.4 billion by October 1, 2010. The amendment was defeated by a roll call vote of 10 ayes to 21 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: October 26, 2005

Convened: 10:07 a.m.
Adjourned: 4:59 p.m.

Meeting on: **Subtitle A** - Committee Print - "*Committee Print: Recommendation for Budget Reconciliation.*" - **An Amendment offered by Mr. Markey.180, WAS NOT AGREED TO by a roll call vote of 10 yeas, and 21 nays.**

☐ Attendance ☒ Recorded Vote Vote Number: 23 Total: Yeas 10 Nays 21

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman		✓		*Mrs. Napolitano, CA*	✓		
Mr. Rahall, WV	✓			Mr. Walden, OR			
Mr. Young, AK		✓		*Mr. Tom Udall, NM*	✓		
Mr. Miller, CA				Mr. Tancredo, CO		✓	
Mr. Saxton, NJ				*Mr. Mark Udall, CO*	✓		
Mr. Markey, MA	✓			Mr. Hayworth, AZ		✓	
Mr. Gallegly, CA				*Mr. Grijalva, AZ*			
Mr. Kildee, MI				Mr. Flake, AZ		✓	
Mr. Duncan, TN		✓		*Mr. Cardoza, CA*		✓	
Mr. DeFazio, OR	✓			Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD				*Ms. Bordallo, Guam*			
Mr. Faleomavaega, AS				Mr. Pearce, NM		✓	
Mr. Calvert, CA		✓		*Ms. Herseth, SD*	✓		
Mr. Abercrombie, HI	✓			Mr. Brown, SC		✓	
Mrs. Cubin, WY		✓		*Mr. Costa, CA*		✓	
Mr. Ortiz, TX		✓		Mrs. Drake, VA			
Mr. Radanovich, CA				*Mr. Melancon, LA*		✓	
Mr. Pallone, NJ				Mr. Fortuño, PR			
Mr. Jones, NC		✓		*Mr. Boren, OK*		✓	
Mrs. Christensen, VI	✓			Miss McMorris, WA			
Mr. Cannon, UT		✓		Mr. Jindal, LA			
Mr. Kind, WI	✓			Mr. Gohmert, TX		✓	
Mr. Peterson, PA		✓		Mrs. Musgrave, CO			
Mr. Inslee, WA				***Vacancy***			
Mr. Gibbons, NV		✓					
				Total	10	21	

Congressman Ron Kind (D–WI) offered an amendment to Subtitle A to require a legally binding agreement between the United States and the State of Alaska regarding an equal distribution of revenues before section 1003 of the Alaska National Interest Lands Conservation Act of 1980 is repealed. The amendment was defeated by a roll call vote of 11 ayes to 25 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: October 26, 2005

Convened: 10:07 a.m.
Adjourned: 4:59 p.m.

Meeting on: **Subtitle A** - Committee Print - "*Committee Print: Recommendation for Budget Reconciliation.*" - **An Amendment offered by Mr. Kind.ANWR2, WAS NOT AGREED TO by a roll call vote of 11 yeas, and 25 nays.**

☐ Attendance ☒ Recorded Vote Vote Number: 24 Total: Yeas 11 Nays 25

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman		✓		*Mrs. Napolitano, CA*	✓		
Mr. Rahall, WV	✓			Mr. Walden, OR		✓	
Mr. Young, AK		✓		*Mr. Tom Udall, NM*	✓		
Mr. Miller, CA				Mr. Tancredo, CO		✓	
Mr. Saxton, NJ				*Mr. Mark Udall, CO*	✓		
Mr. Markey, MA				Mr. Hayworth, AZ		✓	
Mr. Gallegly, CA		✓		*Mr. Grijalva, AZ*	✓		
Mr. Kildee, MI				Mr. Flake, AZ		✓	
Mr. Duncan, TN		✓		*Mr. Cardoza, CA*	✓		
Mr. DeFazio, OR	✓			Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD				*Ms. Bordallo, Guam*		✓	
Mr. Faleomavaega, AS				Mr. Pearce, NM		✓	
Mr. Calvert, CA		✓		*Ms. Herseth, SD*	✓		
Mr. Abercrombie, HI		✓		Mr. Brown, SC		✓	
Mrs. Cubin, WY		✓		*Mr. Costa, CA*	✓		
Mr. Ortiz, TX		✓		Mrs. Drake, VA			
Mr. Radanovich, CA		✓		*Mr. Melancon, LA*		✓	
Mr. Pallone, NJ				Mr. Fortuño, PR		✓	
Mr. Jones, NC		✓		*Mr. Boren, OK*		✓	
Mrs. Christensen, VI	✓			Miss McMorris, WA			
Mr. Cannon, UT		✓		Mr. Jindal, LA			
Mr. Kind, WI	✓			Mr. Gohmert, TX		✓	
Mr. Peterson, PA		✓		Mrs. Musgrave, CO			
Mr. Inslee, WA				***Vacancy***			
Mr. Gibbons, NV		✓					
				Total	11	25	

Congressman Raul Grijalva (D–AZ) offered an amendment to Subtitle A to require a certain legally binding agreement between the Secretary of the Interior and Arctic Slope Regional Corporation regarding revenue sharing before section 1003 of the Alaska National Interest Lands Conservation Act of 1980 is repealed. The amendment was defeated by a roll call vote of 17 ayes to 20 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: October 26, 2005

Convened: 10:07 a.m.
Adjourned: 4:59 p.m.

Meeting on: **Subtitle A** - Committee Print - "*Committee Print: Recommendation for Budget Reconciliation.*" - **An Amendment offered by Mr. Grijalva.030, WAS NOT AGREED TO, by a roll call vote of 17 yeas, and 20 nays.**

☐ Attendance ☒ Recorded Vote Vote Number: 25 Total: Yeas 17 Nays 20

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman		✓		*Mrs. Napolitano, CA*	✓		
Mr. Rahall, WV	✓			Mr. Walden, OR		✓	
Mr. Young, AK		✓		*Mr. Tom Udall, NM*	✓		
Mr. Miller, CA				Mr. Tancredo, CO		✓	
Mr. Saxton, NJ				*Mr. Mark Udall, CO*	✓		
Mr. Markey, MA	✓			Mr. Hayworth, AZ		✓	
Mr. Gallegly, CA		✓		*Mr. Grijalva, AZ*	✓		
Mr. Kildee, MI				Mr. Flake, AZ		✓	
Mr. Duncan, TN		✓		*Mr. Cardoza, CA*	✓		
Mr. DeFazio, OR	✓			Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD				*Ms. Bordallo, Guam*		✓	
Mr. Faleomavaega, AS				Mr. Pearce, NM			
Mr. Calvert, CA		✓		*Ms. Herseth, SD*	✓		
Mr. Abercrombie, HI	✓			Mr. Brown, SC		✓	
Mrs. Cubin, WY		✓		*Mr. Costa, CA*	✓		
Mr. Ortiz, TX	✓			Mrs. Drake, VA			
Mr. Radanovich, CA		✓		*Mr. Melancon, LA*	✓		
Mr. Pallone, NJ				Mr. Fortuño, PR		✓	
Mr. Jones, NC		✓		*Mr. Boren, OK*	✓		
Mrs. Christensen, VI	✓			Miss McMorris, WA			
Mr. Cannon, UT		✓		Mr. Jindal, LA			
Mr. Kind, WI	✓			Mr. Gohmert, TX		✓	
Mr. Peterson, PA		✓		Mrs. Musgrave, CO			
Mr. Inslee, WA	✓			***Vacancy***			
Mr. Gibbons, NV		✓					
				Total	17	20	

Ranking Democrat Nick J. Rahall II (D–WV) offered on behalf of Congressman Jay Inslee (D–WA) an amendment to Subtitle A to strike paragraph 6103(c)(3) entitled "Compliance with NEPA for Other Actions." The amendment was defeated by a roll call vote of 16 ayes to 26 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: October 26, 2005

Convened: 10:07 a.m.
Adjourned: 4:59 p.m.

Meeting on: **Subtitle A** - Committee Print - "*Committee Print: Recommendation for Budget Reconciliation.*" - **An amendment by Mr. Inslee.107 was offered by Mr. Rahall, WAS NOT AGREED TO by a roll call vote of 16 yeas, and 26 nays.**

☐ Attendance ☒ Recorded Vote Vote Number: 26 Total: Yeas 16 Nays 26

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman		✓		*Mrs. Napolitano, CA*	✓		
Mr. Rahall, WV	✓			Mr. Walden, OR		✓	
Mr. Young, AK		✓		*Mr. Tom Udall, NM*	✓		
Mr. Miller, CA				Mr. Tancredo, CO		✓	
Mr. Saxton, NJ	✓			*Mr. Mark Udall, CO*	✓		
Mr. Markey, MA	✓			Mr. Hayworth, AZ		✓	
Mr. Gallegly, CA		✓		*Mr. Grijalva, AZ*	✓		
Mr. Kildee, MI				Mr. Flake, AZ		✓	
Mr. Duncan, TN		✓		*Mr. Cardoza, CA*	✓		
Mr. DeFazio, OR	✓			Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD	✓			*Ms. Bordallo, Guam*		✓	
Mr. Faleomavaega, AS				Mr. Pearce, NM		✓	
Mr. Calvert, CA		✓		*Ms. Herseth, SD*	✓		
Mr. Abercrombie, HI	✓			Mr. Brown, SC		✓	
Mrs. Cubin, WY		✓		*Mr. Costa, CA*		✓	
Mr. Ortiz, TX		✓		Mrs. Drake, VA			
Mr. Radanovich, CA		✓		*Mr. Melancon, LA*		✓	
Mr. Pallone, NJ	✓			Mr. Fortuño, PR		✓	
Mr. Jones, NC		✓		*Mr. Boren, OK*		✓	
Mrs. Christensen, VI	✓			Miss McMorris, WA		✓	
Mr. Cannon, UT		✓		Mr. Jindal, LA			
Mr. Kind, WI	✓			Mr. Gohmert, TX		✓	
Mr. Peterson, PA		✓		Mrs. Musgrave, CO			
Mr. Inslee, WA	✓			***Vacancy***			
Mr. Gibbons, NV		✓					
				Total	16	26	

Chairman Pombo offered an amendment to Subtitle B (Miscellaneous Amendments Relating to Mining) to clarify that no mineral development lands within a unit of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Trails System, the National Wilderness Preservation System, any National Conservation Area, any National Recreation Area, or any National Monument would be available for purchase under amendments made by section 6204 of the Committee Print. The amendment was adopted by voice vote.

Congressman Jim Gibbons (R–NV) offered an amendment to Subtitle B to: (1) require applicants to pay $1000 per acre or fair market value (whichever is greater) when patenting and purchasing mining lands under sections 6202 and 6204 of the Committee Print; (2) to eliminate ambiguity and inconsistency in section 6201 of the Committee Print; and (3) to tighten land patent privileges to ensure that only persons with actual for-profit mining operations may take advantage of the opportunity to patent under the alternative valuable mineral deposit criteria. The amendment was adopted by voice vote.

Congressman Tom Udall (D–NM) offered an amendment to strike Subtitle B. The amendment failed on a roll call vote of 18 ayes and 24 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: October 26, 2005

Convened: 10:07 a.m.
Adjourned: 4:59 p.m.

Meeting on: **Subtitle B** - Committee Print - "*Committee Print: Recommendation for Budget Reconciliation.*" -
An Amendment by Mr.Tom Udall.039, WAS NOT AGREED TO by a roll call vote of 18 yeas, and 24 nays.

☐ Attendance ☒ Recorded Vote Vote Number: 27 Total: Yeas 18 Nays 24

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman		✓		*Mrs. Napolitano, CA*	✓		
Mr. Rahall, WV	✓			Mr. Walden, OR		✓	
Mr. Young, AK		✓		*Mr. Tom Udall, NM*	✓		
Mr. Miller, CA				Mr. Tancredo, CO		✓	
Mr. Saxton, NJ	✓			*Mr. Mark Udall, CO*	✓		
Mr. Markey, MA	✓			Mr. Hayworth, AZ		✓	
Mr. Gallegly, CA		✓		*Mr. Grijalva, AZ*	✓		
Mr. Kildee, MI				Mr. Flake, AZ		✓	
Mr. Duncan, TN		✓		*Mr. Cardoza, CA*	✓		
Mr. DeFazio, OR	✓			Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD	✓			*Ms. Bordallo, Guam*	✓		
Mr. Faleomavaega, AS				Mr. Pearce, NM		✓	
Mr. Calvert, CA		✓		*Ms. Herseth, SD*	✓		
Mr. Abercrombie, HI	✓			Mr. Brown, SC		✓	
Mrs. Cubin, WY		✓		*Mr. Costa, CA*	✓		
Mr. Ortiz, TX		✓		Mrs. Drake, VA			
Mr. Radanovich, CA		✓		*Mr. Melancon, LA*		✓	
Mr. Pallone, NJ	✓			Mr. Fortuño, PR		✓	
Mr. Jones, NC		✓		*Mr. Boren, OK*		✓	
Mrs. Christensen, VI	✓			Miss McMorris, WA		✓	
Mr. Cannon, UT		✓		Mr. Jindal, LA			
Mr. Kind, WI	✓			Mr. Gohmert, TX		✓	
Mr. Peterson, PA		✓		Mrs. Musgrave, CO			
Mr. Inslee, WA	✓			***Vacancy***			
Mr. Gibbons, NV		✓					
				Total	18	24	

Congressman Tom Udall offered an amendment stating that nothing in Subtitle B (or any amendments made by it) should be construed to require or permit any activity affecting any lands within the boundary of any unit of the National Park System, National Wildlife Refuge System, National Wilderness Preservation System, or National Landscape Conservation System that would not have been required or permitted as of October 26, 2005. Congressman Jim Gibbons offered a substitute to the amendment which provided that subject to valid existing rights, nothing in sections 6202, 6203 and 6204 of Subtitle B shall affect any lands within the boundary of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, the National Trails System, the National Wilderness Preservation System, or any National Conservation Area, National Recreation Area, or any National Monument as of the date of enactment of this Act. Chairman Richard Pombo offered two motions to add references to sections 6205 and 6206 and to insert a "be" before "construed" in the text of the Gibbons amendment. These motions were adopted by unanimous consent. The Gibbons substitute, as amended, by adopted by voice vote. The Tom Udall amendment, as amended, was then adopted by voice vote.

Congressman Inslee offered an amendment to Subtitle B to require the collection of an additional 8 percent royalty on any valuable mineral deposits extracted from federal lands. The amendment failed on a roll call vote of 18 ayes to 24 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: October 26, 2005

Convened: 10:07 a.m.
Adjourned: 4:59 p.m.

Meeting on: **Subtitle B** - Committee Print - "*Committee Print: Recommendation for Budget Reconciliation.*" - **An Amendment by Mr. Inslee.111, WAS NOT AGREED TO by a roll call vote of 18 yeas, and 24 nays.**

☐ Attendance ☒ Recorded Vote Vote Number: 28 Total: Yeas 18 Nays 24

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman		✓		*Mrs. Napolitano, CA*	✓		
Mr. Rahall, WV	✓			Mr. Walden, OR		✓	
Mr. Young, AK		✓		*Mr. Tom Udall, NM*	✓		
Mr. Miller, CA				Mr. Tancredo, CO		✓	
Mr. Saxton, NJ	✓			*Mr. Mark Udall, CO*	✓		
Mr. Markey, MA	✓			Mr. Hayworth, AZ		✓	
Mr. Gallegly, CA		✓		*Mr. Grijalva, AZ*	✓		
Mr. Kildee, MI				Mr. Flake, AZ		✓	
Mr. Duncan, TN		✓		*Mr. Cardoza, CA*	✓		
Mr. DeFazio, OR	✓			Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD	✓			*Ms. Bordallo, Guam*	✓		
Mr. Faleomavaega, AS				Mr. Pearce, NM		✓	
Mr. Calvert, CA		✓		*Ms. Herseth, SD*	✓		
Mr. Abercrombie, HI	✓			Mr. Brown, SC		✓	
Mrs. Cubin, WY		✓		*Mr. Costa, CA*	✓		
Mr. Ortiz, TX		✓		Mrs. Drake, VA			
Mr. Radanovich, CA		✓		*Mr. Melancon, LA*		✓	
Mr. Pallone, NJ	✓			Mr. Fortuño, PR		✓	
Mr. Jones, NC		✓		*Mr. Boren, OK*		✓	
Mrs. Christensen, VI	✓			Miss McMorris, WA		✓	
Mr. Cannon, UT		✓		Mr. Jindal, LA			
Mr. Kind, WI	✓			Mr. Gohmert, TX		✓	
Mr. Peterson, PA		✓		Mrs. Musgrave, CO			
Mr. Inslee, WA	✓			***Vacancy***			
Mr. Gibbons, NV		✓					
				Total	18	24	

Congressman Tom Tancredo (R–CO) offered and withdrew an amendment to Subtitle C which would have required the competitive sale of certain Department of the Interior lands identified in a report submitted under section 390(g) of Public Law 104–127.

Congressman Mark Udall (D–CO) offered an amendment to Subtitle D (Oil Shale) to strike the expedited leasing and royalty system in the Subtitle and establish instead an alternative royalty system under existing law. The amendment was defeated on a roll call vote of 18 ayes to 22 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: October 26, 2005

Convened: 10:07 a.m.
Adjourned: 4:59 p.m.

Meeting on: Subtitle D - Committee Print - "*Committee Print: Recommendation for Budget Reconciliation.*" - **An Amendment by Mr. Mark Udall.061, WAS NOT AGREED TO by a roll call vote of 18 yeas, and 22 nays.**

☐ Attendance ☒ Recorded Vote Vote Number: 29 Total: Yeas 18 Nays 22

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman		✓		*Mrs. Napolitano, CA*	✓		
Mr. Rahall, WV	✓			Mr. Walden, OR		✓	
Mr. Young, AK		✓		*Mr. Tom Udall, NM*	✓		
Mr. Miller, CA				Mr. Tancredo, CO		✓	
Mr. Saxton, NJ	✓			*Mr. Mark Udall, CO*	✓		
Mr. Markey, MA	✓			Mr. Hayworth, AZ		✓	
Mr. Gallegly, CA		✓		*Mr. Grijalva, AZ*	✓		
Mr. Kildee, MI				Mr. Flake, AZ		✓	
Mr. Duncan, TN				*Mr. Cardoza, CA*	✓		
Mr. DeFazio, OR	✓			Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD	✓			*Ms. Bordallo, Guam*	✓		
Mr. Faleomavaega, AS				Mr. Pearce, NM		✓	
Mr. Calvert, CA		✓		*Ms. Herseth, SD*	✓		
Mr. Abercrombie, HI	✓			Mr. Brown, SC		✓	
Mrs. Cubin, WY		✓		*Mr. Costa, CA*	✓		
Mr. Ortiz, TX	✓			Mrs. Drake, VA		✓	
Mr. Radanovich, CA		✓		*Mr. Melancon, LA*		✓	
Mr. Pallone, NJ				Mr. Fortuño, PR		✓	
Mr. Jones, NC		✓		*Mr. Boren, OK*		✓	
Mrs. Christensen, VI	✓			Miss McMorris, WA			
Mr. Cannon, UT		✓		Mr. Jindal, LA			
Mr. Kind, WI	✓			Mr. Gohmert, TX		✓	
Mr. Peterson, PA		✓		Mrs. Musgrave, CO			
Mr. Inslee, WA	✓			***Vacancy***			
Mr. Gibbons, NV		✓					
				Total	18	22	

Congressman Luis Fortuño (R–PR) offered an amendment to Subtitle E (Ocean Energy Resources) to allow Puerto Rico and the other territories of the United States to participate in the Ocean State Options Act of 2005. The amendment was adopted by voice vote.

Congressman Louie Gohmert (R–TX) offered and withdrew an amendment to Subtitle E entitled "State Hypocrisy Reform" which would bar States who do not permit the exploration or production of oil and gas on land within the State or within the contiguous coastal zone of the State from receiving oil or gas obtained from any other State.

Congressman Frank Pallone (D–NJ) offered an amendment to strike Subtitle E. The amendment was defeated on a roll call vote of 15 ayes to 25 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: October 26, 2005

Convened: 10:07 a.m.
Adjourned: 4:59 p.m.

Meeting on: **Subtitle E** - Committee Print - *"Committee Print: Recommendation for Budget Reconciliation."* -
An Amendment by Mr. Pallone.066, WAS NOT AGREED TO by a roll call vote of 15 yeas, and 25 nays.

☐ Attendance ☒ Recorded Vote Vote Number: 30 Total: Yeas 15 Nays 25

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman		✓		*Mrs. Napolitano, CA*	✓		
Mr. Rahall, WV	✓			Mr. Walden, OR		✓	
Mr. Young, AK		✓		*Mr. Tom Udall, NM*	✓		
Mr. Miller, CA				Mr. Tancredo, CO		✓	
Mr. Saxton, NJ	✓			*Mr. Mark Udall, CO*	✓		
Mr. Markey, MA	✓			Mr. Hayworth, AZ		✓	
Mr. Gallegly, CA		✓		*Mr. Grijalva, AZ*	✓		
Mr. Kildee, MI				Mr. Flake, AZ		✓	
Mr. Duncan, TN				*Mr. Cardoza, CA*	✓		
Mr. DeFazio, OR	✓			Mr. Renzi, AZ		✓	
Mr. Gilchrest, MD	✓			*Ms. Bordallo, Guam*	✓		
Mr. Faleomavaega, AS				Mr. Pearce, NM		✓	
Mr. Calvert, CA		✓		*Ms. Herseth, SD*	✓		
Mr. Abercrombie, HI	✓			Mr. Brown, SC		✓	
Mrs. Cubin, WY		✓		*Mr. Costa, CA*		✓	
Mr. Ortiz, TX		✓		Mrs. Drake, VA		✓	
Mr. Radanovich, CA		✓		*Mr. Melancon, LA*		✓	
Mr. Pallone, NJ				Mr. Fortuño, PR		✓	
Mr. Jones, NC		✓		*Mr. Boren, OK*		✓	
Mrs. Christensen, VI	✓			Miss McMorris, WA			
Mr. Cannon, UT		✓		Mr. Jindal, LA			
Mr. Kind, WI		✓		Mr. Gohmert, TX		✓	
Mr. Peterson, PA		✓		Mrs. Musgrave, CO			
Mr. Inslee, WA	✓			***Vacancy***			
Mr. Gibbons, NV		✓					
				Total	15	25	

Congresswoman Donna Christensen offered an amendment to strike Subtitle F (Sale and Conveyance of Federal Land). The amendment was defeated by voice vote.

The Committee Print was then ordered forwarded to the House Committee on the Budget in compliance with the reconciliation directive included in section 210(a) of the Concurrent Resolution of the Budget for Fiscal Year 2006 by a roll call vote of 24 ayes to 15 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
109th Congress

Date: October 26, 2005

Convened: 10:07 a.m.
Adjourned: 4:59 p.m.

Meeting on: Committee Print - "*Committee Print: Recommendation for Budget Reconciliation.*" - **Motion favorably forwarding Committee Print, "*Recommendation for Budget Reconciliation*", to the Committee on the Budget, as amended, by Roll Call Vote of 24 Yeas, and 16 Nays**

☐ Attendance ☒ Recorded Vote Vote Number: 31 Total: Yeas 24 Nays 16

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman	✓			*Mrs. Napolitano, CA*		✓	
Mr. Rahall, WV		✓		Mr. Walden, OR	✓		
Mr. Young, AK	✓			*Mr. Tom Udall, NM*		✓	
Mr. Miller, CA				Mr. Tancredo, CO	✓		
Mr. Saxton, NJ		✓		*Mr. Mark Udall, CO*		✓	
Mr. Markey, MA		✓		Mr. Hayworth, AZ	✓		
Mr. Gallegly, CA	✓			*Mr. Grijalva, AZ*		✓	
Mr. Kildee, MI				Mr. Flake, AZ	✓		
Mr. Duncan, TN				*Mr. Cardoza, CA*		✓	
Mr. DeFazio, OR		✓		Mr. Renzi, AZ	✓		
Mr. Gilchrest, MD		✓		*Ms. Bordallo, Guam*			
Mr. Faleomavaega, AS				Mr. Pearce, NM	✓		
Mr. Calvert, CA	✓			*Ms. Herseth, SD*		✓	
Mr. Abercrombie, HI		✓		Mr. Brown, SC	✓		
Mrs. Cubin, WY	✓			*Mr. Costa, CA*		✓	
Mr. Ortiz, TX	✓			Mrs. Drake, VA	✓		
Mr. Radanovich, CA	✓			*Mr. Melancon, LA*	✓		
Mr. Pallone, NJ				Mr. Fortuño, PR	✓		
Mr. Jones, NC	✓			*Mr. Boren, OK*	✓		
Mrs. Christensen, VI		✓		Miss McMorris, WA			
Mr. Cannon, UT	✓			Mr. Jindal, LA	✓		
Mr. Kind, WI		✓		Mr. Gohmert, TX	✓		
Mr. Peterson, PA	✓			Mrs. Musgrave, CO			
Mr. Inslee, WA		✓		***Vacancy***			
Mr. Gibbons, NV	✓						
				Total	24	16	

SECTION-BY-SECTION ANALYSIS

Subtitle A—Arctic Coastal Plain Domestic Energy

Sec. 6101. Short title

The short title of this Subtitle is the Arctic Coastal Plain Domestic Energy Security Act of 2005.

Sec. 6102. Definitions

This section provides definitions for the Subtitle of "Coastal Plain", which is a 1.549 million-acre area in northern Alaska, and "Secretary", meaning Secretary of the Interior or her designee.

Sec. 6103. Leasing program for lands within the coastal plain

This section establishes and implements a competitive oil and gas leasing program for the Section 1002 Area of the Coastal Plain under the Mineral Leasing Act, including provisions for "no significant adverse effect,"and "best commercially available technology for oil and gas exploration." The section repeals a prohibition of oil and gas leasing on federal and Native lands within the Coastal Plain (Alaska Natives own 92,000 acres within the Coastal Plain). The section deems the oil and gas program under this title to be compatible with the Arctic National Wildlife Refuge (ANWR) by stating that the 1987 Environmental Impact Statement (EIS) on ANWR oil development is sufficient to satisfy the National Environmental Policy Act for preparing regulations. However, the section requires an EIS for individual lease sales within18 months after enactment.

In addition, the section ensures that State and local law is not affected. The Secretary of the Interior, after consulting with the State and local populace, may designate up to 45,000 acres on the Coastal Plain as Special Areas to protect those that are unique or sensitive. The section mandates a 4,000 acre Special Area called the Sadlerochit Spring Area and states that directional drilling under Special Areas may be allowed by the Secretary.

Finally, the section makes this Subtitle the Secretary's sole authority to close lands on the Coastal Plain and requires regulations be developed no later than 15 months after enactment.

Sec. 6104. Lease sales

This section provides technical guidelines for timing of lease sales; the manner of the nominations, sales, and bids; and the minimum size of 200,000 acres for the lease sales. It also requires the first sale to be conducted within 22 months after the date of enactment.

Sec. 6105. Grant of leases by the secretary

This section provides for grants of leases.

Sec. 6106. Lease terms and conditions

This section sets standard terms and conditions for leases. It requires, as a term of a lease, negotiations to obtain a project labor agreement for oil and gas development in the 1002 Area. This section applies only to leases in ANWR, nowhere else. This provision addresses the lack of qualified labor on the remote North Slope of

Alaska. It does not change existing laws or policies with respect to project labor agreements. This provision is supported by the Bush Administration.

Sec. 6107. Coastal plain environmental protection

This section establishes an oil and gas program under a "no significant adverse effect" standard using "best commercially available technology." It requires site-specific analyses of probable effects of development, and requires issuance of regulations, terms, conditions, and prohibitions before implementation of the leasing program. The section further requires compliance with all federal and State environmental laws, and a host of other requirements, stipulations, prohibitions, etc.

Under this section the Secretary of the Interior is to consider conditions required in the National Petroleum Reserve-Alaska, and several other protection standards. It also encourages facility consolidation to minimize footprint of development by limiting the total surface disturbance in the Coastal Plain to 2000 acres.

Sec. 6108. Expedited judicial review

This section states that any challenges to this Subtitle must be filed within 90 days or within 90 days after the complainant knew or should have known of the grounds for the complaint. The case will be heard in the U.S. Court of Appeals for the District of Columbia. The section limits the scope of the review to whether terms of this Subtitle are complied with, and bases review on the administrative record.

Sec. 6109. Federal and State distribution of revenues

This section provides 50–50 federal-State of Alaska share of revenues from leasing under the Subtitle, which is the same as other States under the Mineral Leasing Act.

Sec. 6110. Rights-of-way across the coastal plain

This section ensures rights-of-way are granted pursuant to the Mineral Leasing Act with proper environmental conditions.

Sec. 6111. Conveyance

This section conveys and clears title to approximately 4,000 acres of land to Alaska Natives in Kaktovik, Alaska. The Natives are entitled to this land pursuant to their aboriginal land claims settlement. Kaktovik gets the surface estate, and the Regional Corporation for the Natives gets the subsurface estate of the land. In addition, this section clears up some outstanding entitlements.

Sec. 6112. Local government impact aid and community service assistance

This section sets up an impact aid program for any community in Alaska that can demonstrate impacts from development of oil and natural gas, with the most likely recipient being the Village of Kaktovik. It further states what the financial assistance may be used for and provides methods of applying for that assistance.

The financial aid will come from a fund capitalized by a transfer of up to $11 million from federal oil and gas receipts received under

this Subtitle. From this fund, up to $5 million per year in grants may be made by the Secretary of the Interior, subject to appropriation.

Subtitle B—Miscellaneous Amendments Relating to Mining

The land title transfer provisions of Subtitle B are responsive to the voices of the leaders of rural western communities. At hearings held in the west and in Washington, rural community leaders called for a process that would allow mine operators to take possession of the federal lands within their mines—enhancing the ability of the mine operators to work with local community groups to create opportunities for sustainable economic development once the mines close. Federal land management and reclamation policies were shown to be potentially destructive of invested capital in that all infrastructure must be removed upon mine closure, even if a potential post mining land use had been identified by a community which would benefit from the infrastructure.

During the debate on this Subtitle two amendments were offered that were not agreed to: one to strike the entire title, and the second to impose an eight percent royalty on all minerals produced from federal lands. The Committee believes that the royalties proposed by the amendment would not have raised revenue within the budget window. First, royalties imposed on production from existing claims raise the issue of takings under the Fifth Amendment to the Constitution, thus rendering their collection highly unlikely. Second, the practical problems of mine development and mine permitting ensure that any royalties on future production from new claims would be delayed far beyond the five year budget window. In the United States, the approval process for a mining project typically takes seven to ten years to complete. On the contrary, by charging $1000 per acre or fair market value, whichever is greater, for the purchase of the surface of mining claims, as provided in this Subtitle, the public is ensured a fair return for the use of the mineral lands. If the status quo remains and no changes are made, it will take 160 years for the federal treasury to receive the same amount of money through the existing fee structure for any given claim.

Section 6201. Fees for recordation and location of mining claims

This section amends the general mining law of the United States to facilitate the administration of the law benefitting the Administration and the holders of mining claims. The "prudent man test" (discovery of a valuable mineral deposit) in existing law has been moved to the patenting provision where it applies. The section establishes a mineral patent processing fee of $2,500 for the first claim or mill site, and $50 for each additional claim.

The rights of mining claim locators and claim holders who have filed the necessary paperwork and paid the location fee (a filing fee to record a mining claim with the federal government) and claim maintenance fee (annual fee paid to keep your mining claim) are defined.

Section 314 of Federal Land Planning and Management Act, which requires claim holders to file their claim location paperwork with the Bureau of Land Management, is moved to the mining law

where it applies. This section also more than triples the claim "location" fee from $30 to $100.

This section restructures the claim maintenance fee to a tiered system for new claims, so that it is lower in the initial stages of exploration to encourage domestic investment, and higher once minerals are being produced from the claim and the property has a cash flow. Years 1–5 are $35 per year; years 6–10 are $70 per year; years 11–15 are $125 per year; years 16 and beyond are $150 per year. Regardless of age, and once minerals are being produced, the fee is $200 per claim. The section provides a mechanism for existing claim holders to transition into the tiered system for a $100 fee.

For new claims and claims that are transferred to the new tiered system, the claim holder is required to conduct work under a notice or approved plan of operation during each five year interval. Any work done under a plan of operation will require an environmental assessment or environmental impact statement to be approved. If no work is done the claim holder will be required to pay the location fee in addition to the claim maintenance fee in years 6, 11, and 16 respectively.

A waiver of the work requirement, fee increase, and additional location fees are allowed if the work was held up as a result of administrative or legal delays.

This section further establishes an annual $25 per claim fee for small miners (defined as holding ten claims or less) for the life of the claim and eliminates the small miner's annual labor requirement.

It also establishes a process that allows the claim holder to have the opportunity to maintain his claims if he misses the annual maintenance fee payment deadline of September 1. Current law holds if you miss the deadline for any reason, you lose your claim. The claim holder has a "grace period" of 45 days after receipt of a notice from the Secretary to pay a penalty—double the required maintenance fee—to maintain ownership of his claims. If he fails to pay within this 45 day window, he loses his claim. The section also allows the Secretary of the Interior, in consultation with the Governor of Alaska, to set a maintenance fee payment date not more than sixty days later than September 1.

This provision does not open new lands to claim staking; withdrawn lands remain closed as before.

Section 6202. Patents for mining or mill site claims

This section repeals the mineral patent moratorium and establishes a per acre fee of $1,000, or fair market value, whichever is greater for the purchase of lands subject to mining claims; this is called patenting. The patent applicant must provide an appraisal completed by a certified land appraiser. The appraisal must conform to the Uniform Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

The section changes the mineral patent "labor" requirement from $500 per claim to a "mineral development work" requirement of $7,500 per claim. It also allows claim holders who filed for a mineral patent and paid the required patent processing fees, but were not issued their first half final certificate when the mineral patent

moratorium was first passed in 1994, to proceed under the old rules.

The section provides two alternatives to the traditional mineral "validity exam" required to determine if the claim holder has located a valuable mineral deposit. Under one scenario, an agency mineral examiner conducts a field examination of the claims included in the patent application, the examiner may take samples, sample drill core or drill additional holes to verify the mineral discovery, from there he makes a determination as to the economic validity of the discovery. Alternatively, a claim holder who is conducting mining activities that meet the definition of a mine under section 3(h) of the Federal Mine Safety and Health Act of 1972, can patent the unpatented mining claims and mill sites within his approved plan of operations. The Secretary must confirm that the minerals being mined are locatable under the general mining law and that actual sales of minerals have taken place; or if a claim holder whose proven and probable reserves are publicly disclosed to the Securities and Exchange Commission may receive a patent for the claims containing such reserves. The section allows patent applicants to pay for third party mineral examiners who have been trained and approved by the Bureau of Land Management. The Secretary may charge for the mineral examiner training.

If no adverse claims are filed, the Secretary must issue the patent within 24 months. The section also sets the small miner (defined as holding ten claims or less) patent processing fee and mineral development work requirements to one-fifth of what is required for larger operations.

Proceeds from land conveyed under the patenting provisions are distributed in the following manner: 70 percent to the federal treasury; 20 percent to the Secretary of the Army for use, through the Corps of Engineers, for the restoration of Abandoned Mine Sites Program and section 560 of the Water Resources Development Act of 1999; and 10 percent to the Federal Energy and Mineral Resource Professional Development Fund.

Subject to valid existing rights, this subsection does not apply with respect to *any* unit of the: National Park System; National Wildlife Refuge System; National Wild and Scenic Rivers System; National Trails System; a National Conservation Area; a National Recreation Area; a National Monument; or the National Wilderness Preservation System.

There are approximately 360,000 acres of federal land subject to mining claims that are in the process of being explored, developed or mined under an approved or pending plan of operations, some of which may qualify for purchase under this section.

This provision does not open new lands to claim staking; withdrawn lands remain closed as before.

All mining operations, whether located on federal, State, county or private lands, must be in compliance with applicable federal, State and local environmental, mine closure and/or zoning laws in order to operate.

Section 6203. Mineral examinations for mining on certain lands

This section prohibits the Secretary of the Interior from requiring a mineral examination report as a condition of approving a plan of

operations for claims and mill sites located on withdrawn lands if such claims are contiguous to patented or unpatented mining claims where mineral development activity including mining has been conducted as authorized by law or regulation.

Subject to valid existing rights, this subsection does not apply with respect to *any* unit of the: National Park System; National Wildlife Refuge System; National Wild and Scenic Rivers System; National Trails System; a National Conservation Area; a National Recreation Area; a National Monument; or the National Wilderness Preservation System.

This provision does not open new lands to claim staking; withdrawn lands remain closed as before.

Section 6204. Mineral development lands available for purchase

This section directs the Secretary to make mineral development lands available for purchase, including those areas that have been mined, at $1,000 per acre or fair market value, whatever is higher, to facilitate sustainable economic development. Mineral development work requirements and the adjudication fees (patent processing fees) are identical to the mineral patent requirements.

The applicant must provide an appraisal and land survey to the Secretary. The appraisal must be completed by a certified land appraiser, the appraisal must conform to the Uniform Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, and the appraisal must have been completed within 120 days of the application filing date.

This provision allows for the purchase of mine sites at mine closure that would not meet the "law of discovery" requirement in the patenting provision, because the ore has been mined out. By purchasing the surface estate of these lands, the company would be able to leave the infrastructure, such as power transfer stations, power lines, roads, and shop buildings, in place so that they can be used for other types of economic development opportunities in support of the host community.

This provision would also allow for the purchase of slivers and small parcels of federal land that did not meet the "discovery" test within or adjacent to lands that have been patented and mined or are being mined. These slivers and small parcels are difficult for the Bureau of Land Management and U.S. Forest Service to manage.

This provision also provides a mechanism for mining companies to consolidate their land holdings where their operations are located on a mix of federal and private lands. This benefits the land management agencies, local government, and the operating company.

The provision defines who is eligible to participate in the program and describes "mineral development work."

The federal government is indemnified from any environmental liability that may be due to its management and ownership of the lands conveyed.

Proceeds from land conveyed under the patenting provisions are distributed in the following manner: 70 percent to the federal treasury; 20 percent to the Secretary of the Army for use, through the Corps of Engineers, for the restoration of Abandoned Mine

Sites Program and section 560 of the Water Resources Development Act of 1999; and 10 percent to the Federal Energy and Mineral Resource Professional Development Fund.

Subject to valid existing rights, this subsection does not apply with respect to *any* unit of the: National Park System; National Wildlife Refuge System; National Wild and Scenic Rivers System; National Trails System; a National Conservation Area; a National Recreation Area; a National Monument; or the National Wilderness Preservation System.

There are approximately 360,000 acres of federal land subject to mining claims that are in the process of being explored, developed or mined under an approved or pending plan of operations, some of which may qualify for purchase under this section.

This provision does not open new lands to claim staking; withdrawn lands remain closed as before. In order for a company or individual to meet the "mineral development work" requirements for a "direct sale," the project will have been through the environmental review process under the National Environmental Policy Act.

All mining operations, whether located on federal, State, county or private lands, must be in compliance with applicable federal, State and local environmental, mine closure and/or zoning laws in order to operate.

Section 6205. National mining and minerals policy to facilitate the productive second use of lands

This section amends section 101 of the Mining and Minerals Policy Act of 1970 to include "remining" in paragraph (2) and adds a fifth paragraph to facilitate the productive second use of lands used for mining and energy production. It also adds the words "whether located onshore or offshore" at the end of the second sentence and directs each federal department and agency to comply with the policy.

Subject to valid existing rights, this subsection does not apply with respect to *any* unit of the: National Park System; National Wildlife Refuge System; National Wild and Scenic Rivers System; National Trails System; a National Conservation Area; a National Recreation Area; a National Monument; or the National Wilderness Preservation System.

This provision does not open new lands to claim staking; withdrawn lands remain closed as before.

Section 6206. Regulations

This section directs the Secretary to issue final regulations implementing the mining provisions within 180 days of enactment.

Subject to valid existing rights, this subsection does not apply with respect to *any* unit of the: National Park System; National Wildlife Refuge System; National Wild and Scenic Rivers System; National Trails System; a National Conservation Area; a National Recreation Area; a National Monument; or the National Wilderness Preservation System.

This provision does not open new lands to claim staking; withdrawn lands remain closed as before.

Section 6207. Protection of national parks and wilderness areas

This provisions clarifies that subject to valid existing rights, sections 6202, 6203, 6204, 6205 and 6206 of this Subtitle shall not be construed as affecting any lands within the boundary of any unit of the National Park System, National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Trails System, or any National Conservation Area, any National Recreation Area, any National Monument, or any unit of the National Wilderness Preservation System as of the date of the enactment of this Act.

SUBTITLE C—DISPOSAL OF PUBLIC LANDS

CHAPTER 1—DISPOSAL OF CERTAIN PUBLIC LANDS IN NEVADA

Sec. 6301. Short title

This section provides a short title for the Chapter, the Northern Nevada Sustainable Development in Mining Act.

Section 6302. Definitions

This section provides definitions for the Chapter.

Sec. 6303. Land conveyance

This section directs the Secretary of the Interior to convey to Coeur Rochester, Inc. all rights, title and interest in approximately 7,000 acres of federal lands subject to the claimant's mining claims. The land is located in Pershing County, Nevada and is currently being mined by Coeur Rochester. The section requires the mine closure National Environmental Policy Act document to be completed, and exempts the Department of the Interior from any environmental liability accruing from its ownership and management of the lands conveyed.

Sec. 6304. Disposition of proceeds

This section provides the sale price of the acreage. The sales price is $3.5 million. Of this amount, $500,000 goes to the Nevada State Abandoned Mine Land Reclamation program; $100,000 to Pershing County; and the remainder, $2.9 million, to the general fund of the treasury.

The Coeur Rochester mine project has been through the National Environmental Policy Act environmental review process, and is in the process of completing an Environmental Impact Statement for mine closure.

The Rochester Mine—the largest employer and economic driver in Pershing County—is at the end of its mine life and will be closing within two years. The Coeur Rochester Mining Company is developing plans for post-mining projects on-site, including a land fill, which would not be an allowable use on federal lands. This directed sale is supported by the County and will help sustain the economy of the region. Absent this sale authority, the Bureau of Land Management indicated it would take a minimum of five years to complete a sales transaction for the land fill project to move forward.

The Coeur Rochester Mine sustainable development project has been described in detail at two different Energy and Mineral Re-

sources Subcommittee oversight hearings on 'Sustainable Development Opportunities in Mining Communities." Both company representatives and community representatives testified.

Chapter 2—Disposal of Certain Public Lands in Idaho

Sec. 6311. Short title

The short title of this Chapter is the Central Idaho Sustainable Development in Mining Act.

Sec. 6312. Definitions

This section provides definitions for the Chapter.

Sec. 6313. Land conveyance

This section directs the Secretary to convey to TDS LLC, an affiliated company of L&W Stone Corporation approximately 519.7 acres of federal lands currently subject to the TDS LLC's mining claims. It exempts the Department of the Interior from any environmental liability accruing from its ownership and management of the lands conveyed.

L&W Stone is one of the largest employers and economic drivers in Custer County. Without this directed sale, the company will be required to scale back production, forcing it to lay off 50 percent or more of it employees, jeopardizing the long-term economic viability of the project and severely affecting the economy of the surrounding community.

Sec. 6314. Disposition of proceeds

Of the $520,000 sales price, $200,000 will go to the State of Idaho for use in the State parks program; $200,000 will go to Custer County; and the remainder, $120,000, will go to the general fund of the treasury.

The L&W Stone quarry has been vetted through the National Environmental Policy Act environmental review process, and has an approved mining and reclamation plan.

Subtitle D—Oil Shale

Sec. 6401. Oil shale and tar sands amendments

This section strengthens the new oil shale program implemented through the Energy Policy Act of 2005 by establishing a royalty framework built upon a successful Canadian model that helped spur more than 1 million barrels/day in oil production from Alberta's oil sands.

The section directs the Secretary of the Interior to conduct a commercial lease sale of at least 35 percent of federal lands containing oil shale and oil sands in Wyoming, Colorado and Utah within three years.

The section ensures "host" States retain two-thirds of the nonfederal share of oil shale and tar sands lease receipts, and ensures one third goes to counties "hosting" the oil shale and tar sands production. Further, during the first ten years of production from a lease, the State and counties will receive 80 percent of the federal share of lease revenues. These funds may be used by the State and

counties to support infrastructure related to oil shale and tar sands production.

The section also states that the programmatic environmental impact statement (EIS) developed for the oil shale program as mandated in the Energy Policy Act of 2005 will be sufficient for all oil shale and oil sands lease sales conducted within the first 10 years. This strengthens environmental protections by forcing a new EIS to be conducted after 10 years.

Subtitle E—Ocean Energy Resources

Sec. 6501. Short title

This Subtitle may be cited as the "Ocean State Options Act of 2005."

Sec. 6502. Policy

Adjacent States (ocean states) incur expenses in support of outer Continental Shelf (OCS) activities and should receive a portion of the receipts from these activities. Existing laws have reduced production of minerals, have pre-empted State involvement in mineral resource development decisions, and have been harmful to the national interest.

Adjacent States should have more options whether mineral leasing should occur within their Adjacent Zones. At certain distances offshore, it is not reasonably foreseeable that mineral exploration and development activities will adversely affect resources near the coastline.

Inland waters, including the Great Lakes, Long Island Sound, Delaware Bay, Chesapeake Bay, Albemarle Sound, San Francisco Bay, and Puget Sound are not part of the outer Continental Shelf and are not subject to oil and natural gas leasing by the federal government.

Sec. 6503. Definitions under the Outer Continental Shelf Lands Act

Defines terms such as "Adjacent State," "Adjacent Zone," "Neighboring State," and other necessary terms, and includes Puerto Rico and the other Territories of the United States under the definition of "State."

Sec. 6504. Determination of adjacent zones and planning areas

This section designates State Adjacent Zones and OCS Planning Areas on maps incorporated into the bill by reference. Maps are drawn using medial lateral boundary principles with equitable adjustments on a proportional basis. Among other things, the maps ensure that all coastal States have Adjacent Zones that extend to the outer edge of the United States Exclusive Economic Zone (approximately 200 miles from the shoreline or to the extent of the OCS if father away).

Without this equitable provision, the Adjacent Zones of seven coastal States would be "pinched-out" close to the coastline. Further, provides that the line between the Alabama and Florida Adjacent Zones extends due south from the coastline for 125 miles.

Sec. 6505. Administration of leasing

This section provides that a lessee may voluntarily relinquish a part of its oil and/gas producing lease if the Secretary finds that the part of the lease to be relinquished is geologically prospective. In return, the Secretary shall provide the lessee with a royalty incentive on the portion of the lease retained by the lessee. This provision is expected to make large deep gas prospects on the Gulf of Mexico OCS available for leasing and production, while keeping the existing depleting fields in production.

This section also provides for natural gas preference lease regulations, and provides for the Secretary of the Interior to issue regulations. It limits natural gas preference leases to tracts wholly within 125 miles of the coastline within areas withdrawn from leasing on the day after the date of enactment of this Subtitle.

Sec. 6506. Grant of leases by secretary

This section provides authority for the Secretary of the Interior to issue a second lease on a tract, a part of which was voluntarily relinquished under section 6505. It further encourages alternative energy development by increasing the Adjacent State's share of receipts from alternative energy and other activities on the OCS from 27 to 50 percent, and extends the distance within which sharing applies from 15 miles to 200 miles. It authorizes the Secretary to grant natural gas leases within 125 miles of the coastline.

It defines the provisions of a natural gas lease, provides a process for possible production of crude oil from the lease, provides for repurchase of a natural gas lease under certain circumstances, and provides for a preference right for the lessee in case of future oil and gas leasing.

The section removes restrictions on joint bidders within the Alaska OCS Region and within other areas where the Secretary determines the tracts to be "frontier tracts" or otherwise "high cost tracts."

The section eliminates receipts sharing under section 8(g) of he Outer Continental Shelf Lands Act effective October 1, 2013 (because new sharing provisions supercede the section 8(g) sharing).

Sec. 6507. Disposition of receipts

Receipt sharing from some OCS leases begins on January 1, 2006, with sharing from the remaining leases beginning with receipts generated after October 1, 2010. The section allocates, using formulas (for current program areas phased-in over a period of time) for 40 percent of receipts to Adjacent States, nearby States, all producing States, the new Federal Energy Natural Resources Enhancement Fund (section 6514), the new Federal Energy and Mineral Resources Professional Development Fund (section 6523), and the new National Geologic Data and Mapping Fund (section 6526). A large part of the receipts shared with States are further shared with local coastal political subdivisions.

The section provides that shared funds may be used: (1) to reduce in-State college tuition and otherwise support public education, including career technical education; (2) to make transportation infrastructure improvements; (3) to reduce taxes; (4) to promote and provide for coastal or environmental restoration, fish,

wildlife, and marine life habitat enhancement, waterways maintenance, shore protection, and marine and oceanographic education and research; (5) to improve infrastructure associated with energy production activities conducted on the OCS; (6) to fund energy demonstration projects and supporting infrastructure for energy projects; or (7) for any other purpose as determined by State law.

The section further provides that no State or local government recipient of funds under these provisions shall be required to account to the federal government for the expenditure of the funds unless otherwise provided by law. Shared funds may be used as matching funds for other federal programs.

Sec. 6508. Review of outer continental shelf exploration plans

This section requires the holder of oil and gas, or natural gas, lease to submit an exploration plan to Secretary of the Interior for review for compliance with mandated lease terms and applicable statutes and regulations.

Sec. 6509. Reservation of lands and rights

This section clarifies that the President has the authority under section 12 of the Outer Continental Shelf Lands Act to completely revise or revoke any prior Presidential withdrawal. Further, withdrawals shall be for a term not to exceed ten years at any one time. It provides that the President, when considering a potential withdrawal, shall, to the maximum extent practicable, accommodate competing interests and potential uses of the OCS.

This section also codifies until June 30, 2012, areas withdrawn from leasing within the Atlantic, Gulf of Mexico, and Pacific OCS Regions by the President and prohibits the Secretary of the Interior from offering these withdrawn areas from leasing unless the Adjacent State petitions to "opt-out" of the withdrawal.

This section provides a method for Adjacent States (the Governor with concurrence of the State legislature) to seek approval from the Secretary to "opt-out" of any withdrawals, including the option of the State to request oil and natural gas leasing, or natural gas leasing.

States may only petition for natural gas leasing within 125 miles of the coastline. Leasing may not take place within 25 miles of the nearest point of the coastline of a Neighboring State, nor may an oil and gas lease be issued within 50 miles of the coastline of a Neighboring State, UNLESS the Neighboring State has leasing within those same distances OR expresses its concurrence.

This section directs the Secretary to amend the existing OCS Five-Year Program to include leasing in areas where a State's petition to "opt-out" has been approved. It also provides States whose Adjacent Zone contains an area withdrawn from leasing the option of petitioning to extend the existing Presidential withdrawals in up to five-year increments ad infinitum, with a total of 10 years of withdrawal left at any one point in time. Any petition will be by the Governor with concurrence of the State legislature.

The section also amends the 2002–2007 OCS Five-Year Program to provide for two lease sales in the areas added to the Gulf of Mexico OCS Region Central Planning Area. It provides that any future leasing in the so-called "stovepipe" area within the Alabama

Adjacent Zone would require the concurrence of Alabama and Florida.

Sec. 6510. Outer continental shelf leasing program

This section provides that the Secretary of the Interior shall include projections of OCS receipts sharing within each Five-Year leasing program as if all areas would be available for leasing. The Secretary shall also include a macroeconomic estimate of the impact of such leasing on the national economy and each State's economy, including investment, jobs, revenues, personal income, and other categories.

The provision restricts the Five-Year Program to three versions rather than the current four, requires that the Program include 75 percent of the available, unleased acreage in each OCS planning area, and requires analysis of leasing all areas without regard to other law affecting such leasing.

This section provides for resolution by the President of any unresolved conflicts between use of the OCS for military purposes and energy production.

Sec. 6511. Coordination with adjacent states

This section provides that no federal agency may permit or approve, without the concurrence of the Adjacent State, the construction of a crude oil or petroleum products pipeline (or both) within the part of the State's Adjacent Zone that is not available by law for oil and gas leasing or natural gas leasing, with one exception for crude oil produced from the State's Adjacent Zone.

It further provides that States may not prohibit the landing of a natural gas pipeline transporting natural gas from the OCS; however, a State may veto a particular landing location if it proposes two acceptable landing locations within 50 miles on either side of the proposed location.

Sec. 6512. Environmental studies

This section provides for categorical exclusions under the National Environmental Policy Act (NEPA) for suspensions and preliminary activities on an offshore lease that has no, or minor, impact on the environment. Provides that the Environmental Impact Statement (EIS) under NEPA for the Five-Year Leasing Program is sufficient for all lease sales to be conducted under the Program. It further provides that OCS exploration plans shall not require an EIS, and may be categorically excluded because history has shown that exploration plans cause only minor impacts, if detectable.

The section strengthens environmental review provisions by requiring that at least every 10 years a development plan in each planning area must be subject to an EIS. Current Outer Continental Shelf Lands Act provisions only require the first development plan in each OCS Region to be subject to an EIS.

Sec. 6513. Review of outer continental shelf development and production plans

This section requires the holder of oil or natural gas lease to submit a development and production plan to Secretary of the Interior for review for compliance with mandated lease terms and applica-

ble statutes and regulations. The section also requires collaboration between Secretary of the Interior and Affected State's Governor.

Sec. 6514. Federal Energy Natural Resources Enhancement Fund Act of 2005

This section establishes a fund for the monitoring, management, and enhancement of wildlife and fish and their habitats, and air, water, and other natural resources related to energy and minerals development on federal onshore and offshore lands.

The fund will receive 2.5 percent of federal mineral leasing bonus bids and royalties, onshore and offshore phased-in over ten years. One-third of the Fund is paid annually to the Secretary of the Interior for use by the Fish and Wildlife Service, Bureau of Land Management, and the Minerals Management Service. Two-thirds of the Fund will go to the State from which the revenues were derived.

Sec. 6515. Termination of effect of laws prohibiting the spending of appropriated funds for certain purposes

This section eliminates any existing OCS leasing moratoria provisions for the current fiscal year.

Sec. 6516. Outer continental shelf incompatible use

This section protects against OCS uses that are incompatible with "substantially full" exploration and production of oil and natural gas from geologically prospective tracts in areas that are available for leasing by law. The President may allow exceptions based on a national interest finding.

Sec. 6517. Repurchase of certain leases

This section authorizes regulations for the Secretary of the Interior to repurchase and cancel onshore and offshore leases if the lease is not allowed to be explored and/or developed under certain circumstances. A similar provision was included in H.R. 6 of the 109th Congress as approved by the House of Representatives on April 21, 2005.

Sec. 6518. Offsite environmental mitigation

This section provides that the Secretary shall allow offsite mitigation if the mineral lessee (onshore or offshore) makes a proposal that generally achieves the purpose for which mitigation measures appertain.

Sec. 6519. Amendments to the Mineral Leasing Act

This section updates the Mineral Leasing Act to be more compatible with OCS development by requiring compliance with plan review, revision, and completeness procedures.

Sec. 6520. Minerals management service

This section renames the "Minerals Management Service" in the Department of the Interior as the "National Offshore Energy and Royalty Service." Limits director to having one deputy director.

Sec. 6521. Authority to use decommissioned offshore oil and gas platforms and other facilities for mariculture, artificial reef, scientific research, or other uses

This section provides that decommissioned offshore oil and gas production platforms may be retained in place as artificial reefs and for other purposes. It also provides for regulation of such facilities, and provides that Adjacent States may require removal of such platforms within 25 miles of the coastline.

This section gives the Secretary of the Interior guidance in processes required for proper decommission of platforms and other studies.

Sec. 6522. Repeal of requirement to conduct comprehensive inventory of OCS oil and natural gas resources

This section repeals section 357 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 720; 42 U.S.C. 15912) which requires the Secretary of the Interior to conduct a comprehensive inventory, including 3–D seismic surveys, of all OCS lands. The Secretary has no funds to contract for 3–D seismic surveys and the resource assessment part of the inventory is duplicative of other law.

Sec. 6523. Mining and petroleum schools

This section establishes the Federal Energy and Mineral Resources Professional Development Fund.

It gives the Secretary of the Interior the authority to make deposits into the Fund—two percent (phased in over 10 years) of federal onshore and offshore oil and gas and other minerals receipts. The Fund is to maintain and encourage the growth of the energy and minerals workforce by supporting programs at colleges, universities, community colleges, tribal colleges, and technical institutes for career technical education programs to train skilled workers in the oil and gas, coal and mineral mining industries. Additionally funds can go to support State-approved programs at secondary schools offered cooperatively with higher education institutions that provide career technical education for agriculture, forestry, fisheries, utilities, construction, manufacturing, and transportation and warehousing.

This section repeals the currently unfunded and inoperative Mining and Mineral Resource Institutes Act of 1984 and makes it a national policy to preserve and foster the human capital necessary for national economic, energy and minerals security.

Funds go to support existing programs at ABET-accredited petroleum and mining schools, applied geology and geophysics programs, and to individuals for degrees in petroleum and mining engineering, petroleum/mining geology and geophysics and mineral economics.

All university level schools accepting funds have a duty to increase the number of undergraduates enrolled in the supported programs and to produce more engineers, geologists and geophysicists for the petroleum and mining industries.

Oversight and administration of the program is vested in the Secretary of the Interior and in a committee comprised of State and industry officials.

Sec. 6524. Onshore and offshore mineral lease fees

This section prevents creation of new fees by the Secretary of the Interior applicable to federal onshore and offshore mineral leases that were not in effect on January 1, 2005, and sets cap on increase of existing fees concerning mineral leases.

Sec. 6525. Atlantic and Pacific OCS region headquarters

This section requires the Secretary of the Interior to establish Atlantic and Pacific OCS Region headquarters by January 1, 2008, and provides location guidelines. The section further provides that the Atlantic and Pacific regional directors shall be employees within the Senior Executive Service.

Sec. 6526. National Geologic Data and Mapping Fund Act of 2005

This section establishes the National Geologic Data and Mapping Fund. It directs the Secretary of the Interior to deposit into this Fund 0.5 percent (phased-in over 10 years) of federal onshore and offshore oil and gas and other minerals receipts.

The section directs the Secretary of the Treasury to annually convey one third of the Fund to the Secretary of the Interior and two thirds to the States (based on a formula devised by the Secretary of the Interior) to conduct geologic mapping and preserve and make geologic data available for use.

Sec. 6527. Leases for areas located within 100 miles of California or Florida

This section grants the Secretary of the Interior the authority, on request of a lessee, to cancel existing oil and gas leases located completely within 100 miles of the coastline within the California and Florida Adjacent Zones and exchange them for new leases at least 100 miles from the coastline but not completely beyond 125 miles from the coastline.

Such new leases shall be subject to any applicable national defense operating restrictions. Directs that any exploration plan submitted to the Secretary after the date of enactment and before July 1, 2012, for an oil and gas lease wholly within 100 miles of the coastline within the California and Florida Adjacent Zones shall not be treated as received by the Secretary until the earlier of July 1, 2012, or the date on which a State petition for leasing in the area was approved.

It provides further requirements for cancellation and exchange of these leases. The section provides that an existing oil and gas lease located partially within 100 miles of the coastline within the Florida Adjacent Zone may only be developed and produced using wells drilled from well-head locations at least 100 miles from the coastline to any bottom-hole location on the area of the lease.

Subtitle F—Sale and Conveyance of Federal Land

Section 6601. Sale and conveyance of federal land

This section requires the Secretary of the Interior to make available for immediate sale through a competitive sale process at fair market value 19 parcels of federal land located in the District of Columbia. It also directs the Secretary to covey title of 13 parcels

of federal land to the District of Columbia and transfer administrative jurisdiction of ten parcels of federal land from the District of Columbia to the National Park Service.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of Rule X and clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The general performance goal or objective of this bill is to reduce the budget deficit by increasing reliable domestic energy supplies, selling surplus federal lands to aid local communities in economic development, and modernizing the Nation's mining laws by increasing patent and claim maintenance fees.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 31, 2005.

Hon. RICHARD W. POMBO,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation recommendations of the House Committee on Resources.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare to the reconciliation instruction to the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS HOLTZ-EASKIN, *Director*.

Enclosure.

Reconciliation Recommendations of the House Committee on Resources

Summary: This legislation would increase offsetting receipts (a credit against direct spending) resulting from programs to develop federally owned natural resources and from sales of certain federal property. Under the legislation, some of those receipts would be spent, without further appropriation action, for payments to certain states and for other federal activities related to the development and conservation of natural resources.

CBO estimates that enacting this legislation would reduce net direct spending by $6 million in 2006, by $3.7 billion over the 2006–

2010 period, and by $3.4 billion over the 2006–2015 period. Enacting the legislation would not affect federal revenues.

The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO expects that enacting this legislation would benefit a number of state, local, and tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of the legislation is shown in Table 1. The savings would fall within budget functions 300 (natural resources and environment) and 950 (undistributed offsetting receipts).

TABLE 1.—ESTIMATED BUDGET IMPACT OF THE RECONCILIATION RECOMMENDATIONS OF THE HOUSE COMMITTEE ON RESOURCES

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Oil and Gas Leases in ANWR:												
Estimated Budget Authority	0	0	−2,000	−1	−500	−1	−1	−1	−1	−75	−2,501	−2,580
Estimated Outlays	0	0	−2,000	−1	−500	−1	−1	−1	−1	−75	−2,501	−2,580
Oil and Gas Leasing within the OCS:												
Estimated Budget Authority	0	−524	−5	−211	−151	149	153	24	−21	267	−891	−319
Estimated Outlays	0	−524	−5	−211	−151	149	153	24	−21	267	−891	−319
Mining on Federal Land:												
Estimated Budget Authority	−1	−11	−18	−69	−59	−52	−31	−30	−28	−27	−158	−326
Estimated Outlays	−1	−11	−18	−69	−59	−52	−31	−30	−28	−27	−158	−326
Sales of Federal Land:												
Estimated Budget Authority	−5	−3	−29	−44	−47	0	0	0	0	0	−128	−128
Estimated Outlays	−5	−3	−29	−44	−47	0	0	0	0	0	−128	−128
Total Changes:												
Estimated Budget Authority	−6	−538	−2,052	−325	−757	96	121	−7	−50	165	−3,678	−3,353
Estimated Outlays	−6	−538	−2,052	−325	−757	96	121	−7	−50	165	−3,678	−3,353

Note: ANWR = Arctic National Wildlife Refuge, OCS = Outer Continental Shelf.

Basis of estimate: For this estimate, CBO assumes that this legislation will be enacted in December 2005.

This legislation would make several changes to programs to develop federally owned resources, particularly oil and natural gas. It would:

- Direct the Secretary of the Interior to establish an oil and gas leasing program for the coastal plain of the Arctic National Wildlife Refuge (ANWR) in Alaska;
- Increase oil and gas leasing in certain areas of the Outer Continental Shelf (OCS) and provide new spending authority for some of the resulting offsetting receipts;
- Make changes to certain fees and requirements related to mining on federal land;
- Direct the Secretary to sell certain federal property; and
- Require the Secretary to hold commercial lease sales for the right to develop federal oil shale and tar sands.

On balance, CBO estimates that those changes would reduce direct spending by $6 million in 2006, by $3.7 billion over the 2006–2010 period, and by $3.4 billion over the 2006–2015 period.

Oil and gas leasing in ANWR

This legislation would direct the Secretary of the Interior to implement an oil and gas leasing program for the coastal plain of ANWR. The federal government would receive proceeds first from auctioning leases for oil and gas development rights, from annual rental payments, and—once production began—from royalties. Under the legislation, Alaska would receive half of the gross proceeds generated from the proposed program.

The legislation contains several provisions related to the administration of the proposed leasing program, including provisions that would deem an existing environmental impact statement sufficient for certain requirements under the National Environmental Policy Act and specify procedures for complying with that act. The legislation also would specify procedures for judicial review of certain administrative actions, deem the proposed leasing program and associated activities to be compatible with the purposes for which ANWR was established, and specify that the Alaska National Interest Lands Conservation Act would not apply to any rights-of-way or easements granted across the coastal plain for purposes of transporting oil and gas. The legislation would require leasing to begin 22 months after enactment. Considering those provisions and the time frame for lease sales specified in the legislation, CBO expects that the required sales would occur in 2008 and 2010, and that receipts from winning bids would be collected in those years. Without those provisions, CBO expects that such collections would occur later.

We estimate that gross proceeds from bonuses paid by winning bidders would total $5 billion. That estimate is based on information from the state of Alaska, the Energy Information Administration, and other sources. It also relies on estimates by the Department of the Interior (DOI) of the amount of economically recoverable oil that might be produced from ANWR's coastal plain. As specified in the legislation, one-half of those receipts would go to

Alaska, leaving net federal receipts of $2.5 billion over the 2008–2010 period.

In addition to receipts from bonus bids, CBO estimates that the federal government would collect net receipts of about $1 million a year from rental payments starting in 2008. Most of those payments would end in 2015, when we expect production would begin. CBO estimates that gross royalties in that year would total $150 million, and after sharing half of those receipts with Alaska, net federal collections would total $75 million. We expect that the federal government would continue to collect royalties for many years beyond 2015.

Oil and gas leasing within the OCS

The legislation would make several changes to current law that CBO expects would increase offsetting receipts from leasing the right to develop oil and natural gas resources within the OCS. It also would increase direct spending for payments to certain state and local governments and for other new federal programs. Taken together, CBO estimates that these provisions would reduce direct spending by $891million over the 2007–2010 period and by $319 million over the 2007–2015 period (see Table 2).

Increased Receipts from OCS Leases. CBO expects that enacting the legislation would increase proceeds from new leases in areas where we currently expect no new leasing would otherwise occur over the next 10 years. We also expect that a provision to end an existing program for sharing certain OCS receipts with states after 2013 would increase gross receipts starting in 2014. In total, CBO estimates that the legislation would increase gross receipts by about $1.6 billion over the 2007–2010 period and by $3.7 billion over the 2007–2015 period. Under current law, CBO estimates that gross receipts from OCS leases will total $64 billion over the 2006–2015 period.) Under the legislation, we expect that the federal government would continue to collect additional receipts for many years beyond 2015.

Under current law, moratoria generally prohibit new leasing and preleasing activities in most OCS areas outside of the western and central Gulf of Mexico (leasing occurs in small parts of the eastern Gulf of Mexico and the Alaskan OCS). Under current law, those moratoria are in effect through June 2012. As a result, CBO does not expect significant receipts from new offshore leases to be generated in the moratorium areas—under current law—over the next 10 years.

Upon enactment of the legislation, states would have discretion over whether to allow new leasing for oil or natural gas within 125 miles of their respective coastlines, and could petition the Secretary of the Interior to allow such leasing within some or all of those areas, subject to certain procedural requirements. In addition, starting in July 2013, the legislation would require the Secretary to offer for leasing 75 percent of available OCS areas beyond 125 miles of shore, pursuant to new management plans for those areas. The federal government would receive the proceeds from auctioning leases for oil and gas development rights in areas offered under the legislation, then from annual rental payments, and—once production began—from royalties.

TABLE 2.—ESTIMATED BUDGET IMPACT OF CHANGES IN OIL AND GAS LEASING WITHIN THE OCS

	By fiscal year, in millions of dollars											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Increase In OCS Receipts:												
Estimated Budget Authority	0	−554	−307	−390	−374	−155	−245	−506	−629	−518	−1,625	−3,678
Estimated Outlays	0	−554	−307	−390	−374	−155	−245	−506	−629	−518	−1,625	−3,678
New Spending of OCS and Onshore Receipts:												
Payments to states and local governments from new OCS receipts:												
Estimated Budget Authority	0	0	244	137	177	258	78	204	188	291	558	1,577
Estimated Outlays	0	0	244	137	177	258	78	204	188	291	558	1,577
Payments to state and local governments from OCS receipts anticipated under current law:												
Estimated Budget Authority	0	0	0	0	0	0	250	250	320	380	0	1,200
Estimated Outlays	0	0	0	0	0	0	250	250	320	380	0	1,200
Programs to enhance natural resources:												
Estimated Budget Authority	0	15	29	21	23	23	35	38	50	57	88	291
Estimated Outlays	0	15	29	21	23	23	35	38	50	57	88	291
Programs to enhance mineral engineering education:												
Estimated Budget Authority	0	12	23	17	18	18	28	30	40	46	70	232
Estimated Outlays	0	12	23	17	18	18	28	30	40	46	70	232
Geologic mapping:												
Estimated Budget Authority	0	3	6	4	5	5	7	8	10	11	18	59
Estimated Outlays	0	3	6	4	5	5	7	8	10	11	18	59
Subtotal, New Spending:												
Estimated Budget Authority	0	30	302	179	223	304	398	530	608	785	734	3,359
Estimated Outlays	0	30	302	179	223	304	398	530	608	785	734	3,359
Net Effect of OCS Provisions:												
Estimated Budget Authority	0	−524	−5	−211	−151	149	153	24	−21	267	−891	−319
Estimated Outlays	0	−524	−5	−211	−151	149	153	24	−21	267	−891	−319

Note: OCS = Outer Continental Shelf.

Based on information from DOI, CBO expects new leasing would begin in 2007. We estimate that gross proceeds from bonuses for new OCS leases paid by winning bidders and royalties from those leases would total about $1.6 billion over the 2007–2010 period and $3.4 billion over the 2007–2015 period. That estimate relies on studies prepared by DOI on the amount of economically recoverable oil that might be produced in areas where CBO expects new leasing would occur, particularly the eastern Gulf of Mexico, the Atlantic OCS, and the Alaskan OCS. Although CBO cannot predict whether states would choose to allow leasing within areas under their jurisdiction, for this estimate, CBO assumes that roughly half of the area in the eastern Gulf of Mexico, the Atlantic OCS, and the Alaskan OCS would be made available at states' discretion. Our estimate also relies on information from the Energy Information Administration and other sources.

In addition to receipts from bonus bids and royalties, CBO estimates that the federal government would collect rental payments totaling $35 million over the 2007–2010 period and $110 million over the 2007–2015 period. We also estimate that a provision to end an existing program for sharing certain OCS receipts with states after 2013 would increase gross receipts by $94 million in each of fiscal years 2014 and 2015.

In addition, the legislation would expand the definition of the OCS to include certain lands surrounding Puerto Rico and other Territories of the United States. By making those areas available for oil or gas leasing, that provision could result in a further increase in receipts from leases in those areas. CBO is unaware of any federal assessments of economically recoverable resources in those areas, however; thus we have no basis for estimating the timing or magnitude of any additional receipts from leasing activities in those areas.

New Direct Spending of OCS and Onshore Receipts. The legislation would authorize the Secretary to spend, without further appropriation action, a portion of the proceeds from new OCS leases as well as specified percentages of amounts that would be collected under current law from onshore and offshore mineral leases. Based on historical spending patterns for activities similar to those proposed, CBO estimates that new direct spending under the legislation would total $734 million over the 2007–2010 period and about $3.4 billion over the 2007–2015 period, with additional spending continuing for many years after 2015. That estimate of spending includes:

- $558 million over the 2008–2010 period and $1.6 billion over the 2008–2015 period for payments to state and local governments to share a portion of receipts from new OCS leases;
- $1.2 billion over the 2012–2015 period for additional payments to state and local governments of a portion of OCS receipts we anticipate would be generated under current law (this spending would not commence until 2012);
- $88 million over the 2007–2010 period and $291 million over the 2007–2015 period to support projects to enhance natural resources;
- $70 million over the 2007–2010 period and $232 million over the 2007–2015 period for grants and financial assistance

to certain colleges, universities, and vocational schools that offer training in petroleum, mining, or mineral engineering; and,

- $18 million over the 2007–2010 period and $59 million over the 2007–2015 period for geologic mapping programs.

Mining on Federal land

The legislation would make several changes to current law related to mining on federal land. Based on information from DOI and industry sources, CBO estimates that enacting those amendments would increase gross receipts by $11 million in 2006, $240 million over the 2006–2010 period, and $426 million over the next 10 years. Those increases would result primarily from provisions that would increase fees for locating and recording new mining claims, establish a new schedule for annual fees charged to maintain existing claims, and authorize DOI to resume patenting of mining claims and to sell certain other federal land where mineral development has occurred.

Under the legislation, 30 percent of receipts from issuing patents and selling certain land would be available, without further appropriation action, for efforts to reclaim mining land and to support colleges, universities, and vocational schools that offer training in petroleum, mining, or mineral engineering. Based on historical spending patterns for similar programs, CBO estimates that such spending would total $10 million in 2006, $82 million over the 2006–2010 period, and $100 million over the next 10 years. As a result, we estimate that enacting those provisions would reduce net direct spending by $1 million in 2006, $158 million over the 2006–2010 period, and $326 million over the 2006–2015 period.

Sales of Federal land

The legislation would direct the Secretary of the Interior to sell certain federal land administered by the Bureau of Land Management and the National Park Service (NPS).

CBO estimates that the proposed sales would increase offsetting receipts by $5 million in 2006 and $128 million over the 2006–2010 period. We expect no further sales would occur after 2010.

The legislation would direct the Secretary to sell, for amounts specified in the legislation, roughly 7,500 acres of federal land in Nevada and Idaho. CBO estimates that net proceeds from those sales, after making specified payments to those states and the counties where the affected properties are located, would total $3 million in 2006.

The legislation also would direct the Secretary to sell at fair market value about 150 acres of NPS lands located in the District of Columbia. The lands to be sold include Poplar Point (about 100 acres of waterfront property located on the east side of the Anacostia River), around 30 acres of parking lots and other property abutting the Robert F. Kennedy Stadium, nearly 11 acres of land adjacent to South Capitol Street, and 14 smaller tracts in Southwest and Southeast Washington.

While the value of these properties is uncertain and will ultimately be determined by the outcome of a competitive bidding process, CBO estimates that sales proceeds to the federal government

would be about $140 million over the next five years. Offsetting these receipts would be about $15 million of new direct spending authorized over that period, including about $5 million to implement sales (such as preparing appraisals and conducting auctions) and $10 million over the 2007–2010 period to relocate NPS facilities currently located at Poplar Point.

This estimate is based on information obtained from the Department of the Interior, the General Services Administration, the District of Columbia's Office of Tax and Revenue, and private developers. It reflects current real estate tax assessments of the affected federal lands as well as recent sales of comparable properties in the District. We estimate that other provisions in the legislation relating to the conveyance of title or transfer of administrative jurisdiction of other NPS lands to the District of Columbia would not have a significant impact on the federal budget.

Accelerated sales of commercial leases for oil shale and tar sands

The United States is widely believed to contain significant amounts of unconventional oil resources, particularly in the form of oil shale, but historically, commercial oil shale production has not been economically viable. It is likely that DOI will offer some of these resources for leasing by private firms within the next 10 years. The legislation would set deadlines in law for DOI to complete preleasing activities and require the agency to offer leases sooner than would be expected under current law. Because new technology that would make it feasible to economically exploit these resources is not fully developed, CBO does not expect that bonus bids for such leases would be significant over the next five years.

Oil Shale and Tar Sands Leasing under Current Law. The Administration has recently acted to support the establishment of a commercial leasing program for oil shale and tar sands. It established a task force in 2003 to address issues related to such a program. In addition, under the Energy Policy Act of 2005 (Public Law 109–58), the Secretary of the Interior has initiated environmental studies that will be the basis for a commercial leasing program. Pursuant to that act, the Secretary offered, for nominal fees, leases to relatively small tracts of federal land to support research and development of new technologies for processing oil shale and tar sands. DOI accepted applications for such leases during the summer of 2005, and CBO expects the agency to make decisions regarding those applications soon. Under the terms of those leases, companies that meet certain conditions could lease up to 4,960 additional contiguous acres to support efforts to transform research and development projects into commercial operations. Assuming DOI meets its administrative obligations within a timely fashion, CBO expects that the agency could issue some commercial leases for oil shale or tar sands over the next 10 years, depending on the amount of industry interest. Based on information about the likely time required to determine the economic viability of new technologies under development, however, we expect that any such leasing would not occur until after 2010.

Proposed Requirement for Commercial Lease Sales. This legislation would require the Secretary to offer for commercial leasing at

least 35 percent of federal lands considered to be geologically promising for leasing of oil shale and tar sands. As a result, CBO expects that such sales could occur sooner than expected under current law, potentially resulting in a short-term increase in receipts from bonus bids. In keeping with treatment of bonus bids from prior oil shale leases, those bonuses would likely be paid in installments over several years. Because 50 percent of the proceeds from leasing under the legislation would be paid to states, any short-term increase in receipts would be partially offset by a corresponding increase in direct spending. Based on oil companies' expressed interest in participating in the existing research and development leasing program, CBO expects there would be interest in obtaining leases offered under the legislation. Given significant uncertainty surrounding several factors that would be critical to companies' willingness to bid for those leases, however, CBO expects that the potential increase in receipts from winning bids would not be significant over the next five years. We further expect that, over the longer run, increased net receipts from early sales would be offset by forgone receipts from sales that would otherwise occur later.

The uncertainties confronting potential bidders include the volatility of oil prices and other aspects of the oil market, the future availability of viable technologies to produce resources and mitigate environmental impacts, governmental permitting and regulatory processes, and issues related to developing the infrastructure necessary to support operations. The legislation would address some uncertainties related to federal regulatory processes by stating that no leases issued would be subject to further environmental review and specifying federal royalty rates. CBO expects, however, that much uncertainty would remain in the next few years when leases would be offered under the legislation, and that bids by potential lessors would be depressed as a result. Considering the vastness of the resource, however, bonus bids could be very large after 2010–perhaps totaling several hundred million dollars after 2010. CBO has not had sufficient time to interview potential bidders for this resource to estimate its market value to the government in later years.

Intergovernmental and private-sector impact: This legislation contains no intergovernmental or private-sector mandates as defined in UMRA. CBO expects that some state, local, and tribal governments would receive substantial benefits from enactment of this legislation.

The state of Alaska would receive 50 percent of the gross proceeds from federal oil and gas leases in ANWR and Alaska native corporations that own land within ANWR would be able to develop oil and gas resources on their lands. In addition, certain Alaska communities could receive assistance totaling up to $5 million per year.

Other states would receive additional receipts from federal oil and gas leases in the Outer Continental Shelf and from the oil shale and tar sands leases. The District of Columbia would benefit from the land conveyances authorized by the legislation because they would be available for economic development.

Previous CBO estimate: On October 20, 2005, CBO transmitted a cost estimate for the reconciliation recommendations of the Sen-

ate Committee on Energy and Natural Resources, as approved on October 19, 2005. Provisions in that legislation that would open the coastal plain of ANWR to oil and gas leasing are similar to those contained in the reconciliation recommendations of the House Committee on Resources, and our estimates of net receipts under the two ANWR proposals are the same.

Estimate prepared by: Federal Costs: Megan Carroll—ANWR, OCS, hardrock mining, and oil shale and Deborah Reis—Federal land sales. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Selena Caldera.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This Committee Print contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This Committee Print is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1003 OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

[PROHIBITION ON DEVELOPMENT

[SEC. 1003. Production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress.]

REVISED STATUTES OF THE UNITED STATES

CHAPTER SIX.

MINERAL LANDS AND MINING RESOURCES.

SEC. 2319. *(a) LANDS OPEN TO PURCHASE BY CITIZENS.*—All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.

(b) AVAILABILITY FOR PURCHASE.—Notwithstanding any other provision of law and in compliance with subsection (c), the Secretary of the Interior shall make mineral deposits and the lands that contain them, including lands in which the valuable mineral deposit has been depleted, available for purchase to facilitate sustainable economic development. This subsection shall not apply with respect to any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, or National Trails System, or to any National Conservation Area, any National Recreation Area, any National Monument, or any unit of the National Wilderness Preservation System.

(c) APPLICATION.—The holder of mining claims, mill sites, and blocks of such mining claims and mill sites contiguous to patented or unpatented mining claims or mill sites where mineral development activities, including mining, have been conducted as authorized by law or regulation and on which mineral development work has been performed may apply to purchase Federal lands that are subject to the claims. The filing of the proper application shall include such processing fees as are required by section 2325 of the Revised Statutes (30 U.S.C. 29). The applicant or applicants, or their predecessors must present evidence of mineral development work performed on the Federal lands identified and submitted for purchase. Mineral development work upon aggregation must average not less than $7,500 per mining claim or mill site within the Federal lands identified and applied for.

(d) LAND SURVEYS.—For the purpose of this section, and notwithstanding section 2334 of the Revised Statutes (30 U.S.C. 39), land surveys of the Federal lands applied for shall be paid for by the applicant and shall be completed either by a land surveyor registered in the State where the land is situated, or by such a surveyor also designated by the Bureau of Land Management as a mineral surveyor, if such mineral surveyors are available, willing, and able to complete such surveys without delay at a cost comparable to the charges of ordinary registered land surveyors.

(e) DEADLINE FOR CONVEYANCE; PRICE.—Notwithstanding any other provision of law, and not later than one year after the date of the approval of any survey required under subsection (d), the Secretary of the Interior shall convey to the applicant, in return for a payment of $1,000 per acre or fair market value, whichever is greater, all right, title, and interest in and to the Federal land, subject to valid existing rights and the terms and conditions of the Act of August 30, 1890 (26 Stat. 391). For purposes of this subsection, fair market value for mineral development lands available for purchase shall be determined by appraisals prepared by an appraiser certified or qualified under applicable professional criteria or State law, in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, submitted by the applicant to the Secretary of the Interior upon application for purchase, that is completed within 120 days prior to submission of the application. Fair market value for the interest in the land owned by the United States shall be exclusive of, and without regard to, the mineral deposits in the land or the use of such land for mineral activities.

(f) ENVIRONMENTAL LIABILITY.—Notwithstanding any other Federal, State or local law, the United States shall not be responsible for—

(1) investigating or disclosing the condition of any property to be conveyed under this section; and

(2) environmental remediation, waste management, or environmental compliance activities arising from its ownership, occupancy, or management of land and interests therein conveyed under this section with respect to conditions existing at or on the land at the time of the conveyance.

(g) MINERAL DEVELOPMENT WORK DEFINED.—In this section the term "mineral development work" means geologic, geochemical or geophysical surveys; road building; exploration drilling, trenching, and exploratory sampling by any other means; construction of underground workings for the purpose of conducting exploration; mine development work; mineral production from underground or surface mines; environmental baseline studies; construction of environmental protection and monitoring systems; environmental reclamation; construction of power and water distribution facilities; engineering, metallurgical, geotechnical, and economic feasibility studies; land surveys; and any other work reasonably incident to mineral development.

SEC. 2320. Mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. [A mining-claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary.] *A mining claim located after May 10, 1872, whether located by one or more persons, and including a claim located before exposure of the vein or lode, may equal, but shall not exceed, 1,500 feet in length along the vein or lode, and shall extend no more than 300 feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, render such limitation necessary.* The end-lines of each claim shall be parallel to each other.

* * * * * * *

SEC. 2322. *(a) RIGHTS OF LOCATORS, GENERALLY.*—The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State,

territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

(b) RIGHTS SECURED BY MAINTENANCE FEES.—Prior to issuance of a patent, timely payment of the claim maintenance fee secures the rights of the holder of a mining claim, mill site, or tunnel site, both prior to and after discovery of valuable mineral deposits, to use and occupy public lands under the provisions of the general mining law of the United States (as that term is defined in section 2324 of the Revised Statutes) for mineral prospecting, exploration, development, mining, milling, and processing of minerals, reclamation of the claimed lands, and uses reasonably incident thereto. Except for the location fee and the maintenance fees in section 2324 of the Revised Statutes (30 U.S.C. 28), and the patent prices in sections 2325, 2326, 2333, and 2337 of the Revised Statutes (30 U.S.C. 29, 30, 37, and 42), no other fees or fair market value assessments shall be applied to prospecting, exploration, development, mining, processing, or reclamation, and uses reasonably incident thereto.

* * * * * * *

[SEC. 2324. The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining-claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, that is granted a waiver under section 10101 of the Omnibus Budget Reconciliation Act of 1993, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such

claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice is writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made required expenditures. *Provided,* That the period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, including such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of such claim: *Provided further,* That on all such valid existing claims the annual period ending December 31, 1921, shall continue to 12 o'clock meridian July 1, 1922. [That section two thousand three hundred and twenty-four of the revised statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.]❙

SEC. 2324. (a) AUTHORITY TO MAKE REGULATIONS.—The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements:

(1) The location must be distinctly marked on the ground so that its boundaries can be readily traced.

(2) All records of mining claims made after May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim.

(b) RECORDATION OF MINING CLAIMS AND ABANDONMENT.—The locator of an unpatented lode or placer mining claim, mill site, or tunnel site located after October 21, 1976, pursuant to the general mining law of the United States shall, within 90 days after the date of location of such claim, file in the office designated by the Secretary of the Interior a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate

the claimed lands on the ground. The failure to file such instruments as required by this subsection is deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site by the owner. Such recordation by itself shall not render valid any claim that would not be otherwise valid under applicable law.

(c) LOCATION FEE.—Notwithstanding any other provision of law, for every mining claim, mill site, or tunnel site located after the date of the enactment of this subsection pursuant to the general mining law of the United States, the locator shall, at the time the location notice is recorded pursuant to subsection (b), pay a location fee of $100 per claim. This fee shall be in addition to the first year's claim maintenance fee required by subsection (d). Payment of the location fee required by this subsection and the maintenance fee required by subsection (d) secures to the locator the right to use and occupy the public lands for purposes of the general mining law of the United States.

(d) SCHEDULE OF CLAIM MAINTENANCE FEES.—(1) The holder of each unpatented mining claim, mill site, or tunnel site located pursuant to the general mining law of the United States on or after the date of the enactment of this subsection shall pay to the Secretary of the Interior, on or before September 1 of each year, a claim maintenance fee per claim. Except as provided in paragraph (2), such claim maintenance fee shall be paid in the following amounts:

(A) $35 per claim for each of the first through fifth maintenance years, beginning with the year the claim was recorded.

(B) $70 per claim for each of the sixth through tenth maintenance years.

(C) $125 per claim for each of the eleventh through fifteenth maintenance years.

(D) $150 per claim for the sixteenth maintenance year and each year thereafter.

(2) Notwithstanding any other provision of law, for each unpatented mining claim located after the date of enactment of this subsection pursuant to the general mining law of the United States from which minerals are produced, and in lieu of the fee otherwise required by paragraph (1), the holder shall pay to the Secretary of the Interior an annual maintenance fee of $200 per claim.

(3) The holder of each unpatented mining claim, mill site, or tunnel site located pursuant to the general mining law of the United States before the date of enactment of this subsection shall pay to the Secretary of the Interior for such claim—

(A) except as provided in subparagraph (B), the claim maintenance fee that applied before such date of enactment; or

(B) the claim maintenance fee that applies under paragraph (1) or (2), based on the number of years since the original location of the claim, if before the date the payment is due the claim holder—

(i) notifies the Secretary; and

(ii) pays to the Secretary a transfer fee of $100.

(e) ADJUSTMENT OF CLAIM MAINTENANCE FEES.—Claim maintenance fees under subsection (d) shall not be subject to adjustment.

(f) WORK REQUIREMENT.—(1) The holder of each unpatented mining claim, mill site, or tunnel site located pursuant to the general mining law of the United States after the date of enactment of this

subsection, and any holder of a claim that has transferred such claim to the claim maintenance fee schedule under subsection (d), shall conduct physical evaluation and development of the claim or of any contiguous block of claims of which the claim is a part. Exploration and mining activities conducted pursuant to a notice, approved plan of operations, or, in the case of split estate lands, a comparable State or county notice or approval, demonstrates compliance with this section.

(2) If physical evaluation of the claim is not carried out in accordance with paragraph (1) before the end of the fifth, tenth, or fifteenth maintenance year (beginning with the maintenance year in which the claim is filed), respectively, the claim holder shall be required to pay in the next maintenance year the location fee described in subsection (c), in addition to the annual claim maintenance fee required to be paid for the next maintenance year.

(g) WAIVER OF CLAIM MAINTENANCE FEE ADJUSTMENTS AND WORK REQUIREMENT.—If a delay in meeting the work requirements under subsection (f) is the result of pending administrative proceedings, rights-of-way disputes, or litigation concerning issuance or validity of any permit or authorization required under Federal, State, or local law for physical evaluation and development of the claim—

(1) any increase in the claim maintenance fee that would otherwise apply under subsection (d) and the work requirements under subsection (f) shall be suspended for the claim; and

(2) claim maintenance fees required to be paid each year for the claim shall be the same as the fee that applied for the year in which the delay first occurred, and no additional location fee will be owed.

(h) TIME OF PAYMENT.—The claim maintenance fee required under subsection (d) for any maintenance year shall be paid before the commencement of the maintenance year, except that, for the maintenance year in which the location is made the locator shall pay the claim maintenance fee and the location fee imposed under subsection (c) at the time the location notice is recorded with the Bureau of Land Management. The Director of the Bureau of Land Management, after consultation with the Governor of Alaska and by not later than 1 year after the date of enactment of this subsection, may establish a claim maintenance fee filing date for Alaska claim holders that is not later than 60 days after September 1.

(i) SMALL MINER CLAIM MAINTENANCE FEE.—(1) In the case of a claim for which the holder certifies in writing to the Secretary that, on the date the payment of any claim maintenance fee under this section was due, the claim holder and all related parties held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands—

(A) the claim maintenance fee shall be $25 per claim per year for the life of the claim or site held by the claim holder; and

(B) subsection (f) shall not apply.

(2) In this subsection:

(A) With respect to any claim holder, the term "related party" means—

(i) the spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152), as in effect on the date of the enactment of this paragraph of the claim holder; and

(ii) a person who controls, is controlled by, or is under common control with the claim holder.

(B) The terms "control", "controls", and "controlled" include actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

(j) FAILURE TO PAY.—(1) Failure to pay a claim maintenance fee or a location fee for an unpatented mining claim as required by this section shall subject an unpatented mining claim, mill site, or tunnel site to forfeiture by the claim holder as provided in this subsection.

(2) The Secretary of the Interior shall provide the claim holder with notice of the failure and the opportunity to cure within 45 calendar days after the claim holder's receipt of the notice.

(3) The claim holder must, within such 45-day period, pay twice the amount of maintenance fee that would otherwise have been required to be timely paid. The Secretary of the Interior shall specify the amount that must be paid in the notice under paragraph (2).

(4) Failure by the claim holder to make a timely and proper payment in the amount specified in the notice by the Secretary of the Interior, within 45 days after the claim holder's receipt of the notice, shall constitute a forfeiture of the mining claim, mill site, or tunnel site by the claim holder by operation of law.

(k) FAILURE OF CO-OWNER TO CONTRIBUTE.—Upon the failure of any one of several co-owners of a claim to contribute the co-owner's proportion of any claim maintenance fee required by this section, the co-owners who have paid the claim maintenance fee, at the expiration of the year in which any unpaid amount was due, may give such delinquent co-owner personal notice in writing or notice by publication in the newspaper of record for the county in which the land that is subject to the claim or mill site is located, at least once a week for 90 days. If at the expiration of such 90-day period such delinquent co-owner fails or refuses to contribute the co-owner's proportion of the claim maintenance fee required by this section, the co-owner's interest in the claim shall become the property of the other co-owners who have paid the claim maintenance fee. The co-owners who have assumed the interest in the claims shall notify the Secretary of the Interior within 30 days of the assumption.

(l) OIL SHALE CLAIMS SUBJECT TO CLAIM MAINTENANCE FEES UNDER ENERGY POLICY ACT OF 1992.— This section shall not apply to any oil shale claim for which a fee is required to be paid under section 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242).

(m) GENERAL MINING LAW OF THE UNITED STATES DEFINED; RULE OF CONSTRUCTION.—(1) In this section the term "general mining law of the United States" means the provisions of law codified in chapters 2, 12, 12A, 15, and 16 of title 30, United States Code, and in sections 161 and 162 of such title.

(2) Subsections (b) and (c) shall be construed in accordance with judicial decisions under section 314 of the Federal Land Policy and

Management Act of 1976, as in effect before the enactment of those subsections.

SEC. 2325. *(a) MANNER FOR OBTAINING PATENT, GENERALLY.*—A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, associated, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land-office an application for patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land-office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land-office, upon the filing of such application, plat, field-notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application**[**, or at any time**]** *shall include a processing fee of $2,500 for the first claim or site, and $50 for each additional claim contained therein, and at any time* thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that **[**five hundred dollars'**]** *$7,500* worth of **[**labor has been expended**]** *mineral development work has been performed* or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication to claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land-office at the expiration of the sixty days of publication *and if the applicant has complied with the law of discovery*, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of **[**five dollars per acre**]** *$1,000 per acre or fair market value, whichever is greater*, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter. *Provided,* That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be estab-

lished by said affidavits: *And provided,* That this section shall apply to all applications now pending for patents to mineral lands. *For purposes of this section and sections 2326, 2333, and 2337 of the Revised Statutes, fair market value for the patenting of mining claims or mill sites shall be determined by appraisals prepared by an appraiser certified or qualified under applicable professional criteria or State law, in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, submitted by the applicant for a patent to the Secretary of the Interior upon application for patent, that is completed within 120 days prior to submission of the application for patent.*

(b) ALTERNATIVE VALUABLE MINERAL DEPOSIT CRITERIA.—

(1) CLAIMS SUBJECT TO ONGOING ACTIVITIES.—The holder of an unpatented mining claim or mill site who is conducting mining activities that meet the definition of a mine under section 3(h) of the Federal Mine Safety and Health Act of 1972 (30 U.S.C. 802(h)) and whose activities with respect to that claim or site are described in section 4 of such Act (30 U.S.C. 803) may receive a patent for any unpatented mining claims on which mining activities are occurring or any mill sites, within the boundaries of an approved plan of operations or a comparable State or county approval. Upon confirmation by the Secretary that minerals being mined are locatable in accordance with Federal law and that actual sales of minerals have taken place, all Federal lands within those boundaries are eligible for patent upon compliance with this section and sections 2327 and 2329 of the Revised Statutes (30 U.S.C. 34, 35).

(2) DISCLOSED CLAIMS AND MILL SITES.—The holder of an unpatented mining claim or mill site whose proven and probable reserves are publicly disclosed in compliance with the Securities Act of 1933 (15 U.S.C. 77a) or the Securities Exchange Act of 1934 (15 U.S.C. 78a) claim may receive a patent for any such unpatented mining claim containing such reserves or for any mill site within the boundaries of a plan of operations or a comparable State or county approval for such reserves. All Federal lands within those boundaries are eligible for patent upon compliance with this section and sections 2327 and 2329 of the Revised Statutes (30 U.S.C. 34, 35).

(c) MINERAL EXAMINATIONS.—

(1) IN GENERAL.—In order to process patent applications in a timely and responsible manner, upon the request of a patent applicant, the Secretary of the Interior shall allow the applicant to fund a qualified third-party examiner from a list maintained by the Bureau of Land Management to conduct a mineral examination of the mining claims or mill sites contained in a patent application as set forth in this section and sections 2333 and 2337 of the Revised Statutes (30 U.S.C. 37, 42). The Bureau of Land Management shall have the sole responsibility to maintain the list of qualified third-party examiners.

(2) TRAINING.—The Director of the Bureau of Land Management shall provide training in the conduct of mineral examinations to qualified individuals. The Director may charge fees to cover the costs of the training.

(3) QUALIFIED THIRD-PARTY EXAMINER DEFINED.—In this subsection the term "qualified third-party examiner" means a person who is a registered geologist or registered professional mining engineer licensed to practice within the State in which the claims are located.

(d) DISPOSITION OF PROCEEDS.—The gross proceeds of conveyances of land under this section and sections 2319, 2330, 2332, 2333, and 2337 of the Revised Statutes (30 U.S.C. 22, 36, 37, 38, 42) shall be used as follows:

(1) 10 percent shall be deposited into the Federal Energy and Mineral Resource Professional Development Fund.

(2) 20 percent shall be available to the Secretary of the Army for use, through the Corps of Engineers, for the Restoration of Abandoned Mine Sites Program and section 560 of the Water Resources Development Act of 1999.

(3) 70 percent shall be deposited into the General Fund of the Treasury.

(e) ISSUING PATENTS.—If no adverse claim has been filed with the register and the receiver of the proper land office at the expiration of the 60-day period beginning on the date of publication of the notice that an application for mineral patent has been filed under section 2325, 2333 and 2337 of the Revised Statutes (30 U.S.C. 29, 37, 42), the Secretary shall issue the patent not later than 24 months after the date on which the application for patent was filed.

(f) SMALL MINER PATENT ADJUDICATION AND MINERAL DEVELOPMENT WORK REQUIREMENTS.—The holder of 10 claims or less who applies for a mineral patent under this section or a direct purchase under section 2319 of the Revised Statutes (30 U.S.C. 22) shall pay one-fifth of the processing fees and perform one-fifth of the mineral development work required under this section and section 2319 (30 U.S.C. 22).

SEC. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after the filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land-office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver [five dollars per acre] *$1,000 per acre or fair market value, whichever is greater;* for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land-Office, and a patent shall

issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land-Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining-claim to any person whatever.

* * * * * * *

SEC. 2333. Where the same person, association, or corporation is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer-claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of [five dollars per acre] *$1,000 per acre or fair market value, whichever is greater;* for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer-claim, or any placer-claim not embracing any vein or lode-claim shall be paid for at the rate of [two dollars and fifty cents per acre] *$1,000 per acre or fair market value, whichever is greater*, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.

* * * * * * *

SEC. 2337. (a) Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be [made at the same rate as fixed by this chapter for the superficies of the lode.] *at the rate of $1,000 per acre or fair market value, whichever is greater.* The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.

(b) Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an

application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be [made at the rate applicable to placer claims which do not include a vein or lode.] *at the rate of $1,000 per acre or fair market value, whichever is greater.*

* * * * * * *

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TABLE OF CONTENTS

TITLE I—SHORT TITLE; POLICIES; DEFINITIONS

Sec. 101. Short title.

* * * * * * *

TITLE III—ADMINISTRATION

Sec. 301. BLM directorate and functions.

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[Sec. 314. Recordation of mining claims and abandonment.]

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TITLE III—ADMINISTRATION

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MANAGEMENT OF USE, OCCUPANCY, AND DEVELOPMENT

SEC. 302. (a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

* * * * * * *

(e) The Secretary shall not require a mineral examination report, otherwise required to be prepared under regulations promulgated pursuant to this Act, to approve a plan of operations under such regulations for mining claims and mill sites located on withdrawn lands if such mining claims, mill sites, and blocks of such mining claims and mill sites are contiguous to patented or unpatented mining claims or mill sites where mineral development activities, including mining, have been conducted as authorized by law or regulation.

* * * * * * *

[RECORDATION OF MINING CLAIMS AND ABANDONMENT

[SEC. 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-

year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

[(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28–1), relating thereto.

[(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

[(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act shall, within the three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after the date of approval of this Act shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

[(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

[(d) Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of such law.**]**

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SECTION 22 OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

MISCELLANEOUS

SEC. 22. (a) * * *

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(c)(1)

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(3) This section shall apply to lands conveyed by interim conveyance or patent to a Regional Corporation pursuant to this Act which are made subject to a mining claim or claims located under the general mining laws, including lands conveyed prior to enactment of this paragraph. Effective upon the date of enactment of this paragraph, the Secretary, acting through the Bureau of Land Management and in a manner consistent with section 14(g), shall transfer to the Regional Corporation administration of all mining claims determined to be entirely within lands conveyed to that corporation. Any person holding such mining claim or claims shall meet such requirements of the general mining laws [and section 314 of the Federal Land Management and Policy Act of 1976 (43 U.S.C. 1744)], except that any filings that would have been made with the Bureau of Land Management if the lands were within Federal ownership shall be timely made with the appropriate Regional Corporation. The validity of any such mining claim or claims may be contested by the Regional Corporation, in place of the United States. All contest proceedings and appeals by the mining claimants of adverse decisions made by the Regional Corporation shall be brought in Federal District Court for the District of Alaska. Neither the United States nor any Federal agency or official shall be named or joined as a party in such proceedings or appeals. All revenues from such mining claims received after passage of this paragraph shall be remitted to the Regional Corporation subject to distribution pursuant to section 7(i) of this Act, except that in the event that the mining claim or claims are not totally within the lands conveyed to the Regional Corporation, the Regional Corporation shall be entitled only to that proportion of revenues, other than administrative fees, reasonably allocated to the portion of the mining claim so conveyed. The provisions of this section shall apply to Haida Corporation and the Haida Traditional Use Sites, which shall be treated as a Regional Corporation for the purposes of this paragraph, except that any revenues remitted to Haida Corporation under this section shall not be subject to distribution pursuant to section 7(i) of this Act.

* * * * * * *

MINERAL LEASING ACT

SEC. 17. (a) * * *

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[(g) The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation of surface resources. No permit to drill on an oil and gas lease issued under this Act may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary of the Interior or Secretary of Agriculture, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity the concerned Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such entity under this Act.]

(g) REGULATION OF SURFACE-DISTURBING ACTIVITIES.—

(1) REGULATION OF SURFACE-DISTURBING ACTIVITIES.—The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation of surface resources.

(2) SUBMISSION OF EXPLORATION PLAN; COMPLETION REVIEW; COMPLIANCE REVIEW.—

(A) Prior to beginning oil and gas exploration activities, a lessee shall submit an exploration plan to the Secretary of the Interior for review.

(B) The Secretary shall review the plan for completeness within 10 days of submission.

(C) In the event the exploration plan is determined to be incomplete, the Secretary shall notify the lessee in writing and specify the items or information needed to complete the exploration plan.

(D) The Secretary shall have 10 days to review any modified exploration plan submitted by the lessee.

(E) To be deemed complete, an exploration plan shall include, in the degree of detail to be determined by the Secretary by rule or regulation—

(i) a drilling plan containing a description of the drilling program;

(ii) the surface and projected completion zone location;

(iii) pertinent geologic data;

(iv) expected hazards, and proposed mitigation measures to address such hazards;

(v) a schedule of anticipated exploration activities to be undertaken;

(vi) a description of equipment to be used for such activities;

(vii) a certification from the lessee stating that the exploration plan complies with all lease, regulatory and statutory requirements in effect on the date of the issuance of the lease;

(viii) evidence that the lessee has secured an adequate bond, surety, or other financial arrangement prior to commencement of any surface disturbing activity;

(ix) a plan that details the complete and timely reclamation of the lease tract; and

(x) such other relevant information as the Secretary may by regulation require.

(F) Upon a determination that the exploration plan is complete, the Secretary shall have 30 days from the date the plan is deemed complete to conduct a review of the plan.

(G) If the Secretary finds the exploration plan is not consistent with all statutory and regulatory requirements in effect on the date of issuance of the lease, the Secretary shall notify the lessee with a detailed explanation of such modifications of the exploration plan as are necessary to achieve compliance.

(H) The lessee shall not take any action under the exploration plan within a 30 day review period, or thereafter until the plan has been modified to achieve compliance as so notified.

(I) After review by the Secretary provided by this subsection, a lessee may operate pursuant to the plan without further review or approval by the Secretary.

(3) PLAN REVISIONS; CONDUCT OF EXPLORATION ACTIVITIES.—

(A) If a significant revision of an exploration plan under this subsection is submitted to the Secretary, the process to be used for the review of such revision shall be the same as set forth in paragraph (1) of this subsection.

(B) All exploration activities pursuant to any lease shall be conducted in accordance with an exploration plan that has been submitted to and reviewed by the Secretary or a revision of such plan.

(4) SUBMISSION OF DEVELOPMENT AND PRODUCTION PLAN; COMPLETENESS REVIEW; COMPLIANCE REVIEW.—

(A) Prior to beginning oil and gas development and production activities, a lessee shall submit a development and exploration plan to the Secretary of the Interior. Upon submission, such plans shall be subject to a review for completeness.

(B) The Secretary shall review the plan for completeness within 30 days of submission.

(C) In the event a development and production plan is determined to be incomplete, the Secretary shall notify the lessee in writing and specify the items or information needed to complete the plan.

(D) The Secretary shall have 30 days to review for completeness any modified development and production plan submitted by the lessee.

(E) To be deemed complete, a development and production plan shall include, in the degree of detail to be determined by the Secretary by rule or regulation—

(i) a drilling plan containing a description of the drilling program;

(ii) the surface and projected completion zone location;

(iii) pertinent geologic data;

(iv) expected hazards, and proposed mitigation measures to address such hazards;

(v) a statement describing all facilities and operations proposed by the lessee and known by the lessee (whether or not owned or operated by such lessee) that shall be constructed or utilized in the development and production of oil or gas from the leases areas, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations;

(vi) the general work to be performed;

(vii) the environmental safeguards to be implemented in connection with the development and production and how such safeguards are to be implemented;

(viii) all safety standards to be met and how such standards are to be met;

(ix) an expected rate of development and production and a time schedule for performance;

(x) a certification from the lessee stating that the development and production plan complies with all lease, regulatory, and statutory requirements in effect on the date of issuance of the lease;

(xi) evidence that the lessee has secured an adequate bond, surety, or other financial arrangement prior to commencement of any surface disturbing activity;

(xii) a plan that details the complete and timely reclamation of the lease tract; and

(xiii) such other relevant information as the Secretary may by regulation require.

(F) Upon a determination that the development and production plan is complete, the Secretary shall have 120 days

from the date the plan is deemed complete to conduct a review of the plan.

(G) If the Secretary finds the development and production plan is not consistent with all statutory and regulatory requirements in effect on the date of issuance of the lease, the Secretary shall notify the lessee with a detailed explanation of such modifications of the development and production plan as are necessary to achieve compliance.

(H) The lessee shall not take any action under the development and production plan within a 120 day review period, or thereafter until the plan has been modified to achieve compliance as so notified.

(5) PLAN REVISIONS; CONDUCT OF DEVELOPMENT AND PRODUCTION ACTIVITIES.—

(A) If a significant revision of a development and production plan under this subsection is submitted to the Secretary, the process to be used for the review of such revision shall be the same as set forth in paragraph (4) of this subsection.

(B) All development and production activities pursuant to any lease shall be conducted in accordance with an exploration plan that has been submitted to and reviewed by the Secretary or a revision of such plan.

(6) CANCELLATION OF LEASE ON FAILURE TO SUBMIT PLAN OR COMPLY WITH APPROVED PLAN.—Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with a plan, the lease may be canceled in accordance with section 31. Termination of a lease because of failure to comply with a plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

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SEC. 21. (a) * * *

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(e) REVENUES.—

(1) IN GENERAL.—Notwithstanding the provisions of section 35, all revenues received from and under an oil shale or tar sands lease shall be disposed of as provided in this subsection.

(2) ROYALTY RATES FOR COMMERCIAL LEASES.—

(A) INITIAL PRODUCTION.—For the first 10 years after initial production under each oil shale or tar sands lease issued under the commercial leasing program established under subsection (d), the Secretary shall set the royalty rate at not less than 1 percent nor more than 3 percent of the gross value of production. However, the initial production period royalty rate set by the Secretary shall not apply to production occurring more than 15 years after the date of issuance of the lease.

(B) SUBSEQUENT PERIODS.—After the periods of time specified in subparagraph (A), the Secretary shall set the royalty rate on each oil shale or tar sands lease issued under the commercial leasing program established under

subsection (d) at not less than 6 percent nor more than 9 percent of the gross value of production.

(C) REDUCTION.—The Secretary shall reduce any royalty otherwise required to be paid under subparagraphs (A) and (B) under any oil shale or tar sands lease on a sliding scale based upon market price, with a 10 percent reduction if the monthly average price of NYMEX West Texas Intermediate crude oil at Cushing, Oklahoma, (WTI) drops below $50 (in 2005 dollars) for the month in which the production is sold, and an 80 percent reduction if the monthly average price of WTI drops below $30 (in 2005 dollars) for the month in which the production is sold.

(3) DISPOSITION OF REVENUES.—

(A) DEPOSIT.—The Secretary shall deposit into a separate account in the Treasury all revenues derived from any oil shale or tar sands lease.

(B) ALLOCATIONS TO STATES AND LOCAL POLITICAL SUBDIVISIONS.—The Secretary shall allocate 50 percent of the revenues deposited into the account established under subparagraph (A) to the State within the boundaries of which the leased lands are located, with a portion of that to be paid directly by the Secretary to the State's local political subdivisions as provided in this paragraph.

(C) TRANSMISSION OF ALLOCATIONS.—

(i) IN GENERAL.—Not later than the last business day of the month after the month in which the revenues were received, the Secretary shall transmit—

(I) to each State two-thirds of such State's allocations under subparagraph (B), and in accordance with clauses (ii) and (iii) to certain county-equivalent and municipal political subdivisions of such State a total of one-third of such State's allocations under subparagraph (B), together with all accrued interest thereon; and

(II) the remaining balance of such revenues deposited into the account that are not allocated under subparagraph (B), together with interest thereon, shall be transmitted to the miscellaneous receipts account of the Treasury, except that until a lease has been in production for 10 years 80 percent of such remaining balance derived from a lease shall be paid in accordance with subclause (I).

(ii) ALLOCATIONS TO CERTAIN COUNTY-EQUIVALENT POLITICAL SUBDIVISIONS.—The Secretary shall under clause (i)(I) make equitable allocations of the revenues to county-equivalent political subdivisions that the Secretary determines are closely associated with the leasing and production of oil shale and tar sands, under a formula that the Secretary shall determine by regulation.

(iii) ALLOCATIONS TO MUNICIPAL POLITICAL SUBDIVISIONS.—The initial allocation to each county-equivalent political subdivision under clause (ii) shall be fur-

ther allocated to the county-equivalent political subdivision and any municipal political subdivisions located partially or wholly within the boundaries of the county-equivalent political subdivision on an equitable basis under a formula that the Secretary shall determine by regulation.

(D) INVESTMENT OF DEPOSITS.—The deposits in the Treasury account established under this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account and yielding the highest reasonably available interest rates as determined by the Secretary of the Treasury.

(E) USE OF FUNDS.—A recipient of funds under this subsection may use the funds for any lawful purpose as determined by State law. Funds allocated under this subsection to States and local political subdivisions may be used as matching funds for other Federal programs without limitation. Funds allocated to local political subdivisions under this subsection may not be used in calculation of payments to such local political subdivisions under programs for payments in lieu of taxes or other similar programs.

(F) NO ACCOUNTING REQUIRED.—No recipient of funds under this subsection shall be required to account to the Federal Government for the expenditure of such funds, except as otherwise may be required by law.

(4) DEFINITIONS.—In this subsection:

(A) COUNTY-EQUIVALENT POLITICAL SUBDIVISION.—The term "county-equivalent political subdivision" means a political jurisdiction immediately below the level of State government, including a county, parish, borough in Alaska, independent municipality not part of a county, parish, or borough in Alaska, or other equivalent subdivision of a State.

(B) MUNICIPAL POLITICAL SUBDIVISION.—The term "municipal political subdivision" means a municipality located within and part of a county, parish, borough in Alaska, or other equivalent subdivision of a State.

* * * * * * *

SEC. 31. (a) * * *

* * * * * * *

(f) Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by [section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744)] *subsections (b) and (c) of section 2320 of the Revised Statutes (30 U.S.C. 23),* and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas

lease, consistent with the provisions of section 17(e) of this Act, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

(1) * * *

* * * * * * *

SECTION 2511 OF THE ENERGY POLICY ACT OF 1992

SEC. 2511. OIL SHALE CLAIMS.

(a) * * *

* * * * * * *

(e) EFFECT OF ELECTION.—(1) * * *

(2) Notwithstanding any other provision of law, a claim holder referred to in subsection (c) or a claim holder subject to the election requirements of subsection (d) who maintains or elects to maintain an unpatented claim shall maintain such claim by complying with the general mining laws of the United States, and with the provisions of this section, except that the claim holder shall no longer be required to perform annual labor, and instead shall pay to the Secretary $550 per claim per year for deposit as miscellaneous receipts in the general fund of the Treasury, commencing with calendar year 1993. ⟦Such fee shall accompany the filing made by the claim holder with the Bureau of Land Management pursuant to section 314(a)(2) of the Federal Land Policy and Management Act (43 U.S.C. 1744(a)(2)).⟧

* * * * * * *

SECTION 408 OF THE DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

SEC. 408. ⟦(a) LIMITATION OF FUNDS.—None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to accept or process applications for a patent for any mining or mill site claim located under the general mining laws.⟧

* * * * * * *

SECTION 101 OF THE MINING AND MINERALS POLICY ACT OF 1970

SEC. 101. The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, *including through remining where appropriate* (3) mining, mineral, and metallurgical research, including

the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, [and] (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities[.], *and (5) facilitate the productive second use of lands used for mining and energy production.*

For the purpose of this Act "minerals" shall include all minerals and mineral fuels including oil, gas, coal, [oil shale and uranium] *oil shale, and uranium, whether located onshore or offshore*.

It shall be the responsibility of [the Secretary of the Interior] *the head of each Federal department and of each independent agency* to carry out this policy when exercising [his] authority under such programs as may be authorized by law other than this Act.

ENERGY POLICY ACT OF 2005

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. Short title; table of contents.

* * * * * * *

TITLE III—OIL AND GAS

* * * * * * *

Subtitle E—Production Incentives

Sec. 341. Definition of Secretary.

* * * * * * *

[Sec. 357. Comprehensive inventory of OCS oil and natural gas resources.]

* * * * * * *

TITLE III—OIL AND GAS

* * * * * * *

Subtitle E—Production Incentives

* * * * * * *

[SEC. 357. COMPREHENSIVE INVENTORY OF OCS OIL AND NATURAL GAS RESOURCES.

[(a) IN GENERAL.—The Secretary shall conduct an inventory and analysis of oil and natural gas resources beneath all of the waters of the United States Outer Continental Shelf ("OCS"). The inventory and analysis shall—

[(1) use available data on oil and gas resources in areas offshore of Mexico and Canada that will provide information on trends of oil and gas accumulation in areas of the OCS;

[(2) use any available technology, except drilling, but including 3–D seismic technology to obtain accurate resource estimates;

[(3) analyze how resource estimates in OCS areas have changed over time in regards to gathering geological and geophysical data, initial exploration, or full field development, including areas such as the deepwater and subsalt areas in the Gulf of Mexico;

[(4) estimate the effect that understated oil and gas resource inventories have on domestic energy investments; and

[(5) identify and explain how legislative, regulatory, and administrative programs or processes restrict or impede the development of identified resources and the extent that they affect domestic supply, such as moratoria, lease terms and conditions, operational stipulations and requirements, approval delays by the Federal Government and coastal States, and local zoning restrictions for onshore processing facilities and pipeline landings.

[(b) REPORTS.—The Secretary shall submit a report to Congress on the inventory of estimates and the analysis of restrictions or impediments, together with any recommendations, within 6 months of the date of enactment of the section. The report shall be publicly available and updated at least every 5 years.]

Subtitle F—Access to Federal Lands

* * * * * * *

SEC. 369. OIL SHALE, TAR SANDS, AND OTHER STRATEGIC UNCONVENTIONAL FUELS.

(a) * * *

* * * * * * *

[(e) COMMENCEMENT OF COMMERCIAL LEASING OF OIL SHALE AND TAR SANDS.—Not later than 180 days after publication of the final regulation required by subsection (d), the Secretary shall consult with the Governors of States with significant oil shale and tar sands resources on public lands, representatives of local governments in such States, interested Indian tribes, and other interested persons, to determine the level of support and interest in the States in the development of tar sands and oil shale resources. If the Secretary finds sufficient support and interest exists in a State, the Secretary may conduct a lease sale in that State under the commercial leasing program regulations. Evidence of interest in a lease sale under this subsection shall include, but not be limited to, appropriate areas nominated for leasing by potential lessees and other interested parties.]

(e) COMMENCEMENT OF COMMERCIAL LEASING OF OIL SHALE AND TAR SAND.—Not later than 365 days after publication of the final regulation required by subsection (d), the Secretary shall hold the first oil shale and tar sands lease sales under the regulation, offering for lease a minimum of 35 percent of the Federal lands that are geologically prospective for oil shale and tar sands within Colorado, Utah, and Wyoming. The environmental impact statement developed in support of the commercial leasing program for oil shale and

tar sands as required by subsection (c) is deemed to provide adequate environmental analysis for all oil shale and tar sands lease sales conducted within the first 10 years after promulgation of the regulation, and such sales shall not be subject to further environmental analysis.

* * * * * * *

[(o) ROYALTY RATES FOR LEASES.—The Secretary shall establish royalties, fees, rentals, bonus, or other payments for leases under this section that shall—

[(1) encourage development of the oil shale and tar sands resource; and

[(2) ensure a fair return to the United States.]

* * * * * * *

OUTER CONTINENTAL SHELF LANDS ACT

* * * * * * *

SEC. 2. DEFINITIONS.—When used in this Act—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control[;] *or lying within the United States exclusive economic zone adjacent to the Territories of the United States.*

(b) The term "Secretary" means the Secretary of the Interior, except that with respect to functions under this Act transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the term "Secretary" means the Secretary of Energy, or the Federal Energy Regulatory Commission, as the case may be[;].

(c) The term "lease" means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration for, and development and production of, minerals[;].

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation[;].

(e) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1))[;].

[(f) The term "affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any State—

[(1) the laws of which are declared, pursuant to section 4(a)(2) of this Act, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

[(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of this Act;

[(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

[(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

[(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;]

(f) The term "affected State" means the Adjacent State.

(g) The term "marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf[;].

(h) The term "coastal environment" means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone[;].

(i) The term "human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf[;].

(j) The term "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this Act[;].

(k) The term "exploration" means the process of searching for minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in

which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production**[**;**]**.

(l) The term "development" means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered**[**;**]**.

(m) The term "production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and workover drilling**[**;**]**.

(n) The term "antitrust law" means—

(1) * * *

* * * * * * *

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a)**[**;**]**.

(o) The term "fair market value" means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary**[**;**]**.

(p) The term "major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C))**[**; and**]**.

* * * * * * *

(r) The term "Adjacent State" means, with respect to any program, plan, lease sale, leased tract or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any State the laws of which are declared, pursuant to section 4(a)(2), to be the law of the United States for the portion of the outer Continental Shelf on which such program, plan, lease sale, leased tract or activity appertains or is, or is proposed to be, conducted. For purposes of this paragraph, the term "State" includes Puerto Rico and the other Territories of the United States.

(s) The term "Adjacent Zone" means, with respect to any program, plan, lease sale, leased tract, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, the portion of the outer Continental Shelf for which the laws of a particular Adjacent

State are declared, pursuant to section 4(a)(2), to be the law of the United States.

(t) The term "miles" means statute miles.

(u) The term "coastline" has the same meaning as the term "coast line" as defined in section 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

(v) The term "Neighboring State" means a coastal state having a common boundary at the coastline with the Adjacent State.

* * * * * * *

SEC. 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—(a)(1) * * *

(2)(A) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf**[**, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area.**]**. *The lines extending seaward and defining each State's Adjacent Zone, and each OCS Planning Area, are as indicated on the maps for each outer Continental Shelf region entitled "Alaska OCS Region State Adjacent Zone and OCS Planning Areas", "Pacific OCS Region State Adjacent Zones and OCS Planning Areas", "Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas", and "Atlantic OCS Region State Adjacent Zones and OCS Planning Areas", all of which are dated September 2005 and on file in the Office of the Director, Minerals Management Service.* All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

* * * * * * *

SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) * * *

* * * * * * *

(k) VOLUNTARY PARTIAL RELINQUISHMENT OF A LEASE.—Any lessee of a producing lease may relinquish to the Secretary any portion of a lease that the owner has no interest in producing and that the Secretary finds is geologically prospective. In return for any such relinquishment, the Secretary shall provide to the owner a royalty incentive in accordance with regulations promulgated by the Secretary to carry out this subsection. The Secretary shall publish final regulations implementing this subsection within 365 days after the date of the enactment of the Ocean State Options Act of 2005.

(l) NATURAL GAS LEASE REGULATIONS.—Not later than October 1, 2006, the Secretary shall publish a final regulation that shall—

(1) establish procedures for entering into natural gas leases;

(2) ensure that natural gas leases are only available for tracts on the outer Continental Shelf that are wholly within 125 miles

of the coastline within an area withdrawn from disposition by leasing on the day after the date of enactment of the Ocean State Options Act of 2005;

(3) provide that natural gas leases shall contain the same rights and obligations established for oil and gas leases, except as otherwise provided in the Ocean State Options Act of 2005;

(4) provide that, in reviewing the adequacy of bids for natural gas leases, the value of any crude oil estimated to be contained within any tract shall be excluded;

(5) provide that any crude oil produced from a well and reinjected into the leased tract shall not be subject to payment of royalty, and that the Secretary shall consider, in setting the royalty rates for a natural gas lease, the additional cost to the lessee of not producing any crude oil; and

(6) provide that any Federal law that applies to an oil and gas lease on the outer Continental Shelf shall apply to a natural gas lease unless otherwise clearly inapplicable.

* * * * * * *

SEC. 8. LEASES, EASEMENTS, AND RIGHTS-OF-WAY ON THE OUTER CONTINENTAL SHELF.—(a)(1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. *Further, the Secretary may grant natural gas leases in a manner similar to the granting of oil and gas leases and under the various bidding systems available for oil and gas leases.* Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

(A) * * *

* * * * * * *

(3)**[**(A) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.**]**

[(B)**]** *(A)* **[**In the Western and Central Planning Areas of the Gulf of Mexico and the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude and in the Planning Areas offshore Alaska, the Secretary**]** *The Secretary* may, in order to—

(i) * * *

* * * * * * *

[(C)**]** *(B)*(i) Notwithstanding the provisions of this Act other than this subparagraph, with respect to any lease or unit in existence on the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act meeting the requirements of this subparagraph, no royalty payments shall be due on new production, as de-

fined in clause (iv) of this subparagraph, from any lease or unit located in water depths of 200 meters or greater in the Western and Central Planning Areas of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, until such volume of production as determined pursuant to clause (ii) has been produced by the lessee.

* * * * * * *

(b) An oil and gas lease issued pursuant to this section shall—

(1) * * *

* * * * * * *

The Secretary may issue more than one lease for a given tract if each lease applies to a separate and distinct range of vertical depths, horizontal surface area, or a combination of the two. The Secretary may issue regulations that the Secretary determines are necessary to manage such leases consistent with the purposes of this Act.

* * * * * * *

(g)[(1) At the time of soliciting nominations for the leasing of lands containing tracts wholly or partially within three nautical miles of the seaward boundary of any coastal State, and subsequently as new information is obtained or developed by the Secretary, the Secretary, in addition to the information required by section 26 of this Act, shall provide the Governor of such State—

[(A) an identification and schedule of the areas and regions proposed to be offered for leasing;

[(B) at the request of the Governor of such State, all information from all sources concerning the geographical, geological, and ecological characteristics of such tracts;

[(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

[(D) at the request of the Governor of such State, an identification of any field, geological structure, or trap located wholly or partially within three nautical miles of the seaward boundary of such coastal State, including all information relating to the entire field, geological structure, or trap.

The provisions of the first sentence of subsection (c) and the provisions of subsections (e)–(h) of section 26 of this Act shall be applicable to the release by the Secretary of any information to any coastal State under this paragraph. In addition, the provisions of subsections (c) and (e)–(h) of section 26 of this Act shall apply in their entirety to the release by the Secretary to any coastal State of any information relating to Federal lands beyond three nautical miles of the seaward boundary of such coastal State.

[(2) Notwithstanding any other provision of this Act, the Secretary shall deposit into a separate account in the Treasury of the United States all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly (or, in the case of Alaska, partially until seven years from the date of settlement of any boundary dis-

pute that is the subject of an agreement under section 7 of this Act entered into prior to January 1, 1986 or until April 15, 1993 with respect to any other tract) within three nautical miles of the seaward boundary of any coastal State, or, (except as provided above for Alaska) in the case where a Federal tract lies partially within three nautical miles of the seaward boundary, a percentage of bonuses, rents, royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of such tract equal to the percentage of surface acreage of the tract that lies within such three nautical miles. Except as provided in paragraph (5) of this subsection, not later than the last business day of the month following the month in which those revenues are deposited in the Treasury, the Secretary shall transmit to such coastal State 27 percent of those revenues, together with all accrued interest thereon. The remaining balance of such revenues shall be transmitted simultaneously to the miscellaneous receipts account of the Treasury of the United States.]

[(3)] Whenever the Secretary or the Governor of a coastal State determines that a common potentially hydrocarbon-bearing area may underlie the Federal and State boundary, the Secretary or the Governor shall notify the other party in writing of his determination and the Secretary shall provide to the Governor notice of the current and projected status of the tract or tracts containing the common potentially hydrocarbon-bearing area. If the Secretary has leased or intends to lease such tract or tracts, the Secretary and the Governor of the coastal State may enter into an agreement to divide the revenues from production of any common potentially hydrocarbon-bearing area, by unitization or other royalty sharing agreement, pursuant to existing law. If the Secretary and the Governor do not enter into an agreement, the Secretary may nevertheless proceed with the leasing of the tract or tracts. [Any revenue received by the United States under such an agreement shall be subject to the requirements of paragraph (2).]

* * * * * * *

(p) LEASES, EASEMENTS, OR RIGHTS-OF-WAY FOR ENERGY AND RELATED PURPOSES.—

(1) * * *

(2) PAYMENTS AND REVENUES.—(A) * * *

(B) The Secretary shall provide for the payment of [27] *50* percent of the revenues received by the Federal Government as a result of payments under this section from projects that are located wholly or partially within the area extending three nautical miles seaward of State submerged lands. Payments shall be made based on a formula established by the Secretary by rulemaking no later than 180 days after the date of enactment of this section that provides for equitable distribution, based on proximity to the project, among coastal states that have a coastline that is located within [15] *200* miles of the geographic center of the project.

(q) NATURAL GAS LEASES.—

(1) RIGHT TO PRODUCE NATURAL GAS.—A lessee of a natural gas lease shall have the right to produce the natural gas from

a natural gas leased tract if the Secretary estimates that the discovered field has at least 40 percent of the economically recoverable Btu content of the field contained within natural gas and such natural gas is economical to produce.

(2) RIGHT TO PRODUCE CRUDE OIL.—A lessee of a natural gas lease may produce crude oil from the lease unless the Governor and the legislature of the Adjacent State object to such production within 180 days after receipt of written notice from the lessee of intent to produce crude oil from the lease. If the leased tract is located within 50 miles of the nearest point on the coastline of a Neighboring State, the Governor and legislature of the Neighboring State shall also receive such notice and have the right to object to such production within 180 days after receipt of such notice.

(3) ESTIMATES OF BTU CONTENT.—The Secretary shall make estimates of the natural gas Btu content of discovered fields on a natural gas lease only after the completion of at least one exploration well, the data from which has been tied to the results of a three-dimensional seismic survey of the field. The Secretary may not require the lessee to further delineate any discovered field prior to making such estimates.

(4) TRANSPORTATION OF CRUDE OIL.—If an Adjacent State or any applicable Neighboring State does not object to production of crude oil from a natural gas lease, the lessee shall be permitted to transport the crude oil from the leased tract through Adjacent State waters, and Neighboring State waters if applicable, to facilities onshore in the Adjacent State, and Neighboring State if applicable, unless the lessee agreed to other arrangements with the Adjacent State or Neighboring State, or both.

(5) REPURCHASE OF CERTAIN NATURAL GAS LEASES.—Upon request of the lessee and certification by the Secretary of the Interior that a natural gas lease contains all or part of a commercial oil and gas discovery that is not allowed to be produced because it does not meet the standard set in paragraph (1), the Secretary of the Treasury shall repurchase the lease by issuance of a check or electronic payment from OCS Receipts to the lessee in full compensation for the repurchase. The Secretary shall recoup from the State and local governments any funds previously shared with them that were derived from the repurchased lease. Such recoupment shall only be from the State and local governments' shares of OCS receipts that are payable after the date of repurchase.

(6) AMOUNT OF COMPENSATION.—Repurchase compensation for each lease repurchased under the authority of this section shall be in the amount of the lesser of the original bonus bid paid for the lease or, if the lessee is not the original lessee, the compensation paid by the current lessee to obtain its interest in the lease. In addition, the lessee shall be compensated for any expenses directly attributable to the lease that the lessee incurs after acquisition of its interest in the lease to be repurchased, including rentals, seismic acquisition costs, drilling costs, and other reasonable expenses on the lease, including expenses incurred in the repurchase process, to the extent that the lessee has not previously been compensated by the United States for

such expenses. The lessee shall not be compensated for general overhead expenses or employee salaries.

(7) PRIORITY RIGHT TO OBTAIN FUTURE OIL AND GAS LEASE.—The lessee, or a designee of the lessee, of a repurchased natural gas leased tract shall have the right to repurchase such tract as an oil and gas lease, on a noncompetitive basis, by repaying the amount received by the lessee if the tract is made available for lease under an oil and gas lease within 30 years after the repurchase.

(8) DEFINITION OF NATURAL GAS.—For purposes of a natural gas lease, natural gas means natural gas and all substances produced in association with gas, including, but not limited to, hydrocarbon liquids (other than crude oil) that are obtained by the condensation of hydrocarbon vapors and separate out in liquid form from the produced gas stream.

(r) REMOVAL OF RESTRICTIONS ON JOINT BIDDING IN CERTAIN AREAS OF THE OUTER CONTINENTAL SHELF.—Restrictions on joint bidders shall no longer apply to tracts located in the Alaska OCS Region. Such restrictions shall not apply to tracts in other OCS regions determined to be "frontier tracts" or otherwise "high cost tracts" under final regulations that shall be published by the Secretary by not later than 365 days after the date of the enactment of the Ocean State Options Act of 2005.

* * * * * * *

SEC. 9. DISPOSITION OF REVENUES.—*(a)* All rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts*, if not paid as otherwise provided in this title*.

(b) TREATMENT OF OCS RECEIPTS FROM TRACTS COMPLETELY WITHIN 125 MILES OF THE COASTLINE.—

(1) DEPOSIT.—The Secretary shall deposit into a separate account in the Treasury the portion of OCS Receipts for each fiscal year that will be shared under paragraphs (2) and (3).

(2) RECEIPTS SHARING BEGINNING OCTOBER 1, 2010.—

(A) Beginning October 1, 2010, the Secretary shall share OCS Receipts derived from the following areas:

(i) Lease tracts located on portions of the Gulf of Mexico OCS Region completely within 125 miles of any coastline that are available for leasing under the 2002–2007 5-Year Oil and Gas Leasing Program in effect prior to the date of the enactment of the Ocean State Options Act of 2005.

(ii) Lease tracts in production prior to January 1, 2006, completely within 125 miles of any coastline located on portions of the OCS that were not available for leasing under the 2002–2007 5-Year OCS Oil and Gas Leasing Program in effect prior to the date of the enactment of the Ocean State Options Act of 2005.

(iii) Lease tracts for which leases are issued prior to January 1, 2006, located in the Alaska OCS Region completely within 125 miles of the coastline.

(B) The Secretary shall share the following percentages of OCS Receipts from the leases described in subparagraph (A) derived during the fiscal year indicated:

(i) For fiscal year 2011, 4.5 percent.

(ii) For fiscal year 2012, 5.0 percent.

(iii) For fiscal year 2013, 5.5 percent.

(iv) For fiscal year 2014, 6.0 percent.

(v) For fiscal year 2015, 6.5 percent.

(vi) For fiscal year 2016, 7.5 percent.

(vii) For fiscal year 2017, 10.0 percent.

(viii) For fiscal year 2018, 12.5 percent.

(ix) For fiscal year 2019, 15.0 percent.

(x) For fiscal year 2020, 17.5 percent.

(xi) For fiscal year 2021, 20.0 percent.

(xii) For fiscal year 2022, 22.5 percent.

(xiii) For fiscal year 2023, 25.0 percent.

(xiv) For fiscal year 2024, 27.5 percent.

(xv) For fiscal year 2025, 30.0 percent.

(xvi) For fiscal year 2026, 32.5 percent.

(xvii) For fiscal year 2027, 35.0 percent.

(xviii) For fiscal year 2028, 37.5 percent.

(xix) For fiscal year 2029 and each subsequent fiscal year, 40.0 percent.

(3) RECEIPTS SHARING BEGINNING JANUARY 1, 2006.—Beginning January 1, 2006, the Secretary shall share 40 percent of OCS Receipts derived on and after January 1, 2006, from all leases located completely within 125 miles of any coastline not included within the provisions of paragraph (2) or the receipts sharing provisions of section 8(g).

(4) ALLOCATIONS.—The Secretary shall allocate the OCS Receipts deposited into the separate account established by paragraph (1) that are shared under paragraphs (2) and (3) as follows:

(A) BONUS BIDS.—Deposits derived from bonus bids from a leased tract, including interest thereon, shall be allocated at the end of each fiscal year as follows:

(i) 87.5 percent to the Adjacent State.

(ii) 6.25 percent into the Treasury, which shall be allocated to the account established by section 6514 of the Ocean State Options Act of 2005.

(iii) 5 percent into the account established by section 6523 of the Ocean State Options Act of 2005.

(iv) 1.25 percent into the account established by section 6526 of the Ocean State Options Act of 2005.

(B) ROYALTIES.—Deposits derived from royalties from a leased tract, including interest thereon, shall be allocated at the end of each fiscal year as follows:

(i) 87.5 percent to the Adjacent State and any other producing State or States with a leased tract within its Adjacent Zone within 125 miles of its coastline that generated royalties during the fiscal year, if the other producing or States have a coastline point within 300 miles of any portion of the leased tract, in which case the amount allocated for the leased tract shall be—

(I) one-third to the Adjacent State; and

(II) two-thirds to each producing State, including the Adjacent State, inversely proportional to the distance between the nearest point on the coastline of the producing State and the geographic center of the leased tract.

(ii) 6.25 percent into the Treasury, which shall be allocated to the account established by section 6514 of the Ocean State Options Act of 2005.

(iii) 5 percent into the account established by section 6523 of the Ocean State Options Act of 2005.

(iv) 1.25 percent into the account established by section 6526 of the Ocean State Options Act of 2005.

(c) TREATMENT OF OCS RECEIPTS FROM TRACTS PARTIALLY OR COMPLETELY BEYOND 125 MILES OF THE COASTLINE.—

(1) DEPOSIT.—The Secretary shall deposit into a separate account in the Treasury the portion of OCS Receipts for each fiscal year that will be shared under paragraphs (2) and (3).

(2) RECEIPTS SHARING BEGINNING OCTOBER 1, 2010.—

(A) Beginning October 1, 2010, the Secretary shall share OCS Receipts derived from the following areas:

(i) Lease tracts located on portions of the Gulf of Mexico OCS Region partially or completely beyond 125 miles of any coastline that are available for leasing under the 2002–2007 5-Year Oil and Gas Leasing Program in effect prior to the date of enactment of the Ocean State Options Act of 2005.

(ii) Lease tracts in production prior to January 1, 2006, partially or completely beyond 125 miles of any coastline located on portions of the OCS that were not available for leasing under the 2002–2007 5-Year OCS Oil and Gas Leasing Program in effect prior to the date of enactment of the Ocean State Options Act of 2005.

(iii) Lease tracts for which leases are issued prior to January 1, 2006, located in the Alaska OCS Region partially or completely beyond 125 miles of the coastline.

(B) The Secretary shall share the following percentages of OCS Receipts from the leases described in subparagraph (A) derived during the fiscal year indicated:

(i) For fiscal year 2011, 4.5 percent.

(ii) For fiscal year 2012, 5.0 percent.

(iii) For fiscal year 2013, 5.5 percent.

(iv) For fiscal year 2014, 6.0 percent.

(v) For fiscal year 2015, 6.5 percent.

(vi) For fiscal year 2016, 7.5 percent.

(vii) For fiscal year 2017, 10.0 percent.

(viii) For fiscal year 2018, 12.5 percent.

(ix) For fiscal year 2019, 15.0 percent.

(x) For fiscal year 2020, 17.5 percent.

(xi) For fiscal year 2021, 20.0 percent.

(xii) For fiscal year 2022, 22.5 percent.

(xiii) For fiscal year 2023, 25.0 percent.

(xiv) For fiscal year 2024, 27.5 percent.

(xv) For fiscal year 2025, 30.0 percent.

(xvi) For fiscal year 2026, 32.5 percent.

(xvii) For fiscal year 2027, 35.0 percent.

(xviii) For fiscal year 2028, 37.5 percent.

(xix) For fiscal year 2029 and each subsequent fiscal year, 40.0 percent.

(3) RECEIPTS SHARING BEGINNING JANUARY 1, 2006.—Beginning January 1, 2006, the Secretary shall share 40 percent of OCS Receipts derived on and after January 1, 2006, from all leases located partially or completely beyond 125 miles of any coastline not included within the provisions of paragraph (2).

(4) ALLOCATIONS.—The Secretary shall allocate the OCS Receipts deposited into the separate account established by paragraph (1) that are shared under paragraphs (2) and (3) as follows:

(A) BONUS BIDS.—Deposits derived from bonus bids from a leased tract, including interest thereon, shall be allocated at the end of each fiscal year as follows:

(i) 87.5 percent to the Adjacent State.

(ii) 6.25 percent into the Treasury, which shall be allocated to the account established by section 6514 of the Ocean State Options Act of 2005.

(iii) 5 percent into the account established by section 6523 of the Ocean State Options Act of 2005.

(iv) 1.25 percent into the account established by section 6526 of the Ocean State Options Act of 2005.

(B) ROYALTIES.—Deposits derived from royalties from a leased tract, including interest thereon, shall be allocated at the end of each fiscal year as follows:

(i) 87.5 percent to the Adjacent State and any other producing State or States with a leased tract within its Adjacent Zone partially or completely beyond 125 miles of its coastline that generated royalties during the fiscal year, if the other producing State or States have a coastline point within 300 miles of any portion of the leased tract, in which case the amount allocated for the leased tract shall be—

(I) one-third to the Adjacent State; and

(II) two-thirds to each producing State, including the Adjacent State, inversely proportional to the distance between the nearest point on the coastline of the producing State and the geographic center of the leased tract.

(ii) 6.25 percent into the account established by section 6514 of the Ocean State Options Act of 2005.

(iii) 5 percent into the account established by section 6523 of the Ocean State Options Act of 2005.

(iv) 1.25 percent into the account established by section 6526 of the Ocean State Options Act of 2005.

(d) SPECIAL RECEIPTS SHARING.—

(1) DEPOSIT.—The Secretary shall deposit into a separate account in the Treasury the portion of OCS Receipts for each fiscal year that will be shared under paragraphs (2) and (3).

(2) EXCESS NEW PROGRAM RECEIPTS.—

(A) REQUIREMENT.—Beginning January 1, 2006, and continuing through September 30, 2015, if the total amount of OCS receipts in a fiscal year derived from leases included within the sharing provisions of subsections (b)(3) and (c)(3) exceeds the amount specified in subparagraph (B), the Secretary shall share 60 percent of the difference between such total amount and the amount specified in subparagraph (B).

(B) TOTAL AMOUNT SPECIFIED.—The amount specified in this subparagraph is the following:

(i) For fiscal year 2006, $0.
(ii) For fiscal year 2007, $498,000,000.
(iii) For fiscal year 2008, $260,000,000.
(iv) For fiscal year 2009, $322,000,000.
(v) For fiscal year 2010, $140,000,000.
(vi) For fiscal year 2011, $93,000,000.
(vii) For fiscal year 2012, $25,000,000.
(viii) For fiscal year 2013, $540,000,000.
(ix) For fiscal year 2014, $342,000,000.
(x) For fiscal year 2015, $481,000,000.

(3) EXTRA NEW PROGRAM AREA RECEIPTS.—Beginning October 1, 2015, and continuing thereafter through September 30, 2029, the Secretary shall share an additional 20 percent of OCS Receipts derived from leases included within the sharing provisions of subsections (b)(3) and (c)(3) that were not already shared under those provisions.

(4) ALLOCATIONS.—The Secretary shall allocate the OCS Receipts deposited into the separate account established by paragraph (1) that are shared under the provisions of paragraphs (2) and (3) among all producing States, which shall be allocated to each producing State based on the ratio that—

(A) OCS Receipts derived from all leased tracts on the Federal outer Continental Shelf that are completely within 300 miles of the coastline of the producing State for the fiscal year, bears to

(B) OCS Receipts derived from all leased tracts on the Federal outer Continental Shelf that are completely within 300 miles of the coastlines of all producing States for the fiscal year.

(e) TRANSMISSION OF ALLOCATIONS.—

(1) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Secretary shall transmit—

(A) to each State two-thirds of such State's allocations under subsections (b)(4)(A)(i), (b)(4)(B)(i), (c)(4)(A)(i), (c)(4)(B)(i), and (d)(4) for the immediate prior fiscal year;

(B) to coastal county-equivalent and municipal political subdivisions of such State a total of one-third of such State's allocations under subsections (b)(4)(A)(i), (b)(4)(B)(i), (c)(4)(A)(i), (c)(4)(B)(i), and (d)(4), together with all accrued interest thereon; and

(C) the remaining allocations under subsections (b)(4) and (c)(4), together with all accrued interest thereon.

(2) ALLOCATIONS TO COASTAL COUNTY-EQUIVALENT POLITICAL SUBDIVISIONS.—The Secretary shall make an initial allocation of the OCS Receipts to be shared under paragraph (1)(B) as follows:

(A) 25 percent shall be allocated based on the ratio of such coastal county-equivalent political subdivision's population to the coastal population of all coastal county-equivalent political subdivisions in the State.

(B) 25 percent shall be allocated based on the ratio of such coastal county-equivalent political subdivision's coastline miles to the coastline miles of all coastal county-equivalent political subdivisions in the State as calculated by the Secretary. In such calculations, coastal county-equivalent political subdivisions without a coastline shall be considered to have 50 percent of the average coastline miles of the coastal county-equivalent political subdivisions that do have coastlines.

(C) 25 percent shall be allocated to all coastal county-equivalent political subdivisions having a coastline point within 300 miles of the leased tract for which OCS Receipts are being shared based on a formula that allocates the funds based on such coastal county-equivalent political subdivision's relative distance from the leased tract.

(D) 25 percent shall be allocated to all coastal county-equivalent political subdivisions having a coastline point within 300 miles of the leased tract for which OCS Receipts are being shared based on the relative level of outer Continental Shelf oil and gas activities in a coastal political subdivision compared to the level of outer Continental Shelf activities in all coastal political subdivisions in the State. The Secretary shall define the term "outer Continental Shelf oil and gas activities" for purposes of this subparagraph to include, but not be limited to, construction of vessels, drillships, and platforms involved in exploration, production, and development on the outer Continental Shelf; support and supply bases, ports, and related activities; offices of geologists, geophysicists, engineers, and other professionals involved in support of exploration, production, and development of oil and gas on the outer Continental Shelf; pipelines and other means of transporting oil and gas production from the outer Continental Shelf; and processing and refining of oil and gas production from the outer Continental Shelf. For purposes of this subparagraph, if a coastal county-equivalent political subdivision does not have a coastline, its coastal point shall be the point on the coastline closest to it.

(3) ALLOCATIONS TO COASTAL MUNICIPAL POLITICAL SUBDIVISIONS.—The initial allocation to each coastal county-equivalent political subdivision under paragraph (2) shall be further allocated to the coastal county-equivalent political subdivision and any coastal municipal political subdivisions located partially or wholly within the boundaries of the coastal county-equivalent political subdivision as follows:

(A) One-third shall be allocated to the coastal county-equivalent political subdivision.

(B) Two-thirds shall be allocated on a per capita basis to the municipal political subdivisions and the county-equivalent political subdivision, with the allocation to the latter based upon its population not included within the boundaries of a municipal political subdivision.

(f) INVESTMENT OF DEPOSITS.—Amounts deposited under this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account in which they are deposited and yielding the highest reasonably available interest rates as determined by the Secretary of the Treasury.

(g) USE OF FUNDS.—A recipient of funds under this section may use the funds for one or more of the following:

(1) To reduce in-State college tuition at public institutions of higher learning and otherwise support public education, including career technical education.

(2) To make transportation infrastructure improvements.

(3) To reduce taxes.

(4) To promote and provide for—

(A) coastal or environmental restoration;

(B) fish, wildlife, and marine life habitat enhancement;

(C) waterways maintenance;

(D) shore protection; and

(E) marine and oceanographic education and research.

(5) To improve infrastructure associated with energy production activities conducted on the outer Continental Shelf.

(6) To fund energy demonstration projects and supporting infrastructure for energy projects.

(7) For any other purpose as determined by State law.

(h) NO ACCOUNTING REQUIRED.—No recipient of funds under this section shall be required to account to the Federal Government for the expenditure of such funds, except as otherwise may be required by law. Further, funds allocated under this section to States and political subdivisions may be used as matching funds for other Federal programs.

(i) EFFECT OF FUTURE LAWS.—Enactment of any future Federal statute that has the effect, as determined by the Secretary, of restricting any Federal agency from spending appropriated funds, or otherwise preventing it from fulfilling its pre-existing responsibilities as of the date of enactment of the statute, unless such responsibilities have been reassigned to another Federal agency by the statute with no prevention of performance, to issue any permit or other approval impacting on the OCS oil and gas leasing program, or any lease issued thereunder, or to implement any provision of this Act shall automatically prohibit any sharing of OCS Receipts under this section directly with the States, and their coastal political subdivisions, for the duration of the restriction. The Secretary shall make the determination of the existence of such restricting effects within 30 days of a petition by any outer Continental Shelf lessee or producing State.

(j) DEFINITIONS.—In this section:

(1) COASTAL COUNTY-EQUIVALENT POLITICAL SUBDIVISION.—The term "coastal county-equivalent political subdivision" means a political jurisdiction immediately below the level of State government, including a county, parish, borough in Alaska, independent municipality not part of a county, parish, or borough in Alaska, or other equivalent subdivision of a coastal State, that lies within the coastal zone.

(2) COASTAL MUNICIPAL POLITICAL SUBDIVISION.—The term "coastal municipal political subdivision" means a municipality located within and part of a county, parish, borough in Alaska, or other equivalent subdivision of a State, all or part of which coastal municipal political subdivision lies within the coastal zone.

(3) COASTAL POPULATION.—The term "coastal population" means the population of all coastal county-equivalent political subdivisions, as determined by the most recent official data of the Census Bureau.

(4) COASTAL ZONE.—The term "coastal zone" means that portion of a coastal State, including the entire territory of any coastal county-equivalent political subdivision at least a part of which lies, within 75 miles landward from the coastline.

(5) BONUS BIDS.—The term "bonus bids" means all funds received by the Secretary to issue an outer Continental Shelf minerals lease.

(6) ROYALTIES.—The term "royalties" means all funds received by the Secretary from production of oil or natural gas, or the sale of production taken in-kind, from an outer Continental Shelf minerals lease.

(7) PRODUCING STATE.—The term "producing State" means an Adjacent State having an Adjacent Zone containing leased tracts from which OCS Receipts were derived.

(8) OCS RECEIPTS.—The term "OCS Receipts" means bonus bids and royalties.

SEC. 10. USE OF DECOMMISSIONED OFFSHORE OIL AND GAS PLATFORMS AND OTHER FACILITIES FOR MARICULTURE, ARTIFICIAL REEF, SCIENTIFIC RESEARCH, OR OTHER USES.

(a) IN GENERAL.—The Secretary shall issue regulations under which the Secretary may authorize use of an offshore oil and gas platform or other facility that is decommissioned from service for oil and gas purposes for culture of marine organisms, an artificial reef, scientific research, or any other use authorized under section 8(p).

(b) TRANSFER REQUIREMENTS.—The Secretary shall not allow the transfer of a decommissioned offshore oil and gas platform or other facility to another person unless the Secretary is satisfied that the transferee is sufficiently bonded, endowed, or otherwise financially able to fulfill its obligations, including but not limited to—

(1) ongoing maintenance of the platform or other facility;

(2) any liability obligations that might arise;

(3) removal of the platform or other facility if determined necessary by the Secretary; and

(4) any other requirements and obligations that the Secretary may deem appropriate by regulation.

(c) PLUGGING AND ABANDONMENT.—The Secretary shall ensure that obligations of a lessee regarding the plugging and abandonment of wells are unaffected by implementation of this section.

(d) POTENTIAL TO PETITION TO OPT-OUT OF REGULATIONS.—An Adjacent State acting through a resolution of its legislature, with concurrence of its Governor, may petition to opt-out of the application of regulations promulgated under this section to platforms and other facilities located in the area of its Adjacent Zone within 25 miles of the coastline. The Secretary is authorized to except such area from the application of such regulations, and shall approve such petition, unless the Secretary finds that approving the petition would probably cause serious harm or damage to the marine resources of the State's Adjacent Zone. Prior to acting on the petition, the Secretary shall complete an environmental assessment that documents the anticipated environmental effects of approving the petition.

(e) LIMITATION ON LIABILITY.—A person that had used an offshore oil and gas platform or other facility for oil and gas purposes and that no longer has any ownership or control of the platform or other facility shall not be liable under Federal law for any costs or damages arising from such platform or other facility after the date the platform or other facility is used for any purpose under subsection (a), unless such costs or damages arise from—

(1) use of the platform or other facility by the person for development or production of oil or gas; or

(2) another act or omission of the person.

(f) OTHER LEASING AND USE NOT AFFECTED.—This section, and the use of any offshore oil and gas platform or other facility for any purpose under subsection (a), shall not affect—

(1) the authority of the Secretary to lease any area under this Act; or

(2) any activity otherwise authorized under this Act.

SEC. 11. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS.—(a) * * *

* * * * * * *

[(c)(1) Except as otherwise provided in the Act, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act, regulations prescribed under this Act, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that the Secretary shall disapprove such plan if he determines that (A) any proposed activity under such plan would result in any condition described in section 5(a)(2)(A)(i) of this Act, and (B) such proposed activity cannot be modified to avoid such condition. If the Secretary disapproves a plan under the preceding

sentence, he may, subject to section 5(a)(2)(B) of this Act, cancel such lease and the lessee shall be entitled to compensation in accordance with the regulations prescribed under section 5(a)(2)(C) (i) or (ii) of this Act.

[(2) The Secretary shall not grant any license or permit for any activity described in detail in an exploration plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(B) (i) or (ii) of such Act, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act.

[(3) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

[(A) a schedule of anticipated exploration activities to be undertaken;

[(B) a description of equipment to be used for such activities;

[(C) the general location of each well to be drilled; and

[(D) such other information deemed pertinent by the Secretary.

[(4) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

[(d) The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.]

(c) PLAN REVIEW; PLAN PROVISIONS.—

(1) Except as otherwise provided in this Act, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan (hereinafter in this section referred to as a "plan") to the Secretary for review which shall include all information and documentation required under paragraphs (2) and (3). The Secretary shall review the plan for completeness within 10 days of submission. If the Secretary finds that the plan is not complete, the Secretary shall notify the lessee with a detailed explanation and require such modifications of such plan as are necessary to achieve completeness. The Secretary shall have 10 days to review a modified plan for completeness. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and the lessee shall certify that such plan is consistent with the terms of the lease and is consistent with all statutory and regulatory requirements in effect on the date of issuance of the lease. The Secretary shall have 30 days from the date the plan is deemed complete to conduct a review of the plan. If the Secretary finds the plan is not consistent with the lease and all such statutory and regulatory requirements, the Secretary shall notify the lessee with a detailed explanation of such modifica-

tions of such plan as are necessary to achieve compliance. The Secretary shall have 30 days to review any modified plan submitted by the lessee. The lessee shall not take any action under the exploration plan within the 30-day review period, or thereafter until the plan has been modified to achieve compliance as so notified.

(2) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

(A) a schedule of anticipated exploration activities to be undertaken;

(B) a description of equipment to be used for such activities;

(C) the general location of each well to be drilled; and

(D) such other information deemed pertinent by the Secretary.

(3) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

(d) PLAN REVISIONS; CONDUCT OF EXPLORATION ACTIVITIES.—

(1) If a significant revision of an exploration plan under this subsection is submitted to the Secretary, the process to be used for the review of such revision shall be the same as set forth in subsection (c) of this section.

(2) All exploration activities pursuant to any lease shall be conducted in accordance with an exploration plan or a revised plan which has been submitted to and reviewed by the Secretary.

* * * * * * *

SEC. 12. RESERVATIONS.—(a) The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf. *The President may partially or completely revise or revoke any prior withdrawal made by the President under the authority of this section. The President may not revise or revoke a withdrawal that was initiated by a petition from a State and approved by the Secretary of the Interior under subsection (h). A withdrawal by the President may be for a term not to exceed 10 years. In considering a potential withdrawal under this subsection, to the maximum extent practicable the President shall accommodate competing interests and potential uses of the outer Continental Shelf.*

* * * * * * *

(g) OPTION TO PETITION FOR LEASING WITHIN CERTAIN AREAS OF THE OUTER CONTINENTAL SHELF.—

(1) PROHIBITION AGAINST LEASING.—Except as otherwise provided in this subsection, prior to June 30, 2012, the Secretary shall not offer for leasing for oil and gas, or for natural gas, any area withdrawn from disposition by leasing in the Atlantic OCS Region or the Pacific OCS Region, or the Gulf of Mexico OCS Region Eastern Planning Area, as depicted on the map referred to within this paragraph, under the "Memorandum on Withdrawal of Certain Areas of the United States Outer Conti-

nental Shelf from Leasing Disposition", 34 Weekly Comp. Pres. Doc. 1111, dated June 12, 1998, or any area not withdrawn under that Memorandum that is included within the Gulf of Mexico OCS Region Eastern Planning Area as indicated on the map entitled "Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas" or within the Florida Straits Planning Area as indicated on the map entitled "Atlantic OCS Region State Adjacent Zones and OCS Planning Areas", both of which are dated September 2005 and on file in the Office of the Director, Minerals Management Service.

(2) REVOCATION OF WITHDRAWAL.—The provisions of the "Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition", 34 Weekly Comp. Pres. Doc. 1111, dated June 12, 1998, are hereby revoked and are no longer in effect regarding any areas included within the Gulf of Mexico OCS Region Central Planning Area as indicated on the map entitled "Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas" dated September 2005 and on file in the Office of the Director, Minerals Management Service. The 2002–2007 5-Year Outer Continental Shelf Oil and Gas Leasing Program is hereby amended to include the areas added to the Gulf of Mexico OCS Region Central Planning Area by this Act to the extent that such areas were included within the original boundaries of proposed Lease Sale 181. The amendment to such leasing program includes two sales in such additional areas, one of which shall be held in January 2007 and one of which shall be held in June 2007. The Final Environmental Impact Statement prepared for this area for Lease Sale 181 shall be deemed sufficient for all purposes for each lease sale in which such area is offered for lease during the 2002–2007 5-Year Outer Continental Shelf Oil and Gas Leasing Program without need for supplementation. Any tract only partially added to the Gulf of Mexico OCS Region Central Planning Area by this Act shall be eligible for leasing of the part of such tract that is included within the Gulf of Mexico OCS Region Central Planning Area, and the remainder of such tract that lies outside of the Gulf of Mexico OCS Region Central Planning Area may be developed and produced by the lessee of such partial tract using extended reach or similar drilling from a location on a leased area.

(3) PETITION FOR LEASING.—

(A) IN GENERAL.—The Governor of the State, upon concurrence of its legislature, may submit to the Secretary a petition requesting that the Secretary make available any area that is within the State's Adjacent Zone, included within the provisions of paragraph (1), and that (i) is greater than 25 miles from any point on the coastline of a Neighboring State for the conduct of offshore leasing, pre-leasing, and related activities with respect to natural gas leasing; or (ii) is greater than 50 miles from any point on the coastline of a Neighboring State for the conduct of offshore leasing, pre-leasing, and related activities with respect to oil and gas leasing. The Adjacent State may also petition for leasing any other area within its Adjacent Zone

if leasing is allowed in the similar area of the Adjacent Zone of the applicable Neighboring State, or if not allowed, if the Neighboring State, acting through its Governor, expresses its concurrence with the petition. The Secretary shall only consider such a petition upon making a finding that leasing is allowed in the similar area of the Adjacent Zone of the applicable Neighboring State or upon receipt of the concurrence of the Neighboring State. The date of receipt by the Secretary of such concurrence by the Neighboring State shall constitute the date of receipt of the petition for that area for which the concurrence applies. A petition for leasing any part of the Alabama Adjacent Zone that is a part of the Gulf of Mexico Eastern Planning Area, as indicated on the map entitled 'Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas' which is dated September 2005 and on file in the Office of the Director, Minerals Management Service, shall require the concurrence of both Alabama and Florida.

(B) LIMITATIONS ON LEASING.—In its petition, a State with an Adjacent Zone that contains leased tracts may condition oil and gas, or natural gas, new leasing for tracts within 25 miles of the coastline by—

(i) requiring a net reduction in the number of production platforms;

(ii) requiring a net increase in the average distance of production platforms from the coastline;

(iii) limiting permanent surface occupancy on new leases to areas that are more than 10 miles from the coastline;

(iv) limiting some tracts to being produced from shore or from platforms located on other tracts; or

(v) other conditions that the Adjacent State may deem appropriate as long as the Secretary does not determine that production is made economically or technically impracticable or otherwise impossible.

(C) ACTION BY SECRETARY.—Not later than 90 days after receipt of a petition under subparagraph (A), the Secretary shall approve the petition, unless the Secretary determines that leasing the area would probably cause serious harm or damage to the marine resources of the State's Adjacent Zone. Prior to approving the petition, the Secretary shall complete an environmental assessment that documents the anticipated environmental effects of leasing in the area included within the scope of the petition.

(D) FAILURE TO ACT.—If the Secretary fails to approve or deny a petition in accordance with subparagraph (C) the petition shall be considered to be approved 90 days after receipt of the petition.

(E) AMENDMENT OF THE 5-YEAR LEASING PROGRAM.—Notwithstanding section 18, within 180 days of the approval of a petition under subparagraph (C) or (D), the Secretary shall amend the current 5-Year Outer Continental Shelf Oil and Gas Leasing Program to include a lease sale or sales for the entire area covered by the approved petition, unless

there are, from the date of approval, fewer than 12 months remaining in the current 5-Year Leasing Program in which case the Secretary shall include the areas covered by the approved petition within lease sales under the next 5-Year Leasing Program. For purposes of amending the 5-Year Program in accordance with this section, further consultations with States shall not be required. The environmental assessment performed under the provisions of the National Environmental Policy Act of 1969 to assess the effects of approving the petition shall be sufficient to amend the 5-Year Leasing Program.

(h) OPTION TO PETITION FOR EXTENSION OF WITHDRAWAL FROM LEASING WITHIN CERTAIN AREAS OF THE OUTER CONTINENTAL SHELF.—

(1) IN GENERAL.—The Governor of the State, upon the concurrence of its legislature, may submit to the Secretary petitions requesting that the Secretary extend for a period of time of up to 5 years for each petition the withdrawal from leasing for all or part of any area within the State's Adjacent Zone within 125 miles of the coastline that is subject to subsection (g)(1). A State may petition multiple times for any particular area but not more than once per calendar year for any particular area. A State must submit separate petitions, with separate votes by its legislature, for areas within 50 miles of the coastline, areas more than 50 miles but not exceeding 100 miles from the coastline, and areas exceeding 100 miles but not exceeding 125 miles from the coastline. A petition of a State may apply to either oil and gas leasing or natural gas leasing, or both, and may request some areas to be withdrawn from all leasing and some areas to be withdrawn only from one type of leasing. A petition for extending the withdrawal from leasing of any part of the Alabama Adjacent Zone that is a part of the Gulf of Mexico OCS Region Eastern Planning Area, as indicated on the map entitled "Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas" which is dated September 2005 and on file in the Office of the Director, Minerals Management Service, may be made by either Alabama or Florida.

(2) ACTION BY SECRETARY.—The Secretary shall perform an environmental assessment under the National Environmental Policy Act of 1969 to assess the effects of approving the petition under paragraph (1). Not later than 90 days after receipt of the petition, the Secretary shall approve the petition, unless the Secretary determines that extending the withdrawal from leasing would probably cause serious harm or damage to the marine resources of the State's Adjacent Zone. The Secretary shall not approve a petition from a State that extends the remaining period of a withdrawal of an area from leasing for a total of more than 10 years. However, the Secretary may approve petitions to extend the withdrawal from leasing of any area ad infinitum, subject only to the limitations contained in this subsection.

(3) FAILURE TO ACT.—If the Secretary fails to approve or deny a petition in accordance with paragraph (2) the petition shall

be considered to be approved 90 days after receipt of the petition.

* * * * * * *

SEC. 18. OUTER CONTINENTAL SHELF LEASING PROGRAM.—(a) The Secretary, pursuant to procedures set forth in subsections (c) and (d) of this section, shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this Act. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

(1) * * *

* * * * * * *

(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone. *The Secretary shall, in each 5-year program, include lease sales that when viewed as a whole propose to offer for oil and gas or natural gas leasing at least 75 percent of the available unleased acreage within each OCS Planning Area. Available unleased acreage is that portion of the outer Continental Shelf that is not under lease at the time of the proposed lease sale, and has not otherwise been made unavailable for leasing by law.*

* * * * * * *

[(c)(1) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any State which may become an affected State under such proposed program. The Secretary may also invite or consider any suggestions from the executive of any affected local government in such an affected State, which have been previously submitted to the Governor of such State, and from any other person.

[(2) After such preparation and at least sixty days prior to publication of a proposed leasing program in the Federal Register pursuant to paragraph (3) of this subsection, the Secretary shall submit a copy of such proposed program to the Governor of each affected State for review and comment. The Governor may solicit comments from those executives of local governments in his State which he, in his discretion, determines will be affected by the proposed program. If any comment by such Governor is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating his reasons therefor. All such cor-

respondence between the Secretary and Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.]

(c)(1) During the preparation of any proposed leasing program under this section, the Secretary shall consider and analyze leasing throughout the entire Outer Continental Shelf without regard to any other law affecting such leasing. During this preparation the Secretary shall invite and consider suggestions from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any coastal State. The Secretary may also invite or consider any suggestions from the executive of any local government in a coastal State that have been previously submitted to the Governor of such State, and from any other person. Further, the Secretary shall consult with the Secretary of Defense regarding military operational needs in the outer Continental Shelf. The Secretary shall work with the Secretary of Defense to resolve any conflicts that might arise regarding offering any area of the outer Continental Shelf for oil and gas or natural gas leasing. If the Secretaries are not able to resolve all such conflicts, any unresolved issues shall be elevated to the President for resolution.

(2) After the consideration and analysis required by paragraph (1), including the consideration of the suggestions received from any interested Federal agency, the Federal Trade Commission, the Governor of any coastal State, any local government of a coastal State, and any other person, the Secretary shall publish in the Federal Register a proposed leasing program accompanied by a draft environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969. After the publishing of the proposed leasing program and during the comment period provided for on the draft environmental impact statement, the Secretary shall submit a copy of the proposed program to the Governor of each affected State for review and comment. The Governor may solicit comments from those executives of local governments in the Governor's State that the Governor, in the discretion of the Governor, determines will be affected by the proposed program. If any comment by such Governor is received by the Secretary at least 15 days prior to submission to the Congress pursuant to paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating the Secretary's reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

* * * * * * *

(i) PROJECTION OF STATE AND LOCAL GOVERNMENT SHARES OF OCS RECEIPTS.—Concurrent with the publication of the scoping notice at the beginning of the development of each 5-year Outer Continental Shelf oil and gas leasing program, or as soon thereafter as possible, the Secretary shall provide to each coastal State, and coastal political subdivisions thereof, a best-efforts projection of the

OCS Receipts that the Secretary expects will be shared with each coastal State, and its coastal political subdivisions, using the assumption that the unleased tracts within the State's Adjacent Zone are fully made available for leasing, including long-term projected OCS Receipts. In addition, the Secretary shall include a macroeconomic estimate of the impact of such leasing on the national economy and each State's economy, including investment, jobs, revenues, personal income, and other categories.

* * * * * * *

SEC. 19. COORDINATION AND CONSULTATION WITH AFFECTED STATES AND LOCAL GOVERNMENTS.—(a) Any Governor of any affected State or the executive of any affected local government*, for any tract located within the Adjacent State's Adjacent Zone,* in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan. Prior to submitting recommendations to the Secretary, the executive of any affected local government in any affected State must forward his recommendations to the Governor of such State.

* * * * * * *

(f)(1) No Federal agency may permit or otherwise approve, without the concurrence of the Adjacent State, the construction of a crude oil or petroleum products (or both) pipeline within the part of the Adjacent State's Adjacent Zone that is not available by law for oil and gas or natural gas leasing, except that such a pipeline may be approved to pass through such Adjacent Zone if at least 50 percent of the production projected to be carried by the pipeline within its first 10 years of operation is from areas of the Adjacent States Adjacent Zone.

(2) No State may prohibit the construction within its Adjacent Zone or its State waters of a natural gas pipeline that will transport natural gas produced from the outer Continental Shelf. However, an Adjacent State may prevent a proposed natural gas pipeline landing location if it proposes two alternate landing locations in the Adjacent State, acceptable to the Adjacent State, located within 50 miles on either side of the proposed landing location.

SEC. 20. ENVIRONMENTAL STUDIES.—(a) * * *

* * * * * * *

(d)*(1)* The Secretary shall consider available relevant environmental information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.

(2) For all programs, lease sales, leases, and actions under this Act, the following shall apply regarding the application of the National Environmental Policy Act of 1969:

(A) Granting or directing lease suspensions and the conduct of all preliminary activities on outer Continental Shelf tracts, including seismic activities, are categorically excluded from the need to prepare either an environmental assessment or an environmental impact statement, and it shall not be required to

document why no exceptions to the categorical exclusion apply for activities conducted under the authority of this Act.

(B) The environmental impact statement developed in support of each 5-year oil and gas leasing program provides the environmental analysis for all lease sales to be conducted under the program and such sales shall not be subject to further environmental analysis.

(C) Exploration plans shall not be subject to any requirement to prepare an environmental impact statement, and the Secretary may find that exploration plans are eligible for categorical exclusion due to the impacts already being considered within an environmental impact statement or due to mitigation measures included within the plan.

(D) Within each OCS Planning Area, after the preparation of the first development and production plan environmental impact statement for a leased tract within the Area, future development and production plans for leased tracts within the Area shall only require the preparation of an environmental assessment unless the most recent development and production plan environmental impact statement within the Area was finalized more than 10 years prior to the date of the approval of the plan, in which case an environmental impact statement shall be required.

* * * * * * *

[SEC. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION.—(a)(1) Prior to development and production pursuant to an oil and gas lease issued after the date of enactment of this section in any area of the outer Continental Shelf, other than the Gulf of Mexico, or issued or maintained prior to such date of enactment in any area of the outer Continental Shelf, other than the Gulf of Mexico, with respect to which no oil or gas has been discovered in paying quantities prior to such date of enactment, the lessee shall submit a development and production plan (hereinafter in this section referred to as a "plan") to the Secretary, for approval pursuant to this section.

[(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

[(3) Except for any privileged or proprietary information (as such term is defined in regulations issued by the Secretary), the Secretary, within ten days after receipt of a plan and statement, shall (A) submit such plan and statement to the Governor of any affected State, and, upon request, to the executive of any affected local government, and (B) make such plan and statement available to any appropriate interstate regional entity and the public.

[(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act in any region of the outer Continental Shelf, other than the Gulf of Mexico, unless such lease

requires that development and production activities be carried out in accordance with a plan which complies with the requirements of this section.

[(c) A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

[(1) the specific work to be performed;

[(2) a description of all facilities and operations located on the outer Continental Self which are proposed by the lessee of known by him (whether or not owned or operated by such lessee) to be directly related to proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

[(3) the environmental safeguards to be implemented on the outer Continental Shelf and how much safeguards are to be implemented;

[(4) all safety standards to be met and how such standards are to be met;

[(5) an expected rate of development and production and a time schedule for performance; and

[(6) such other relevant information as the Secretary may by regulation require.

[(d) The Secretary shall not grant any license or permit for any activity described in detail in a plan affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(B) (i) or (ii) of such Act, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act.

[(e)(1) At least once the Secretary shall declare the approval of a development and production plan in any area or region (as defined by the Secretary) of the outer Continental Shelf, other than the Gulf of Mexico, to be a major Federal action.

[(2) The Secretary may require lessees of tracts for which development and production plans have not been approved, to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 shall commence.

[(f) If approval of a development and production plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, and upon request, to the executive of any local government, and shall make such draft available to any appropriate interstate regional entity and the public.

[(g) If approval of a development and production plan is not found to be a major Federal action, the Governor of any affected State and the executive of any affected local government shall have sixty days from the date of receipt of the plan from the Secretary to submit comments and recommendations. Prior to submitting recommendations to the Secretary, the executive of any affected local

government must forward his recommendations to the Governor of his State. Such comments and recommendations shall be made available to the public upon request. In addition, any interested person may submit comments and recommendations.

[(h)(1) After reviewing the record of any public hearing held with respect to the approval of a plan pursuant to the National Environmental Policy Act of 1969 or the comments and recommendations submitted under subsection (g) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsection (e) of this section, or sixty days after the period provided for comment under subsection (g) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the human, marine, or coastal environment, including compliance with the regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act. Any modification required by the Secretary which involves activities for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) must receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c)(3)(B) (i) or (ii) of such Act unless the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act. The Secretary shall disapprove a plan—

[(A) if the lessee fails to demonstrate that he can comply with the requirements of this Act or other applicable Federal law, including the regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act;

[(B) if any of the activities described in detail in the plan for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) do not receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c)(3)(B) (i) or (ii) of such Act and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of such Act;

[(C) if operations threaten national security or national defense; or

[(D) if the Secretary determines, because of exceptional geological conditions in the lease areas, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that (i) implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal or human environments, (ii) the threat of harm or damage will not disappear or decrease to an

acceptable extent within a reasonable period of time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.

[(2)(A) If a plan is disapproved—

[(i) under subparagraph (A) of paragraph (1); or

[(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued after approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1455),

the lessee shall not be entitled to compensation because of such disapproval.

[(B) If a plan is disapproved—

[(i) under subparagraph (C) or (D) of paragraph (1); or

[(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued before approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972, and such approval occurs after the lessee has submitted a plan to the Secretary,

the term of the lease shall be duly extended, and at any time within five years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Secretary shall approve, disapprove, or require modifications of such plan in accordance with this subsection.

[(C) Upon expiration of the five-year period described in subparagraph (B) of this paragraph, or, in the Secretary's discretion, at an earlier time upon request of a lessee, if the Secretary has not approved a plan, the Secretary shall cancel the lease and the lessee shall be entitled to receive compensation in accordance with section 5(a)(2)(C) of this Act. The Secretary may, at any time within the five-year period described in subparagraph (B) of this paragraph, require the lessee to submit a development and production plan for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been duly diligent in pursuing his obligations under the lease, and shall immediately initiate procedures to cancel such lease, without compenation, under the provisions of section 5(c) of this Act.

[(3) The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

[(i) The Secretary may approve any revision of an approved plan proposed by the lessee if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee, or is otherwise not inconsistent with the provisions of this Act, to the extent such revision is consistent with protection of the human, marine, and coastal environments. Any revision of an approved plan which the Secretary determines is significant

shall be reviewed in accordance with subsections (d) through (f) of this section.

[(j) Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may be canceled in accordance with sections 5 (c) and (d). Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

[(k) If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Energy Regulatory Commission that portion of such plan which relates to production of natural gas and the facilities for transportation of natural gas. The Secretary and the Federal Energy Regulatory Commission shall agree as to which of them shall prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 applicable to such portion of such plan, or conduct studies as to the effect on the environment of implementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting such studies pursuant to such agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Energy Regulatory Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717), may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary, in consultation with the Federal Energy Regulatory Commission, shall promulgate rules to implement this subsection, but the Federal Energy Regulatory Commission shall retain sole authority with respect to rules and procedures applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.

[(l) The Secretary may require the provisions of this section to apply to an oil and gas lease issued or maintained under this Act, which is located in that area of the Gulf of Mexico which is adjacent to the State of Florida, as determined pursuant to section 4(a)(2) of this Act.]

SEC. 25. REVIEW OF OUTER CONTINENTAL SHELF DEVELOPMENT AND PRODUCTION PLANS.

(a) DEVELOPMENT AND PRODUCTION PLANS; SUBMISSION TO SECRETARY; STATEMENT OF FACILITIES AND OPERATION; SUBMISSION TO GOVERNORS OF AFFECTED STATES AND LOCAL GOVERNMENTS.—

(1) Prior to development and production pursuant to an oil and gas lease issued on or after September 18, 1978, for any area of the outer Continental Shelf, or issued or maintained prior to September 18, 1978, for any area of the outer Continental Shelf, with respect to which no oil or gas has been dis-

covered in paying quantities prior to September 18, 1978, the lessee shall submit a development and production plan (hereinafter in this section referred to as a "plan") to the Secretary for review.

(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by the lessee (whether or not owned or operated by such lessee) that will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

(3) Except for any privileged or proprietary information (as such term is defined in regulations issued by the Secretary), the Secretary, within 30 days after receipt of a plan and statement, shall—

(A) submit such plan and statement to the Governor of any affected State, and upon request to the executive of any affected local government; and

(B) make such plan and statement available to any appropriate interstate regional entity and the public.

(b) DEVELOPMENT AND PRODUCTION ACTIVITIES IN ACCORDANCE WITH PLAN AS LEASE REQUIREMENT.—After enactment of the Ocean State Options Act of 2005, no oil and gas lease may be issued pursuant to this Act in any region of the outer Continental Shelf, unless such lease requires that development and production activities be carried out in accordance with a plan that complies with the requirements of this section. This section shall also apply to leases that do not have an approved development and production plan as of the date of enactment of the Ocean State Options Act of 2005.

(c) SCOPE AND CONTENTS OF PLAN.—A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

(1) the general work to be performed;

(2) a description of all facilities and operations located on the outer Continental Shelf that are proposed by the lessee or known by the lessee (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

(3) the environmental safeguards to be implemented on the outer Continental Shelf and how such safeguards are to be implemented;

(4) all safety standards to be met and how such standards are to be met;

(5) an expected rate of development and production and a time schedule for performance; and

(6) such other relevant information as the Secretary may by regulation require.

(d) COMPLETENESS REVIEW OF THE PLAN.—

(1) Prior to commencing any activity under a development and production plan pursuant to any oil and gas lease issued or maintained under this Act, the lessee shall certify that the plan is consistent with the terms of the lease and that it is consistent with all statutory and regulatory requirements in effect on the date of issuance of the lease. The plan shall include all required information and documentation required under subsection (c).

(2) The Secretary shall review the plan for completeness within 30 days of submission. If the Secretary finds that the plan is not complete, the Secretary shall notify the lessee with a detailed explanation of such modifications of such plan as are necessary to achieve completeness. The Secretary shall have 30 days to review a modified plan for completeness.

(e) REVIEW FOR CONSISTENCY OF THE PLAN.—

(1) After a determination that a plan is complete, the Secretary shall have 120 days to conduct a review of the plan, to ensure that it is consistent with the terms of the lease, and that it is consistent with all such statutory and regulatory requirements applicable to the lease. If the Secretary finds that the plan is not consistent, the Secretary shall notify the lessee with a detailed explanation of such modifications of such plan as are necessary to achieve consistency.

(2) The Secretary shall have 120 days to review a modified plan.

(3) The lessee shall not conduct any activities under the plan during any 120-day review period, or thereafter until the plan has been modified to achieve compliance as so notified.

(4) After review by the Secretary provided for by this section, a lessee may operate pursuant to the plan without further review or approval by the Secretary.

(f) REVIEW OF REVISION OF THE APPROVED PLAN.—The lessee may submit to the Secretary any revision of a plan if the lessee determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee, or is otherwise not inconsistent with the provisions of this Act, to the extent such revision is consistent with protection of the human, marine, and coastal environments. The process to be used for the review of any such revision shall be the same as that set forth in subsections (d) and (e).

(g) CANCELLATION OF LEASE ON FAILURE TO SUBMIT PLAN OR COMPLY WITH A PLAN.—Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with a plan, the lease may be canceled in accordance with section 5(c) and (d). Termination of a lease because of failure to comply with a plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

(h) PRODUCTION AND TRANSPORTATION OF NATURAL GAS; SUBMISSION OF PLAN TO FEDERAL ENERGY REGULATORY COMMISSION; IMPACT STATEMENT.—If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Energy Regulatory Commission

that portion of such plan that relates to the facilities for transportation of natural gas. The Secretary and the Federal Energy Regulatory Commission shall agree as to which of them shall prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) applicable to such portion of such plan, or conduct studies as to the effect on the environment of implementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting such studies pursuant to such agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Energy Regulatory Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717f), may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary, in consultation with the Federal Energy Regulatory Commission, shall promulgate rules to implement this subsection, but the Federal Energy Regulatory Commission shall retain sole authority with respect to rules and procedures applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.

* * * * * * *

MINING AND MINERAL RESOURCES INSTITUTES ACT

AN ACT To establish a State Mining and Mineral Resources Research Institute program, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

SECTION 1. (a)(1) There are authorized to be appropriated to the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") funds adequate to provide for each participating State $400,000 for each of the fiscal years ending September 30, 1990, through September 30, 1994, to assist the State in carrying on the work of a competent and qualified mining and mineral resources research institute or center (hereafter in this Act referred to as the "institute") at one public college or university in the State which meets the eligibility criteria established in section 10.

[(2)(A) Funds appropriated under this section shall be made available for grants to be matched on a basis of no less than 2non-Federal dollars for each Federal dollar.

[(B) If there is more than one such eligible college or university in a State, funds appropriated under this Act shall, in the absence of a designation to the contrary by act of the legislature of the State, be granted to one such college or university designated by the Governor of the State.

[(C) Where a State does not have a public college or university eligible under section 10, the Committee on Mining and Mineral Resources Research established in section 9 (hereafter in this Act referred to as the "Committee" may allocate the State's allotment to one private college or university which it determines to be eligible under such section.

[(b) It shall be the duty of each institute to plan and conduct, or arrange for a component or components of the college or university with which it is affiliated to conduct research, investigations, demonstrations, and experiments of either, or both, a basic or practical nature in relation to mining and mineral resources, and to provide for the training of mineral engineers and scientists through such research, investigations, demonstrations, and experiments. The subject of such research, investigation, demonstration, experiment, and training may include exploration; extraction; processing; development; production of fuel and nonfuel mineral resources; mining and mineral technology; supply and demand for minerals; conservation and best use of available supplies of minerals; the economic legal, social, engineering, recreational, biological, geographic, ecological, and other aspects of mining, mineral resources, and mineral reclamation. Such research, investigation, demonstration, experiment, and training shall consider the interrelationship with the natural environment, the varying conditions and needs of the respective States, and mining and mineral resources research projects being conducted by agencies of the Federal and State governments and other institutes.

[RESEARCH FUNDS TO INSTITUTES

[SEC. 2. (a) There is authorized to be appropriated to the Secretary not more than $15,000,000 for each of the fiscal years ending September 30, 1990, through September 30, 1994, which shall remain available until expended. Such funds when appropriated shall be made available to an institute or to institutes participating in a generic mineral technology center to meet the necessary expenses for purposes of—

[(1) specific mineral research and demonstration projects of broad application, which would not otherwise be undertaken, including the expenses of planning and coordinating regional mining and mineral resources research projects by two or more institutes; and

[(2) research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior, which are deemed by the Committee to be desirable and are not otherwise being studied.

There is authorized to be appropriated to the Secretary not more than $1,800,000 for each of the fiscal years after fiscal year 1996 to be made available by the Secretary to an institute or institutes experienced in investigating the continental shelf regions of the United States, the deep seabed and near shore environments of islands, and the Arctic and cold water regions as a source for nonfuel minerals. Such funds are to be used by the institute or institutes to assist in developing domestic technological capabilities required for the location of, and the efficient and environmentally sound re-

covery of, minerals (other than oil and gas) from the Nation's shallow and deep seabed.

[(b) Each application for funds under subsection (a) of this section shall state, among other things, the nature of the project to be undertaken; the period during which it will be pursued; the qualifications of the personnel who will direct and conduct it; the estimated costs; the importance of the project to the Nation, region, or State concerned; its relation to other known research projects theretofore pursued or being pursued; the extent to which the proposed project will provide opportunity for the training of mining and mineral engineers and scientists; and the extent of participation by nongovernmental sources in the project.

[(c) The Committee shall review all such funding applications and recommend to the Secretary the use of the institutes, insofar as practicable, to perform special research. Recommendations shall be made without regard to the race, religion, or sex of the personnel who will conduct and direct the research, and on the basis of the facilities available in relation to the particular needs of the research project; special geographic, geologic, or climatic conditions within the immediate vicinity of the institute; any other special requirements of the research project; and the extent to which such project will provide an opportunity for training individuals as mineral engineers and scientists. The Committee shall recommend to the Secretary the designation and utilization of such portions of the funds authorized to be appropriated by this section as it deems appropriate for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

[(d) No funds shall be made available under subsection (a) of this section except for a project approved by the Secretary and all funds shall be made available upon the basis of merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of individuals as mineral engineers and scientists.

[(e) No funds made available under this section shall be applied to the acquisition by purchase or lease of any land or interests therein, or the rental, purchase, construction, preservation, or repair of any building.

[FUNDING CRITERIA

[SEC. 3. (a) Funds available to institutes under sections 1 and 2 of this Act shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by him. Each institute shall—

[(1) set forth its plan to provide for the training of individuals as mineral engineers and scientists under a curriculum appropriate to the field mineral resources and mineral engineering and related fields;

[(2) set forth policies and procedures which assure that Federal funds made available under this Act for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available for purposes of this Act, and in no case supplant such funds; and

[(3) have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this Act and shall make an annual report to the Secretary on or before the first day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provisions of this Act during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary.

If any of the funds received by the authorized receiving officer of any institute under the provisions of this Act shall by any action or contingency be found by the Secretary to have been improperly diminished, lost, or misapplied, such funds shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be allotted or paid to any institute of such State.

[(b) The institutes are authorized and encouraged to plan and conduct programs under this Act in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved. Moneys appropriated pursuant to this Act shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research.

[DUTIES OF THE SECRETARY

[SEC. 4. (a) The Secretary, acting through the Director of the Bureau of Mines, shall administer this Act and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions. The Secretary shall furnish such advice and assistance as will best promote the purposes of this Act, shall participate in coordinating research initiated under this Act by the institutes, shall indicate to them such lines of inquiry that seem most important, and shall encourage and assist in the establishment and maintenance of cooperation by and between the institutes and between them and other research organizations, the United States Department of the Interior, and other Federal establishments.

[(b) On or before the first day of July in each year beginning after the date of enactment of this Act, the Secretary shall ascertain whether the requirements of section 3(a) have been met as to each institute and State.

[(c) The Secretary shall make an annual report the Congress of the receipts, expenditures, and work of the institutes in all States under the provisions of this Act. The Secretary's report shall indicate whether any portion of an appropriation available for allotment to any State has been withheld and, if so, the reason therefor.

[AUTONOMY

[SEC. 5. Nothing in this Act shall be construed to impair or modify the legal relationship existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this Act shall in any way be construed to authorize Federal control or direction of education at any college or university.

[MISCELLANEOUS PROVISIONS

[SEC. 6. (a) The Secretary shall obtain the continuing advice and cooperation of all agencies of the Federal Government concerned with mining and mineral resources, of State and local governments, and of private institutions and individuals to assure that the programs authorized by this Act will supplement and not be redundant with respect to established mining and minerals research programs, and to stimulate research in otherwise neglected areas, and to contribute a comprehensive nationwide program of mining and minerals research, with due regard for the protection and conservation of the environment. The Secretary shall make generally available information and reports on projects completed, in progress, or planned under the provisions of this Act, in addition to any direct publication of information by the institutes themselves.

[(b) Nothing in this Act is intended to give or shall be construed as giving the Secretary any authority over mining and mineral resources research conducted by any agency of the Federal Government, or as repealing or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with regard to mining and mineral resources.

[(c) No research, demonstration, or experiment shall be carried out under this Act by an institute financed by grants under this Act, unless all uses, products, processes, patents, and other developments resulting therefrom, with such exception or limitation, if any, as the Secretary may find necessary in the public interest, are made available promptly to the general public. Patentable inventions shall be governed by the provisions of Public Law 95–517. Nothing contained in this section shall deprive the owner of any background patent relating to any such activities of any rights which that owner may have under that patent.

[(d)(1) There is authorized to be appropriated to the Secretary $450,000 for each of the fiscal years ending September 30, 1990, through September 30, 1994, to administer this Act. No funds may be withheld by the Secretary for administrative expenses from those authorized to be appropriated by sections 1 and 2 of this Act.

[(2) There are authorized to be appropriated to the Secretary such sums as are necessary for the printing and publishing of the results of activities carried out by institutes and generic mineral technology centers under this Act, but such appropriations shall not exceed $550,000 in any single fiscal year.

[CENTER FOR CATALOGING

[SEC. 7. The Secretary shall establish a center for cataloging current and projected scientific research in all fields of mining and mineral resources. Each Federal agency doing mining and mineral resources research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain for public use a catalog of mining and mineral resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of government, colleges, universities,

private institutions, firms, and individuals as may make such information available.

[INTERAGENCY COOPERATION

[SEC. 8. The President shall, by such means as he deems appropriate, clarify agency responsibility for Federal mining and mineral resources research and provide for interagency coordination of such research, including the research authorized by this Act. Such coordination shall include—

[(1) continuing review of the adequacy of the Government-wide program in mining and mineral resources research;

[(2) identification and elimination of duplication and overlap between agency programs;

[(3) identification of technical needs in various mining and mineral resources research categories;

[(4) recommendations with respect to allocation of technical effort among Federal agencies;

[(5) review of technical manpower needs, and findings concerning management policies to improve the quality of the Government-wide research effort; and

[(6) actions to facilitate interagency communication at management levels.

[COMMITTEE

[SEC. 9. (a) The Secretary shall appoint a Committee on Mining and Mineral Resources Research composed of—

[(1) the Assistant Secretary of the Interior responsible for minerals and mining research, or his delegate;

[L(2) the Director, Bureau of Mines, or his delegate;

[(3) the Director, United States Geological Survey, or his delegate;

[(4) the Director of the National Science Foundation, or his delegate;

[(5) the President, National Academy of Sciences, or his delegate;

[(6) the President, National Academy of Engineering, or his delegate; and

[(7) not more than other persons who are knowledgeable in the fields of mining and mineral resources research, including two university administrators involved in the conduct of programs authorized by this Act, 3 representatives from the mining industry, a working miner, and a representative from the conservation community. In making these appointments, the Secretary shall consult with interested groups.

[(b) The Committee shall consult with, and make recommendations to, the Secretary on all matters relating to mining and mineral resources research and the determinations that are required to be made under this Act. The Secretary shall consult with, and consider recommendations of, such Committee in such matters.

[(c) Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing Committee business, paid at a rate fixed by the Secretary but not excess of the daily equivalent of the maximum rate of pay for grade GS–18 of

the General Schedule under section 5332 of title 5 of the United States Code, and shall be fully reimbursed for travel, subsistence, and related expenses.

[(d) The committee shall be jointly chaired by the Assistant Secretary of the Interior responsible for minerals and mining and a person to be elected by the Committee from among the members referred to in paragraphs (5), (6), and (7) of subsection (a) of this section.

[(e) The Committee shall develop a national plan for research in mining and mineral resources, considering ongoing efforts in the universities, the Federal Government, and the private sector, and shall formulate and recommend a program to implement the plan utilizing resources provided for under this Act. The Committee shall submit such plan to the Secretary, the President, and the Congress on or before March 1, 1986, and shall submit an annual update of such plan by January 15 of each calendar year.

[(f) Section 10 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

[ELIGIBILITY CRITERIA

[SEC. 10. (a) The Committee shall determine the eligibility of a college or university to participate as a mining and mineral resources research institute under this Act using criteria which include—

[(1) the presence of a substantial program of graduate instruction and research in mining or mineral extraction or closely related fields which has a demonstrated history of achievement;

[(2) evidence of institutional commitment for the purposes of this Act;

[(3) evidence that such institution has or can obtain significant industrial cooperation in activities within the scope of this Act; and

[(4) the presence of an engineering program in mining or minerals extraction that is accredited by the Accreditation Board for Engineering and Technology, or evidence of equivalent institutional capability as determined by the Committee.

[(b)(1) Notwithstanding the provisions of subsection (a), those colleges or universities which, on the date of enactment of the Mining and Mineral Resources Research Institute Amendments of 1988, have a mining or mineral resources research institute program which has been found to be eligible pursuant to this Act shall continue to be eligible subject to review at least once during the period authorized by the Mining and Mineral Resources Research Institute Amendments of 1988, under the provisions of subsection (a). The results of such review shall be submitted by January 15, 1992, pursuant to section 11(a)(2) of the Mining and Mineral Resources Research Institute Amendments of 1988.

[(2) Generic mineral technology centers established by the Secretary under this Act are to be composed of institutes eligible pursuant to subsection (a). Existing generic mineral technology centers shall continue to be eligible under this Act subject to at least one review prior to January 15, 1992, pursuant to section 11(a)(3) of

the Mining and Mineral Resources Research Institute Amendments of 1988.

[SEC. 11. SHORT TITLE.

[This Act may be cited as the "Mining and Mineral Resources Institutes Act."

[SEC. 12. STRATEGIC RESOURCES GENERIC MINERAL TECHNOLOGY CENTER.

[(a) ESTABLISHMENT.—The Secretary of Interior is authorized and directed to establish a Strategic Resources Mineral Technology Center (hereinafter referred to as the "center") for the purpose of improving existing, and developing new, technologies that will decrease the dependence of the United States on supplies of strategic and critical minerals.

[(b) FUNCTIONS.—The center shall—

[(1) provide for studies and technology development in the areas of mineral extraction and refining processes, product substitution and conservation of mineral resources through recycling and advanced processing and fabrication methods;

[(2) identify new deposits of strategic and critical mineral resources; and

[(3) facilitate the transfer of information, studies, and technologies developed by the center to the private sector.

[(c) CRITERIA.—The Secretary shall establish the center referred to in subsection (a) at a university that—

[(1) does not currently host a generic mineral technology center;

[(2) has established advanced degree programs in geology and geological engineering, and metallurgical and mining engineering;

[(3) has expertise in materials and advanced processing research; and

[(4) is located west of the 100th meridian.

[(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.]

SEC. 1. SHORT TITLE.

This Act may be cited as the "Energy and Mineral Schools Reinvestment Act".

SEC. 2. POLICY.

It is the policy of the United States to maintain the human capital needed to preserve and foster the economic, energy, and mineral resources security of the United States. The petroleum and mining engineering programs and the applied geology and geophysics programs at State chartered schools, universities, and institutions that produce human capital are national assets and should be assisted with Federal funds to ensure their continued health and existence.

SEC. 3. MAINTAINING AND RESTORING HISTORIC AND EXISTING PETROLEUM AND MINING ENGINEERING EDUCATION PROGRAMS.

(a) Using the funds in the Federal Energy And Mineral Resources Professional Development Fund, the Secretary of the Interior (in this Act referred to as the "Secretary") shall provide funds to each historic and existing State-chartered recognized petroleum or mining

school to assist such schools, universities, and institutions in maintaining programs in petroleum, mining, and mineral engineering education and research. All funds shall be directed only to these programs and shall be subject to the conditions of this section. Such funds shall not be less than 35 percent of the annual outlay of funds under this Act.

(b) In this Act the term "historic and existing State-chartered recognized petroleum or mining school" means a school, university, or educational institution with the presence of an engineering program meeting the specific program criteria, established by the member societies of ABET, Inc., for petroleum, mining, or mineral engineering and that is accredited on the date of enactment of the Ocean State Options Act of 2005 by ABET, Inc.

(c) It shall be the duty of each school, university, or institution receiving funds under this section to provide for the training of undergraduate and graduate petroleum, mining, and mineral engineers through research, investigations, demonstrations, and experiments. All such work shall be carried out in a manner that will enhance undergraduate education.

(d) Each school, university, or institution receiving funds under this Act shall maintain the program for which the funds are provided for 10 years after the date of the first receipt of such funds take steps agreed to by the Secretary, to increase the number of undergraduate students enrolled in and completing the programs of study in petroleum, mining, and mineral engineering.

(e) The research, investigation, demonstration, experiment, and training authorized by this section may include development and production of conventional and non-conventional fuel resources, the production of metallic and non-metallic mineral resources, and the production of stone, sand, and gravel. In all cases the work carried out with funds made available under this Act shall include a significant opportunity for participation by undergraduate students.

(f) Research funded by this Act related to energy and mineral resource development and production may include studies of petroleum, mining, and mineral extraction and immediately related beneficiation technology; mineral economics, reclamation technology and practices for active operations, and the development of re-mining systems and technologies to facilitate reclamation that fosters the ultimate recovery of resources at abandoned petroleum, mining, and aggregate production sites.

(g) Grants for basic science and engineering studies and research shall not require additional participation by funding partners. Grants for studies to demonstrate the proof of concept for science and engineering or the demonstration of feasibility and implementation shall include participation by industry and may include funding from other Federal agencies.

(h)(1) No funds made available under this section shall be applied to the acquisition by purchase or lease of any land or interests therein, or the rental, purchase, construction, preservation, or repair of any building.

(2) Funding made available under this section may be used with the express approval of the Secretary for proposals that will provide for maintaining or upgrading of existing laboratories and labora-

tory equipment. Funding for such maintenance shall not be used for university overhead expenses.

(3) Funding made available under this Act may be used for maintaining and upgrading university-owned mines and oil and gas drilling rigs used for undergraduate and graduate training and mine safety training for the industry. All requests for funding such mines and oil and gas drilling rigs must demonstrate that they have been owned by the university for 5 years prior to the date of enactment of the Ocean State Options Act of 2005 and have been actively used for instructional purposes during that time.

(4) Any funding made available under this section for research, investigation, demonstration, experiment, or training shall not be used for university overhead charges in excess of 10 percent of the amount authorized by the Secretary.

SEC. 4. FORMER PETROLEUM AND MINING ENGINEERING PROGRAMS.

A school, university, or educational institution that formerly met the requirements of section 3(b) of this Act immediately before the date of the enactment of the Offshore State Options Act of 2004 shall be eligible for funding under this Act only if it—

(1) establishes a petroleum, mining, or mineral engineering program that meets the specific program criteria and is accredited as such by ABET, Inc.;

(2) agrees to the conditions of subsections (c), (d), and (e) of section 3 and the Secretary, as advised by the Committee established by section 11, determines that the program will strengthen and increase the number of nationally available, well- qualified faculty members in petroleum, mining, and mineral engineering; and

(3) agrees to maintain the accredited program for 10 years after the date of the first receipt of funds under this Act.

SEC. 5. FUNDING OF CONSORTIA OF HISTORIC AND EXISTING SCHOOLS.

(a) Where appropriate, the Secretary may make funds available to consortia of schools, universities, or institutions that include the historic and existing petroleum and mining schools to meet the necessary expenses for purposes of—

(1) specific energy and mineral research projects of broad application that could not otherwise be undertaken, including the expenses of planning and coordinating regional petroleum, mining, and mineral engineering projects by two or more schools; and

(2) research into any aspects of petroleum, mining, or mineral engineering problems that are related to the mission of the Department of the Interior and that are considered by the Committee to be desirable.

(b) Each application for funds under subsection (a) shall state, among other things, the nature of the project to be undertaken; the period during which it will be pursued; the qualifications of the personnel who will direct and conduct it; the estimated costs; the importance of the project to the Nation, region, or States concerned; its relation to other known research projects theretofore pursued or being pursued; the extent to which the proposed project will maximize the opportunity for the training of undergraduate petroleum,

mining, and mineral engineers; and the extent of participation by nongovernmental sources in the project.

(c) No funds shall be made available under this section except for a project approved by the Secretary. All funds shall be made available upon the basis of merit of the project, the need for the knowledge that it is expected to produce when completed, and the opportunity it provides for the undergraduate training of individuals as petroleum, mining, and mineral engineers.

SEC. 6. SUPPORT FOR SCHOOLS WITH ENERGY AND MINERAL RESOURCE PROGRAMS IN PETROLEUM AND MINERAL EXPLORATION GEOLOGY, PETROLEUM GEOPHYSICS, OR MINING GEOPHYSICS.

(a) Up to 20 percent of the annual outlay of funds under this Act may be granted to schools, universities, and institutions other than those described in sections 3, 4, and 5.

(b) The Secretary, as advised by the Committee established by section 11, shall determine the eligibility of a college or university to receive funding under this Act using criteria that include—

(1) the presence of a substantial program of undergraduate and graduate instruction and research in petroleum geology, mineral exploration geology, economic geology, mining geology, petroleum geophysics, mining geophysics, geological engineering, or geophysical engineering that has a demonstrated history of achievement;

(2) evidence of institutional commitment for the purposes of this Act that includes a significant opportunity for participation by undergraduate students;

(3) evidence that such school, university, or institution has or can obtain significant industrial cooperation in activities within the scope of this Act;

(4) agreement by the school, university, or institution to maintain the programs for which the funding is sought for the 10-year period beginning on the date the school, university, or institution first receives such funds; and

(5) requiring that such funding shall be for the purposes set forth in subsections (e), (f), and (g) of section 3 and subject to the conditions set forth in section 3(h).

SEC. 7. DESIGNATION OF FUNDS FOR SCHOLARSHIPS AND FELLOWSHIPS.

(a) The Committee shall recommend to the Secretary the designation and utilization of not more than 30 percent of the annual outlay of funds under this Act for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

(b) In order to receive a scholarship or a graduate fellowship, an individual student must be a lawful permanent resident of the United States or a United States citizen and must agree in writing to complete a course of studies and receive a degree in petroleum, mining, or mineral engineering, petroleum geology, mining and economic geology, petroleum and mining geophysics, or mineral economics.

(c) The regulations required by section 9 shall require that an individual, in order to retain a scholarship or graduate fellowship, must continue in one of the course of studies listed in subsection (b) of this section, must remain in good academic standing, as deter-

mined by the school, institution, or university and must allow for reinstatement of the scholarship or graduate fellowship by the Secretary, upon the recommendation of the school or institution. Such regulations may also provide for recovery of funds from an individual who fails to complete any of the courses of study listed in subsection (b) of this section after notice that such completion is a requirement of receipt funding under this Act.

SEC. 8. FUNDING CRITERIA FOR INSTITUTIONS.

(a) Funds available under this Act shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by the Secretary. Each school, university, or institution that receives funds under this Act shall—

(1) establish its plan to provide for the training of individuals as petroleum or mineral engineers and scientists under a curriculum appropriate to the field of mineral resources and mineral engineering and related fields;

(2) establish policies and procedures that assure that Federal funds made available under this Act for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available for purposes of this Act, and in no case supplant such funds; and

(3) have an officer appointed by its governing authority who shall receive and account for all funds paid under this Act and shall make an annual report to the Secretary on or before the first day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under this Act during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary.

(b) If any of the funds received by the authorized receiving officer of any institute under this Act are found by the Secretary to have been improperly diminished, lost, or misapplied, such funds shall be recovered by the Secretary.

(c) Schools, universities, and institutions receiving funds under this Act are authorized and encouraged to plan and conduct programs under this Act in cooperation with each other and with such other agencies, business enterprises and individuals.

SEC. 9. DUTIES OF SECRETARY.

(a) The Secretary, acting through the Assistant Secretary for Land and Minerals Management, shall administer this Act and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions not later than 1 year after the enactment of the Ocean State Options Act of 2005.

(b) The Secretary shall furnish such advice and assistance as will best promote the purposes of this Act, shall participate in coordinating research initiated under this Act, shall indicate to schools, universities, and institutions receiving funds under this Act such lines of inquiry that seem most important, and shall encourage and assist in the establishment and maintenance of cooperation by and between such schools, universities, and institutions and between

them and other research organizations, the Department of the Interior, and other Federal agencies.

(c) On or before the first day of July of each year beginning after the date of enactment of this sentence, schools, universities, and institutions receiving funds under this Act shall certify compliance with this Act. An individual granted a scholarship or fellowship with funds provided under this Act, shall through their respective school, university, or institution, advise the Secretary upon completion of the course of studies and the awarding of the degree within 30 days after the award. As needed the Secretary shall ascertain whether the requirements of this Act have been met by schools, universities, and institutions and individuals.

SEC. 10. COORDINATION.

(a) Nothing in this Act shall be construed to impair or modify the legal relationship existing between any of the schools, universities, and institutions under whose direction an institute is established with funds provided under this Act and the government of the State in which it is located. Nothing in this Act shall in any way be construed to authorize Federal control or direction of education at any school, university, or institution.

(b) The programs authorized by this Act are intended to enhance the Nation's petroleum, mining, and mineral engineering education programs and to enhance educational programs in petroleum and mining exploration and to increase the number of individuals enrolled in and completing these programs. To achieve this intent, the Secretary and the Committee established by section 11 shall receive the continuing advice and cooperation of all agencies of the Federal Government concerned with the identification, exploration, and development energy and mineral resources.

(c) Nothing in this Act is intended to give or shall be construed as giving the Secretary any authority over mining and mineral resources research conducted by any agency of the Federal Government, or as repealing or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with regard to mining and mineral resources.

(d) The schools, universities, and institutions receiving funding under this Act shall generally make publicly available the information and reports on projects completed, in progress, or planned with funds provided under this Act. This information shall be made available on an annual basis. All uses, products, processes, patents, and other developments resulting from any research, demonstration, or experiment funded in whole or in part under this Act shall be made available promptly to the general public, subject to exception or limitation, if any, as the Secretary may find necessary in the public interest or national security. Schools, universities, and institutions receiving patents for inventions funded in whole or in part under this Act shall be governed by the applicable Federal law, except that one percent of gross revenues derived from such patents shall be paid by the schools and the institutions to the Federal Energy and Mineral Resources Professional Development Fund established by section 6523(a) of the Ocean State Options Act of 2005.

SEC. 11. COMMITTEE ON PETROLEUM, MINING, AND MINERAL ENGINEERING AND ENERGY AND MINERAL RESOURCE EDUCATION.

(a) The Secretary shall appoint a Committee on Petroleum, Mining, and Mineral Engineering and Energy and Mineral Resource Education composed of—

(1) the Assistant Secretary of the Interior responsible for land and minerals management, or a delegate of such Assistant Secretary, and not more than 16 other persons who are knowledgeable in the fields of mining and mineral resources research, including 2 university administrators one of whom shall be from historic and existing petroleum and mining schools; a community, technical, or tribal college administrator; a career technical education educator; 6 representatives equally distributed from the petroleum, mining, and aggregate industries; a working miner; a working oilfield worker; a representative of the Interstate Oil and Gas Compact Commission; a representative from the Interstate Mining Compact Commission; a representative from the Western Governors Association; a representative of the State geologists, and a representative of a State mining and reclamation agency. In making these 16 appointments, the Secretary shall consult with interested groups.

(2) The Assistant Secretary for Land and Minerals Management, in the capacity of the Chairman of the Committee, may have present during meetings of the Committee representatives of Federal agencies with responsibility for energy and minerals resources management, energy and mineral resource investigations, energy and mineral commodity information, international trade in energy and mineral commodities, mining regulation and mine safety research, and research into the development, production, and utilization of energy and mineral commodities.

(b) The Committee shall consult with, and make recommendations to, the Secretary on all matters relating to funding energy and mineral resources research and the awarding and allocation of funding made under this Act. The Secretary shall consult with, and consider recommendations of, such Committee in such matters.

(c) Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing Committee business, paid at a rate fixed by the Secretary but not in excess of the daily equivalent of the maximum rate of pay for level IV of the Executive Schedule under section 5136 of title 5, United States Code, and shall be fully reimbursed for travel, subsistence, and related expenses.

(d) The Committee shall be chaired by the Assistant Secretary of the Interior responsible for land and minerals management. There shall also be elected a Vice Chairman by the Committee from among the members referred to in this section. The Vice Chairman shall perform such duties as are determined to be appropriate by the committee, except that the Chairman of the Committee must personally preside at all meetings of the full Committee.

(e) Following completion of the report required by section 385 of the Energy Policy Act of 2005, the Committee shall consider the recommendations of the report, ongoing efforts in the schools, universities, and institutions receiving funding under this Act, the Federal

and State Governments, and the private sector, and shall formulate and recommend to the Secretary a national plan for a program utilizing the fiscal resources provided under this Act. The Committee shall submit such plan to the Secretary for approval. Upon approval, the plan shall guide the Secretary and the Committee in their actions under this Act.

(f) Section 10 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

SEC. 12. CAREER TECHNICAL EDUCATION.

(a) Up to 15 percent of the annual outlay of funds under this Act may be granted to schools or institutions including, but not limited to, colleges, universities, community colleges, tribal colleges, and technical institutes other than those described in sections 3, 4, 5, and 6.

(b) The Secretary, as advised by the Committee established under section 11, shall determine the eligibility of a school or institution to receive funding under this section using criteria that include—

(1) the presence of a substantial program of training, including vocational education for individuals seeking to enter the oil and gas, coal mining, or mineral mining industries in a skilled technical trade offered by the schools or institutions referred to in subsection (a); or

(2) the presence of a State-approved program of career technical education at a secondary school, offered cooperatively with a schools or institutions referred to in subsection (a) in one of the industrial sectors of—

(A) agriculture, forestry, or fisheries;

(B) utilities;

(C) construction;

(D) manufacturing; and

(E) transportation and warehousing.

(c) Schools or institutions receiving funds under this section must show evidence of an institutional commitment for the purposes career technical education and provide evidence that the school or institution can obtain industrial cooperation in activities within the scope of this Act.

(d) Schools or institutions receiving funds under this section must agree to maintain the programs for which the funding is sought for a period of 10 years beginning on the date the school or institution receives such funds, unless the Secretary finds that a shorter period of time is appropriate for the local labor market or is required by State authorities..

DISSENTING VIEWS

The Committee on Resources is instructed by the Budget Resolution to raise $2.4 billion in revenue in the five-year period prior to October 1, 2010. Yet, instead of responsibly raising revenue to address our nation's serious budgetary problems, the committee's Majority has chosen to abuse the budget process to promote misguided and controversial legislation which has little relevance to deficit reduction. To the contrary, the committee's recommendations to the Committee on the Budget impose substantial, long-term costs on both the American taxpayers and the environment.

The committee's recommendations would radically alter laws applicable to the management of our nation's public resources by repealing:

- The 25-year-old prohibition on oil and gas development in the Arctic National Wildlife Refuge in Alaska;
- The 13-year-old ban on issuing patents to allow mining companies to obtain title to public lands at nominal cost under the Mining Law of 1872; and,
- The 24-year-old moratorium on oil and gas leasing on Outer Continental Shelf (OCS) lands offshore east and west coast states.

In addition, the committee's proposal would subsidize and fast-track oil shale development across the west and sell federal lands and properties in Nevada, Idaho and the District of Columbia, the latter in a manner undercutting a carefully negotiated agreement.

The committee's budget reconciliation recommendations not only represent misplaced priorities but also missed opportunities.

Rather than attempting to disguise the Arctic National Wildlife Refuge controversy as a budget matter—when any ANWR revenues are highly speculative—the committee could have met its budgetary obligations by modestly raising fees and royalties on the oil and gas industry, which is profiting at record levels from access to public lands and resources under current law. Rather than open the door to more abuses and giveaways of public lands to the hard rock mining industry, as is the case with the sham reform in Subtitle B, the committee could have generated hundreds of millions of dollars in revenue by establishing a royalty on the value of such minerals extracted from public lands.

The committee's recommendations for fundamentally altering the system governing oil and gas leasing on Outer Continental Shelf (OCS) lands is yet another egregious abuse of the budget—and the public—process. The product of closed-door negotiations, the complex legislative scheme in Subtitle E has not been subject to a single day of public hearings, even though it affects millions of Ameri-

cans, particularly those who live in coastal states. Short-term revenue gain (e.g., from the controversial Lease Sale 181 off the Florida coast) would be offset by revenue sharing provisions for producing states and the creation of new spending programs, which, in the long-term, would divert billions of dollars annually away from the Treasury.

And in a provision which is inexplicable at a time of record oil and gas industry profits and bizarrely contrary to budget reconciliation, the OCS subtitle also includes language (Section 6524) which "notwithstanding any other provision of law" permanently prohibits any increase in existing fees (beyond CPI) or the creation of new fees "applicable to actions on Federal onshore and offshore oil and gas, coal, geothermal and other mineral leases, including transportation of any production from such leases." In an era of enormous budget deficits, enacting such a prohibition on new revenue would be utterly irresponsible.

DEMOCRATIC AMENDMENTS

Democratic Members offered the following amendments to the Budget Reconciliation Committee Print at the markup on Wed., October 26, 2005. All of the Democratic amendments were rejected by roll call votes and the Committee Print was approved by a vote of 24 to 16 with 14 Democratic Members voting no.

Subtitle A—Arctic National Wildlife Refuge Oil and Gas Leasing

(1) MARKEY AMENDMENT—Strikes ANWR leasing authority and instead directs the Secretary of the Interior to raise $2.4 billion in oil and gas fees and royalties.

(2) KIND AMENDMENT—To assure that ANWR revenue provisions will be enforceable, requires that the State of Alaska agree to a 50/50 percent split with the U.S. Treasury as a pre-condition for leasing.

(3) GRIJALVA AMENDMENT—Requires that the Arctic Slope Regional Corporation comply with the Alaska Native Claims Settlement Act's revenue sharing requirement (for other Alaska Natives) as a pre-condition for leasing.

(4) INSLEE AMENDMENT—Strikes NEPA waivers.

Subtitle B—Hard Rock Mining

(5) TOM UDALL AMENDMENT—Strikes (Mining) Subtitle B.

(6) INSLEE AMENDMENT—Imposes 8 percent royalty on hard rock mining on public lands.

Subtitle D—Oil Shale

(7) MARK UDALL AMENDMENT—Requires consultation with states (current law), deletes minimum leasing mandate, and strikes mandatory royalty reduction requirements.

Subtitle E—Outer Continental Shelf (OCS) Oil and Gas Leasing

(8) PALLONE AMENDMENT—Strikes (OCS) Subtitle E

SUBTITLE ANALYSIS

Subtitle A—Arctic National Wildlife Refuge Oil and Gas Leasing

Subtitle A of the Committee Print authorizes oil and gas leasing in the Arctic National Wildlife in Alaska. The bill purports to split the revenue from the Federal lands equally with the State of Alaska, ostensibly resulting in $2.5 billion in receipts for the U.S. Treasury and $2.5 billion for the State of Alaska over five years (based on the CBO cost estimate for H.R. 6).

Including ANWR in Budget Reconciliation raises a number of issues, among them:

(1) The oil and gas industry is not actively lobbying for ANWR. CBO's estimate that ANWR will produce $5 billion in total revenue over the first five years is based on bureaucratic economic modeling at the Department of the Interior. In the real world, the major oil and gas companies which operate in Alaska have shown little public enthusiasm for opening ANWR, casting serious doubt on whether they would invest billions to make ANWR the biggest dollar lease sale in U.S. history as anticipated by the Department. See: "Big Oil Steps Aside in Battle Over the Arctic," New York Times, February, 21, 2005. *http://www.nytimes.com/2005/02/21/politics/21refuge.html.*

(2) Minimal revenue from comparable lease sales in the National Petroleum Reserve—Alaska casts doubt on ANWR revenue estimates. NPR–A is located on the North Slope of Alaska to the west of Prudhoe Bay. The Department of the Interior held a 1.4 million acre lease sale in 2004 (comparable in size to the 1.5 million acre ANWR coastal plain) that generated only $54 million in bonus bids. By contrast, CBO is relying on Department of the Interior projections that ANWR will produce $5 billion or 93 times the revenue that was generated in the real world NPR–A sale.

(3) The State of Alaska will file a lawsuit to claim 90 percent of the ANWR revenue. Under the Alaska Statehood Act—which is current law—the State of Alaska receives 90 percent of oil and gas leasing revenue from federal lands. The state legislature has repeatedly endorsed preservation of the 90/10 split between the state and federal government for ANWR revenues and a lawsuit over this issue is inevitable since the Committee Print provides for the revenues to be equally divided. Accordingly, ANWR revenues would be tied up in court-ordered escrow for years and, ultimately, if the state prevails in its claim that it is entitled to 90 percent under the terms of its admission to the Union, the federal share would be reduced to ten percent or only $500 million (instead of $2.5 billion under the CBO projections).

(4) Senate Byrd Rule means that environmental, labor and Native legislative provisions will be dropped if ANWR is included in a budget reconciliation conference report. The Senate Energy Committee held a markup on Wed. October 20,2005 and—in order to comply with the Senate Byrd Rule on matters extraneous to budget reconciliation—reported ANWR legislation which is significantly different than what is contained in the Committee Print. *http://energy.senate.gov/public/index.cfm ?FuseAction=IssueItems.View&IssueItem ID=25*

Notably, in order to comply with the Byrd Rule, the Senate Energy Committee eliminated from its ANWR legislation:

- the ban on exporting ANWR oil;
- the requirement for project labor agreements;
- environmental safeguards (further weakening the House bill and resulting in far less legal protection for ANWR than applies under current law to any other federal land in the nation); and,
- authority for Alaska Native corporations to receive revenues from the development of their lands.

In order to attempt to address the Byrd Rule problems, Senators Murkowski and Stevens introduced companion legislation, S. 1891, to restore provisions contained in the House-passed version of H.R. 6 (and the Committee Print). However, that bill would be subject to a filibuster and its prospects for passage are uncertain at best.

Subtitle B—Hard Rock Mining

Right to Mine: Section 6201 revises the mining law to give companies the right to claim public lands "for hardrock mining" (e.g., gold and silver) whether or not there is a valuable mineral deposit within the claim. Under current law, a company must prove it has a properly staked and maintained claim on a valuable mineral deposit before the right to mine is established. The Committee Print allows mining companies to secure this right to mine by simply filing a claim application and paying a small fee with the Bureau of Land Management. This section also lowers mining maintenance fees from $125 under current law to $35 for the first 5 years.

Patents: Section 6202 eliminates the current Congressional ban on the "patenting" of mining claims on public lands. Under the 1872 Mining Law, mining companies can patent—buy—public land for $2.50 or $5 an acre. Since 1994, Congress has placed a moratorium on patenting, in each annual Interior Appropriations bill. Under the Committee Print, as amended, mining companies would be able to buy full-fee-title (surface and subsurface) to public land for either $1,000 an acre or the fair-market value of the surface (without consideration of the value of the minerals contained in the land), whichever is greater. In addition, the buyer would pay a $2,500 processing fee for the first claim and $50 processing fee for each additional claim. Small miners, under this section, defined as those that hold 10 claims or less, would pay one-fifth of what larger companies would be required to pay.

This section would facilitate the transfer of public lands to the mining industry by eliminating the standard tests of the 1872 Mining law to ensure that the assets being divested will be developed for mining purposes. The Committee Print eliminates the existing "discovery of a valuable mineral" requirements that must be met before a patent is issued, enshrines a mining company's "right to mine" regardless of whether or not they have a valuable mineral deposit and eliminates the ability of concerned citizens to challenge mining company patents. The Committee Print allows companies to patent—or buy—public land without proving they have a valuable mineral deposit as long as they (a) already have a permit to mine or (b) have reported to the Security Exchange Commission that a "probable" mineral reserve is located in the claim. The Committee

Print would enable mining companies to easily purchase public land without having to prove that they can or will construct a viable mine on the property. Thus, lands sold off through these purchases could be used for non-mining purposes, such as resort or other commercial development.

This section also prohibits any other fees or fair-market-value assessments to be applied to "prospecting, exploration, development, mining, processing, or reclamation, and uses reasonably incident thereto"—which would prohibit the government from levying any royalty or other production fee on mining operations.

Finally, this section provides funding for new federal programs that would not be subject to appropriations. Of the revenues collected under this section, 10% are allocated to the Federal Energy and Mineral Resources Fund (created under section 6514 of the OCS subtitle), 20% to the Army Corps of Engineers to pay for the restoration of abandoned mine sites and the remaining 70% to the Treasury.

Mining in Protected Areas: Section 6203, as amended, allows the Secretary to approve a plan of operations without a mineral examination report for mines in withdrawn areas if there are already patented or unpatented claims contiguous to such areas where mining activities are already occurring. This allows mining companies to mine in public lands, such as National Forests and lands managed by the Bureau of Land Management, (including Wilderness Study Areas) without proving the existence of a valid mineral deposit.

Public Lands Give-Away: Section 6204 allows individuals to purchase "mineral development lands"—any land with a mineral deposit as well as lands that were once mineralized and have been previously mined—for "sustainable economic development." This section also allows anyone who holds mining claims or millsites where mineral development has occurred, as authorized by law or regulation, to purchase those lands. This section would apply to public lands, such as National Forests and lands managed by the Bureau of Land Management, including Wilderness Study Areas.

Offsite Mitigation: Finally, Section 6518 of the OCS Subtitle allows any mitigation required for energy projects, both on and offshore, including activity under the Mineral Leasing Act, the Mining Law of 1872 and other federal statutes, to be performed at sites away from the area actually impacted by the energy and/or mineral production activity.

Subtitle C—Disposal of Public Lands in Nevada and Idaho

Subtitle C—Chapter 1: Disposal of Certain Public Lands in Nevada

Chapter 1 directs the Secretary of the Interior to convey 7000 acres of public land in Pershing County, Nevada to a mining company in return for the payment of $500 per acre. The legislation waives the conveyance from any review or approval under Federal law. Of the proceeds from the conveyance, up to $20,000 is made available to the Nevada BLM, $500,000 is paid directly to the State of Nevada, and $100,000 is paid directly to Pershing County. The remainder of the proceeds are to be deposited in the general fund of the Treasury.

Subtitle C—Chapter 2: Disposal of Certain Public Lands in Idaho

Chapter 2 directs the Secretary of the Interior to convey 519.7 acres of public land in Custer County, Idaho to a mining company in return for the payment of $1000 per acre. The legislation waives the conveyance from any review or approval under Federal law. Of the proceeds from the conveyance, up to $20,000 is made available to the Idaho BLM, $200,000 is paid directly to the State of Idaho, and $200,000 is paid directly to Custer County. The remainder of the proceeds are to be deposited in the general fund of the Treasury.

Subtitle D—Oil Shale

States Rights Eliminated: Section 6401 would amend Section 369 of the Energy Policy Act of 2005 signed in August, which provides that before any new large-scale leasing program (as opposed to the smaller-scale leasing for experimental purposes now getting underway), the Interior Department must:

(1) Prepare a programmatic environmental impact statement, to be finished within 18 months after the new law: this is already getting underway;

(2) Issue new leasing regulations (deadline is 6 months after completion of the EIS); and then

(3) Consult with relevant Governors, local governments, interested Indian tribes, and other interested persons, to determine the level of support for development of oil shale resources.

The Committee Print would eliminate the requirement that Interior consult with the Governors of affected States, local governments, and others to determine whether there is support for development of oil shale in Colorado, Wyoming, Utah or other affected States.

Fast-Track Oil Shale Development: The Committee Print would require Interior to lease a MINIMUM of 35% of "the Federal lands that are geologically prospective for oil shale and tar sands within Colorado, Utah, and Wyoming" and to do so no later than 1 year after publishing the new leasing regulations. It is not clear whether this means 35% of such lands in EACH state, or 35% of the total in the 3 states. In either case, this is a requirement for a very fast, large-scale commercial leasing program.

No Criticism or Challenges Allowed: As noted, current law requires Interior to prepare a programmatic EIS prior to issuing the new leasing regulations. The Committee Print provides that this EIS—which has not yet been written—"is deemed to provide adequate environmental analysis for all oil shale and tar sands lease sales conducted within the first 10 years after promulgation of the regulations, and such sales shall not be subject to further environmental analysis."

In other words, the Committee Print would preclude for a full decade any challenge to the adequacy of whatever EIS the Interior Department may produce. This overrides any concerns the States, local governments, and public citizens may have with any aspect of the EIS, and would do so preemptively, before the EIS has even been written.

Price-Fixing: Section 369(o) of Energy Policy Act of 2005 directs the Interior Department to set oil-shale royalty rates that will "(1)

encourage development of the oil shale and tar sands resource; and (2) ensure a fair return to the United States [i.e. the taxpayers]."

The Committee Print would repeal this requirement and replace it with detailed provisions specifying what royalty rates are to be charged for the first 1 0 years of commercial oil shale production, and require that after that the rates must be adjusted according to a formula tied to certain oil prices. Since this formula has not been subject to a legislative hearing, one can only conclude that this looks like micro-management at best, and raises the question of whether it is fair to the taxpayers.

The remainder of the subtitle (starting on line 24 of page 59) addresses the allocation of federal revenues from oil shale/tar sands royalties. Under this part of the committee print all royalties would go into a separate Treasury account; 50% of the return from each lease would be allocated to the state where the leased lands are located, with two-thirds of each state's share going to the state government and one-third to the county and municipal governments. Any remaining revenues would go to miscellaneous receipts in the Treasury (pp 60–62). A recipient government could use the money for "any lawful purpose as determined by state law" and would not count as offsets to reduce PILT payments. It is not known whether this subtitle would raise or reduce federal revenues.

Subtitle E—Outer Continental Shelf (OCS) Oil and Gas Leasing

OCS-Offshore Drilling: The Committee Print contains provisions in Subtitle E—Ocean Energy Resources that would affect radical change to the current law applicable to management of oil and gas resources on the federal Outer Continental Shelf (OCS). This subtitle is similar to one considered by the Committee in the Energy 2 legislation marked-up in September; however, it has not been subject to a legislative hearing. Among its major provisions, Subtitle E includes the following:

Moratoria on Offshore Drilling: Section 6515 opens all areas of the Outer Continental Shelf (OCS) to potential oil and gas exploration and development by repealing the offshore drilling moratorium which has been enacted annually by Congress since 1980. Section 6515 provides that:

> "All provisions of existing Federal law prohibiting the spending of appropriated funds to conduct oil and natural gas leasing and preleasing activities for any area of the outer Continental Shelf shall have no force or effect."

Although Section 6509 of the Committee Print extends the moratoria areas until June 30, 2012 (a date consistent with the expiration of the Presidential Executive Order prohibiting OCS leasing in those areas), a state may choose to be exempted from the moratoria and leasing could occur anytime prior to 2012 within 125 miles of its coastline. In essence, decision-making authority to allow and set conditions for offshore oil and gas leasing on the federal OCS would be delegated to the states, specifically to the governor and legislature of coastal states.

After the expiration of any remaining moratoria in 2012, states that still opposed OCS development would be required to petition the Department of the Interior to keep the moratoria. *Beyond 125*

miles, however, the moratoria would expire even if a state opposed leasing in that area off its coast.

CZMA Consistency & States' Rights: Provisions contained in Subtitle E would have profound negative consequences for implementation of the Coastal Zone Management Act. Policy changes under this subtitle completely re-write the 1990 amendments to the CZMA which clarified that OCS oil and gas activities fall squarely within the Federal consistency review authority of coastal states. Section 6503 would replace the OCSLA definition of "affected state" with a new, weaker definition for "adjacent state" that would eliminate inclusion of states negatively impacted by OCS activities. Section 6502 would declare arbitrarily that OCS activities as close as 25 or 50 miles from the coast have no "reasonably foreseeable" adverse impact. Additionally, section 6512 would categorically exclude oil and gas activities from having to prepare environmental impact statements or environmental assessments under the National Environmental Policy Act further restricting review opportunities by concerned coastal states. The practical effect of these changes would be to override the Federal consistency protections currently authorized under the CZMA for states seeking to protect their coasts from OCS activities. This subtitle also contains a provision (section 6521) that would allow the oil and gas industry to evade their legal responsibility to remove decommissioned rigs and platforms from the OCS in favor of promoting other controversial uses, such as open ocean aquaculture.

Incentives to Drill/Decreased Federal Revenues: Section 6507 provides significant incentives for coastal states and local political subdivisions to open OCS lands off their respective coastlines. The bill provides a very complicated and multi-tiered set of formulae for allocating and disbursing federal revenues to coastal states that allow offshore drilling adjacent to their states. In short, the Committee print would ultimately divert 40% of federal oil and gas leasing bonus bids and royalties from OCS leasing to participating States, costing the U.S. Treasury billions of dollars in future revenues.

The subtitle would also create 3 new federal programs (sections 6514, 6523 and 6526) that would be funded, without further appropriation, from OCS revenues. Permissible expenditures of OCS receipts by a state are unlimited (including to "to reduce taxes") and no accounting to the federal government is allowed.

Natural Gas OCS Leasing Required by 2006: Section 6505 requires that the federal government have a "natural gas only" leasing program by October 1, 2006.

Florida Lease Sale 181/DOD Issues: Section 6509 transfers certain lands included in the controversial proposed Lease Sale 181, now considered to be off Florida's coastline, to Alabama and requires that this parcel be sold within 90–days of enactment. The Final EIS done for Lease Sale 181 is deemed sufficient to meet the NEP A requirements for this new federal OCS leasing action. Moreover, Senator Nelson (D–FL) has objected to this language and has written to Chairman Pombo on October 19, 2005:

> "Unfortunately, your proposal to expand drilling in the eastern Gulf undermines the long-standing agreement between the Department of Defense and the Department of the Interior

that has allowed this critical testing and training space to remain open. That arrangement, first established by the Reagan Administration in 1983, gives the Air Force say over the sale of drilling leases in the eastern Gulf to protect U.S. military readiness from falling prey to oil-drilling interests."

"Compensation" for Lessees: Section 6506 establishes "rights to produce" oil and gas and devises a formula for "compensation" to the holders of leases not in production.

Leasing Mandate: Section 6510 requires that the Secretary of the Interior lease "at least" 75 percent of the available unleased acreage within each OCS Planning Area.

Incompatible Activities Prohibited: Section 6516 prohibits construction or operation of any "facility, restricted transportation corridor or operating area" in the OCS that is incompatible with energy leasing, production or exploration. The President may grant exceptions to this prohibition after a finding that the activity is in the "national interest."

Override of State's Rights for Pipelines: Section 6511 prohibits coastal states from blocking construction and landing of natural gas pipelines within their borders unless the state provides two alternatives in an adjacent state, acceptable to the adjacent state.

Offsite Mitigation: Section 6518 allows any mitigation required for energy projects, both on and offshore, including activity under the Mineral Leasing Act, the Mining Law of 1872 and other federal statutes, to be performed at sites away from the area actually impacted by the energy production activity.

Lease Exchange: Section 6527 would allow undeveloped existing leases near the coastlines of Florida and California to be exchanged for leases beyond 100 miles from the coastline at the request of the leaseholder, even if that lease is located within a withdrawn area. This provision applies to 37 existing leases located off California's Central Coast and 66 leases adjacent to Florida.

Subtitle F—Sale of Federal Land in the District of Columbia

After extensive negotiations between the District of Columbia, the Department of the Interior, the National Park Service and Members of Congress complex legislation dealing with a list of federally owned parcels in the District was introduced in September. Original cosponsors of H.R. 3699 were Representatives Davis, Norton and Van Hollen. Representatives Duncan, Cannon and Drake have since signed onto the bill.

The legislation contains a complicated series of land exchanges and sales designed to provide the District with more land in and around the Anacostia Waterfront and elsewhere while also streamlining NPS land management in the area. H.R. 3699 was reported by the Government Reform Committee by voice vote on September 29. The bill was sequentially referred to the Resources Committee which has taken no action.

Subtitle F of the Committee Print makes drastic changes to the proposal contained in H.R. 3699. Most significantly, a number of parcels, including Poplar Point along the Anacostia waterfront and Mount Vernon Square across the street from the Convention Center, which were to be traded or sold to the District, are now authorized for sale to the highest bidder. Furthermore, certain open space

requirements that were to be included in the sales to the District and several parcels that would have been transferred from the District to DOl under H.R. 3699 are not included in the Committee Print.

NICK J. RAHALL, II.
GEORGE MILLER.
EDWARD J. MARKEY.
DALE E. KILDEE.
PETER A. DEFAZIO.
FRANK PALLONE, Jr,
DONNA CHRISTENSEN.
JAY INSLEE.
GRACE NAPOLITANO.
TOM UDALL.
RAÚL GRIJALVA.
MARK UDALL.

ADDITIONAL VIEWS OF REPRESENTATIVE MARK UDALL

I voted against this proposed reconciliation legislation because I oppose many of its provisions, including several parts—not all—of Subtitle D, which deals with oil shale.

Oil shale has great potential as an energy source, so it's an important part of our energy policy. And it's important to the taxpayers, who own most of it. They have an interest in what return they will get for this resource.

But it's particularly important for Colorado.

Our state has some of the most important deposits of oil shale, and Coloradans—particularly those on the Western Slope—will be directly affected by its development.

A new report from the RAND Corporation spells out the great benefits that can come from developing oil shale. But it also makes clear it's important for the development to happen in the right way.

The report says oil shale development will have significant effects, not just on the land but also on air quality and on both the quality and quantity of our very limited water supplies. And it says what Coloradans know already—large-scale oil shale development will bring significant population growth and is likely to put stress on the ability of local communities to provide needed services.

In short, the report reminds us how much Colorado and our neighbors had at stake when Congress debated the oil shale provisions of the new Energy Policy Act that's been on the books for just over two months now.

While there are lots of things in that law I don't like, I think the parts dealing with oil shale are appropriate and deserve a chance to work before we rush to change them.

But this legislation would tear up that part of the new law and replace it with provisions that not only would be bad public policy but would be a direct threat to Colorado.

I offered an amendment that would have revised subtitle D in several important ways:

To begin with, the current law says that the Interior department has to consult with the Governor of Colorado and other relevant states, as well as with local governments and other interested parties, before going ahead with large-scale oil shale leasing.

Subtitle D repeals that requirement for consultation. My amendment would have retained it.

Similarly, current law permits an orderly, measured program for oil shale development. But subtitle D would mandate a massive development program on a crash basis.

It says Interior would have to lease *a minimum* of 35% of the oil shale lands in Colorado, Utah, and Wyoming within just a one-year period. It's not clear if this means 35% of the three-state total or 35% of the oil-shale lands in each state. Either way, it's a requirement for a very fast, large-scale commercial leasing program:

The Interior Department says there are about 16,000 square miles of oil shale lands in Colorado, Utah, and Wyoming combined. That's more than 10 million acres, and about 72% of that is federal land. So, even if the intent is to require leasing 35% of the three-state total, not 35% in each state, that's more than 2.5 million acres—all in one year!

Mandating leases for that much land, that fast, risks putting a big part of Northwestern Colorado on the fast track to becoming a national sacrifice zone. It's déjà vu all over again—back to the mistaken crash-development policy of the Carter Administration. That was a mistake then and it would be a mistake now.

My amendment would have deleted that part of subtitle D, allowing current law to stand.

Also, current law requires the Interior Department to prepare a programmatic environmental impact statement (EIS) on oil shale, with a tight deadline for completion. That's the right thing to do. Work has started on that EIS, and Coloradans look forward to reading it.

But I guess reading something first is too old-fashioned for the supporters of Subtitle D. The subtitle says that the EIS is "deemed" to be good enough—meaning that it cannot be questioned or challenged—and no further environmental analysis will be done for a full 10 years—no matter what problems the State of Colorado or anyone else may have with the EIS.

That's like giving an "A" grade before a student even turns in the homework—it may be good for the student's "self-esteem," but it doesn't ensure careful work.

And careful work on oil shale is essential because the stakes are so high for Colorado's land, water, and communities.

So, my amendment would have deleted that part of subtitle D and allowed current law to stand.

Finally, current law tells the Interior Department to set oil-shale royalty rates that will do two things—encourage development of oil shale and also ensure a fair return to the taxpayers.

But subtitle D would repeal this, replacing it with specific rates to be charged for the first 10 years of commercial oil shale production, and requiring that after that the rates must be adjusted according to a formula tied to certain oil prices. This is a blatant example of micro-management, with nothing to show it is fair to the taxpayers.

My amendment would have deleted that that attempt at long-term political price-fixing, and replaced it with the language of the current law.

I do not think these provisions of subtitle D help meet the committee's budget reconciliation goals. So, there's no need for them to be included in this legislation. But they are worse than unnecessary. They are bad for Colorado and bad for the country. They should have been deleted, and current law should have been allowed to stand—which is what my amendment would have accomplished.

MARK UDALL.

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,

Washington, DC, October 28, 2005.

Hon. JIM NUSSLE,

Chairman, Committee on the Budget, 309 Cannon House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to section 201(a) of the Concurrent Resolution on the Budget, I hereby transmit the required recommendations and the appropriate accompanying material to the House Committee on the Budget. These recommendations were approved by vote of the Committee on Transportation and Infrastructure on October 26, 2005. This submission is for the purpose of complying with reconciliation directives included in H. Con. Res. 95, the fiscal year 2006 budget resolution and is consistent with section 310 of the Congressional Budget and Impoundment Control Act of 1974.

Sincerely,

DON YOUNG,
Chairman.

Enclosures.

SUMMARY OF THE LEGISLATION

Sec. 7001. Extension of vessel tonnage duties

This provision temporarily increases the existing vessel tonnage duties that are imposed on the cargo-carrying capacity of vessels that enter the United States from any foreign port or place, or depart from and return to a United States port or place on a "voyage to nowhere." They are assessed regardless of whether the vessel is empty or carrying cargo. These fees are intended to offset the cost of activities performed by the U.S. Coast Guard that benefit these vessels, such as marine safety, search and rescue, and aids to navigation. The Coast Guard spends far more on these activities than is currently being collected by this fee, or would be collected under this proposal.

The fees were originally imposed in 1909. A tonnage duty of 2 cents per ton, not to exceed 10 cents per ton in a single year, was imposed on vessels arriving in the United States from foreign ports in North America, Central America, the West India Islands, the Bahama Islands, and Newfoundland. A duty of 6 cents per ton, not to exceed 30 cents per ton in a single year, was imposed for vessels arriving in the United States from foreign ports anywhere else in the world.

In 1990, the 2 cents per ton duty was raised to 9 cents per ton, not to exceed 45 cents per ton in a single year, and the 6 cent duty was raised to 27 cents per ton, not to exceed $1.35 cents per ton in a single year. The 1990 amendments also applied the fee to those vessels (except vessels of the United States, recreational vessels, and barges) returning from a "voyage to nowhere." These fee increases were extended twice (in 1993 and 1997), but expired in 2002.

For fiscal years 2006 through 2010, this provision increases the 2 cent duty to 4.5 cents per ton, not to exceed 22.5 cents per ton

in a single year, and the 6 cent duty to 13.5 cents per ton, not to exceed 67.5 cents per ton in a single year.

SECTION-BY-SECTION ANALYSIS

Sec. 7001. Extension of vessel tonnage duties

This section temporarily increases the vessel tonnage duties paid by vessels entering the U.S. from any port or place, and certain vessels departing from and returning to a U.S. port or place on a "voyage to nowhere." Specifically, this provision increases the vessel tonnage duty paid by vessels arriving in the U.S. from a foreign port in the northern Western Hemisphere, and by a vessel returning from a "voyage to nowhere," to 4.5 cents per ton, not to exceed 22.5 cents per ton in a single year. In addition, this provision increases the vessel tonnage duty paid by vessels arriving from a foreign port anywhere else in the world to 13.5 cents per ton, not to exceed 67.5 cents per ton in a single year. These increased rates will be in effect for fiscal years 2006 through 2010.

SUMMARY OF COMMITTEE VOTES

The Committee on Transportation and Infrastructure held a full committee markup on October 26, 2005. The committee print was adopted by voice vote.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each roll call vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no roll call votes during consideration of the bill.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals

and objective of this legislation are to ensure that users of U.S. ports contribute toward the cost of U.S. Coast Guard safety and navigation activities benefiting these users.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for the Committee Print from the Director of the Congressional Budget Office.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 27, 2005.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation recommendations of the House Committee on Transportation and Infrastructure.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

DONALD B. MAPRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

Reconciliation Recommendations of the House Committee on Transportation and Infrastructure

Summary: The legislation would increase vessel tonnage charges on vessels entering the United States from any foreign port or place. Those charges are collected by the U.S. Customs Service on behalf of the U.S. Coast Guard, and the increase would be effective for fiscal years 2006 through 2010. CBO estimates that this provision would increase offsetting receipts, which are credits against direct spending, by $156 million over the 2006–2010 period, with no effect after 2010.

This legislation contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. By increasing vessel tonnage duties, the legislation would impose new private-sector mandates. CBO estimates that the incremental di-

rect costs of complying with those mandates would average $31 million over the 2006–2010 period and thus would fall below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: CBO's estimate of the budgetary effects of this legislation is shown in the following table. The effects of this legislation fall within budget function 400 (transportation).

ESTIMATED BUDGETARY IMPACT OF THE RECONCILIATION RECOMMENDATIONS OF THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	−30	−31	−31	−32	−32	0	0	0	0	0	−156	−156
Estimated Outlays	−30	−31	−31	−32	−32	0	0	0	0	0	−156	−156

Basis of estimate: The legislation would increase, through fiscal year 2010, per-ton duties from 2 cents to 4.5 cents (up to a maximum of 22.5 cents per ton per year) on vessels entering the United States from foreign ports in the Western Hemisphere and from 6 cents to 13.5 cents (up to a maximum annual duty of 67.5 cents per ton) on those arriving from other foreign ports. After 2010, duty rates would revert to current law.

CBO estimates that enacting this legislation would increase offsetting receipts by an average of $31 million annually over the fiscal years 2006 through 2010. That estimate is based on the receipts collected from existing tonnage rates and the amounts collected before 2002 when those rates were temporarily increased. In addition, CBO assumes that shipping traffic at U.S. ports continues to grow at the rates experienced in recent years. Like collections from the existing fees, amounts received as a result of the proposed increase would be deposited in the general fund of the U.S. Treasury as offsetting receipts (as specified in the legislation).

Estimated impact on State, local, and tribal governments: The legislation contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: The legislation would impose new private-sector mandates on operators of vessels entering the United States from any foreign port or place by increasing certain vessel tonnage duties over the 2006–2010 period. The direct costs of complying with those mandates would be the incremental amounts collected by the federal government as a result of the higher rates. CBO estimates that the total incremental costs of both mandates would average $31 million annually over the 2006–2010 period and thus would fall below the annual threshold established by UMRA ($123 million, adjusted annually for inflation) in the first five years the mandates are in effect.

Estimate prepared by: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Sarah Puro; Impact on the Private Sector: Craig Cammarata.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHAP. 6.—An Act To provide revenue, equalize duties and encourage the industries of the United States, and for other purposes.

SEC. 36. That a tonnage duty of ❚9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991 through 2002,❚ *4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010,* and 2 cents per ton, not to exceed in the aggregate

10 cents per ton in any one year, for each fiscal year thereafter is hereby imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or Newfoundland, and on all vessels (except vessels of the United States, recreational vessels, and barges, as those terms are defined in section 2101 of title 46, United States Code) that depart a United States port or place and return to the same port or place without being entered in the United States from another port or place; and a duty of ❚27 cents per ton, not to exceed $1.35 per ton per annum, for fiscal years 1991 through 2002,❚ *13.5 cents per ton, not to exceed 67.5 cents per ton per annum, for fiscal years 2006 through 2010,* and 6 cents per ton, not to exceed 30 cents per ton per annum, for each fiscal year thereafter is hereby imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port. However, neither duty shall be imposed on vessels in distress or not engaged in trade.

CHAP. 86.—AN ACT concerning tonnage duties on vessels entering otherwise than by sea.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That vessels entering otherwise than by sea from a foreign port at which tonnage or light-house dues or other equivalent tax or taxes are not imposed on vessels of the United States shall be exempt from the tonnage duty of ❚9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991 through 2002, and 2 cents❚ *4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010, and 2 cents* per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter, prescribed by section thirty-six of the Act approved August fifth, nineteen hundred and nine, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes."

BILL THOMAS, CALIFORNIA,
CHAIRMAN

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CHIEF OF STAFF

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JANICE MAYS,
MINORITY CHIEF COUNSEL

October 28, 2005

The Honorable Jim Nussle
Chairman
Committee on the Budget
309 Cannon House Office Building
Washington, DC 20515

Dear Chairman Nussle:

On October 26, 2005, the Committee on Ways and Means, pursuant to H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006, ordered favorably reported, as amended, its Entitlement Reconciliation Recommendations for Fiscal Year 2006 to the Committee on the Budget. Accordingly, I am now transmitting these recommendations to you.

Enclosed please find the legislative language and the explanatory report language.

Best regards,

Bill Thomas

Bill Thomas
Chairman

Enclosures

ENTITLEMENT RECONCILIATION RECOMMENDATIONS FOR FISCAL YEAR 2006

PURPOSE AND SUMMARY

The "Entitlement Reconciliation Recommendations for Fiscal Year 2006" approved by the Committee on Ways and Means on October 26, 2005 would reform a number of programs within the Committee's jurisdiction, and result in a net savings of $8 billion in Fiscal Year (FY) 2006–2010. This provides the Committee's entitlement reconciliation recommendations, pursuant to H. Con. Res. 95, the Concurrent Resolution on the Budget for FY 2006, as reported to the Committee on the Budget.

The Committee's recommendations include provisions to reauthorize and make improvements to the Temporary Assistance for Needy Families (TANF) block grant program created under P.L. 104–193, the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (PRWORA, the 1996 welfare reform law), among other purposes. Since October 1, 2002, the authorization of TANF and related programs has been extended on a temporary basis 11 times, with the most recent extension through December 31, 2005. TANF is the primary Federal program of cash assistance for needy families.

The primary changes reflected include: (1) maintaining current record Federal funding for TANF; (2) increasing Federal funding for Child Care and Development Block Grant (CCDBG) programs; (3) improving individual and State work requirements while adding flexibility for States to satisfy these requirements; (4) encouraging healthy marriage and two-parent married families by directing $300 million per year in Federal and State funds to encourage strong families and healthy marriages, among other provisions; (5) repealing the "Byrd Amendment" enacted in the Continued Dumping and Subsidy Offset Act (CDSOA) of 2000 (P.L. 106–387); (6) gradually reducing child support administrative matching rates in conformity with other programs; (7) ending Federal matching of Federal child support incentive payments; (8) treating more Supplemental Security Income (SSI) lump sums under current law installment payment rules; and (9) clarifying eligibility for foster care and adoption payments and foster care administrative costs, consistent with current law.

SUBCOMMITTEE ACTION

On March 15, 2005, the Subcommittee on Human Resources ordered favorably reported, with amendment, to the full Committee H.R. 240, the "Personal Responsibility, Work, and Family Promotion Act of 2005," by a 7 to 4 vote with a quorum present. H.R. 240 as approved by the Subcommittee includes many of the welfare reform reauthorization policies included in Committee's entitlement reconciliation recommendations as approved on October 26, 2005.

The Subcommittee on Human Resources held a hearing on H.R. 240 on February 10, 2005. Testimony was presented by the Administration, program administrators, researchers, and advocates about programs and policies under the Subcommittee's jurisdiction

including TANF, child care, child support, foster care and adoption, and SSI.

On February 12, 2004, the Committee requested the Congressional Budget Office (CBO) to provide an economic analysis of the Continued Dumping and Subsidy Offset Act of 2000 CDSOA to aid the Committee in its deliberations in the issue, including a discussion of any significant ways in which it benefits, harms, or distorts economic activity in the United States. On March 2, 2004, CBO provided that analysis to the Committee, finding that "the distributions mandated by CDSOA are detrimental to the overall economic welfare of the United States . . ."

In January 2005, Trade Subcommittee Chairman Clay Shaw and Oversight Subcommittee Chairman Jim Ramstad reconfirmed an earlier request to the Government Accountability Office (GAO) to carry out a comprehensive review of the CDSOA and its impact on recipient industries. The GAO provided its report on September 26, 2005, finding that CDSOA is not a trade remedy law, which generally provides relief to all producers in an industry; limits CBP's ability to process payments and perform desired quality controls, thereby imposing implementation risks; and most CDSOA payments went to a select few companies. The GAO further criticized CDSOA, recommending that "[i]n considering whether to keep, modify, or repeal CDSOA, Congress should consider whether the law is achieving its purposes of strengthening U.S. trade remedy laws, restoring conditions of fair trade, and assisting U.S. producers."

On July 25, 2005, the Subcommittee on Trade requested written comments for the record from all parties interested in technical corrections to U.S. trade laws and miscellaneous duty suspension proposals, including on H.R. 1121 to repeal CDSOA. Over 150 comments were received on H.R. 1121 by the deadline of September 2, 2005.

LEGISLATIVE HISTORY

The Committee on Ways and Means marked up Entitlement Reconciliation Recommendations for Fiscal Year 2006 on Wednesday, October 26, 2005, and ordered the Recommendations favorably reported, as amended, by a recorded vote of 22–17, with a quorum present.

ANALYSIS OF LEGISLATION, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

(Sections 8001, 8002, and 8003 provide the Short Title, Table of Contents, and References)

SECTION 8004. FINDINGS

Present law

P.L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, made a series of findings related to marriage, responsible parenthood, trends in welfare receipt and the relationship between welfare receipt and nonmarital parenthood, and trends in and negative consequences of nonmarital and teen births.

Explanation of provision

The Committee recommendations make a series of findings related to: (1) the success of the 1996 law in moving families from welfare to work and reducing child poverty; (2) progress made by the nation in reducing teen pregnancy and births, slowing increases in nonmarital births, and improving child support collections and paternity establishment; (3) the flexibility provided by the 1996 law for States to develop innovative programs; (4) further progress to be made in promoting work, strengthening families, and enhancing State flexibility to build on the success of welfare reform; and (5) establishing the sense of Congress that increasing success in moving families from welfare to work and promoting healthy marriage and other means of improving child well-being are important government interests and the policies in Federal TANF law (as amended by this title) are intended to serve those ends.

Reason for change

The findings highlight noteworthy achievements of the landmark 1996 welfare reform law to be strengthened through various provisions of the Committee recommendations. The findings focus on the recommendations' provisions related to promoting work, reducing poverty, discouraging out-of-wedlock childbearing with a particular focus on teen pregnancy often associated with long welfare dependence, and promoting State flexibility in operating programs designed to promote healthy marriage among other means of improving child well-being.

SUBTITLE A.—TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Section 8101. Purposes

Present law

The purpose of TANF is to increase State flexibility in operating a program designed to: (1) assist needy families so that children may live in their homes or those of relatives; (2) end dependence of needy parents on government benefits; (3) reduce out-of-wedlock pregnancies; and (4) encourage the formation and maintenance of two-parent families.

Explanation of provision

The purpose of TANF is to improve child well-being by increasing State flexibility in operating a program designed to: (1) provide assistance and services to needy families so that children may live in their homes or those of relatives, (2) end dependence of needy families on government benefits and reduce poverty; (3) reduce out-of-wedlock pregnancies; and (4) encourage the formation and maintenance of healthy, two-parent married families and encourage responsible fatherhood.

Reason for change

The Committee recommendations provide an overarching TANF program purpose of improving child well-being, supported by cur-

rent law purposes of providing assistance to children, ending dependence on welfare benefits, reducing births outside marriage, and encouraging the formation and maintenance of healthy married families. The Committee recommendations also highlight that a key purpose of the TANF program is ending dependence on government benefits and reducing poverty through job preparation, work, and marriage. The Committee notes that the concepts of child well-being and reducing poverty through increased work and improved family stability are closely intertwined. In these respects the 1996 welfare reform law has achieved remarkable results, contributing to the lifting of over 1.4 million children from poverty since the law's enactment. Directing TANF programs and other efforts to be oriented toward further improving child well-being is designed in part to continue and amplify this record of success in removing children from poverty, among other purposes.

The recommendations modify the fourth program purpose to clarify the goal of encouraging the formation and maintenance of healthy, two-parent married families. Current research clearly reflects that children do best across a range of measures when raised by two married parents, especially by their own biological parents: Children raised by single parents are five times more likely to live in poverty, five times more likely to depend on welfare, two to three times more likely to show behavioral problems, and two times as likely to commit crimes or go to jail. Children raised by single parents also are more likely to suffer from abuse and neglect, commit suicide, take drugs, and drop out of school. The purposes of TANF should reflect such research, especially in keeping with the overall program interest in promoting child well-being.

Finally, the recommendations reinforce that a key TANF program purpose includes encouraging responsible fatherhood, which is essential to the healthy upbringing of children. (Section 8119 of the recommendations also provides for a new "responsible fatherhood" program authorizing grants of up to $20 million per year for this purpose.)

Section 8102. Family Assistance Grants

Present law

Provides capped grants (entitlements to States) through December 31, 2005. Nationally, annual family assistance grants total $16.567 billion for the States, District of Columbia, and the territories. Each jurisdiction's share of the national total grant equals its share of the national total FY 2002 grant. Also provides matching grants to the territories.

Explanation of provision

Extends basic block grant at current funding levels through FY 2010. Extends matching grants for the territories through FY 2010.

Reason for change

The Committee recommendations reauthorize the TANF block grant at its current level, providing States, D.C., and territories with a continuation of the record Federal funds made available in each fiscal year since 1996 despite unprecedented caseload declines

during that period. Since 1994/95 (when national caseloads and Federal funds peaked, which funding levels serve as the basis for the TANF block grant amount), welfare caseloads have fallen by 60 percent. A number of States individually and collectively continue to have significant unspent TANF balances, totaling $3.8 billion as of September 2004, according to the U.S. Department of Health and Human Services (HHS). States may use such unspent balances for additional needs in the years ahead, and other provisions in the Committee recommendations (see Section 8107, on use of funds) provide States significant new flexibility in the use of such unspent or "carryover" funds, including providing additional child care and other work supports as appropriate.

Section 8103. Promotion of Family Formation and Healthy Marriage

Present law

No provision for special grants. Up to five States may receive an out-of-wedlock bonus (totaling up to $100 million per year) for reducing out-of-wedlock birth ratios without increasing abortion rates.

Federal TANF funds may be used on activities that seek to reduce out-of-wedlock births and promote the formation and maintenance of two-parent families (TANF goals 3 and 4) without regard to families' financial need. However, all State expenditures counted toward required maintenance of effort spending (including those directed at TANF goals 3 and 4) must be for TANF-eligible families, subject to a test of financial need.

Explanation of provision

Eliminates the out-of-wedlock birth bonus. Appropriates $100 million annually for FYs 2006 through 2010 for 50 percent competitive matching grants to States, territories and tribal organizations for programs to promote healthy, married two-parent families. Grants may be used for advertising campaigns; education in high schools; marriage education, marriage skills and relationship skills programs, conflict resolution, and job and career advancement for non-married pregnant women and expectant fathers; pre-marital education and marriage skills training for engaged couples and individuals and couples interested in marriage; marriage enhancement and marriage skills training programs for married couples; divorce reduction programs; marriage mentoring programs; and programs to reduce marriage disincentives in means-tested programs, if offered in conjunction with any other listed activity.

Requires that participation in marriage promotion activities (other than media campaigns and high school education) be voluntary. Applications for marriage promotion grants must describe what the grantee will do to ensure that participation is voluntary and how potential participants will be informed that participation is voluntary. Marriage promotion grantees must also agree to consult with experts in domestic violence or relevant community domestic violence coalitions, and describe in their application for the grant how they propose to address, as appropriate, domestic violence issues.

Provides that State expenditures to reduce out-of-wedlock births and promote marriage and responsible fatherhood (TANF goals 3 and 4) may be counted toward required maintenance of effort State spending without regard to families' financial need (conforming with the rule for use of Federal TANF funds for these activities).

Adds a requirement that each State outline in its TANF State plan how it will encourage equitable treatment of married, two-parent families. The recommendations further provide (Section 8111) that Federal TANF funds used for marriage promotion shall be treated as State matching funds for marriage promotion grants; however, Federal TANF funds used for marriage promotion may not be counted toward the State's maintenance of effort spending requirement. In addition, the recommendations specify that some research and demonstration funds (Section 8115, $100 million yearly for FY 2006 through FY 2010) shall be spent primarily on activities allowed under marriage promotion grants.

Reason for change

In keeping with the TANF program purpose of encouraging the formation and maintenance of healthy, two-parent married families, the Committee recommendations refocus current out-of-wedlock birth rate reduction "bonus" funds on programs and activities designed to encourage the formation of healthy marriages and to strengthen and maintain existing marriages, for several reasons. The awarding of current bonus funds, while in name designed to encourage the operation of State programs and efforts to reduce out-of-wedlock childbearing, has not been associated with specific State efforts in this area. Further, under current law there is no requirement that States awarded such funds use the money for efforts to reduce out-of-wedlock births or otherwise strengthen families. Thus there has been interest in converting this current stream of funding to support more specific efforts to strengthen families. Given the limited number of States using Federal or State TANF program funds for activities and programs designed to promote healthy marriage and strong families in keeping with the overall TANF program purposes, the Committee recommendations seek to encourage more innovation in this area by making available additional funds to States interested in operating such programs.

The Committee recommendations include the clarification that any State funds used to strengthen marriage and two-parent families may be counted toward the TANF program's State maintenance of effort requirements, mirroring the broad flexibility available in spending Federal TANF funds since 1996.

Section 8104. Supplemental Grant for Population Increases in Certain States

Present law

Supplemental grants for 17 States with low historic Federal grants per poor person and/or high population growth for FYs 1998–2001 (extended at FY 2001 funding level for FY 2002 by P.L. 107–147 and thereafter by temporary extension bills). Grants grew each year, from $79 million in FY 1998 to $319 million in FY 2001.

Explanation of provision

Extends supplemental grants through FY 2009, at the current level of $319 million per year.

Reason for change

The Committee recommendations provide for the continuation of the current TANF supplemental grants program, with funds remaining at the current level and for each currently-eligible State for each of the next 4 fiscal years (FYs 2006–2009). As under the 1996 welfare reform law, which authorized the TANF block grant through FY 2002 yet provided for supplemental grants through only FY 2001, the authority for supplemental grants under the Committee recommendations would expire 1 year prior to that of the TANF block grant.

Section 8105. Elimination of High Performance Bonus

Present law

High performance bonus paid on the basis of achieving TANF goals. Formula developed by HHS in consultation with the States. For FY 2002 and each year thereafter, performance formula includes employment and family formation outcomes, child care affordability, and coverage in certain government programs.

Explanation of provision

Repeals the High Performance Bonus.

Reason for change

The Committee recommendations end the payment of bonuses for "high performance" for several reasons. First, mirroring the welfare reform reauthorization legislation approved by the House in the 107th and 108th Congresses, half of the current bonus funds are redirected to activities and services to promote marriage and stronger families, in keeping with the overall goals of the TANF program and these reauthorization provisions. The remaining funds are eliminated, assisting in achieving the Committee's entitlement reconciliation goal of $1 billion in mandatory savings through FY 2010. The Committee notes that the overall recommendations provide States full funding of the TANF block grant, and increasing funding for child care needs, which is especially generous in light of the 60 percent decline in TANF recipients since passage of the 1996 welfare reform law. In addition, experience since the 1996 welfare reform law has shown that many States have received bonus funds without operating policies and programs designed to achieve those outcomes; in short, the merits of holding out financial bonuses to encourage specific types of State behavior is debatable at best, based on experience since the 1996 law.

Section 8106. Contingency Fund

Present law

Capped matching grants ($2 billion) provided in case of recession for FY1997–FY 2001 (extended through FY 2002 by P.L. 107–147 and thereafter by temporary extension recommendations). To qual-

ify for contingency dollars, States must spend under the TANF program a sum of their own dollars equal to their pre-TANF spending.

Explanation of provision

The Committee recommendations extend the current TANF contingency fund, providing up to $2 billion for FYs 2006 through 2010. Beginning in FY 2008: permits States to count child care spending and all spending in separate State programs toward State spending required to access contingency fund; eliminates the pro-rata reduction in the Federal match rate for States that qualify for funds for only part of the year; and adjusts food stamp "needy State" trigger for policy changes made after passage of 1996 welfare law.

Reason for change

In order to assist States demonstrating increased needs during difficult economic times, the Committee recommendations extend and improve the current Federal TANF contingency fund program created under the 1996 welfare reform law. This fund would be extended through FY 2010.

Before permitting access to money from this fund, current law expects States to satisfy a 100 percent maintenance of effort requirement comparing recent with pre-TANF welfare-related spending. However, neither former nor recent child care spending is included in performing this calculation. Thus a provision is included in the Committee recommendations to add State spending on child care (which has risen since the 1996 welfare reform law), increasing the likelihood that States would satisfy the 100 percent maintenance of effort requirement and thus access Federal contingency funds.

The Committee recommendations also include several technical and conforming amendments simplifying the annual reconciliation process for ensuring that States receive the correct amount of contingency funds, and ensuring that Federal policy changes affecting food stamp eligibility made since the 1996 welfare reform law do not inadvertently affect States' ability to qualify for Federal contingency funds.

Section 8107. Use of Funds

Present law

States may use funds in any manner reasonably calculated to accomplish the TANF purposes. Additionally, States may use TANF funds in any manner that they were authorized to use funds from its predecessor programs ("grandfathered" activities).

For purposes of TANF, States may treat a new resident of the State under the rules of the applicant's or recipient's former State. The State plan must indicate whether the State intends to treat families moving into the State differently from others. The U.S. Supreme Court struck differential treatment of new State residents.

States may transfer up to 30 percent of TANF funds to the CCDBG and the Title XX Social Services Block Grant (SSBG). Specifies that a maximum of ten percent of total transfers may go to SSBG in FY 2005, 4.25 percent thereafter. Also allows States to

use TANF funds, within the overall 30 percent transfer limit, as matching funds for the Job Access transportation program for TANF recipients, ex-recipients, and persons at risk of becoming income-eligible for TANF.

Grants may be reserved (remain unspent) without fiscal year limit for the purpose of providing "assistance" (chiefly ongoing cash aid). For other benefits and services "nonassistance" amounts must be obligated in the year of award and spent in the following year.

Explanation of provision

The Committee recommendations modify the rule for use of TANF funds for "grandfathered" activities, permitting States to use TANF funds for any purposes or activities permitted under pre-TANF rules. They also strike provisions about treatment of families migrating into the State, increase the overall ceiling on transfers to 50 percent, and set the limit on SSBG transfers at ten percent (the original limit in the1996 welfare reform law) for FY 2006 and each fiscal year thereafter.

The Committee recommendations allow States to use carry-over funds for any benefit or service without fiscal year limitation and permit a State or tribe to designate some unspent TANF funds as a contingency reserve.

Reason for change

Several provisions to increase States' flexibility in designing and operating TANF programs are included in the Committee recommendations. The increase in TANF funds that may be transferred to the child care and SSBGs would allow States to use TANF funds to support more working families outside of the welfare system, as these programs are not limited to TANF-eligible families. Transfer authority has become increasingly important as States shift more resources to support working families using TANF funds made available due to the dramatic caseload declines in recent years.

Currently, regulations implementing the TANF program limit States to spending carryover funds only on cash assistance. These recommendations clarify that carryover funds may be spent on any of the States' TANF programs, including child care and other services as well as cash assistance. Thus States in future years will have additional flexibility in spending the $3.75 billion in unspent TANF funds, as of September 2004, on activities such as child care to support work.

The provision to allow States to designate unspent TANF funds as contingency reserves is intended to improve the reliability of the TANF block grant in future years. In the past, unspent TANF balances have led to confusion over how much TANF funds were unneeded versus specifically set-aside for future needs. The Committee expects the Secretary of HHS to provide additional guidance to States for purposes of their reporting contingency reserves in a uniform manner.

Section 8108. Repeal of Federal Loan for State Welfare Programs

Present law

Provides a $1.7 billion revolving and interest-bearing Federal loan fund for State welfare programs.

Explanation of provision

The Committee recommendations repeal the loan fund, effective October 1, 2006, and make conforming amendments to reflect the repeal in related program provisions.

Reason for change

The loan authority is eliminated given a lack of interest in the program from the States.

Section 8109. Universal Engagement and Family Self-Sufficiency Plan Requirements

Present law

State plans must require that a parent or caretaker engage in work (as defined by the State) after, at most, 24 months of receiving assistance. However, this requirement is not enforced by a specific penalty.

States must make an initial assessment of the skills, prior work experience, and employability of each recipient 18 or older or those who have not completed high school within 30 days.

States may, but are not required to, use the assessment, in consultation with the recipient, to develop an Individual Responsibility Plan (IRP). The plan sets forth an employment goal for the recipient and a plan for moving the individual immediately into private sector employment; the obligations of the recipient, which may include requirements to attend school, maintain certain grades and attendance, keep school age children in school, immunize children, and attend parenting and money management classes; increase responsibility and amount of work over time; describe the services the State will provide the individual so that the individual will be able to keep and retain employment in the private sector; and may require the individual to undergo appropriate substance abuse treatment.

TANF work participation standards are enforced by a penalty on States: loss of five percent of the State's basic grant for first year of violation (penalty may be reduced for the degree of violation). The penalty increases by a maximum two percentage points each year, and is capped at 21 percent of the block grant. Penalty may be reduced for the degree of violation. A State must replace the amount of Federal penalty funds lost with its own funds.

Explanation of provision

Repeals the 24-month work trigger; requires States, in a manner they deem appropriate, to assess the skills, prior work experience, and employability of each work-eligible person. Work eligible persons are defined in section 8110 of the recommendations as heads of households whose needs are included in the TANF grant (or

would be included but for a sanction). The State may use job search or work activities to assess the employability of individuals.

Requires States to develop a family self-sufficiency plan for each family with a work-eligible person; plans must be established within 60 days of opening a case (within 12 months for families enrolled on October 1, 2005). The plan is to specify appropriate activities, including "direct work" activities (see section 8110) and provide for the ongoing participation in the activities. The State has sole discretion, consistent with TANF work participation standards, to define and design activities and develop methods for monitoring activities. The State must require recipients to participate in activities in accordance with the plan, monitor participation of each individual in activities specified in the plan, and review and revise the plan and activities as the State deems appropriate.

Penalizes a State for failure to meet TANF work participation standards or establish family self-sufficiency plans. States that fail to meet standard and/or establish self-sufficiency plans are penalized a maximum of five percent of the State's basic block grant for the first year of violation (increasing each subsequent year). Penalty may be reduced for the degree of violation.

Reason for change

Universal engagement is a centerpiece of the welfare reform provisions included in the Committee's recommendations. The most recent data from HHS indicates that nine States, Guam, Puerto Rico and the Virgin Islands do not require recipients to engage in any activities during their first 24 to 30 months of receiving benefits. The Committee believes this is unfair to beneficiaries given time limits on benefits, which in such cases provide that up to half of a parent's available Federal TANF benefits could have been received before they take a first step to prepare for self-sufficiency. Early and constant activity is the best path out of poverty, which is provided for under the self-sufficiency plan and related provisions of the recommendations.

The Committee recognizes that early detection of impediments such as substance abuse and addiction can help improve the prospects of employment and self-sufficiency, and better preserve families and protect children from abuse and neglect. The Committee also believes that States should retain the flexibility to use work and work-related screening and assessment activities to determine the employability of individuals. Therefore, the Committee recommendations clarify that the use of job search and other job readiness or work activities to assess the employability of individuals and possible future work activities satisfy family self-sufficiency plan requirements.

Section 8110. Work Participation Requirements

Present law

States must have a specified percentage of their adult recipients engaged in creditable work activities. Since FY 2002 the participation standard has been 50 percent for all families (and since FY 1999 it has been 90 percent for the two-parent component of the caseload). Standards are reduced by a caseload reduction credit: for

each percent decline in the caseload from the FY 1995 level (not attributable to policy changes), the work participation standard is reduced by one percentage point. The monthly participation rate, expressed as a percentage, equals (a) the number of all recipient families in which an individual is engaged in work activities for the month, divided by (b) the number of recipient families with an adult recipient or minor head of household. The annual participation rate, which is compared against the participation standard, is the average of the monthly participation rates.

States may exempt the parent of a child under age 1 from work and exclude them from the calculation of work participation rates. States may exclude families with certain sanctioned individuals from the calculation of the participation rates. Excluded are families sanctioned for up to 3 months in a 12-month period.

Federal law lists 12 activities that count toward meeting the participation standards. Nine activities have priority status: unsubsidized jobs, subsidized private jobs, subsidized public jobs, work experience, on-the-job training; job search (6 weeks usual maximum), community service, vocational educational training (12 month limit), and providing child care for certain TANF recipients. Three other creditable activities: job skills training directly related to employment; and (for high-school dropouts only) education directly related to work and completion of secondary school. Participation in education (including vocational educational training) may account for no more than 30 percent of persons credited with work.

Generally, to count toward the all-family rate, participation of 30 hours (20 hours in priority work activities) is required. For two-parent families the standard is 35 hours (30 in priority work activity), but increases to 55 hours (50 in priority activities) if the family receives federally-subsidized child care.

Teen parents are deemed to participants by maintaining satisfactory attendance in secondary school (or the equivalent in the month) or by participating in education directly related to employment for an average of 20 hours weekly.

If an adult recipient refuses to engage in required work, the State shall reduce aid to the family pro rata (or more, at State option) with respect to the period of work refusal, or shall discontinue aid, subject to good cause and other exceptions that the State may establish. Exception: a State may not penalize a single parent caring for a child under age 6 for refusal to work if the parent has a demonstrated inability to obtain needed child care that is appropriate, suitable, and affordable.

Explanation of provision

States must have a specified percentage of families containing adult recipients engaged in direct work or alternative self-sufficiency activities chosen by the State. In FY 2006 the standard is 50 percent, and it rises by five percentage points yearly to reach 70 percent in FY 2010. The Committee recommendations eliminate the separate standard for two-parent families.

The Committee recommendations measure caseload reduction from a moving base year (rather than from FY 1995) and shorten the measuring interval. Also changes the eligibility criteria base year from FY 1995 to the new moving base. For FY 2006, the credit

is based on the percent decline in the caseload from FY1996 (not due to changes in eligibility criteria from FY 1996); for FY 2007, the base year is FY 1998; for FY 2008, FY 2001. For FY 2009 and every year thereafter, the measuring interval is 3 fiscal years.

The Committee recommendations establish a "superachiever" caseload reduction credit for a State with a reduction of at least 60 percent (for any reason) from FY 1995 to FY 2001.

The monthly participation rate, expressed as a percentage, is (a) the total number of countable hours, divided by (b) 160 times the number of counted families for the month. Counted families are those that include a "work eligible" recipient: Work eligible persons are defined as heads of households whose needs are included in the TANF grant or would be included but for a sanction. The annual participation rate is the average of the monthly participation rates. States may, on a case-by-case basis, exclude from the calculation of work participation rates families in which the youngest child is under age 1. States may exclude families subject to a sanction under TANF or for failure to meet child support requirements for up to 3 months in a 12-month period. States may exclude from the calculation of work participation rates families in their first month on the rolls (based on the most recent application for benefits).

The recommendations list six "direct" work activities: Unsubsidized jobs, subsidized private jobs, and subsidized public jobs, on-the-job training, supervised work experience, and supervised community service. States may define any other activity as countable so long as it leads to self-sufficiency and is consistent with the purposes of TANF. Generally, States must engage all families with adult recipients in a direct work activity or alternative self-sufficiency activity for 160 hours per month for full-credit, though partial (pro-rata) credit is provided for families that fall short of the full-credit standard. To be counted toward meeting the standards, participation must include at least 24 hours per week in direct work activities listed in the law (see above). The 160 hour per month standard implements a 40 hour per week requirement. In the average month, 160 hours per month is equivalent to 37 hours per week. This is because the average month contains 4.33 weeks, not 4 weeks, and 160 divided by 4.33 equals 37. The 160 hour per month standard is seen as allowing 13 hours per month for sick leave and holidays.

The current 30 percent cap on the share of TANF recipients who may be counted as working by virtue of participation in education (including vocational educational training) is eliminated. Thus, subject to the other provisions of this title and in contrast to current law, an unlimited number of parents on TANF may be counted as working towards the calculation of State work participation rate requirements through participation in education full or part time.

For 3 months within a consecutive 24 month period, persons may be deemed to meet the 24-hour weekly direct work requirement by engaging in short-term activities chosen by the State to promote self-sufficiency (examples listed in the recommendations are substance abuse counseling or treatment; rehabilitation treatment and services; work-related education or training directly enabling the family member for work; and job search or job readiness assist-

ance). A fourth month is allowed for an individual to complete a training program.

Teen parents are deemed to be participating for 40 hours per week by virtue of satisfactory school attendance (or the equivalent in the month) or by participating in education directly related to employment for an average of 20 hours weekly. If a person in a family receiving TANF assistance fails to engage in required activities and the family does not otherwise engage in activities in accordance with its self-sufficiency plan, the State shall impose a penalty as follows: (a) If the failure is partial or does not last longer than 1 month, the State shall reduce assistance to the family pro rata (or more, at State option) with respect to any period of failure during the month, or shall end all assistance to the family, subject to good cause exceptions that the State may establish; and (b) if the failure is total and persists for at least 2 consecutive months, the State shall end all cash payments to the family, including State-funded maintenance of effort payments, for at least 1 month and thereafter until the person resumes full participation in required activities, subject to good cause exceptions that the State may establish. If a State constitution or a State statute enacted before 1966 obligated local governments to provide assistance to needy parents and children, the State has 1 year (beginning with the date of enactment) to meet the requirement of these recommendations.

Reason for change

As has been noted above, the Committee believes that too many recipients remain on welfare without engaging in activities to prepare them for work. The recommendations provide increases in the work requirements expected of States with important areas of increased flexibility in activities that may be counted towards satisfying those requirements. Overall, States are required, when fully phased in, to have an average of 70 percent of adult recipients in 40 hours of activities, including 24 hours of direct work and 16 hours of other activities, for 48 weeks each year. As under current law, States would receive credit towards those rising work participation standards for the degree to which States continue to succeed in reducing welfare dependence in future years.

The Committee supports the efforts of parents on welfare to participate in education and training to improve their employability and wages. Numerous studies, including the National Evaluation of Welfare-to-Work Strategies, have found that work or work combined with short-term training is the most effective approach for helping parents achieve independence from welfare and support their families. The Committee recommendations eliminate the current 30 percent cap on the share of the welfare caseload that may be counted as participating in working through education. This will ensure that, if States choose to employ the flexibility provided under the Committee recommendations to promote strategies that combine part-time work and education as the best path off of welfare, they will be able to fully count all individuals so participating in education, not just a minority as under current law.

There are many ways that vocational education and training may be combined under H.R. 240 in ways that will greatly improve an

individual's long-term prospects for self-sufficiency. Below are specific examples of allowable combinations of work and training.

Example #1: A participant is taking classes to become a certified nurse assistant. She goes to class 4 hours each morning from Monday through Thursday. Each afternoon, she works 4 hours in a practicum assignment, practicing the skills she is learning in class. On Friday, she has a part-time job for eight hours. The practicum hours and the part-time job would count towards the direct work requirement (total 24 hours). The 16 hours of class would count towards the overall participation requirement for a total of 40 hours of participation. Because the participant is meeting her direct work requirement, there would be no limit on how long she could continue this arrangement (other than the overall 5-year lifetime limit on receipt of Federal benefits). She could continue for whatever time it took to complete her certificate.

Example #2: A new participant is currently enrolled in a vocational education program that will take 12 to 18 months to complete. Her self-sufficiency plans calls for her to complete the current semester (about 4 months). Thereafter, she plans to work 3 days a week and continue her vocational training on the other 2 days. The educational activity can substitute for the direct work requirement for up to 4 months. Thereafter, the part-time work will count towards the direct work requirement and the vocational education will count towards the additional hours, for a total of 40. Subject to the overall 5-year limit on receipt of Federal benefits, she can continue in this arrangement until she completes her vocational education program.

Example #3: A recipient with low basic educational skills who is having difficulty obtaining employment participates in a comprehensive work experience and skills building program. The recipient participates in a full-time, 40 hours per week program that includes actual work activities (perhaps in an industrial or even an office setting) familiarizing the client with a job setting and job-specific skills, and integrates that experience with basic educational skills training, all at the same site. The work activities and training might be blended to enhance the client's experience, but about 5 hours of each day would involve work activities.

Under the Committee recommendations, States are provided partial credit toward their work participation rate requirement for individuals who perform as few as 24 hours per week of direct work, and receive full credit for families who perform 40 or more hours per week of work and other activities designed to promote self-sufficiency. The recommendations eliminate the separate and higher State work participation rate requirement that currently applies to two-parent families, making them subject to the same rate and hours of work rules as single-parent families receiving assistance, enhancing the chances that these or other families might be able to participate in "extra" hours that could balance families whose maximum hours of work and other activities might fall short of the 40 hours per week standard.

The Secretary of HHS is expected to issue regulations that specify how the 24-hour direct work requirement may be applied in certain low-benefit States. The Committee is aware that certain States may face special challenges in meeting the 24-hour direct work re-

quirement in cases in which unsubsidized or subsidized private sector employment is limited and the State may only enroll individuals in a certain number of hours of work experience or community service activities due to minimum wage constraints. The Committee notes that modifying regulations, which currently limit the value of government benefits to only cash welfare and food stamps, to include additional benefits families receive also would facilitate participation in additional work experience or community service.

Under the Committee recommendations, States have the flexibility to make accommodations in the work requirements for individuals with special circumstances, for example, caring for a disabled child. The maximum work requirement a State must meet, assuming the State receives no credit for past or future caseload declines, would be 70 percent in FY 2010. Even at this high work rate, the State can exempt up to 30 percent of its caseload from the work requirement. Further, many States have created separate State programs to avoid penalties for failure to meet the higher work requirements for 2-parent families. Under the Committee recommendations, these separate 2-parent work requirements are eliminated, allowing States to use these State funds for assistance to parents caring for disabled relatives, subject to separate State work requirements.

The recommendations update the current credit for net caseload reduction. As under current law, this credit reduces the State work participation rate requirement by the percentage decline, if any, in the State's welfare caseload relative to a prior year. Under the recommendations, States would continue to be given credit for caseload declines, but the baseline fiscal year for determining the percentage decline and thus the credit would be recalibrated as follows: in FY 2006, States would be credited for declines between FYs 1996 and 2005; in FY 2007, between FYs 1998 and 2006; in FY 2008, between FYs 2001 and 2007; in FY 2009, between FYs 2005 and 2008; and in FY 2010, between FYs 2006 and 2009. Thus if the State's welfare caseload declined by 30 percent between FYs 2006 and 2009, its real work participation rate requirement for the remaining caseload in FY 2010 would be 40 percent, given the updated credit for net caseload reduction.

In addition to the credit for net caseload reduction, 17 States that achieved caseload declines of more than 60 percent between FYs 1995 and 2001 will receive an additional superachiever credit. Given their large past caseload declines, these States will receive a percentage reduction in future work requirements based on the percentage decline above 60 percent (Alabama is eligible for a maximum 0.1 percent credit against future rates, Colorado 12 percent, Florida 14 percent, Georgia four percent, Idaho 20 percent, Illinois 14 percent, Louisiana nine percent, Maryland six percent, Michigan five percent, Mississippi ten percent, North Carolina five percent, Ohio three percent, Oklahoma nine percent, South Carolina two percent, West Virginia two percent, Wisconsin 16 percent, and Wyoming 20 percent). The credit takes into consideration the difficulty these States might have in further reducing caseloads, which would otherwise reduce the rising work rate requirements. The superachiever credit in any year may not reduce the target work participation rate to less than 50 percent in any future year. For a num-

ber of superachiever States, this will maintain the effective work rate requirement at the current 50 percent level for several or all of the next 5 fiscal years. All States, including those receiving superachiever credits, may receive additional credits under the recalibrated net caseload reduction credit provision described above.

To illustrate how the superachiever credit works, consider the State of Wisconsin. Wisconsin experienced a 76 percent caseload decline in the FY 1995–2001 period, qualifying for a superachiever credit of 16 percent (76 percent decline minus 60 percent threshold equals 16 percent credit). As State work rates rise under the recommendations from 50 percent in FY 2006 to 55 percent in FY 2007, 60 percent in FY 2008, and 65 percent in FY 2009, this credit would maintain Wisconsin's work rate requirement at the current 50 percent level. In FY 2010 when the rate rises to 70 percent, Wisconsin's effective work rate requirement would be 54 percent (70 percent work rate minus 16 percent credit equals 54 percent effective work rate).

In order to stress the importance of work, the recommendations specify certain conditions under which States must provide for a "full check sanction" if a parent refuses to participate in work and other activities as required by the State and as expressed in the self-sufficiency plan to which the parent has agreed, but adds that this condition does not apply for up to 1 year after enactment of these recommendations in a State with a Constitutional requirement to provide benefits, permitting all States to take steps to come into compliance.

Section 8111. Maintenance of Effort

Present law

Establishes a maintenance of effort requirement that States spend at least 75 percent of what was spent from State funding in FY 1994 on programs replaced by TANF. Nationally, this sum is $10.4 billion (maintenance of effort rises to 80 percent if State fails a work participation standard).

Explanation of provision

Continues existing maintenance of effort requirement through FY 2010. Provides that Federal TANF funds used for marriage promotion shall be treated as State matching funds for marriage promotion grants, but may not be counted as State funds toward maintenance of effort requirements.

Reason for change

The Committee recommendations extend the current maintenance of effort requirements for an additional 5 years. The recommendations also include a conforming change related to State spending on activities to prevent out-of-wedlock childbearing and promote healthy marriages, designed to promote State flexibility in spending funds to promote these purposes.

This extends and expands a key feature of the flexibility afforded States under the 1996 welfare reform law. Under the maintenance of effort provisions, States have collectively been able to conserve about $3 billion annually that formerly was spent on the TANF

predecessor programs. States may use such funds on other State activities, which may include child care, child protection, or any other vital State concern.

Section 8112. Performance Improvement

Present law

Each State must outline, in a 27-month plan, how it intends to: conduct a program providing cash assistance to needy families with children and providing parents with work and support services; require caretaker recipients to engage in work (at State definition) after 24 months of aid or sooner, if then judged work-ready; ensure that caretakers engage in work in accordance with the law; take steps deemed necessary by the State to restrict use and disclosure of information about recipients; establish goals and take action to prevent/reduce the incidence of out-of-wedlock pregnancies; and conduct a program providing education and training on the problem of statutory rape. In addition, the plan must indicate whether the State intends to treat families moving into the State differently from others; note whether the State intends to aid noncitizens; set forth objective criteria for benefit delivery and for fair and equitable treatment; and provide that, unless the governor opts out by notice to HHS, the State will require a parent who has received TANF for 2 months and is not work-exempt to participate in community service employment. In the plan the State must certify that it will operate a child support enforcement program and a foster care and adoption assistance program and provide equitable access to Indians ineligible for aid under a tribal plan. It must certify that it has established standards against program fraud and abuse. It must specify which State agency or agencies will administer and supervise TANF. In addition, the State may opt to certify that it has established and is enforcing procedures to screen and identify recipients with a history of domestic violence, to refer them to services, and to waive program rules for some of them.

States are authorized to administer and provide TANF services through contracts with charitable, religious, or private organizations and to pay recipients by means of certificates, vouchers, or other disbursement forms redeemable with these organizations. The recommendations stipulate that any religious organization with a contract to provide welfare services shall retain independence from government and require States to provide an alternative provider for a beneficiary who objects to the religious character of the designated organization. States are required to consult with local governments and private sector organizations in the development of, and have 45 days to comment on, the TANF State plan.

The Secretary of HHS is directed to rank States in order of success in moving recipients into long-term private jobs and reducing the proportion of out-of-wedlock births and in both cases to review programs of the three States with highest and lowest ratings.

Explanation of provision

The Committee recommendations require the State plan to describe how the State will pursue ending dependence of needy families on government benefits and reducing poverty by promoting job

preparation and work and how the State will encourage the formation and maintenance of healthy two-parent married families, encourage responsible fatherhood, and prevent and reduce the incidence of out-of-wedlock pregnancies. The plan must also describe strategies to improve program management and performance and engage religious organizations in the provision of TANF-funded services.

States are required to describe in their plans any strategies the State is undertaking to deal with (a) employment retention and advancement for recipients; (b) efforts to reduce teen pregnancy; (c) services for struggling and noncompliant families and for clients with special problems; and (d) program integration, including the extent to which employment and training services are provided through the One-Stop Career Center System created under the Workforce Investment Act of 1998.

The Committee recommendations strike the provision requiring goals to reduce out-of-wedlock pregnancies and replaces it with a requirement that States establish specific numerical performance goals, measures, measurement methodology, and plans to improve outcomes regarding TANF's goals of ending dependence and reducing poverty by promoting work and job preparation, and encouraging the formation of healthy, 2-parent married families, encouraging responsible fatherhood, and reducing out-of-wedlock pregnancies.

The Committee recommendations strike the provision requiring community service after 2 months of benefits unless a State opts out. They add a requirement that the plan describe strategies to engage faith-based organizations in provisions of services funded by TANF. They also delete "long-term" qualifier from private job measure and adds employment retention and ability to increase wages to factors used for rankings.

Tribes must be consulted and be allowed to comment on the TANF State plan and that tribes consult with the States in developing their tribal family assistance plans. In addition, the Secretary is required, in consultation with the States, to develop uniform performance measures to judge the effectiveness and improvement of State programs in accomplishing TANF purposes.

Reason for change

The Committee recommendations remove certain State plan requirements in current law that do not conform to proposed changes in the TANF program. The recommendations also add certain State plan requirements that reflect the recommendations' increased focus on engaging more recipients in work and other self-sufficiency activities, and the proposal's focus on promoting healthy marriages and preventing out-of-wedlock births. Finally, the new plan requirements reflect growing interest among program administrators in helping recipients move from employment to better jobs leading finally to long-term self-sufficiency by requiring States to report on what strategies they are employing to address this issue.

The recommendations also strike the State plan requirement of community service after 2 months of benefits. This change does not preclude States from requiring community service of individuals during their early months on TANF, as States would continue to

have the flexibility to do so in operating their programs under the Committee recommendations. The underlying work requirements, as amended by this title, will continue to provide guidance to States on the flexibility and expectations for serving and assisting individuals during their first months on welfare, including in community service as appropriate.

The uniform performance improvement measures are intended to help States quickly identify program weaknesses so they may correct them in a timely manner and to facilitate States' sharing of best practices.

The Committee recommendations require eligible States to submit documents to the Secretary of HHS describing their strategies for engaging faith-based organizations in the provision of services funded under the provisions in Section 104 of the 1996 welfare reform law. The principles set out in Section 104 allow for the funding of faith-based organizations on the same basis as other nongovernmental organizations; permit them to maintain their religious character by choosing board members, symbols, and staff in accord with their faith; and protect beneficiaries from discrimination while safeguarding their rights of conscience by ensuring that alternative providers that are unobjectionable to them on religious grounds are made available.

Section 8113. Data Collection and Reporting

Present law

States are required to collect monthly, and report quarterly, disaggregated case record information (but may use sample case record information for this purpose) about recipient families. Required family information includes:

1. County of residence;
2. Whether a member received disability benefits;
3. Ages of members;
4. Size of family and the relation of each member to the family head;
5. Employment status and earnings of the employed adult;
6. Marital status of adults;
7. Race and educational level of each adult;
8. Race and educational level of each child;
9. Whether the family received subsidized housing, Medicaid, food stamps; or subsidized child care (and if the latter two, the amount);
10. Number of months that the family received each type of aid under the program;
11. Number of hours per week, if any, that adults participated in specified activities (education, subsidized private jobs, unsubsidized jobs, public sector jobs, work experience, or community service, job search, job skills training or on-the job training, vocational education);
12. Information needed to calculate participation rates;
13. Type and amount of assistance received under the program; including the amount of and reason for any reduction of assistance;
14. Unearned income;
15. Citizenship of family members;

16. Number of families and persons receiving aid under TANF (including the number of two-parent and one-parent families);

17. Total dollar value of assistance given;

18. Total number of families and persons aided by welfare-to-work grants (and the number whose participation ended during a month);

19. Number of noncustodial parents who participated in work activities; and

20. For each teenager, whether he/she is the parent of a child in the family.

States are required to collect information monthly, and report quarterly, on families receiving assistance. Regulations require States to annually submit a program report (by December 31 of each year) providing information on the State TANF program and all programs funded by TANF or State maintenance of effort funds. For each maintenance of effort program, reports are to include the name, purpose, and eligibility criteria. The Secretary of HHS shall prescribe regulations to define data elements for required State reports and shall consult with the Secretary of the U.S. Department of Labor (DOL) in defining data elements regarding programs operated with welfare-to-work funds.

The Secretary of HHS is required to make annual reports to Congress that include State progress in meeting TANF objectives (increasing employment and earnings of needy families and child support collections, and decreasing out-of-wedlock pregnancies and child poverty), demographic and financial characteristics of applicants, recipients, and ex-recipients; characteristics of each TANF program; and trends in employment and earnings of needy families with children.

The Secretary of HHS is required to submit to four Committees of Congress annual reports on specified matters about three groups: children whose families lost TANF eligibility because of a time limit, children born after enactment of TANF to teen parents, and persons who became teen parents after enactment.

Explanation of provision

The Committee recommendations permit the Secretary to designate core elements that must be reported for all families. They revise the data elements required to be reported by the States. Reporting of race and educational level of each minor parent is required. The requirement that States report the educational level of each child is deleted. The requirement to report the amount of food stamps and subsidized child care received by the family is removed. The requirement that States report on different types of assistance, conforming the reporting requirement to the narrowed definition of assistance in section 8117 is removed.

The reported activity list is expanded by adding: training and other activities directed at TANF purposes. Adds and (job) placement to job search. Omits job skills training and vocational education. Specifies that work experience and community service are "supervised." Adds information needed to calculate progress toward universal engagement.

New information on recipient families in the quarterly report is required: the date the family first received aid on the basis of its

most recent application; whether a self-sufficiency plan is established for the family; and the marital status of the parents of any child in the family at the birth of the child, and if the parents were not then married, whether the paternity of the child has been established.

Reason for change

Since the 1996 welfare reform law was enacted, data reported to the Secretary of HHS has been critical in evaluating the impacts of various State and local programs. The recommendations conform data reporting elements to the proposal's increased emphasis on work among current recipients. Based on the information provided to the Congress in the Annual Report submitted by the Secretary of HHS, there appear to be several areas on which additional information is needed to improve Congressional oversight of the program. For example, Congress does not have complete information on what State programs are funded with TANF dollars, and whether and what benefits are provided to families beyond the 60 month time limit. Another area in which additional information is needed relates to the changing nature of TANF programs in the direction of providing improved supports. While it is unreasonable to expect States to provide information on individuals receiving work supports, additional information on the types of supports provided to those receiving cash benefits and aggregate data on those receiving work supports in lieu of cash benefits would provide a better picture of State welfare programs. In particular, additional information on programs funded with State maintenance of effort dollars will advance the understanding of the changing nature of State TANF programs.

The recommendations' requirement that States provide information on all activities performed by adults receiving assistance and their fulfillment of self-sufficiency plan requirements would provide a clearer picture of the work and other activities in which recipients are engaged. Current data reflects that as of FY 2002, a full 58 percent of work eligible adults were participating in no hours of work or other activities, making this an area in which the Congress is interested in receiving additional data in accordance with the strengthened work requirements (particularly the requirement that 70 percent of adult recipients be engaged in work or work activities by FY 2010) provided under the Committee recommendations. Finally, the provision requiring increased analysis of State Single Audit reports responds to findings from a recent GAO report on the Single Audit process and HHS' oversight of the audits.

Section 8114. Direct Funding and Administration by Indian Tribes

Present law

Earmarks some TANF funds in the amount equal to Federal pre-TANF payments received by a State and attributable to Indians for administration by tribes at their option. Sums used for tribal family assistance programs are deducted from State TANF grants. Also appropriates $7.6 million annually for work and training activities (now known as Native Employment Works [NEW]) to tribes that operated a pre-TANF work and training program.

Explanation of provision

Continues Indian tribal assistance grants and NEW work/training grants through FY 2010.

Reason for change

Makes conforming amendment.

Section 8115. Research, Evaluations, and National Studies

Present law

The law requires the Secretary of HHS to conduct research on effects, costs, and benefits of State programs. The Secretary may help States develop innovative approaches to employing TANF recipients and shall evaluate them. For 6 years, appropriates $15 million annually, half for TANF research and novel approaches cited above and half for State-initiated TANF studies and completing pre-TANF waiver projects.

Explanation of provision

The Committee recommendations appropriate $102 million each year for FYs 2006 through 2010 for research and demonstration projects and for technical assistance to States, tribal organizations, and other entities chosen by the Secretary. Two million dollars annually is set aside for demonstration projects for coordination of child welfare and TANF services to tribal families at risk of child abuse or neglect. The remaining $100 million per fiscal year shall be spent primarily on activities allowed under marriage promotion grants (see above). Entities conducting marriage promotion activities funded by these research and demonstration grants must ensure the participation is voluntary and that domestic violence issues be addressed (same requirements as apply to the healthy marriage promotion grants provided under section 8103).

Not later than March 31, 2006, the Secretary of HHS, in consultation with the Attorney General, will submit a report on the enforcement of affidavits of support and sponsor deeming required by P.L. 104–193. Not later than 6 months after enactment, the Secretaries of HHS and DOL will submit a joint report describing common or conflicting data elements, definitions, performance measures, and reporting requiremements in the Workforce Investment Act and TANF law.

Reason for change

Research, demonstrations, and technical assistance are a critical feature of the TANF program. Given the flexible nature of the block grant program, States have broad latitude to develop innovative programs that may be replicated by other States. The new $100 million fund authorized by the Committee recommendations would help answer important questions about what types of interventions may prevent divorce, increase and strengthen healthy marriages, and prevent and reduce the incidence of out-of-wedlock births. As scarce resources have been devoted to these important purposes of the TANF program, this new fund would play a critical role in developing and promoting best practices across the country. In addition, this new fund will provide much needed funding for

technical assistance to tribal organizations as they work to create and develop TANF programs to meet the unique needs of their members.

The new demonstration authority for Indian tribes is intended to support tribes that receive funds under the Title IV–B Child Welfare Services or Promoting Safe and Stable Families programs but do not have access to the Title IV–E Adoption Assistance and Foster Care program. Parents seeking temporary assistance through the TANF program and those caring for children who have been subject to abuse and neglect or are at-risk of such maltreatment often face similar and complex service needs. The demonstration authority will help tribes improve coordination between these two programs; strengthen families by providing assistance and services necessary to prevent family disruption; and, when necessary, support out-of-home placements to safely care for children.

The Committee seeks information from HHS and the U.S. Department of Justice to verify that affidavit of support and sponsor deeming provisions are being implemented as the 1996 law intended. The Committee is concerned that the appropriate procedures and guidance to State and local governments have not been put in place in order to ensure these provisions are implemented.

Section 8116. Study by the Census Bureau

Present law

The Census Bureau is directed to expand the Survey of Income and Program Participation (SIPP) to obtain data with which to evaluate TANF's impact on a random national sample of recipients. Appropriations are authorized at $10 million annually for FYs 2006 through 2010.

Explanation of provision

Appropriations are authorized at $10 million annually for FY 2006 through FY 2010 to the Census Bureau. The Bureau is directed to implement or enhance a longitudinal survey of program participation to permit assessment of outcomes of continued reform on the economic and child well-being of low-income families with children, including those who received TANF-funded aid or services. Survey content should include information needed to examine the issues of out-of-wedlock childbearing, marriage, welfare dependency, beginning and ending of spells of assistance, work, earnings, and employment stability. To the extent possible, the survey is to provide State representative samples. Funds are to remain available through FY 2010 for this survey.

Reason for change

The SIPP has been used widely by public and private researchers to assess impacts of the TANF program. This provision reauthorizes and refocuses future data collection efforts on areas of particular interest to the Committee, including out-of-wedlock childbearing, length of stay on welfare, earnings and employment stability, and child well-being.

Section 8117. Definition of Assistance

Present law

Receipt of assistance by a parent or other caretaker relative triggers work and time limit rules. Law does not define the term. By regulation, assistance is defined as ongoing aid to meet basic needs, plus support services such as child care and transportation subsidies, for unemployed recipients. It excludes non-recurrent short term benefits. Federally-funded "assistance" to a family with an adult is limited to 60 months; States may impose shorter time limits.

Explanation of provision

The recommendations define "assistance" as payment, by cash, voucher, or other means, to or for an individual or family to meet a subsistence need, but not including costs of transportation or child care. They exclude non-recurrent short-term benefits.

Reason for change

This provision codifies regulations important in determining how long individuals may receive cash benefits and when work requirements and penalties should be imposed. Clarifying that child care and transportation subsidies should never be considered assistance would provide States additional flexibility in supporting individuals who have left welfare and prevent welfare dependence for others. Combined with other features of this title, including the enhanced flexibility provided States in spending so-called carryover funds, this provision will afford States additional tools to support families with child care and other work supports as needed, including through use of the $3.75 billion in unspent TANF funds as of September 2004.

Section 8118. Technical Corrections

Present law

Not applicable.

Explanation of provision

Makes a number of technical corrections.

Reason for change

Technical corrections.

Section 8119. Fatherhood Program

Section 8119 of the Committee recommendations amends Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193) to add a new Fatherhood program to the Social Security Act as a new Part C of Title IV, as follows:

PART C—FATHERHOOD PROGRAM

Section 441 of Part C—Findings

Present law

No provision.

Explanation of provision

There is evidence indicating the need to promote and support involved, committed, and responsible fatherhood, and to encourage and support healthy marriages between parents raising children.

Reason for change

The Committee is very interested in finding ways to reverse the negative impacts of single-parent families on both adults and children. One solution is to increase, in appropriate situations, the incidence of marriage. Whether or not marriage occurs, a second approach is to promote the involvement of single fathers in the lives of their children. Even when fathers do not live with their children, they still have a responsibility to participate in the child's rearing and to work with the mother to provide a solid foundation for the child's development. Economic support is another important part of the father's role in the family. Since many poor fathers have a weak and sporadic connection to the workforce, fatherhood projects would work to increase the number of employed fathers and improve the work skills of employed fathers to help them increase their income and be better able to provide economic support, including child support, to the family. The purposes selected by the Committee would help define projects that would contribute to addressing the problems associated with single-parent families.

Section 441 of Part C—Purposes

Present law

No provision.

Explanation of provision

The first of the three purposes is to provide for projects and activities by public entities and nonprofit community entities, including religious organizations, to test promising approaches to accomplishing the following four objectives:

(1) Promoting responsible, caring and effective parenting and encouraging positive father involvement, including the positive involvement of non-resident fathers;

(2) Enhancing the abilities and commitment of unemployed or low-income fathers to provide support for their families and to avoid or leave welfare;

(3) Improving fathers' ability to effectively manage family business affairs; and

(4) Encouraging and supporting healthy marriages and married fatherhood.

The second purpose is through the projects and activities described above, to improve outcomes for children such as increased family income and economic security, improved school performance, better health, improved emotional and behavioral stability and so-

cial adjustment, and reduced risk of delinquency, crime, substance abuse, child abuse and neglect, teen sexual activity, and teen suicide.

The third purpose is to evaluate approaches and disseminate findings to encourage replication of effective approaches to achieving the desired outcomes for both parents and children.

Reason for change

The Committee recognizes the tremendous hurdles before single mothers, and their struggles to work and support their families, reflected most recently in the rise in the share of single mothers working following passage of the 1996 reforms. However, because so many of those high hurdles remain in place, it is an unfortunate fact that children reared in female-headed families are more likely to live in poverty, fail in school, be arrested, have children outside marriage, and go on welfare themselves. To help address these problems, the Committee recommendations implement a fatherhood grant program to provide funding for projects to work directly with fathers, especially those in poverty. The fatherhood projects would emphasize healthy marriage, parenting, and employment and may be able to reduce both the number of children being reared in single-parent families and, where marriage is not a possibility, to strengthen the relationship between single fathers and their children. Most Federal and State social programs, including welfare, are aimed primarily at helping single mothers. The fatherhood grant program acknowledges that Congress is interested in helping fathers improve their financial independence, manage their financial affairs, and strengthen their ability to support their family.

Section 442 of Part C—Definitions

Present law

No provision.

Explanation of provision

Declares the terms "Indian tribe" and "tribal organization" to have the meanings given them in subsections (e) and (l), respectively, of Section 4 of the Indian Self-Determination and Education Assistance Act.

Reason for change

Clarifies the definition of "Indian tribe" and "tribal organization" as they relate to the fatherhood grant program.

Section 443 of Part C—Competitive Grants for Service Projects

Present law

No provision.

Explanation of provision

Authorizes the Secretary of HHS to make grants for FY 2006 through FY 2010 to public and nonprofit community entities, including religious organizations, and to Indian tribes and tribal organizations, for demonstration service projects and activities de-

signed to test the effectiveness of various approaches to accomplishing the four specified objectives.

Requires that in order to qualify for a full-service project grant an entity (applicant) must submit an application to the Secretary of HHS that contains the following elements:

Project description. A description of the project and how it will be carried out, including the geographical area to be covered and the number and characteristics of clients to be served, and how it will address each of the four specified objectives; and of how the entity or its contractor will self-evaluate the project.

Experience and qualifications. A demonstration of the applicant's ability to carry out the project, and such other qualifications as the Secretary may require.

Addressing child abuse and neglect and domestic violence. A description of how the applicant will assess for the presence of, and intervene to resolve, child abuse and neglect and domestic violence, including how the applicant will coordinate with State and local child protective service and domestic violence programs.

Addressing concerns relating to substance abuse and sexual activity. A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

Coordination with specified programs. An undertaking to coordinate, as appropriate, with State and local entities responsible for the TANF, Child Welfare Service, and Child Support Enforcement (CSE) programs under Title IV of the Social Security Act, programs under Title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

Records, reports, and audits. An agreement to maintain records, make reports, and cooperate with reviews or audits as required by the Secretary.

Self-initiated evaluation. If the applicant elects to contract for independent evaluation of the project (part or all of the cost of which may be paid for using grant funds), a commitment to submit to the Secretary a copy of the evaluation report by 30 days after completion of the report and not more than 1 year after completion of the project.

Cooperation with Secretary's oversight and evaluation. An agreement to cooperate with the Secretary's evaluation of the project, by means including random assignment of clients to service recipient and control groups, if determined appropriate; and also agreement to give the Secretary access to project staff and clients, and project documents and records.

Requires that in order to qualify for a limited purpose grant of less than $25,000 per fiscal year, an entity (applicant) must submit an application to the Secretary that contains the following elements:

Project description. A description of the project and how it will be carried out, including the number and characteristics of clients

to be served, the proposed duration of the project, and how it will address at least one of the four specified objectives.

Qualifications. Such information as the Secretary may require as to the capacity of the entity to carry out the project, including any previous experience with similar activities.

Coordination with related programs. As required by the Secretary in appropriate cases, an undertaking to coordinate and cooperate with State and local entities responsible for specific programs relating to the objectives of the project, including, as appropriate, jobs programs and programs serving children and families.

Records, reports, and audits. An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

Cooperation with Secretary's oversight and evaluation. An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including affording the Secretary access to the project and to project-related records and documents, staff and clients.

In awarding grants, the Secretary must seek to achieve a balance among entities of differing sizes, entities in differing geographic areas, entities in urban and in rural areas, and entities employing differing methods of achieving the program purposes, including working with CSE agencies to help fathers satisfy child support arrearages. The Secretary may give preference to projects in which a majority of the clients to be served are low-income fathers.

Federal grant funds may be used for up to 80 percent of the annual costs of full-service projects (or up to 90 percent, if the entity demonstrates circumstances limiting the entity's ability to secure non-Federal resources), and for up to 100 percent of annual costs for limited-purpose projects. The non-Federal share may be in cash or in kind.

Reason for change

Funding both full service and limited purpose fatherhood grant projects would enable the Secretary of HHS to collect valuable information about the effectiveness of using different approaches to meet the goals of the fatherhood grant program. During Committee hearings on fatherhood issues in recent Congresses, Members have expressed interest in a variety of fatherhood programs—from those addressing the needs of inner city populations to those run by a rural faith-based group working to address specific problems in a small community. Of particular interest are programs that help young low-income fathers meet their child support obligations, both current and past due. One approach, which has been used on a limited basis in Maryland, Iowa, and Montana, is to consider compromising arrearages owed to the State when the non-custodial parent has kept current on a child support payment plan for a specific period of time or has enrolled and completed a responsible fatherhood project under which he went to work and completed certain activities.

Section 444 of Part C—Multicity, Multistate Demonstration Projects

Present law

No provision.

Explanation of provision

Generally allows the Secretary of HHS to make multicity, multistate demonstration project grants for FY 2006 through FY 2010 to eligible entities (described below) for two multicity, multistate projects demonstrating approaches to achieving the four specified objectives. One of the projects is required to test the use of married couples to deliver program services.

Provides that an entity eligible for a multicity, multistate grant must be a national nonprofit fatherhood promotion organization with substantial experience in designing and successfully conducting programs meeting the three purposes described earlier, and with experience in simultaneously conducting such programs in more than one major metropolitan area in more than one State, and in coordinating, when appropriate, with State and local government agencies (including agencies responsible for child support enforcement and workforce development) and private, and nonprofit agencies (including community-based and religious organizations).

Requires that in order to qualify for a multicity, multistate demonstration project grant and an entity (applicant) must submit an application to the Secretary that contains the following elements:

Qualifications. An entity must meet the eligible entity requirements described above. Further, the application must include any other information the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

Project description. A description of and commitments concerning the project design, including the following elements: A detailed description of the project, which (a) provides for projects to be conducted in at least three major metropolitan areas; (b) States how it will address each of the four specified objectives; (c) demonstrates that there are sufficient potential clients to permit random assignment to service recipient and control groups; and (d) demonstrates that the project will direct a majority of resources to serving low-income fathers (but need not employ means-testing).

The project description must include an agreement that the entity will cooperate with the Secretary's and evaluator's oversight and evaluation of the project, by means including providing access to the project and to project-related records and documents, staff and clients; and will, in consultation with the evaluator and as required by the Secretary, modify the project design, initially and subsequently (including by providing for random assignment), as necessary to facilitate oversight and evaluation and to make appropriate mid-course adjustment in the project design indicated by interim evaluations; and will submit revised descriptions of modified project designs to the Secretary.

Addressing child abuse and neglect and domestic violence. A description of how the applicant will assess for the presence of, and

intervene to resolve, child abuse and neglect and domestic violence, including how the applicant will coordinate with State and local child protective service and domestic violence programs.

Addressing concerns relating to substance abuse and sexual activity. A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

Coordination with specified programs. An undertaking to coordinate, as appropriate, with State and local entities responsible for the TANF, Child Welfare Service, and CSE programs under Title IV of the Social Security Act, programs under Title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs required by the Secretary.

Records, reports, and audits. An agreement to maintain records, make reports, and cooperate with reviews or audits required by the Secretary.

Federal grant funds for multicity, multistate demonstration projects may be used for up to 80 percent of annual costs of the demonstration projects. The non-Federal share may be in cash or in kind.

Reason for change

It is important that some experienced fatherhood organizations develop grant projects in major cities. The Committee is aware of a number of these organizations that have sponsored fatherhood programs in inner-city areas, have experience working with State and local agencies, and have the capacity to design projects that would improve outcomes for fathers. The Committee expects the selected projects to provide project information with the Secretary of HHS that can be shared with other programs.

Section 445 of Part C—Evaluation

Present Law

No provision.

Explanation of provision

The Secretary of HHS is authorized, directly or by contract or cooperative agreement, to evaluate the effectiveness of the selected competitive grants for service projects and the selected multicity, multistate demonstration projects from the standpoint of the specified program purposes.

Evaluations under this section must use assessment methods including, to the maximum extent feasible, random assignment of clients to service delivery and control groups; to describe and measure the effectiveness of the projects in achieving their goals; and describe and assess, their impact on marriage, parenting, domestic violence, child abuse and neglect, money management, employment and earnings, payment of child support, and child well-being, health and education.

The Secretary is required to publish an implementation evaluation report covering the first 24 months of the activities under these recommendations to be completed by 36 months after initiation of such activities; and a final report on the evaluation to be completed by September 30, 2013.

Reason for change

Carefully evaluating the fatherhood projects and their outcomes would help the Secretary of HHS determine the best approaches to meet program objectives. The Committee is interested in maximizing information for Congress and others to review in considering whether a project has been effective.

Section 446 of Part C—Projects of National Significance

Present law

No provision.

Explanation of provision

The Secretary of HHS is authorized, by grant, contract or cooperative agreement, to carry out projects and activities of national significance relating to fatherhood promotion, including the following elements.

Collection and dissemination of information. Assisting States, communities, and private entities, including religious organizations, in efforts to promote and support marriage and responsible fatherhood by collecting, evaluating, developing, and making available (through the Internet and by other means) to all interested parties information regarding approaches to accomplishing the four specified objectives.

Media campaign. Developing, promoting, and distributing to interested States, local governments, public agencies, and private nonprofit organizations, including charitable and religious organizations, a media campaign that promotes and encourages involved, committed and responsible fatherhood and married fatherhood.

Technical assistance. Providing technical assistance, including consultation and training, to public and private entities, including community organizations and faith-based organizations, in the implementation of local fatherhood promotion programs.

Research. Conducting research on projects of national significance related to fatherhood promotion.

Reason for change

To assist State and local projects that are working to help young and especially poor fathers become better husbands, parents, and providers, fatherhood projects of national significance will produce, collect, and distribute information about accomplishing the goals of the fatherhood program. Other allowable activities such as a media campaign, technical assistance, and research would help encourage involved, committed, and responsible fatherhood and married fatherhood.

Section 447 of Part C—Nondiscrimination

Present law

No provision.

Explanation of provision

The projects and activities assisted must be made available on the same basis to all fathers and expectant fathers able to benefit from such projects and activities, including married and unmarried fathers and custodial and noncustodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers on the same basis as to fathers.

Reason for change

This provision clarifies the intent of the Committee regarding nondiscrimination.

Section 448 of Part C—Authorization of Appropriations; Reservation for Certain Purposes

Present law

No provision.

Explanation of provision

Appropriations of $20 million for each of FY 2006 through FY 2010 are authorized. Not more than 15 percent of the annual appropriation shall be available for the costs of the multi-city, multi-State demonstration projects under Section 444, evaluations under Section 445, and projects of national significance under Section 446.

Reason for change

This level of funding is appropriate for initiating the program so it can provide valuable information about effective approaches that help young men become better fathers and play a more significant role in their family's lives.

Section 8120. State Option to Make TANF Programs Mandatory Partners with One-Stop Employment Training Centers

Present law

The Workforce Investment Act (WIA) makes TANF an optional partner with one-stop employment training centers.

Explanation of provision

Makes State TANF programs mandatory partners with one-stop employment training centers established under the Workforce Investment Act, unless the governor of a State decides otherwise and so notifies the Secretaries of HHS and DOL.

Reason for change

This provision is intended to enhance program integration and ensure that all available employment services and training opportunities are available for low-income individuals by making TANF

a mandatory partner with the Workforce Investment Act One-Stop Delivery System, unless a State decides otherwise.

Section 8121. Sense of the Congress

Present law

No provision.

Explanation of provision

Provides that it is the sense of Congress that a State welfare-to-work program should include mentoring.

Reason for change

The sense of the Congress is intended to emphasize the interest of Congress that States include mentoring activities in their welfare-to-work programs.

Section 8122. Drug Testing of Applicants for and Recipients of Assistance

Present law

States may test welfare recipients for the use of controlled substances and sanction recipients who test positive for controlled substances.

Explanation of provision

The Committee recommendations require States to test applicants and recipients of TANF for use of drugs if the State has a reason to believe he or she has unlawfully used a controlled substance. If the applicant or recipient tests positive for drug use, or if the State otherwise determines that he or she has unlawfully used drugs, the State must ensure that the family self-sufficiency plan addresses the use of the substance; suspend cash assistance to the family until a subsequent test shows no drug use; and require the applicant or recipient to undergo periodic drug tests (every 30 or 60 days) as a condition of receiving cash assistance.

States are required to terminate participation in the program for a family for 3 years if the recipient fails the drug test at least three consecutive times (States may set a more lax requirement, allowing failure of the drug test for up to six consecutive times).

The Secretary of HHS is required to penalize a State that does not comply with this requirement. The penalty is a minimum of five percent of the State's block grant, and a maximum of ten percent of the State's block grant, with the Secretary determining the exact penalty amount.

Reason for change

Welfare reform is intended to identify and remove barriers in the path to self-sufficiency for low-income individuals and their families. Individuals who use and are addicted to drugs encounter numerous difficulties in moving to healthy, self-reliant lives as workers and parents. This provision is designed to help identify drug users to ensure that States assist these individuals, including by adjusting their self-sufficiency plan to include activities to assist the individual in overcoming drug use.

SUBTITLE B.—CHILD CARE

Section 8201. Entitlement Funding

Present law

Entitles States to a basic block grant based on FY 1992-1995 expenditures in welfare-related child care. Mandatory funds above this amount are provided to States on a matching basis. Also appropriates entitlement (mandatory) funding at the FY 2002 rate of $2.717 billion annually through December 31, 2005.

Explanation of provision

The Committee recommendations appropriate funds for mandatory child care as follows:

$2.717 billion for FY 2006;
$2.767 billion for FY 2007;
$2.817 billion for FY2008;
$2.867 billion for FY 2009; and
$2.917 billion for FY 2010.

Reason for change

In addition to continuing the current record high Federal funding levels in FY 2006 for the mandatory portion of the CCDBG, the Committee recommendations provide for increased funding in FYs 2007 through 2010. The Committee recommendations provide for increases of $50 million in FY 2007, $100 million in FY 2008, $150 million in FY 2009, and $200 million in FY 2010.

Thus the total amount of mandatory child care provided under the Committee recommendations is $14 billion over the next 5 fiscal years. That is in addition to child care available from other sources, including the $17 billion Federal TANF block grant and State maintenance of effort funds in excess of $10 billion annually, the $1.7 billion annual Federal Title XX SSBG, over $2 billion annually in discretionary child care funds (under the jurisdiction of the Education and the Workforce Committee), and other State resources. In addition, the Committee recommendations (Section 8107, Use of Funds) provide additional State flexibility to spend TANF funds for child care by increasing the amount of funds that may be transferred from TANF to the CCDBG, and otherwise provide additional flexibility in spending current and carryover TANF funds for child care needs.

SUBTITLE C.—CHILD SUPPORT

Section 8301. Federal Matching Funds for Limited Pass Through of Child Support Payments to Families Receiving TANF

Present law

While the family receives TANF benefits, the State is permitted to retain any current child support payments and any assigned arrearages it collects up to the cumulative amount of TANF benefits which have been paid to the family. In other words, the State can decide how much, if any, of the State share (some, all, none) of the child support payment collected on behalf of TANF families to send

to the family. The State is required to pay the Federal government the Federal share of the child support collected.

Explanation of provision

For TANF families, requires the Federal government to waive its share of an increase in the child support passed through to the family (up to the greater of $100 per month or $50 over the State's stipulated child support pass through as of December 31, 2001). To obtain the Federal matching funds, the State has to disregard the amount passed through to the family in determining the family's TANF benefit amount. This provision would apply to amounts distributed on or after October 1, 2008.

Reason for change

The Committee recommendations provide that current and former welfare families receive more of the child support collected from non-custodial parents. By providing a Federal match for certain child support passed through to current TANF families, States would be given an incentive to enact such a policy. These additional funds for current TANF families would help the family by encouraging a stronger connection between the family and the absent parent, providing additional regular income for the family, and allowing the paying parent to see that at least part of their child support payments are actually going to the family, rather than being retained by the government.

Section 8302. State Option to Pass Through All Child Support Payments to Families that Formerly Received TANF

Present law

Current child support payments must be paid to the family if the family is no longer on TANF. With respect to former TANF families: Since October 1, 1997, child support arrearages that accrue after the family leaves TANF also are required to be paid to the family before any monies may be retained by the State. With respect to former TANF families: Since October 1, 2000, child support arrearages that accrued before the family began receiving TANF also are required to be distributed to the family first. However, if child support arrearages are collected through the Federal income tax refund offset program, the family does not have first claim on the arrearage payments. Such arrearage payments are retained by the State and the Federal government.

Explanation of provision

The Committee recommendations simplify child support distribution rules to give States the option of providing families that have left TANF the full amount of the child support collected on their behalf (i.e., both current child support and child support arrearages). The Federal government would share with the States the costs of paying child support arrearages to the family first. This provision would apply to amounts distributed on or after October 1, 2008.

Reason for change

Providing additional funds to single-parent families leaving welfare would increase the parents' incentive to leave welfare, improve the chances that they will be able to sustain themselves and their children without falling back on welfare, and contribute to strengthening the bond between children and non-custodial parents.

Section 8303. Mandatory Review and Adjustment of Child Support Orders for Families Receiving TANF

Present Law

Federal law requires that the State have procedures under which every 3 years the State review and adjust (if appropriate) child support orders at the request of either parent, and that in the case of TANF families, the State review and update (if appropriate) child support orders at the request of the State CSE agency or of either parent.

Explanation of provision

States are required to review and, if appropriate, adjust child support orders in TANF cases every 3 years. This provision would take effect on October 1, 2007.

Reason for change

Factors such as inflation, unemployment, promotion, job change, marriage, or disability can cause child support orders to become outdated and need adjustment. Although requiring regular review of child support orders would involve the investment of time and money by States, according to the Congressional Budget Office, both States and the Federal government would save money if child support orders were updated every 3 years. In addition to reducing costs, a regular review and modification of child support orders would promote fairness for both custodial and non-custodial parents. For custodial parents, positive changes in the financial condition of the non-custodial parent can result in higher child support payments for families. For non-custodial parents experiencing economic difficulties, proper adjustment of a child support order would help prevent them from accumulating unnecessary debt while allowing for continued, though perhaps lower, regular financial contribution to the monthly income needs of the child.

Section 8304. Mandatory Fee for Successful Child Support Collection for Family That Has Never Received TANF

Present law

Federal law requires that non-welfare families may apply for CSE services, and States must charge an application fee that cannot exceed $25. Such fees may be recovered from the custodial parent, the noncustodial parent, or the State (with State funds). In addition, States have the option of recovering costs in excess of the application fee. Such recovery may be from either the custodial parent or the noncustodial parent.

Explanation of provision

Families that have never been on TANF are required to pay a $25 annual user fee when child support enforcement efforts on their behalf are successful (i.e., at least $500 annually is collected on their behalf). Such fees may be recovered from the custodial parent, the noncustodial parent, or the State (with State funds). This provision would take effect on October 1, 2006.

Reason for change

The implementation of user fees in certain non-welfare cases contributes to offsetting the costs of the program and is a reasonable expectation, especially with the limitation that fees apply only in those cases in which at least $500 is collected. This means the $25 fee equals a maximum of five percent of any amount collected, and less in the case of collections exceeding $500. In addition, this action represents continued progress toward a focus on families and a strengthened child support enforcement program instead of simply recoupment of welfare benefit costs.

Section 8305. Report on Undistributed Child Support Payments

Present law

No provision.

Explanation of provision

Within 6 months of enactment, the Secretary of HHS must submit to the House Ways and Means Committee and the Senate Finance Committee a report on the procedures States use to locate custodial parents for whom child support has been collected but not yet distributed. The report must include an estimate of the total amount of undistributed child support and the average length of time it takes undistributed child support to be distributed. To the extent the Secretary deems appropriate, the report would be required to include recommendations as to whether additional procedures should be established at the State or Federal level to expedite the payment of undistributed child support.

Reason for change

The Committee is interested in learning more about the problem of collected child support payments that are being held by the State rather than being distributed to families because of problems such as an incorrect address. The Secretary of HHS is directed to examine this problem and its causes, estimate the amount of money that is undistributed and the length of time for which it is undistributed, and make recommendations on State or Federal policy changes that would effectively address this problem.

Section 8306. Decrease in Amount of Child Support Arrearage Triggering Passport Denial

Present law

Federal law stipulates that the Secretary of HHS is required to submit to the Secretary of State the names of noncustodial parents who have been certified by the State CSE agency as owing more

than $5,000 in past-due child support. The Secretary of State has authority to deny, revoke, restrict, or limit passports to noncustodial parents whose child support arrearages exceed $5,000.

Explanation of provision

The Committee recommendations authorize the denial, revocation, or restriction of passports to noncustodial parents whose child support arrearages exceed $2,500, rather than $5,000 as under current law. This provision would take effect on October 1, 2006.

Reason for change

The passport denial program has proved to be an effective method for collecting past-due child support payments. Since the program's inception in June 1998, individuals with child support arrearages have paid over $21 million in lump sum child support payments to avoid losing their passports. By lowering the amount that triggers passport revocation, even more child support would be collected to help more families.

Section 8307. Use of Tax Refund Intercept Program to Collect Past-Due Child Support on Behalf of Children who are Not Minors

Present law

Federal law prohibits the use of the Federal income tax offset program to recover past-due child support on behalf of non-welfare cases in which the child is not a minor, unless the child was determined disabled while he or she was a minor and for whom the child support order is still in effect. (Since enactment in 1981 (P.L. 97–35), the Federal income tax offset program has been used to collect child support arrearages on behalf of welfare families regardless of whether the children were still minors as long as the child support order was in effect.)

Explanation of provision

Permits the Federal income tax refund offset program to be used to collect arrearages on behalf of non-welfare children who are no longer minors. This provision would take effect on October 1, 2007.

Reason for change

Originally proposed as part of H.R. 4071 in the 106th Congress, this provision promotes equal treatment of all child support debts, increases collections, and strengthens the important message that child support debts cannot be avoided by withholding payment until the child is no longer a minor.

Section 8308. Garnishment of Compensation Paid to Veterans for Service-Connected Disabilities in Order to Enforce Child Support Obligations

Present law

The disability compensation benefits of veterans are treated differently than most forms of government payment for purposes of paying child support. Whereas most government payments are subject to being automatically withheld to pay child support, veterans' disability compensation is not subject to intercept. The only excep-

tion occurs when veterans have elected to forego some of their retirement pay in order to collect additional disability payments. The advantage of veterans replacing retirement pay with disability pay is that the disability pay is not subject to taxation. With this exception, the only way to obtain child support payments from veterans' disability compensation is to request that the Secretary of the Veterans Administration intercept the disability compensation and make the child support payments.

Explanation of provision

Allows veterans' disability compensation benefits to be intercepted (withheld) and paid on a routine basis to the custodial parent if the veteran is 60 days or more in arrears on child support payments. This provision cannot be used to collect alimony and no more than 50 percent of any particular disability payment can be withheld. This provision would take effect on October 1, 2007.

Reason for change

The Ways and Means Committee has been supportive of allowing veterans' disability payments to be subject to withholding to enforce child support obligations. Nonetheless, by allowing withholding only after the veteran has been 60 days in arrears on child support obligations, veterans' disability payments would continue to be treated differently than most other government payments; the Committee believes the fact that veterans are receiving the payments because they were injured in the line of duty justifies this continued differential treatment.

Section 8309. Maintenance of Technical Assistance Funding

Present law

Federal law appropriates an amount equal to 1 percent of the Federal share of child support collected on behalf of TANF families during the preceding year for the Secretary to provide information dissemination and technical assistance to the States, training of State and Federal staff, staffing studies, related activities needed to improve CSE programs (including technical assistance concerning State automated CSE systems), and research demonstration and special projects of regional or national significance relating to the operation of CSE programs. Such funds are available until they are expended.

Explanation of provision

Changes the amount available for technical assistance funding to an amount equal to one percent of the Federal share of child support collected or the amount appropriated for FY 2002, whichever is greater.

Reason for change

Funding authorized under this provision is an important element of the Federal government's oversight of the development of State automated child support program systems. This provision would help maintain an adequate funding stream for much needed technical assistance as HHS works to bring all States into compliance

with the automated system requirements of the 1996 welfare reform law.

Section 8310. Maintenance of Federal Parent Locator Service Funding

Present law

Federal law appropriates an amount equal to two percent of the Federal share of child support collected on behalf of TANF families during the preceding year for the Secretary to use for operation of the Federal Parent Locator Service to the extent that the costs of the Federal Parent Locator Service are not recovered by user fees. Funds that were appropriated for FYs 1997–2001 remain available until expended.

Explanation of provision

Changes the amount available for the Federal Parent Locator Service (FPLS) to an amount equal to two percent of the Federal share of child support collected or the amount appropriated for FY 2002, whichever is greater. Makes all funds appropriated for this purpose available until expended.

Reason for change

The FPLS processes millions of requests for information to help find absent parents in order to secure and enforce child support obligations. This provision would help maintain an adequate funding stream for this important service.

Section 8311. Information Comparisons with Insurance Data

Present law

No provision.

Explanation of provision

The Secretary of HHS is authorized, via the Federal Parent Locator Service, to compare information of noncustodial parents who owe past-due child support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments; and to furnish any information resulting from a match to the appropriate State CSE agency in order to secure settlements, awards, etc. for payment of past-due child support. Stipulates that no insurer would be liable under Federal or State law for disclosures made in good faith of this provision.

A State or Federal agency that receives such information from the Secretary of HHS must reimburse the Secretary for the costs incurred by the Secretary in providing the information, at rates which the Secretary determines to be reasonable.

Reason for change

Although States must have laws requiring the use of procedures that authorize intercepting or seizing periodic or lump-sum payments from settlements to satisfy current support obligations, States often cannot access the databases that contain insurance and settlement information. To assist States, the Committee recommendations allow the Secretary of HHS to administer a program

to match the list of those individuals owing past-due child support against insurance databases to identify individuals who have pending insurance claims and settlements. The Secretary of HHS would notify States if delinquent obligors have pending insurance claims and settlements so that States could take enforcement actions to freeze and seize these payments. Participation by insurance companies would be voluntary.

Section 8312. Tribal Access to the Federal Parent Locator Service

Present law

The FPLS is a national location system operated by the Federal Office of Child Support Enforcement to assist States in locating noncustodial parents, putative fathers, and custodial parties for the establishment of paternity and child support obligations, as well as the enforcement and modification of orders for child support, custody and visitation. It also identifies support orders or support cases involving the same parties in different States. The FPLS consists of the Federal Case Registry, Federal Offset Program, Multi-State Financial Institution Data Match, National Directory of New Hires, and the Passport Denial Program. Additionally, the FPLS has access to external sources such as the Internal Revenue Service (IRS), the Social Security Administration (SSA), Department of Veterans Affairs (VA), the Department of Defense (DOD), and the Federal Bureau of Investigation (FBI). The FPLS is only allowed to transmit information in its databases to "authorized persons," which include (1) child support enforcement agencies (and their attorneys and agents); (2) courts, (3) the resident parent, legal guardian, attorney, or agent of a child owed child support; and (4) foster care and adoption agencies.

Explanation of provision

The Committee recommendations include Indian tribes and tribal organizations that operate a CSE program as "authorized persons."

Reason for change

To help tribal child support enforcement programs locate noncustodial parents to establish paternity and collect child support, the Committee recommendations give tribal child support enforcement programs access to the Federal Parent Locator Service. This action will increase child support collections to families, especially tribal families.

Section 8313. Reimbursement of Secretary's Costs of Information Comparisons andDisclosure for Enforcement of Obligations on Higher Education Act Loans and Grants

Present law

Federal law (P.L. 106–113) authorized the Department of Education to have access to the National Directory of New Hires. The provisions were designed to improve the ability of the Department of Education to collect on defaulted student loans and grant overpayments made to individuals under Title IV of the Higher Education Act of 1965. The Federal Office of Child Support Enforcement (OCSE) and the Department of Education negotiated and im-

plemented a Computer Matching Agreement in December 2000. Under the agreement, the Secretary of Education is required to reimburse the Secretary of HHS for the additional costs incurred by the Secretary of HHS in furnishing requested information.

Explanation of provision

The reimbursement of costs provision is amended by eliminating the word "additional," thereby requiring the Secretary of Education to reimburse the Secretary of HHS for any costs incurred by the Secretary of HHS in providing requested information on new hires.

Reason for change

The Committee recommendations make legislative language governing the Department of Education's access to the National Directory of New Hires consistent with general reimbursement language that applies to other entities.

Section 8314. Technical Amendment Relating to Cooperative Agreements Between States and Indian Tribes

Present law

Federal law requires that any State that has a child welfare program and that has Indian country may enter into a cooperative agreement with an Indian tribe or tribal organization if the tribe demonstrates that it has an established tribal court system with several specific characteristics related to paternity establishment and the establishment and enforcement of child support obligations. The Secretary of HHS may make direct payments to Indian tribes and tribal organizations that have approved child support enforcement plans.

Explanation of provision

The Committee recommendations delete the reference to child welfare programs.

Reason for change

The reference to be deleted incorrectly refers to the child welfare program rather than the child support enforcement program.

Section 8315. State Option to Use Statewide Automated Data Processing and Information Retrieval System for Interstate Cases

Present law

The 1996 welfare reform law mandated States to establish procedures under which the State would use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request from another State to enforce a child support order. This provision was designed to enable child support agencies to quickly locate and secure assets held by delinquent noncustodial parents in another State without opening a full-blown interstate child support enforcement case in the other State. The assisting State must use automatic data processing to search various State data bases including financial institutions, license records, employment service data, and State new hire registries, to determine whether information is available regarding a parent who

owes a child support obligation, the assisting State is then required to seize any identified assets. This provision does not allow States to open/establish a child support interstate case.

Explanation of provision

The Committee recommendations allow an assisting State to establish a child support interstate case based on another State's request for assistance; and thereby an assisting State would be able to use the CSE statewide automated data processing and information retrieval system for interstate cases.

Reason for change

The Committee recommendations allow States that cannot now use their automated systems to provide high-volume automated administrative enforcement services in interstate cases to choose to open a case in order to assist other States in collecting child support.

Section 8316. Modification of Rule Requiring Assignment of Support Rights as a Condition of Receiving TANF

Present law

In order to receive benefits TANF recipients must assign their child support rights to the State. The assignment covers any child support that accrues while the family receives TANF and any support that accrued before the family began receiving TANF.

Explanation of provision

The Committee recommendations stipulate that the assignment covers child support that accrues during the period that the family receives TANF, and also gives States the option of including in the assignment child support that accrued to the family before the family began receiving TANF. This provision would take effect on October 1, 2008.

Reason for change

To help families as they transition from welfare to work, the Committee recommendations allow States to permit families to keep more of the child support collected on their behalf.

Section 8317. State Option to Discontinue Certain Support Assignments

Present law

Any assignment of rights to child support that was in effect on September 30, 1997 must remain in effect. This means that any child support collected as a result of the assignment is owed to the State and the Federal government.

Explanation of provision

Any assignment of rights to child support that was in effect on September 30, 1997 may remain in effect. This means that States would have the option to discontinue pre-assistance assignments in effect on September 30, 1997. If a State chooses to discontinue the child support assignment, the State would have to give up its legal

claim to collections based on such arrearages and the State would have to distribute the collections to the family.

In addition, States would have the option to discontinue pre-assistance assignments in effect after September 30, 1997 and before the implementation date of this provision. If a State chooses to discontinue the child support assignment, the State would have to give up its legal claim to collections based on such arrearages and the State would have to distribute the collections to the family.

Reason for change

Allowing States the option to discontinue certain assignments of pre-assistance child support can contribute to increased child support payments to families and simplified administration of child support programs by the States.

Section 8318. Technical Correction

Present law

Section 453(j) of the Social Security Act includes two paragraphs labeled with the number (7).

Explanation of provision

This provision corrects the numbering order of the paragraphs in Section 453(j) of the Social Security Act.

Reason for change

Technical correction.

Section 8319. Reduction in Rate of Reimbursement of Child Support Administrative Expenses

Present law

Without limit, the Federal government reimburses States for 66 percent of the cost of operating their child support programs.

Explanation of provision

Federal participation in the child support program will continue, but with a gradual reduction in the Federal matching rate. The reimbursement rate would be 62 percent for FY 2007, 58 percent for FY 2008, 54 percent for FY 2009, and 50 percent for FY 2010 and each succeeding fiscal year.

Reason for change

The GAO reports that the current Federal matching rate for administrative expenses in the Medicaid, Food Stamps, Foster Care, and Adoption Assistance programs is 50 percent. This provision will make, by FY 2010, the Federal matching rate for child support program administrative costs the same as the current participation rate in other major Federal-State programs.

As a result of the current 66 percent Federal matching rate as well as other current program features—including the provision of Federal incentive payments, which would be retained under this title (but which would no longer be subject to Federal matching payments; see below)—the GAO also reports that in FY 2004 Federal funds actually paid for a full 88 percent of net child support

program administrative costs. Regardless of the tremendous success of this program in recovering child support, this degree of Federal funding is difficult to justify, especially in a program operated by the States and from which States receive numerous benefits. Those benefits include reductions in the need for payment of TANF benefits. The Committee notes the TANF caseload has fallen by more than 60 percent since 1996, which has permitted States to operate TANF programs using approximately $10 billion annually in State funds and thus collectively save approximately $3 billion per year in State funds relative to pre-1996 levels of State spending. At the same time, the Federal TANF block grant commitment has remained constant at $17 billion per year, and States currently have $3.75 billion in unspent Federal TANF funds.

By gradually reducing the Federal matching rate to 50 percent by FY 2010, a level equaling the rate already provided under other major programs, while retaining the payment of approximately $500 million per fiscal year in Federal incentive payments used for administrative purposes, the Committee expects that the Federal government will continue to support more than half of all child support administrative costs into the future. At the same time, the current 88 percent Federal share of net program costs as reported by the GAO will be reduced to a more reasonable and in the long run justifiable level.

Section 8320. Incentive Payments

Present law

Current law requires the Secretary of HHS to reimburse each State for child support expenditures at specified Federal matching rates. In addition, section 458 of the Social Security Act provides States with incentive payments based on program performance. States are required to spend incentive payments on child support enforcement activities. Incentive payments spent ("reinvested") within the child support program are eligible for a Federal match. Incentive payments are estimated to be: $446 million in FY 2005, $458 million in FY 2006, $471 million in FY 2007, $483 million in FY 2008, $494 million in FY 2009, and $505 million in FY 2010.

Explanation of provision

The Committee recommendations end the Federal matching of State expenditure of Federal CSE incentive payments. (This means that CSE incentive payments that are received by States and reinvested in the CSE program are not eligible for Federal reimbursement.) This provision would take effect on October 1, 2007—that is, starting in FY 2008.

Reason for change

The Committee recommendations continue the provision of child support incentive payments based on State performance in achieving certain indicators of an effective child support program. While continuing the Federal payment of such incentives, the Committee recommendations end the current policy of providing States additional Federal matching funds for spending Federal incentive funds on child support program purposes, for several reasons. There is

nothing to indicate that the Committee intended to allow States to receive such matching payments in the legislation creating the current incentive bonus structure (P.L. 105–200). In addition, current policy violates the longstanding budgetary principle of not matching State spending of one Federal dollar with the payment of another Federal dollar. As described above, the Committee also notes a recent study by the GAO, which indicates that current Federal administrative funding under the child support enforcement program is among the most generous of major Federal entitlement programs. Federal funds account for 88 percent of net costs in the child support program, far exceeding the Federal share of such costs under many other major social programs, including foster care and adoption and health care programs, including Medicaid.

SUBTITLE D.—CHILD WELFARE

Section 8401. Extension of Authority to Approve Demonstration Projects

Present law

Section 1130 (a)(1) and (2) of the Social Security Act permits the Secretary of HHS to conduct demonstration projects that are likely to promote the objectives of the child welfare programs authorized under Title IV–B and Title IV–E. This authority extends through FY 2005.

Explanation of provision

The Committee recommendations extend the authority of the Secretary of HHS to permit child welfare demonstration projects through FY 2010.

Reason for change

Waivers of Federal Foster Care, Adoption Assistance, and child welfare services programs allow States to seek improvements and efficiencies in child protection programs. For example, managed care approaches to service provision approved under Title IV–E waivers have allowed States to provide increased support services to a broader range of families than could be accomplished under the restrictive guidelines that govern existing Federal funding streams.

Much has been learned from the existing demonstration projects, particularly as a result of the requirement that projects be rigorously evaluated. Continuation of this activity would yield additional important information on ways to improve the provision of services to children and families in need.

Section 8402. Elimination of Limitation on Number of Waivers

Present law

Section 1130(a)(2) of the Social Security Act limits to 10 the number of demonstration projects the Secretary of HHS may grant in a single fiscal year.

Explanation of provision

The Committee recommendations remove the restriction on the number of demonstration projects the Secretary of HHS may approve in each fiscal year.

Reason for change

The authority of the Secretary of HHS to approve child welfare waivers has been increased over time and many States currently operate demonstration projects. Existing waivers have shown that enhanced flexibility can free States and localities to expand and improve services and supports to families without jeopardizing program integrity. Any and all States should have the opportunity to seek out approaches designed to improve child protection services that match local needs. Lifting the cap on the number of waivers that may be approved would ensure that every State has this option.

Section 8403. Elimination of Limitation on Number of States That May Be Granted Waivers to Conduct Demonstration Projects on Same Topic

Present law

No current provision. In the past, HHS has expressed a "preference" for projects that "would test policy alternatives that are unique; that differ in their approach to serving families and children; [and] that differ in significant ways from other proposals."

Explanation of provision

The Committee recommendations add language to assert that the Secretary of HHS may not refuse to grant a particular waiver of child welfare program rules on the grounds that the purpose of the waiver or demonstration project is similar to another waiver or demonstration project.

Reason for change

In the past, the Secretary of HHS has narrowly interpreted the agency's waiver authority. States were denied waiver applications on the grounds that the approach had already been tested, despite the fact that there were no such restrictions imposed in statute. The Committee finds that lessons learned from existing or previous demonstration projects ought to inform future applications on similar topics. Thus, if one State's waiver would benefit children in other States, that waiver should be allowed to apply in those other States.

Section 8404. Elimination of Limitation on Number of Waivers That May Be Granted to a Single State for Demonstration Projects

Present law

No current provision. In the past, HHS has expressed a "preference" for projects "that are submitted by States that have not previously been approved for a child welfare demonstration project."

Explanation of provision

The Committee recommendations add language to assert that the Secretary of HHS may not impose a limit on the number of waivers or demonstration projects that a single State is granted.

Reason for change

In the past, the Secretary of HHS has narrowly interpreted waiver authority. The Committee recommendations make clear that States have the authority to operate more than one waiver at a time. As many waivers are narrowly focused on a particular service need, eligibility category, or local area, it is important that the number of waivers or demonstration projects granted a single State not be arbitrarily limited.

Section 8405. Streamlined Process for Consideration of Amendments to and Extensions of Demonstration Projects Requiring Waivers

Present law

No provision.

Explanation of Provision

The Committee recommendations add language to require the Secretary of HHS to develop a "streamlined process" of considering amendments or extensions that States propose to their demonstration projects.

Reason for change

The process for making adjustments or extensions to child welfare demonstration projects in the past has been lengthy and overly bureaucratic. While the Committee finds that the current Administration has made dramatic improvements to the waiver approval process, particularly as it affects waivers of health care provisions, the recommendations would ensure there is an expedited process for child welfare waiver extensions and amendments in the future. The recommendations would not in any way diminish the authority of the Secretary of HHS to raise and require States to address any issues that may affect children's health and safety.

Section 8406. Availability of Reports

Present law

Section 1130(f)(1) and (2) of the Social Security Act provides that States conducting demonstration projects under a waiver granted by the Secretary of HHS must obtain an evaluation of the project's effectiveness and must provide interim and final evaluation reports to the Secretary of HHS when and in the manner that the Secretary requests.

Explanation of provision

The Committee recommendations require the Secretary of HHS to make available (to States or other interested parties) any of the demonstration project evaluation reports that it receives from a State and any demonstration project evaluation or report made by

the Secretary of HHS, with a focus on information that promotes best practices and program improvements.

Reason for change

The child welfare waiver authority requires rigorous evaluation and studies of each project. This information can provide important guidance to other States as they consider waiver applications or other improvements to child protection programs. The recommendations require the Secretary to ensure that the findings from these demonstration reviews are made available to other States and interested parties.

Section 8407. Clarification of Eligibility for Foster Care Maintenance Payments and Adoption Assistance

Present law

Section 472(a) of the Social Security Act provides that a State with a foster care program approved under Title IV–E must make foster care maintenance payments on behalf of eligible children who are removed from their home and placed into foster care. These eligibility criteria include a requirement that the child must have met—in the home from which he/she was removed—the income and other eligibility tests necessary to receive aid under the now-defunct AFDC program (as it existed on July 16, 1996). Section 474 provides that States are entitled to receive Federal matching funds at the Federal Medical Annual Percentage (FMAP) rate (ranging from 50 percent to 83 percent based on State's per capita income) for every foster care maintenance payment it makes on behalf of an eligible child.

Section 473(a)(2) of the Social Security Act provides that under one pathway to eligibility for adoption assistance, a special needs adoptee must have been eligible for aid under the AFDC program (as it existed on July 16, 1996) both in the month that the child was removed from the home and placed into foster care and in the month in which the adoption proceedings were initiated.

Explanation of provision

The Committee recommendations adjust Section 472(a) to clarify that for purposes of determining AFDC eligibility, the home from which the child is removed is always the home that a judge found to be "contrary to the child's welfare" or the home from which the child's parent or legal guardian entered into a voluntary agreement to place the child in foster care.

The clarification is in response to a 2003 decision by the 9th Circuit Court of Appeals, Rosales v. Thompson, (321 F.3d. 835) which read the statute to permit eligibility for certain children to be based on their financial and other circumstances in the homes of relatives who were not their parents or legal guardians and which were not the homes that were found unsafe for them. This reading of the statute is contrary to longstanding practice and to the way the eligibility test is understood by the HHS. Under the Rosales court's reading of the law, nearly every child in the 9th Circuit (which includes California, Washington, Oregon, Arizona, Montana,

Idaho, Nevada, Alaska, and Hawaii) could become eligible for federally matched foster care maintenance payments.

The clarification also adjusts Section 473(a)(2) of the Social Security Act regarding eligibility for adoption assistance to remove a requirement that the child meet the AFDC eligibility criteria (as they existed on July 16, 1996) at the time the adoption proceedings were initiated. This provision is not expected to change the number of special needs adoptees who are found eligible for Federal adoption assistance because, under the AFDC eligibility rules in effect on July 16, 1996, nearly every child who is entering final adoption proceedings would be considered AFDC eligible.

Reason for change

The Committee recommendations clarify the intent of Congress and restate longstanding eligibility requirements for Federal foster care and adoption assistance. The reading of the statute in both court cases is contrary to longstanding practice and to the way the eligibility test is understood by HHS. This clarification also responds to the President's FY 2006 budget proposal, which includes a provision to "clarify the process for determining Title IV–E eligibility. . . [and] amend the statute to come into accord with the Department's long-standing policy" in this respect.

Section 8408. Clarification Regarding Federal Matching of Certain Administrative Costs under the Foster Care Maintenance Payments Program

Present law

Section 474(a)(3) of the Social Security Act authorizes open-ended Federal matching of eligible State costs associated with the Federal foster care program. These are training costs (matched at 75 percent); data collection costs (matched at 50 percent) and all other administrative costs, including child placement and case management services (matched at 50 percent).

Section 472 provides that a condition of eligibility for Federal foster care maintenance payments is placement of a child in a licensed foster family home or a child care institution (not including "detention facilities" or public institutions that accommodate more than 25 children).

Section 471(a)(15)(B)(i) provides that a State must make reasonable efforts to preserve a family prior to the placement of a child in foster care or to prevent or eliminate the need for removing the child from the child's home. As part of meeting this duty, States may make certain administrative claims on behalf of children who have not been removed from their homes but are at imminent risk of removal. These children are called "candidates" for Title IV–E foster care.

Explanation of provision

The Committee recommendations specify that claims for Federal matching funds based on training, data collection, case management, and other administrative costs on behalf of otherwise eligible children who are placed in settings ineligible for Title IV–E funding would be available in only two circumstances:

(1) In the case of a child who is placed in the home of a relative who is not a licensed foster care provider, for 12 months or as long as it takes a State to normally license a foster family home (whichever is shorter) and;

(2) In the case of a child who is moved from an ineligible facility (e.g. juvenile detention center) to a licensed foster family home or an eligible child care institution, for no longer than 30 calendar days.

The Committee recommendations specify that in the case of a child who is at imminent risk of removal to foster care the State may only make administrative claims if:

(1) Reasonable efforts are being made to prevent the removal of the child from the home or (if necessary) to pursue the removal; and

(2) Not less than every 6 months the State determines that the child continues to be at imminent risk of removal.

Reason for change

The Committee recommendations clarify the circumstances under which States may claim Federal administrative funds for certain children in or at risk of being placed in foster care. This change is needed to ensure that States cannot continue to place a child in an unlicensed setting for an indefinite period of time while the State claims the child is a "candidate" for Federal foster care payments and thus the State is able to submit claims for reimbursement of its administrative costs from Federal resources. During this time, such children remain in the unlicensed setting, which longstanding Federal policy rightly discourages and seeks to minimize. The proposal does not reduce Federal foster care benefits to families because the funds in question in this case do not support payments to families. Instead, the proposal addresses under what circumstance and how much Federal administrative funding States may claim to operate their foster care programs.

Section 8409. Technical Correction

Present law

Section 1130(b)(1) of the Social Security Act states that the Secretary of HHS may not waive compliance with certain provisions under Title IV–B and IV–E, including those provisions under "Section 422(b)(9)."

Explanation of provision

The Committee recommendations change this reference to Section 422(b)(10). This technical correction is necessary because the cited language was renumbered in 1997 (P.L. 105–33) without the necessary conforming amendment to Section 1130 of the Social Security Act.

Reason for change

Technical correction.

Section 8410. Technical Correction

Present law

Section 470 of the Social Security Act states such sum as may be necessary shall be available "For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would have been eligible for assistance under the State's plan approved under part A (as such plan was in effect on June 1, 1995)."

Explanation of provision

The Committee recommendations change the date of this reference to July 16, 1996. This technical correction is necessary to ensure this provision is parallel to other references in Title IV–E of the Social Security Act to the date of enactment of the Personal Responsibility and Work Opportunity Act (P.L. 104–193) which replaced AFDC with TANF.

Reason for change

This is a technical and conforming date change.

SUBTITLE E.—SUPPLEMENTAL SECURITY INCOME

Section 8501. Review of State Agency Blindness and Disability Determinations

Present law

No provision regarding SSI.

To improve the accuracy and integrity of the program by reducing improper payments, the Social Security Disability Insurance (SSDI) program currently requires reviews of State agency favorable decisions before benefits are paid.

Explanation of provision

The Commissioner of Social Security is required to review determinations made by State agencies that adult applicants became blind or disabled as of a specified onset date. The Commissioner is also required to review at least 20 percent of determinations made in FY 2006, 40 percent of those made in FY 2007 and at least 50 percent of those made in FY 2008 or thereafter.

Reason for change

Under current law, the Commissioner of Social Security is required to review certain eligibility determinations made for Social Security disability insurance program claims that are made by State agencies. This practice ensures consistent and uniform application of Social Security Administration policies. By expanding this review provision to a similar share of SSI adult disability cases, the practice would be extended to help ensure that only beneficiaries disabled under the law receive SSI benefits. Also, the extension of this current SSDI program practice to the SSI program will make the determination of eligibility for these disability programs more consistent.

Section 8502. Payment of Certain Lump Sum Benefits in Installments under the Supplemental Security Income Program

Present law

If a beneficiary is due a past due payment of benefits and the amount of this payment, less any reimbursement to a State for interim assistance and any attorney's fees, is greater than the product of 12 times the maximum monthly benefit payable to an individual, or if applicable, an individual and spouse, then this payment must be made in not more than 3 installments made at 6 month intervals.

This provision does not apply in cases in which a beneficiary is determined to have an impairment likely to result in death within 12 months, or in cases in which a person is not currently eligible for benefits and is not likely to become eligible for benefits in the next 12 months.

Special exceptions regarding the amount of installments may be made for individuals who have outstanding debt or current or expected expenses attributable to food, clothing, shelter or medical expenses not covered by other government programs. Installments that would occur after the unexpected death of a recipient may be paid to a surviving spouse or in the case of a child to his or her parent.

Explanation of provision

The Committee recommendations revise the rules for payment of past due monthly benefits to provide that if such a payment, less any reimbursement to a State for interim assistance and any attorney's fees, is greater than the product of 3 times the maximum monthly benefit payable to an individual, or if applicable, an individual and spouse, then this payment must be made in not more than 3 installments made at 6 month intervals.

The Committee recommendations maintain all other provisions of current law, including exceptions related to individuals with especially serious conditions, certain expenses, and surviving spouses or parents.

Reason for change

The Committee recommendations provide for improved program consistency in the distribution of lump sum SSI benefit payments. Instead of maintaining current law provisions at levels at which, if unspent, lump sums of up to approximately $7,200 could eventually threaten an individual's continued eligibility for SSI benefits, the Committee recommendations provide a lower threshold triggering the provision of more lump sum payments in installments. This lower threshold of approximately $1,800 more nearly approximates the SSI program's current resources limit of $2,000. This change will alter the timing of when recipients receive the benefits, but will not affect the total amount of benefits paid. This timing change may promote more sound spending choices on the part of program beneficiaries, and results in modest program savings.

SUBTITLE F.—STATE AND LOCAL FLEXIBILITY

Section 8601. Program Coordination Demonstration Projects

Present law

No provision.

Explanation of provision

Purpose: To establish a "program of demonstration projects" in States (or portions of States) that would coordinate multiple public assistance, workforce development, and other programs so as to support working individuals and families, help families escape welfare dependency, promote child well-being, or help build stronger families. Projects would use innovative approaches to strengthen service systems and provide more coordinated and effective service delivery.

New authority: Establishes broad new authority that would, subject to limits discussed below, allow the heads of Federal agencies to waive statutory and regulatory requirements of specified covered programs (see below) at the request of State or sub-State entities.

Requests/applications for demonstration project waivers under the new authority would contain, among other items: (1) a description and justification of the project for which the waivers are being requested (including how it is expected to improve achievement of the included programs' purposes from the standpoint of quality and cost-effectiveness and the performance objectives of the project), (2) information and assurances necessary to establish that the project will meet cost-neutrality requirements (see below), and (3) assurance that the applicant agencies will conduct ongoing and final project evaluations and make interim and final project reports.

Covered ("qualified") programs: Programs/activities for which waivers could be granted using the new authority are: TANF (including mandatory child care) under Title IV–A of the Social Security Act and the SSBG (Title XX of the Social Security Act).

Federal approval of waiver requests: In general, the head of a Federal agency with responsibility for a program/activity for which a waiver is requested may approve a waiver/demonstration application and may waive any requirement (subject to some limits, see below) applicable to the program to the extent necessary and appropriate for the conduct of the proposed demonstration. To approve a project and waive requirements, a Federal agency head must determine that the project: (1) has a reasonable likelihood of achieving the objectives of the programs included in the project, (2) may reasonably be expected to meet cost-neutrality requirements (see below), and (3) includes 2 or more covered programs.

Approval is required of each Federal agency head with responsibility for a program covered by the waiver/demonstration request.

If a demonstration/waiver request is not disapproved within 90 days of receipt, it would be deemed approved. However, the deadline could be extended if the Federal agency asks for additional information. Projects may not be approved for a period longer than 5 years.

General limitations on waivers: Federal agencies may not use the new authority to waive provisions of law relating to:

1. Civil rights or prohibition of discrimination;
2. The purposes or goals of any program;
3. Maintenance of effort requirements (e.g., provisions that require States or other entities to maintain a certain level of spending);
4. Health or safety;
5. Labor standards under the Fair Labor Standards Act of 1938; or
6. Environmental protection.

Reports: Each Federal agency would be required to submit reports of applications for waivers/demonstrations under the new authority to the congressional Committees with jurisdiction (including the agency's decision and the reasons for approving or denying the application).

Each Federal agency would be required to provide annual reports to Congress on demonstrations approved under the new authority (including how well each project is improving program achievement from the standpoint of quality and cost-effectiveness and recommendations for program modifications based on project outcomes).

Cost-neutrality requirement: For any fiscal year, total Federal payments for affected programs in a State in which a demonstration project under the new authority is being conducted may not exceed the estimated amount that would have been paid if the project had not been conducted. (This allows "savings" in one program to be offset by new "costs" in another program.) The determination would be made by the Federal Office of Management and Budget (OMB).

Upon request by an applicant entity, the OMB would be permitted (at its discretion) to adjust the annual cost-neutrality requirement so that cost-neutrality is measured over a period longer than 1 year, but no more than 5 years.

Reason for change

Waivers under the AFDC program led to important information about how cash welfare programs could be operated in more efficient and effective ways that benefited low-income families. The Committee recommendations seek to offer added opportunities for States to integrate other programs that serve similar populations, but frequently have conflicting or incongruous requirements. Sufficient protections are included in the recommendations to ensure that fundamental program purposes are not compromised by demonstration projects, and that various civil rights, health and safety, and labor protections may not be waived. These demonstrations could yield important information for other States and the Nation on how programs serving low-income families may be improved in the future.

SUBTITLE G.—REPEAL OF CONTINUED DUMPING AND SUBSIDY OFFSET

Section 8701. Repeal of Continued Dumping and Subsidy Offset

Present law

The CDSOA, set forth at section 754 of the Tariff Act of 1930, 19 U.S.C. 1675c, requires the annual distribution of collected antidumping and countervailing duties to affected domestic producers for qualifying expenditures enumerated in the statute. The CDSOA requires the Bureau of Customs and Border Protection to create a special account for each antidumping and countervailing duty order currently in effect and to deposit collected duties into the respective account for future disbursement; funds in the account are available for distribution to any firm that was a petitioner or interested party publicly in support of the petition in the underlying antidumping or countervailing duty proceeding and that remains in operation. Distributions are to be made no later than 60 days after the first day of a fiscal year from duties assessed during the preceding fiscal year. Approximately $1 billion has been distributed under the CDSOA from FY2001 to FY2004. The World Trade Organization (WTO) has ruled that the statute violates U.S. obligations under the WTO Agreement on Antidumping and the Agreement on Subsidies and Countervailing Measures; panel and Appellate Body reports in the case were adopted by the WTO Dispute Settlement Body January 27, 2003.

Explanation of provision

This provision repeals the statute and the reference to it in the table of contents for Title VII of the Tariff Act. All amounts remaining in any special account established under the statute, as in effect on the day before the date of enactment, will be deposited into the general fund of the Treasury.

Reason for change

The GAO analyzed the operation of CDSOA and found that nearly half of the $1 billion in CDSOA payments made to date have gone to only five companies, three of which are related. Moreover, two-thirds of all payments have gone to only three industries: bearings, candles, and steel. The GAO report shows that CDSOA does not achieve its stated goal of strengthening trade relief to injured U.S. producers because it is not available to all companies; many domestic producers impacted by dumped or subsidized imports are ineligible to receive funds because they did not formally and publicly support the petition that resulted in the duties. The GAO study also shows that CDSOA provides incentives for companies to inflate claims. Because funds are disbursed on a pro-rata basis to companies eligible under each separate order, the biggest companies with the most qualifying expenditures receive the most money. Claims for qualifying expenditures in FY 2004 were just under $2 trillion dollars. It is obvious that claims are inflated, but there is no penalty for excessive claims. Moreover, the statute does not require verification. Accordingly, the GAO study provides objective

analysis regarding the ineffective operation of CDSOA and the extreme misuse of taxpayer dollars.

In addition, eleven countries successfully challenged CDSOA in a WTO dispute settlement proceeding. In late November 2004, the European Union, Japan, Korea, India, Brazil, Mexico, Canada, and Chile received formal WTO authorization to retaliate up to $134 million. On May 1, 2005, the EU imposed $28 million and Canada imposed $14 million. Mexico imposed $20.9 million in retaliation on August 18, 2005, and Japan applied $52 million in retaliation on September 1, 2005. Thus far, increased tariffs have been applied to a variety of U.S. exports, including: wine, dairy, textiles and apparel, paper products, frozen corn, sports footwear, hand drills, crane lorries, eyeglass frames, plastic furniture, photocopying machines, prefabricated buildings, mobile homes, ball point pens, chewing gum, live swine, oysters, certain cigarettes, certain fish, ball bearings, flat rolled steel, navigational instruments, machinery accessories, printing machines, forklift trucks, and industrial belts. Congressional action is required to bring the United States into compliance with the WTO determination, thereby ending the retaliation.

SUBTITLE H.—EFFECTIVE DATE

Section 8801. Effective Date

Present law

TANF State plan requirements and block grants took effect July 1, 1997, or earlier at State option.

Explanation of provision

Unless otherwise specified, provisions shall be effective as of October 1, 2005. If the Secretary determines that State legislation is required to meet State plan requirements under Title IV of the Social Security Act, more time is allowed (3 months after the first day of the first calendar quarter following the close of the first regular session of the legislature that began after October 1, 2005).

Reason for change

The Committee recommendations provide for the effective date of changes while allowing States ample time to make any necessary changes to State laws.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the Entitlement Reconciliation Recommendations for Fiscal Year 2006.

MOTION TO REPORT RECOMMENDATIONS

The Chairman's Amendment in the Nature of a Substitute, as amended, was ordered favorably reported by a roll call vote of 22 yeas to 17 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	√			Mr. Rangel		√	
Mr. Shaw				Mr. Stark		√	
Mrs. Johnson	√			Mr. Levin		√	
Mr. Herger	√			Mr. Cardin		√	
Mr. McCrery	√			Mr. McDermott		√	
Mr. Camp	√			Mr. Lewis (GA)		√	
Mr. Ramstad	√			Mr. Neal		√	
Mr. Nussle	√			Mr. McNulty		√	
Mr. Johnson	√			Mr. Jefferson		√	
Mr. English	√			Mr. Tanner		√	
Mr. Hayworth	√			Mr. Becerra		√	
Mr. Weller	√			Mr. Doggett		√	
Mr. Hulshof	√			Mr. Pomeroy		√	
Mr. Lewis (KY)	√			Ms. Tubbs Jones		√	
Mr. Foley				Mr. Thompson		√	
Mr. Brady	√			Mr. Larson		√	
Mr. Reynolds	√			Mr. Emanuel		√	
Mr. Ryan	√						
Mr. Cantor	√						
Mr. Linder	√						
Mr. Beauprez	√						
Ms. Hart	√						
Mr. Chocola	√						
Mr. Nunes	√						

VOTES ON AMENDMENTS

A roll call vote was conducted on the following amendments to the Chairman's Amendment in the Nature of a Substitute.

An amendment by Ms. Tubbs Jones, which would strike subtitle G, the "Repeal of Continued Dumping and Subsidy Offset," was defeated by a roll call vote of 18 yeas to 21 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas.....		√		Mr. Rangel.....	√		
Mr. Shaw.....				Mr. Stark.....	√		
Mrs. Johnson.....		√		Mr. Levin.....	√		
Mr. Herger.....		√		Mr. Cardin.....	√		
Mr. McCrery.....		√		Mr. McDermott.....	√		
Mr. Camp.....		√		Mr. Lewis (GA).....	√		
Mr. Ramstad.....		√		Mr. Neal.....	√		
Mr. Nussle.....		√		Mr. McNulty.....	√		
Mr. Johnson.....		√		Mr. Jefferson.....	√		
Mr. English.....		√		Mr. Tanner.....	√		
Mr. Hayworth.....		√		Mr. Becerra.....	√		
Mr. Weller.....		√		Mr. Doggett.....	√		
Mr. Hulshof.....		√		Mr. Pomeroy.....	√		
Mr. Lewis (KY).....		√		Ms. Tubbs Jones....	√		
Mr. Foley.....				Mr. Thompson.....	√		
Mr. Brady.....		√		Mr. Larson.....	√		
Mr. Reynolds.....		√		Mr. Emanuel.....	√		
Mr. Ryan.....		√					
Mr. Cantor.....		√					
Mr. Linder.....		√					
Mr. Beauprez.....		√					
Ms. Hart.....	√						
Mr. Chocola.....		√					
Mr. Nunes.....		√					

An amendment by Messrs. Levin and Pomeroy, which would strike child support savings provisions, was defeated by a roll call vote of 17 yeas to 22 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas.....		√		Mr. Rangel.....	√		
Mr. Shaw.....				Mr. Stark.....	√		
Mrs. Johnson.....		√		Mr. Levin.....	√		
Mr. Herger.....		√		Mr. Cardin.....	√		
Mr. McCrery.....		√		Mr. McDermott.....	√		
Mr. Camp.....		√		Mr. Lewis (GA).....	√		
Mr. Ramstad.....		√		Mr. Neal.....	√		
Mr. Nussle.....		√		Mr. McNulty.....	√		
Mr. Johnson.....		√		Mr. Jefferson.....	√		
Mr. English.....		√		Mr. Tanner.....	√		
Mr. Hayworth.....		√		Mr. Becerra.....	√		
Mr. Weller.....		√		Mr. Doggett.....	√		
Mr. Hulshof.....		√		Mr. Pomeroy.....	√		
Mr. Lewis (KY).....		√		Ms. Tubbs Jones....	√		
Mr. Foley.....				Mr. Thompson.....	√		
Mr. Brady.....		√		Mr. Larson.....	√		
Mr. Reynolds.....		√		Mr. Emanuel.....	√		
Mr. Ryan.....		√					
Mr. Cantor.....		√					
Mr. Linder.....		√					
Mr. Beauprez.....		√					
Ms. Hart.....		√					
Mr. Chocola.....		√					
Mr. Nunes.....		√					

An amendment by Mr. McDermott, which would establish a federal policy of reducing child poverty and establish a commission to provide recommendations, was defeated by a roll call vote of 17 yeas to 22 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas.....		√		Mr. Rangel.....	√		
Mr. Shaw.....				Mr. Stark.....	√		
Mrs. Johnson.....		√		Mr. Levin.....	√		
Mr. Herger.....		√		Mr. Cardin.....	√		
Mr. McCrery.....		√		Mr. McDermott.....	√		
Mr. Camp.....		√		Mr. Lewis (GA).....	√		
Mr. Ramstad.....		√		Mr. Neal.....	√		
Mr. Nussle.....		√		Mr. McNulty.....	√		
Mr. Johnson.....		√		Mr. Jefferson.....	√		
Mr. English.....		√		Mr. Tanner.....	√		
Mr. Hayworth.....		√		Mr. Becerra.....	√		
Mr. Weller.....		√		Mr. Doggett.....	√		
Mr. Hulshof.....		√		Mr. Pomeroy.....	√		
Mr. Lewis (KY).....		√		Ms. Tubbs Jones....	√		
Mr. Foley.....				Mr. Thompson.....	√		
Mr. Brady.....		√		Mr. Larson.....	√		
Mr. Reynolds.....		√		Mr. Emanuel.....	√		
Mr. Ryan.....		√					
Mr. Cantor.....		√					
Mr. Linder.....		√					
Mr. Beauprez.....		√					
Ms. Hart.....		√					
Mr. Chocola.....		√					
Mr. Nunes.....		√					

VOTES ON PROCEDURAL MOTIONS

A motion by Mr. Nussle to table the appeal of the ruling of the Chair to sustain the point of order that the Stark/Cardin amendment was not germane was agreed to by a roll call vote of 22 yeas to 17 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	√			Mr. Rangel		√	
Mr. Shaw				Mr. Stark		√	
Mrs. Johnson	√			Mr. Levin		√	
Mr. Herger	√			Mr. Cardin		√	
Mr. McCrery	√			Mr. McDermott		√	
Mr. Camp	√			Mr. Lewis (GA)		√	
Mr. Ramstad	√			Mr. Neal		√	
Mr. Nussle	√			Mr. McNulty		√	
Mr. Johnson	√			Mr. Jefferson		√	
Mr. English	√			Mr. Tanner		√	
Mr. Hayworth	√			Mr. Becerra		√	
Mr. Weller	√			Mr. Doggett		√	
Mr. Hulshof	√			Mr. Pomeroy		√	
Mr. Lewis (KY)	√			Ms. Tubbs Jones		√	
Mr. Foley				Mr. Thompson		√	
Mr. Brady	√			Mr. Larson		√	
Mr. Reynolds	√			Mr. Emanuel		√	
Mr. Ryan	√						
Mr. Cantor	√						
Mr. Linder	√						
Mr. Beauprez	√						
Ms. Hart	√						
Mr. Chocola	√						
Mr. Nunes	√						

A motion by Mr. McCrery to table the appeal of the ruling of the Chair to sustain the point of order that the Stark/Emanuel amendment was not germane was agreed to by a roll call vote of 21 yeas to 17 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas.....	√			Mr. Rangel.....		√	
Mr. Shaw.....	√			Mr. Stark.....		√	
Mrs. Johnson.....	√			Mr. Levin.....		√	
Mr. Herger.....	√			Mr. Cardin.....		√	
Mr. McCrery.....	√			Mr. McDermott.....		√	
Mr. Camp.....	√			Mr. Lewis (GA).....		√	
Mr. Ramstad.....	√			Mr. Neal.....		√	
Mr. Nussle.....	√			Mr. McNulty.....		√	
Mr. Johnson.....	√			Mr. Jefferson.....		√	
Mr. English.....	√			Mr. Tanner.....		√	
Mr. Hayworth.....	√			Mr. Becerra.....		√	
Mr. Weller.....	√			Mr. Doggett.....		√	
Mr. Hulshof.....	√			Mr. Pomeroy.....		√	
Mr. Lewis (KY).....	√			Ms. Tubbs Jones....		√	
Mr. Foley.....				Mr. Thompson.....		√	
Mr. Brady.....	√			Mr. Larson.....		√	
Mr. Reynolds.....				Mr. Emanuel.....		√	
Mr. Ryan.....	√						
Mr. Cantor.....	√						
Mr. Linder.....	√						
Mr. Beauprez.....	√						
Ms. Hart.....	√						
Mr. Chocola.....	√						
Mr. Nunes.....	√						

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 28, 2005.

Hon. WILLIAM "BILL" M. THOMAS,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation recommendations of the House Committee on Ways and Means.

CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sheila Dacey.

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

Reconciliation Recommendations of the House Committee on Ways and Means

Summary: The legislation would:

- Reauthorize the Temporary Assistance for Needy Families (TANF) program; it would increase funding for some grants and establish several new grants, but also would eliminate funding for other related grants;
- Increase funding for child care programs;
- Make several changes to the child support enforcement program, including reducing the federal share of funding, assessing fees on some families receiving services, and allowing the distribution to families of more collections from child support payments;
- Clarify eligibility for foster care and adoption assistance and place limits on federal matching funds for certain administrative costs for foster care;
- Require the Social Security Administration (SSA) to change its system of reviewing awards to certain disabled adults in the Supplemental Security Income (SSI) program and pay more retroactive SSI benefits in installments; and
- End distributions of antidumping and countervailing duties under the Continued Dumping and Subsidy Offset Act (CDSOA).

The legislation would extend the TANF and child care programs through 2010. Those programs are scheduled to expire on December 31, 2005. Continuing the programs at their current funding levels would provide budget authority of $79.4 billion for TANF and $12.6 billion for child care over the 2006–2010 period. However, CBO already assumes that level of funding in its baseline for those programs, pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Deficit Control Act). Therefore, the extension of those programs would have no cost relative to CBO's baseline.

CBO estimates that other provisions of the legislation would reduce direct spending by $100 million in 2006, by $8.0 billion over the 2006–2010 period, and by $21.2 billion over the 2006–2015 period, relative to CBO's baseline projections.

Implementing this legislation also would affect spending subject to appropriation action. The legislation would authorize appropriations of $20 million annually over the 2006–2010 period for a new grant program to promote fatherhood. It would also authorize appropriations for new administrative requirements in the SSI program. CBO estimates that appropriation of the authorized levels would result in outlays of $13 million in 2006, $170 million over the 2006–2010 period, and $310 million over the 2006–2015 period.

The legislation would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by decreasing the federal government's funding for states to administer the child support program. As a result of the reduction in federal assistance, CBO estimates that state spending for administering the child support program would increase significantly, and that increase would exceed the thresholds established in UMRA ($62 million in 2005, adjusted annually for inflation).

State, local, and tribal governments would benefit from the continuation of TANF grants, the creation of new grant programs, and broader flexibility and options in some areas. Other provisions of the legislation would significantly affect the way states administer the TANF program, but because of the flexibility in that program, the new requirements would not be intergovernmental mandates as defined in UMRA.

The legislation contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of the legislation is shown in Table 1. For this estimate, CBO assumes that it will be enacted in December 2005. The costs of this legislation fall within budget functions 370 (commerce and housing credit), 550 (health), and 600 (income security).

TABLE 1.—ESTIMATED COSTS OF RECONCILIATION RECOMMENDATIONS OF THE HOUSE COMMITTEE ON WAYS AND MEANS

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
CHANGES IN DIRECT SPENDING												
Subtitle A: TANF:												
Estimated Budget Authority	135	234	253	262	−41	−34	−29	−29	−27	−20	843	704
Estimated Outlays	237	234	134	274	47	−21	−29	−29	−27	−20	926	800
Subtitle B: Child Care:												
Budget Authority	0	50	100	150	200	200	200	200	200	200	500	1,500
Estimated Outlays	0	36	83	133	183	197	200	200	200	200	434	1,430
Subtitle C: Child Support:												
Estimated Budget Authority	4	−436	−1,148	−1,501	−1,818	−1,904	−1,988	−2,081	−2,181	−2,284	−4,899	−15,337
Estimated Outlays	4	−436	−1,148	−1,501	−1,818	−1,904	−1,988	−2,081	−2,181	−2,284	−4,899	−15,337
Subtitle D: Child Welfare:												
Estimated Budget Authority	−88	−120	−124	−127	−131	−135	−139	−143	−147	−152	−590	−1,306
Estimated Outlays	−80	−116	−123	−127	−131	−133	−138	−143	−147	−152	−577	−1,290
Subtitle E: Supplemental Security Income:												
Estimated Budget Authority	−261	−135	−77	−112	−147	−189	−216	−265	−306	−348	−732	−2,056
Estimated Outlays	−261	−135	−77	−112	−147	−189	−216	−265	−306	−348	−732	−2,056
Subtitle G: Repeal of Continued Dumping and Subsidy Offset:												
Estimated Budget Authority	−1,300	−1,300	−300	−300	−300	−300	−300	−300	−300	−300	−3,500	−5,000
Estimated Outlays	0	−1,300	−1,300	−300	−300	−300	−300	−300	−300	−300	−3,200	−4,700
Total Changes in Direct Spending:												
Estimated Budget Authority	−1,510	−1,707	−1,296	−1,628	−2,237	−2,362	−2,472	−2,618	−2,761	−2,904	−8,378	−21,495
Estimated Outlays	−100	−1,717	−2,431	−1,634	−2,167	−2,351	−2,472	−2,618	−2,761	−2,904	−8,048	−21,153
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	34	37	40	41	42	23	23	25	25	27	194	317
Estimated Outlays	13	28	41	44	44	38	27	24	25	26	170	310
Memorandum: Changes in Direct Spending from Program Extensions That Are Already Assumed in CBO's Baseline												
TANF:												
Estimated Budget Authority	11,899	16,875	16,875	16,875	16,875	0	0	0	0	0	79,399	79,399
Estimated Outlays	9,323	15,969	17,253	16,886	16,875	3,038	55	0	0	0	76,306	79,399
Child Care:												
Estimated Budget Authority	1,726	2,717	2,717	2,717	2,717	0	0	0	0	0	12,594	12,594

Estimated Outlays	1,163	2,365	2,680	2,718	2,717	761	163	27	0	0	11,643	12,594

Note: TANF = Temporary Assistance for Needy Families.

Basis of estimate: Most of the legislation's budgetary effects would stem from reducing spending for the child support enforcement program and stopping distribution of certain duties collected by the federal government. The legislation contains a number of other provisions that reduce or increase spending, resulting in a net decrease in direct spending of $100 million in 2006, $8.0 billion over the 2006–2010 period, and $21.2 billion over the 2006–2015 period.

Subtitle A: TANF

The legislation would reauthorize basic TANF grants through 2010 at the current funding level of $16.6 billion. By law, that amount is assumed to continue in CBO's current baseline; thus, enacting the legislation would not change basic TANF grants relative to that baseline. Subtitle A would alter the funding of some grants related to TANF and make several other changes to program rules and reporting requirements. CBO estimates that enacting subtitle A would increase direct spending by $237 million in 2006, by $926 million over the 2006–2010 period, and by $800 million over the 2006–2015 period, relative to CBO's baseline projections (see Table 2).

State Family Assistance Grants. Section 8102 would extend the state family assistance grant program through 2010 at the current funding level of $16.6 billion. The extension would provide nearly $80 billion in additional direct spending over the 2006–2010 period. CBO already assumes funding at that level in its baseline in accordance with rules for constructing baseline projections, as set forth in section 257 of the Deficit Control Act. Therefore, CBO estimates this provision would have no effect on direct spending over the 2006–2015 period, relative to the baseline projections. The TANF program and related grants were originally authorized through fiscal year 2002. They have been extended several times in subsequent legislation, most recently through December 31, 2005, by Public Law 109–68, which was enacted on September 21, 2005.

Healthy Marriage Promotion Grants. Section 8103 would eliminate a grant program that rewards states for reducing out-of-wedlock birth rates, but would create a new grant program to promote healthy marriages. CBO projects $1 billion in funding ($100 million annually over the 2006–2015 period) under current law for the existing grant program, in accordance with the Deficit Control Act. We estimate that eliminating this program would reduce outlays by $381 million over the 2007–2010 period, relative to CBO's baseline projections. The reduction in outlays would begin in 2007 because the grants are awarded in the last days of a fiscal year. CBO expects the reduced funding would cause states to decrease TANF benefits for families that also receive food stamps. As a result, the Food Stamp payment to those families would rise, and the cost of Food Stamp benefits would grow by an estimated $4 million over the 2007–2010 period.

TABLE 2.—DIRECT SPENDING EFFECTS OF SUBTITLE A: TANF

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Eliminate Grants for Reducing Out-of-Wedlock Births: [1]												
Estimated Budget Authority	−100	−99	−99	−99	−99	−99	−99	−99	−99	−99	−496	−991
Estimated Outlays	0	−56	−118	−104	−99	−99	−99	−99	−99	−99	−377	−872
Establish Healthy Marriage Promotion Grant:												
Budget Authority	100	100	100	100	100	100	100	100	100	100	500	1,000
Estimated Outlays	1	28	74	124	122	111	100	100	100	100	349	860
Continue Supplemental Grants through 2009: [1]												
Estimated Budget Authority	222	315	315	315	−1	0	0	0	0	0	1,166	1,166
Estimated Outlays	182	292	320	315	56	1	0	0	0	0	1,165	1,166
Eliminate High-Performance Bonus: [1]												
Estimated Budget Authority	−200	−199	−197	−197	−198	−198	−198	−198	−198	−198	−991	−1,981
Estimated Outlays	0	−114	−235	−208	−198	−198	−198	−198	−198	−198	−755	−1,745
Modify Contingency Fund: [1]												
Estimated Budget Authority	0	0	17	26	40	46	51	51	53	60	83	344
Estimated Outlays	0	0	17	26	40	46	51	51	53	60	83	344
Increase Transfer Authority to SSBG:												
Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	44	14	−47	−11	0	0	0	0	0	0	0	0
Establish Secretary's Fund for Research, Demonstration, and National Studies:												
Budget Authority	102	102	102	102	102	102	102	102	102	102	510	1,020
Estimated Outlays	10	61	110	117	111	103	102	102	102	102	409	920
Extend Funding of Studies and Demonstrations:												
Budget Authority	11	15	15	15	15	15	15	15	15	15	71	146
Estimated Outlays	*	9	13	15	15	15	15	15	15	15	52	127
Total Changes in Subtitle A:												
Estimated Budget Authority	135	234	253	262	−41	−34	−29	−29	−27	−20	843	704
Estimated Outlays	237	234	134	274	47	−21	−29	−29	−27	−20	926	800

[1] Estimate includes effects on spending in the Food Stamp program.

Notes.—TANF = Temporary Assistance for Needy Families, SSBG = Social Services Block Grant. * = Costs or savings of less than $500,000.

Section 8103 would establish a new competitive grant to states and Indian tribes for developing and implementing programs to promote and support marriage. The legislation would appropriate $100 million annually for grants that could be used for a variety of activities, including public advertising campaigns, education and training programs on topics related to marriage, marriage-mentoring programs, and programs to reduce disincentives to marriage in means-tested programs. The grants could be used to cover up to 50 percent of the cost of the new programs. Estimated outlays would total $1 million in 2006 and $349 million over the 2006–2015 period.

Supplemental Grants. Section 8104 would provide $319 million annually for supplemental grants for population increases over the 2006–2009 period. (It provides only $223 million in 2006; Public Law 109–68 already provided $96 million for the first quarter of 2006). These grants are awarded to states that have lower-than-average TANF grants per poor person or rapidly increasing populations. Current law specifies that supplemental grants should not be assumed to continue in baseline projections after December 31, 2005, overriding the continuation rules specified in section 257 of the Deficit Control Act.

CBO estimates that states would spend $1.2 billion from this new funding over the 2006–2010 period. We expect that some of the additional funding would be used to increase benefits to families that also receive food stamps. As a result, the Food Stamp payment to those families would fall and the cost of Food Stamp benefits would decline by an estimated $15 million over the 2006–2010 period.

Bonuses for High-Performing States. Section 8105 would eliminate funding for bonuses to high-performing states. Those bonuses reward states for moving TANF recipients into jobs, providing support for low-income working families, and increasing the percentage of children who reside in married-couple families. This change would reduce funding by $1 billion ($200 million a year) over the 2006–2010 period relative to CBO's baseline projections. Because the bonuses are usually granted in the last days of a fiscal year, TANF spending would fall by only $764 million over the five-year period. CBO expects the reduced TANF funding would cause states to decrease benefits to families that also receive food stamps. As a result, the Food Stamp payment to those families would rise and the cost of Food Stamp benefits would grow, by an estimated $9 million over the five-year period.

Contingency Fund. Section 8106 would extend and amend the Contingency Fund for State Welfare Programs. Under current law, the contingency fund provides additional federal funds to states with high and increasing unemployment rates or significant growth in Food Stamp participation. To be eligible, states are required to maintain their TANF spending at 100 percent of their 1994 levels and to match federal payments. CBO estimates that states will draw federal funds totaling between $30 million and $40 million annually under current law.

Starting in fiscal year 2008, the legislation would count more state spending toward the requirement that states match federal payments and increase the federal match for states that qualify for

funds for only part of the year. It would make small changes to rules governing eligibility for this funding. Based on CBO's projections of unemployment rates, Food Stamp participation, and state TANF spending, CBO estimates that states would qualify for $83 million more from the contingency fund over the 2008–2010 period.

Social Services Block Grant (SSBG). Section 8107 would allow states to continue to transfer up to 10 percent of TANF funds to the SSBG program. Reflecting provisions in current law, that percentage was assumed to fall to 4.25 percent after December 31, 2005, in CBO's baseline projections.

Maintaining the transfer authority at the higher level would make it easier for states to spend their TANF grants and would accelerate spending relative to baseline. Based on recent state transfers, CBO expects that states would transfer an additional $215 million in 2006 and $340 million annually thereafter under this provision, but because some of this money would have been spent within the TANF program anyway, only $44 million of additional spending would occur in 2006 and $14 million in 2007. Because states would have found alternate ways to spend the funds in later years, the increase in spending in 2006 and 2007 would be offset by decreased spending in subsequent years. Thus, this provision would have no net impact on TANF spending over the 2006–2010 period.

Work Participation Requirements. Section 8110 would require states to have an increasing percentage of TANF recipients participate in work activities while receiving cash assistance. It would maintain current penalties for the failure to meet those requirements. Those penalties can total up to 5 percent of the TANF block grant amount for the first failure to meet work requirements and increase with each subsequent failure. CBO estimates that any penalties for failing to meet the new requirements would total less than $500,000 annually.

Research, Evaluation, and National Studies. Section 8115 would make funds available to the Secretary of Health and Human Services to conduct and support research and demonstration projects and provide technical assistance, primarily on the promotion of marriage. The program would be funded at $102 million annually. Implementing the provision would boost spending by $10 million in 2006 and $409 million over the 2006–2010 period.

Section 8115 also would continue annual grants of $15 million for research. (Public Law 109–68 already provided $4 million for the first quarter of 2006; this legislation would provide an additional $11 million for 2006.) Based on recent spending patterns, CBO estimates that this provision would increase outlays by $52 million over the 2006–2010 period.

Subtitle B: Child care

The child care entitlement to states provides funding to states for child care subsidies to low-income families and for other activities. Subtitle B would extend the grant program through 2010 and raise funding by $50 million in 2007, $100 million in 2008, $150 million in 2009, and $200 million in 2010, providing total funding of $13.1 billion over the 2006–2010 period. CBO already assumes funding of $12.6 billion in its baseline in accordance with the Deficit Control

Act. CBO estimates that, as a result of the funding increase, outlays would rise by $434 million over the 2007–2010 period and by $1.4 billion over the 2007–2015 period, relative to its baseline projections.

Subtitle C: Child support

The legislation would change many aspects of the operation and financing of the child support program. It would significantly reduce the federal share of child support administrative spending and require states to assess fees on certain recipients of child support services. It would allow states to share more child support collections with current and former recipients of TANF, thereby reducing the amount the federal and state governments would recoup from previous TANF benefit payments. Finally, it would require states to periodically update child support orders and expand the use of certain enforcement tools. Overall, CBO estimates that enacting subtitle C would increase direct spending by $4 million in 2006, but reduce direct spending by $4.9 billion over the 2006–2010 period and by $15.3 billion over the 2006–2015 period (see Table 3).

Distribute More Collections to Current TANF Recipients. When a family applies for TANF, it assigns to the state any rights the family has to child support collections. While the family receives assistance, the state uses any collections it receives to reimburse itself and the federal government for TANF payments. (The federal government's share of child support collections is 55 percent, on average.) Those reimbursements to the federal government are recorded as offsetting receipts (a credit against direct spending). States may choose to give some of the child support collected to families, but states must finance those payments out of their share of collections.

TABLE 3.—DIRECT SPENDING EFFECTS OF SUBTITLE C: CHILD SUPPORT

	By fiscal year, in millions of dollars (budget authority and outlays)—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Distribute More Collections to Current TANF Families:												
Child Support Collections	0	0	0	18	24	25	25	26	27	27	42	172
Food Stamps	0	0	0	−8	−11	−11	−11	−11	−12	−12	−19	−76
Subtotal	0	0	0	10	13	14	14	15	15	15	23	96
Distribute More Collections to Former TANF Families:												
Child Support Collections	0	0	0	107	146	149	153	156	159	163	253	1,033
Food Stamps	0	0	0	−10	−14	−14	−14	−15	−15	−15	−24	−97
Subtotal	0	0	0	97	132	135	139	141	144	148	229	936
Require Triennial Update of Child Support Orders:												
Administrative Costs	0	0	15	15	12	12	13	13	13	13	42	106
Child Support Collections	0	0	−5	−14	−20	−20	−19	−19	−19	−20	−39	−136
Food Stamps	0	0	−1	−2	−2	−2	−2	−2	−3	−3	−5	−17
Medicaid	0	0	−2	−6	−10	−10	−8	−7	−7	−8	−18	−58
Subtotal	0	0	7	−7	−20	−20	−16	−15	−16	−18	−20	−105
Assess $25 Annual Fee:												
Administrative Costs	0	−40	−43	−44	−45	−46	−46	−47	−47	−47	−172	−405
Reduce threshold for passport denial to $2,500:												
Child Support Collections	0	−1	−1	−1	−1	−1	−1	−1	−1	−1	−4	−9
Funding for Technical Assistance:												
Children's Research	2	2	1	0	−1	−2	−3	−4	−5	−6	4	−16
Match Databases of Insurance Claims:												
Child Support Collections	0	0	−2	−4	−4	−4	−4	−4	−4	−4	−10	−30
Administrative Costs	2	2	0	0	0	0	0	0	0	0	4	4
Subtotal	2	2	−2	−4	−4	−4	−4	−4	−4	−4	−6	−26
Limit Assignment to On-Assistance Period:												
Child Support Collections	0	0	0	4	5	5	6	6	6	6	9	38
Reduce Match Rate and Eliminate Incentive Match:												
Administrative Costs	0	−432	−1,197	−1,619	−1,963	−2,050	−2,141	−2,238	−2,339	−2,444	−5,211	−16,423
Child Support Collections	0	31	84	112	130	131	134	136	138	141	357	1,037
Subtotal	0	−401	−1,113	−1,507	−1,833	−1,919	−2,007	−2,102	−2,201	−2,303	−4,854	−15,386
Effect of Matching Rate Change on Other Policies:												
Administrative Costs	0	2	3	5	8	8	7	8	8	8	18	57
Child Support Collections	0	0	0	−63	−85	−87	−89	−91	−93	−95	−148	−603
Food Stamps	0	0	0	9	13	13	12	13	13	13	22	86

TABLE 3.—DIRECT SPENDING EFFECTS OF SUBTITLE C: CHILD SUPPORT—Continued

	By fiscal year, in millions of dollars (budget authority and outlays)—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Subtotal	0	2	3	−49	−64	−66	−70	−70	−72	−74	−108	−460
Total Changes in Subtitle C	4	−436	−1,148	−1,501	−1,818	−1,904	−1,988	−2,081	−2,181	−2,284	−4,899	−15,337

Note: TANF=Temporary Assistance for Needy Families.

Section 8301 would allow states to increase the amount of child support collections that they pay to a family receiving assistance without turning over to the federal government its share of those payments, beginning in fiscal year 2009. The amount states could pay to families under the provision would be limited to $100 per month or $50 more than the state would have paid under the state law in effect in 2001, whichever is greater. The state could not count the child support as income in determining the families' benefits under the TANF program.

Based on information from state child-support officials, CBO estimates that federal share of collections would fall by $42 million over the 2009–2010 period. Because additional child support income in many cases would reduce the Food Stamp benefits a family receives, CBO estimates savings in the Food Stamp program totaling $19 million over that period.

Distribute More Past-Due Support to Former TANF Recipients. Section 8302 would allow states to share more child support collections with families who used to receive welfare benefits. When a family ceases to receive public assistance, states continue to enforce the family's child support order. All amounts of child support collected on time are sent directly to the family. However, both the government and the family have a claim on collections of past-due child support: the government claims the support owed for the period when the family was on assistance, up to the amount of the assistance paid, and the family claims the remainder. A complicated set of distribution rules determines which claim is paid first when a collection is made.

Section 8302 would give states the option to pay all collections to families who have left public assistance. CBO estimates that states with 20 percent of collections would implement the policy by 2010. Based on information from state child-support officials and policy experts, and on HHS data, CBO estimates that families would receive an additional $450 million over the 2009–2010 period and $1.9 billion over the 2009–2015 period as a result of these changes. CBO estimates that those increased distributions to families would reduce the federal share of collections by $253 million over the 2009–2010 period.

Some of the new collections would be paid to families that also receive food stamps. As a result, the Food Stamp payment to those families would fall and the cost of Food Stamp benefits would decline by an estimated $24 million over the 2009–2010 period.

Mandatory Three-Year Update of Child Support Orders. Section 8303 would require states to adjust child support orders of families on TANF every three years. States could use one of three methods to adjust orders: full review and adjustment, cost-of-living adjustment (COLA), or automated adjustment. Under current law, nearly half of the states perform periodic adjustments. Most perform a full review, and the remainder apply a COLA. No state currently makes automated adjustments. The provision would take effect on October 1, 2007, and CBO estimates that it would reduce direct spending by $20 million over the 2008–2010 period. Although it would require additional spending for administrative costs, this provision would produce more income from child support collections and reduce spending for the Food Stamp and Medicaid programs.

CBO estimates that there are 700,000 TANF recipients with child support orders in states that do not periodically adjust orders and that one-third of those orders would be adjusted each year. We assume that half of the states not already adjusting orders would choose to perform full reviews and half would apply a COLA.

When a state performs a full review of a child support order, it obtains current financial information from the custodial and noncustodial parents and determines whether any adjustment in the amount of ordered child support is indicated. The state also may revise an order to require the noncustodial parent to provide health insurance. Children who receive TANF benefits are generally eligible for Medicaid, so any new health insurance requirements would reduce spending for that program. When a state makes a cost-of-living adjustment, it applies a percentage increase reflecting the rise in the cost of living to every order, regardless of how the financial circumstances of the individuals may have changed. When there are COLA adjustments, no additional health insurance coverage is required.

CBO expects any increased collections for a family would continue for up to three years. While a family remains on TANF, the state would keep all the increased collections to reimburse itself and the federal government for welfare payments. The states would pay any increased collections stemming from reviews of child support orders to families once they leave assistance. That additional child support income for former recipients would result in savings in the Food Stamp program. Overall, CBO expects the federal share of administrative costs for child support to rise by $42 million and federal collections to increase by $39 million over the 2008–2010 period. Food Stamps and Medicaid savings would total $5 million and $18 million, respectively, over that period.

Annual Fee. Section 8304 would require states to impose an annual fee of $25 on each family that never received TANF benefits and for which the child support program collects at least $500 in a year. Based on child support administrative data, CBO estimates that implementing the fee would raise $265 million over the 2007–2010 period. The money would be split between the federal and state governments based on their shares of administrative costs.

Denial of Passports. Under current law, the State Department denies a request for a passport for a noncustodial parent if he or she owes more than $5,000 in past-due child support. Beginning in fiscal year 2007, section 8306 would lower that threshold and deny a passport to a noncustodial parent owing $2,500 or more. Generally, when a noncustodial parent seeks to restore eligibility for a passport, he or she will arrange to pay the past-due amount down to the threshold level.

Based on information from the State Department, CBO estimates the policy would result in new payments of child support of about $11 million annually. We assume the same share of those payments would be on behalf of current and former welfare families as in the overall program—10 percent—and that percentage would be retained by the federal and state governments as reimbursement for welfare benefits. The federal share of such collections would be about $1 million a year.

Maintenance of Technical Assistance and Federal Parent-Locator Service Funding. Current law allows the Secretary of Health and Human Services to use 3 percent of the federal share of child support collections to fund technical assistance efforts and to operate the federal parent-locator service. Sections 8309 and 8310 would set a minimum funding level for those purposes equal to the 2002 level of $37 million. Because CBO projects that such payments will fall below $37 million in each year from 2006 to 2008 under the current formula, this provision would increase payments by $5 million over that period.

Several provisions of subtitle C would affect the amount of child support collections the federal government retains. Provisions reducing funding for the administration of the child support program and allowing states to share more of collections with families would lower the federal share of collections. New enforcement mechanisms would boost the federal share. The net effect of all the provisions of subtitle C would be to lower the federal share of collections by an increasing amount each year. Because funding for technical assistance is set at a percentage of collections, CBO estimates that implementing subtitle C of the bill would lower funding for technical assistance by $1 million in 2010 and $21 million over the 2010–2015 period.

Comparison with Insurance Data. Section 8311 would authorize the Secretary to compare information on noncustodial parents who owe past-due child support with information maintained by insurers concerning insurance payments and to furnish any information resulting from the match to state agencies to pursue payments to pay overdue child support. States representing about one-third of child support collections currently participate in an existing system operated by the Child Support Lien Network that performs a similar function. CBO expects that, eventually, even without federal intervention, about half of the states would participate. Under the proposal, CBO expects all states would participate by 2009. Based on data for the existing program, CBO expects that collections would increase by $15 million annually when fully phased in and that half of those collections would be on behalf of current or former TANF families. The federal share of collections would be $10 million over the 2008–2010 period. CBO estimates that implementing the program would raise administrative costs by about $3 million in each of the years 2006 and 2007. The federal share of those costs would total $4 million over the two years.

Modification of Rule Requiring Assignment of Support Rights. Under current law, families assign to the state the right to any child support payments due before and during the period the families receive assistance. Section 8316 would give states the option to eliminate the requirement that families assign support due in the period before they receive assistance. CBO estimates that families would receive about $10 million more annually under the provision, in addition to amounts distributed to families under sections 8301 and 8302. CBO estimates that those increased distributions to families would reduce the federal share of collections by $9 million over the 2009–2010 period.

Reduction in Rate of Reimbursement. Sections 8319 and 8320 would lower the federal share of administrative spending for child

support. In fiscal year 2004, expenditures in the child support program totaled $5.3 billion; the federal government paid $3.5 billion and states paid $1.8 billion. Under current law, CBO expects total spending to grow to $6.6 billion by 2010.

Section 8319 would gradually lower the federal match on child support spending from 66 percent under current law to 62 percent in 2007, 58 percent in 2008, 54 percent in 2009, and 50 percent in 2010. Section 8320 would further reduce the federal contribution toward child support spending. Each year, the Secretary of Health and Human Services awards incentive funds to high-performing states. Such payments totaled $450 million in 2004 and are expected to grow to $505 million by 2010. States are required to spend their incentive payments on child support activities. In 2008, the legislation would eliminate the federal match on child support spending that states finance with incentive payments.

If states did not adjust their own spending for the child support program in response to the policies, total funding for the program would fall by 40 percent in 2010, the year that the policies are fully phased in. CBO expects that states would instead lessen the effect of the policies on total program spending by increasing state spending. That increased state spending would avoid half of the reduction in total spending that would occur if states were to make no change. CBO estimates that the federal share of administrative costs for child support would fall by $5.2 billion over the 2007–2010 period.

Child support funding is used to establish and enforce child support orders and collect money owed to families. CBO estimates that lower spending on the child support program would lead to lower collections. The estimate assumes that the percentage decline in collections would equal half the percentage decline in total administrative spending. On that basis, CBO estimates that the federal share of collections would drop by $357 million over the 2007–2010 period because of reduced spending in the child support program.

It is also possible that states would not meet required performance standards as a result of the reduced investment in the child support program. States are subject to penalties for failure to meet various performance standards, including standards for paternity establishment and data reliability. Penalties equal 1 percent of the TANF block grant amount for the first failure to meet the standards and can increase up to 5 percent of the grant with subsequent failures. CBO cannot estimate the likely amount of such penalties under this legislation.

Effect of Match Rate Change on Other Policies. Enacting these policies would also affect the costs and savings of other provisions of subtitle C. Specifically, they would change the budget effects of the proposals to require periodic review and adjustment, assess a $25 fee for certain child support cases, and distribute more collections to current and former TANF families. The provisions would lower the net cost of those provisions by $108 million over the 2007–2010 period and by $460 million over the 2007–2015 period.

Subtitle D: Child welfare

Subtitle D would reduce limitations on child welfare waivers, clarify eligibility for foster care and adoption assistance, and place

limits on federal matching funds for certain administrative costs for foster care. CBO estimates that enacting this subtitle would reduce expenditures for child welfare by $80 million in fiscal year 2006, by $577 million over the 2006–2010 period, and by $1.3 billion from 2006 through 2015 (see Table 4).

TABLE 4.—DIRECT SPENDING EFFECTS OF SUBTITLE D: CHILD WELFARE

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Clarify Eligibility for Foster Care and Adoption Assistance:												
Estimated Budget Authority	−62	−84	−86	−88	−90	−92	−95	−97	−99	−102	−410	−895
Estimated Outlays	−54	−80	−85	−88	−90	−90	−94	−97	−99	−102	−397	−879
Limit Federal Matching Funds for Certain Administrative Costs for Foster Care:												
Estimated Budget Authority	−26	−36	−38	−39	−41	−43	−44	−46	−48	−50	−180	−411
Estimated Outlays	−26	−36	−38	−39	−41	−43	−44	−46	−48	−50	−180	−411
Total Changes in Subtitle D:												
Estimated Budget Authority	−88	−120	−124	−127	−131	−135	−139	−143	−147	−152	−590	−1,306
Estimated Outlays	−80	−116	−123	−127	−131	−133	−138	−143	−147	−152	−577	−1,290

Child Welfare Waivers. Subtitle D would extend through 2010 the authority that states have to operate demonstration projects involving child welfare programs. In addition, the subtitle would eliminate certain limitations on the number of waivers that may be granted on the same topic, and on the number of waivers that may be granted within a single state. Those demonstration projects are required to be cost-neutral to the federal government. However, it is possible that demonstrations would lead to increased costs to the federal government because of measurement or methodological errors in the cost-neutrality calculation. CBO cannot estimate the likely amount of such costs.

Clarification of Eligibility. Subtitle D would reduce claims for federal foster care and adoption assistance payments in the states located within the 9th Circuit by clarifying the "home of removal" requirement. Under a ruling by the 9th Circuit Court of Appeals, states within that circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) have broader latitude in determining eligibility when a child has lived with a relative outside the home from which he or she was removed by the court. Based on estimates from HHS of the number of children who are likely to be affected, CBO estimates that enacting this provision would reduce payments to about 4,000 children each month, on average, reducing federal spending on child welfare by $54 million in 2006, by $397 million over the 2006–2010 period, and by $879 million over the 2006–2015 period.

Limitation of Matching Funds for Administrative Costs. Subtitle D would reduce states' claims for administrative expenses in cases when a child is placed in an ineligible home. Under current practice, some states claim administrative expenses for placements that are not licensed and eligible for the federal match. This provision would limit those claims to the average time it takes for the state to license or approve a home as a foster home, but no longer than 12 months. Based on information from HHS, CBO estimates that this provision would reduce federal spending on foster care administration by $26 million in fiscal year 2006, $180 million from 2006 through 2010, and $411 million from 2006 through 2015.

Subtitle E: Supplemental Security Income

Subtitle E would make two changes to the Supplemental Security Income program. It would require that a portion of adult disability determinations receive an extra layer of review before benefits are awarded. It would also require the Social Security Administration to pay more SSI awards in installments rather than as a single lump sum. Together, these proposals would reduce direct spending by $261 million in 2006, by $732 million over the 2006–2010 period, and by $2.1 billion over the 2006–2015 period (see Table 5).

Pre-effectuation Reviews. Section 8501 would require SSA to conduct reviews of initial decisions to award SSI benefits to certain disabled adults. The legislation would direct the agency to review at least 20 percent of all favorable adult-disability determinations made by state-level Disability Determination Service (DDS) offices in 2006. That fraction would rise to 40 percent in 2007 and to 50 percent thereafter.

CBO anticipates that state DDS offices will approve between 370,000 and 400,000 adult disability applications for SSI benefits annually between 2006 and 2015. Based on recent data for similar reviews in the Social Security Disability Insurance program, CBO projects that by 2015, more than 20,000 DDS awards would be overturned as a result of this provision, resulting in lower outlays for SSI and Medicaid. (In most states, SSI eligibility automatically confers entitlement to Medicaid benefits.) CBO estimates that this change would trim SSI benefits by $2 million and federal Medicaid outlays by $4 million in 2006. Over the 2006–2010 period, CBO estimates the provision would reduce SSI outlays by $99 million and Medicaid spending by $208 million.

Retroactive Benefits. Section 8502 would require installment payment of more past-due benefits in the SSI program. Past-due benefits occur chiefly because of the time necessary to consider disability applications. Those processing times typically take three-to-five months at the DDS level—much longer on appeal—so that a successful claimant is usually entitled to a large retroactive check.

TABLE 5.—DIRECT SPENDING EFFECTS OF SUBTITLE E: SUPPLEMENTAL SECURITY INCOME

	By fiscal year, in millions of dollars (budget authority and outlays)—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2006–2010	2006–2015
Require Pre-effectuation Reviews:												
SSI	−2	−8	−19	−30	−40	−54	−54	−68	−77	−85	−99	−437
Medicaid	−4	−17	−38	−62	−87	−115	−142	−172	−204	−238	−208	−1,079
Subtotal	−6	−25	−57	−92	−127	−169	−196	−240	−281	−323	−307	−1,516
Pay More Retroactive Benefits in Installments:												
SSI	−255	−110	−20	−20	−20	−20	−20	−25	−25	−25	−425	−540
Total Changes in Subtitle E	−261	−135	−77	−112	−147	−189	−216	−265	−306	−348	−732	−2,056

Note: SSI = Supplemental Security Income.

Under current law, SSA divides such retroactive benefits into up to three installments (paid at six-month intervals) when they total more than 12 times the maximum monthly SSI benefit. That maximum will be $603 per month in 2006, so the current rule affects cases in which the initial amount exceeds $7,236. The legislation would tighten that rule to require installments whenever the retroactive benefit exceeds three times the monthly maximum, or $1,809 in 2006. As under current law, people with terminal illnesses or overdue debts for food, clothing, shelter, or medical care would be exempt from the installment requirement, and so would amounts owed to states under SSI's "interim assistance reimbursement" program.

The provision would take effect three months after enactment. It would not affect total amounts paid to disabled claimants, but would stretch them out over a longer period. Based on the volume of SSI awards and their processing times, CBO estimates that the provision would reduce benefit outlays by $255 million in 2006 and $110 million in 2007. After that, savings would decline to $20 million to $25 million annually. Over the 2006–2010 period, total savings would be $425 million.

Both provisions would increase SSA's administrative costs, which are subject to annual appropriation. The proposal to perform more pre-effectuation reviews of disabled-adult awards would increase the number of reviews by about 50,000 in 2006 and by about 135,000 each year when fully effective. Based on SSA's costs for performing similar reviews in the Disability Insurance program, CBO estimates the provision would cost the agency about $8 million in 2006 and $63 million over the 2006–2010 period. Paying more retroactive benefits in installments would cost SSA an estimated $6 million in 2006 and $30 million over the 2006–2010 period. (These costs are included in "changes in spending subject to appropriation" in Table 1.)

Subtitle G: Repeal of continued dumping and subsidy offset

Antidumping and countervailing duty laws provide for the assessment of duties on imports that cause an injury to competing domestic industries. Antidumping duties are imposed on imports that are thought to be priced too low, and countervailing duties are imposed on imports that are thought to be subsidized by foreign governments. The Continued Dumping and Subsidy Offset Act of 2000 (CDOSA) requires that antidumping and countervailing duties collected by the federal government be distributed to the domestic producers affected by imported goods. The collection of duties is recorded in the federal budget as revenues, and the distribution of the duties is recorded as federal spending.

Based on historical experience with antidumping and countervailing duties, CBO estimates that under current law, CDSOA distributions will total about $300 million a year. In addition to those amounts, we estimate distributions of about $2 billion between 2007 and 2008 from duties on Canadian softwood lumber. This amount is CBO's estimate of the expected value of distributions under the Canadian softwood lumber case. Total collections of duties under the lumber case to date are estimated at about $4 billion. Final determination of the amount of these duties is currently

in litigation, and the timing of any distribution is unknown. Thus, our estimate reflects equal chances that the full $4 billion will be distributed and that no duties from the softwood lumber case will be distributed to U.S. companies under CDSOA.

The reconciliation legislation would repeal the CDSOA, stopping the distribution of duties to the affected domestic industries. CBO estimates that repealing the CDSOA would reduce direct spending by $3.2 billion over the 2007–2010 period and by $4.7 billion over the 2006–2015 period. Enacting the legislation would not affect direct spending in fiscal year 2006 because distribution of duties for this year will likely occur before the legislation is enacted (based on an assumed enactment of late December). Antidumping and countervailing duties would still be collected; therefore, enacting the legislation would not affect federal revenues.

Estimated impact on state, local, and tribal governments:

Mandates

Generally, conditions of federal assistance are not defined as intergovernmental mandates in UMRA. However, UMRA makes special provisions for identifying intergovernmental mandates in large entitlement grant programs (those that provide more than $500 million annually to state, local, or tribal governments), including TANF, Medicaid, and child support enforcement. Specifically, if a legislative proposal would increase the stringency of conditions of assistance, or cap or decrease the amount of federal funding for the program, such a change would be considered an intergovernmental mandate if state, local, or tribal governments lack the authority to offset added costs by adjusting their financial or programmatic responsibilities. The TANF and Medicaid programs allow states significant flexibility to alter their programs and accommodate new requirements. However, the child support enforcement program is narrower in scope, and its primary goal is to collect and redistribute child support payments. This narrower focus does not afford states as much flexibility as other large entitlement programs, so significant reductions in funding for the child support program could be intergovernmental mandates as defined in UMRA.

Therefore, CBO concludes that this legislation would impose an intergovernmental mandate as defined in UMRA by decreasing the federal government's responsibility to provide funding to states to administer the child support program. The legislation would reduce the federal matching rate for administrative costs from 66 percent to 50 percent over a four-year period, and it would eliminate federal matching funds for administrative expenses associated with incentive payments to states. As a result of this reduction in federal assistance, states would have to significantly increase their spending in order to administer the program. CBO estimates that additional state spending would exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

Other impacts

The legislation would have a number of other impacts on state, local, and tribal governments—some of which would benefit those governments through additional assistance or broader flexibility in

programs, and others would result in reductions in federal aid and additional requirements.

The legislation would provide significant assistance to state and local governments. It would provide over $80 billion to states over the 2006–2010 period for family assistance and supplemental grants. The legislation also would provide over $12 billion to states for the 2006–2010 period for child care programs, an increase over current law of about $500 million. The legislation also would extend a number of demonstration programs, expand waivers in some grant programs, and authorize funding for fatherhood programs.

Some new requirements in the legislation would result in additional revenues or savings for states. The legislation would require mandatory reviews of child support cases every three years—a requirement that CBO estimates would result in net savings to states of about $24 million over the 2006–2010 period. States also would lose the option to charge lower fees for some participants in the child support program. However, the higher fees are estimated to result in an additional $90 million in reimbursements for administrative expenses over the 2006–2010 period.

Finally, the legislation also would tighten some requirements in public assistance programs and establish new responsibilities for states. It would increase minimum work participation rates in the TANF program, likely prompting states and tribes to redirect some of their resources toward administrative support, child care, and worker supervision. The legislation also would require states to implement an ongoing drug testing program for applicants in the family assistance program. This and other requirements for data collection, reporting, and performance evaluation also would require states to reallocate some of their resources.

Estimated impact on the private sector: The legislation contains no private-sector mandates as defined in UMRA.

Previous CBO estimate: On March 25, 2005, CBO transmitted a cost estimate for S. 667, the Personal Responsibility and Individual Development for Everyone Act (PRIDE), as reported by the Senate Committee on Finance on March 17, 2005. CBO estimated that S. 667 would increase direct spending by $10.8 billion and revenues by $600 million over the 2005–2010 period. The differences in the estimates reflect differences between the two pieces of legislation.

Both would reauthorize the TANF and child care programs and make changes to the child support enforcement, SSI, and foster care programs. However, this legislation includes many policies not in the Senate bill, such as reducing funding for child support administration and ending distribution of antidumping and countervailing duties under CDSOA. The Senate bill included policies not in this legislation, such as changes to the eligibility rules relating to the earned income tax credit and an extension of the requirements that states provide transitional medical assistance. The Senate bill also provided $5.5 billion more in additional mandatory child care funding over the 2006–2010 period.

Estimate prepared by: Federal Costs: Sheila Dacey—TANF, Child Support, and Child Care; Christina Hawley Sadoti—Child Welfare; Kathy Ruffing—Supplemental Security Income; Jeanne De Sa and Eric Rollins—Medicaid and SCHIP; Melissa Petersen—

Commerce. Impact on State, Local, and Tribal Governments: Leo Lex; Impact on the Private Sector: Molly Dahl.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight fIndings), the Committee, based on public hearing testimony and information from the Administration and the GAG, concluded that it is appropriate and timely to consider the bill as reported.

The Subcommittee on Human Resources held a hearing on February 10, 2005 on welfare reform reauthorization proposals and related programs. Various witnesses testified about the TANF program, including recommendations for further reforms to promote additional work by parents and self-suffIciency for families. In addition, the Subcommittee heard testimony about the need for States to help every family they serve achieve the greatest degree of self-suffIciency and fInd effective ways to improve child well-being through programs aimed at promoting healthy marriages and encouraging responsible fatherhood. The Subcommittee received testimony about other programs under the Committee's Human Resources jurisdiction, including child support enforcement, foster care and adoption, and Supplemental Security Income, from a wide variety of witnesses.

The Subcommittee on Human Resources held a hearing on June 9, 2005 on foster care fInancing issues.

The Subcommittee on Human Resources held a hearing on July 14, 2005 on welfare and work data. Using data from the National Directory of New Hires, HHS has produced material that suggests there are thousands more current and former welfare recipients working than States have been reporting. This new information has important implications for the next stage of welfare reform, and suggests that it is appropriate for Federal policy to expect and support more work among parents on welfare.

The GAG has confIrmed that States use an array of Federal and State funds to provide a wide range of benefIts and services that can support the work efforts oflowincome families, although the types of supports and coverage of the eligible population vary among the States and sometimes within States. These fIndings bolster the justifIcation for reauthorizing the TANF block grant program.

For at least 10 years, GAG has found that States could improve take steps to improve their recovery ofthe Federal government's share of child support program costs. To defray some of these costs the GAG has recommended that States be mandated to charge a minimum service fee on successful child support collections for non-TANF families.

In a June 30, 2005 report to Chairman Wally Herger of the Subcommittee on Human Resources, GAG provided background about administrative expenditures and Federal matching rates for selected programs including child support enforcement, foster care, adoption assistance, child care, Medicaid, and food stamps. In a subsequent letter to Chairman Herger on September 9, 2005, GAG

further explained that, in terms of child support program costs, "the Federal government's share represented 88 percent of the net costs for the child support enforcement program for fiscal year 2004," among other data.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that the Entitlement Reconciliation Recommendations for Fiscal Year 2006 reauthorize and make improvements to the TANF program and other programs within the Committee's jurisdiction. Through reporting requirements in the legislation, Congress and the Administration will be able to assess State achievement of specified T ANF program goals of: (1) providing assistance and services to needy families; (2) ending dependence of needy families on government benefits and reducing poverty by promoting job preparation, work and marriage; (3) reducing out-of-wedlock pregnancies; and (4) encouraging the formation and maintenance of healthy, married families, among other purposes.

CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I ofthe Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises. . . "), and from the 16th Amendment to the Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

* * * * * * *

PART A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

SEC. 401. PURPOSE.

(a) IN GENERAL.—The purpose of this part is to [increase] *improve child well-being by increasing* the flexibility of States in operating a program designed to—

(1) provide assistance *and services* to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy [parents on government benefits] *families on government benefits and reduce poverty* by promoting job preparation, work, and marriage;

* * * * * * *

(4) encourage the formation and maintenance of [two-parent families] *healthy, 2-parent married families, and encourage responsible fatherhood*.

* * * * * * *

SEC. 402. ELIGIBLE STATES; STATE PLAN.

(a) IN GENERAL.—As used in this part, the term "eligible State" means, with respect to a fiscal year, a State that, during the 27-month period ending with the close of the 1st quarter of the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

(1) OUTLINE OF FAMILY ASSISTANCE PROGRAM.—

(A) GENERAL PROVISIONS.—A written document that outlines how the State intends to do the following:

(i) * * *

[(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier, consistent with section 407(e)(2).

[(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407.]

(ii) Require a parent or caretaker receiving assistance under the program to engage in work or alternative self-sufficiency activities (as defined by the State), consistent with section 407(e)(2).

(iii) Require families receiving assistance under the program to engage in activities in accordance with family self-sufficiency plans developed pursuant to section 408(b).

* * * * * * *

[(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State (as defined in section 403(a)(2)(C)(iii)) for calendar years 1996 through 2005.]

(v) The document shall—

(I) describe how the State will pursue ending dependence of needy families on government benefits and reducing poverty by promoting job preparation and work;

(II) describe how the State will encourage the formation and maintenance of healthy 2-parent married families, encourage responsible fatherhood, and prevent and reduce the incidence of out-of-wedlock pregnancies;

(III) include specific, numerical, and measurable performance objectives for accomplishing subclauses (I) and (II); and

(IV) describe the methodology that the State will use to measure State performance in relation to each such objective.

(vi) Describe any strategies and programs the State may be undertaking to address—

(I) employment retention and advancement for recipients of assistance under the program, including placement into high-demand jobs, and whether the jobs are identified using labor market information;

(II) efforts to reduce teen pregnancy;

(III) services for struggling and noncompliant families, and for clients with special problems; and

(IV) program integration, including the extent to which employment and training services under the program are provided through the One-Stop delivery system created under the Workforce Investment Act of 1998, and the extent to which former recipients of such assistance have access to additional core, intensive, or training services funded through such Act.

[(vi)**]** *(vii)* Conduct a program, designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.

(viii) Encourage equitable treatment of married, 2-parent families under the program referred to in clause (i).

(B) SPECIAL PROVISIONS.—

[(i) The document shall indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program.**]**

[(ii)**]** *(i)* The document shall indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.

[(iii)**]** *(ii)* The document shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely

affected to be heard in a State administrative or appeal process.

[(iv) Not later than 1 year after the date of enactment of this section, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 407(e)(2), require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 407(c), to participate in community service employment, with minimum hours per week and tasks to be determined by the State.]

(iii) The document shall describe strategies and programs the State is undertaking to engage religious organizations in the provision of services funded under this part and efforts related to section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(iv) The document shall describe strategies to improve program management and performance.

* * * * * * *

(4) CERTIFICATION OF THE ADMINISTRATION OF THE PROGRAM.—A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for the fiscal year, which shall include assurances that local *and tribal* governments and private sector organizations—

(A) * * *

* * * * * * *

SEC. 403. GRANTS TO STATES.

(a) GRANTS.—

(1) FAMILY ASSISTANCE GRANT.—

(A) IN GENERAL.—Each eligible State shall be entitled to receive from the Secretary, for each of fiscal years [1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003] *2006 through 2010*, a grant in an amount equal to the State family assistance grant *payable to the State for the fiscal year*.

* * * * * * *

(C) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for [fiscal year 2003] *each of fiscal years 2006 through 2010* $16,566,542,000 for grants under this paragraph.

[(2) BONUS TO REWARD DECREASE IN ILLEGITIMACY RATIO.—

[(A) IN GENERAL.—Each eligible State shall be entitled to receive from the Secretary a grant for each bonus year.

[(B) AMOUNT OF GRANT.—

[(i) IN GENERAL.—If, for a bonus year, none of the eligible States is Guam, the Virgin Islands, or American Samoa, then the amount of the grant shall be—

[(I) $20,000,000 if there are 5 eligible States; or

[(II) $25,000,000 if there are fewer than 5 eligible States.

[(ii) AMOUNT IF CERTAIN TERRITORIES ARE ELIGIBLE.—If, for a bonus year, Guam, the Virgin Islands, or American Samoa is an eligible State, then the amount of the grant shall be—

[(I) in the case of such a territory, 25 percent of the mandatory ceiling amount (as defined in section 1108(c)(4)) with respect to the territory; and

[(II) in the case of a State that is not such a territory—

[(aa) if there are 5 eligible States other than such territories, $20,000,000, minus ⅕ of the total amount of the grants payable under this paragraph to such territories for the bonus year; or

[(bb) if there are fewer than 5 such eligible States, $25,000,000, or such lesser amount as may be necessary to ensure that the total amount of grants payable under this paragraph for the bonus year does not exceed $100,000,000.

[(C) DEFINITIONS.—As used in this paragraph:

[(i) ELIGIBLE STATE.—

[(I) IN GENERAL.—The term "eligible State" means a State that the Secretary determines meets the following requirements:

[(aa) The State demonstrates that the illegitimacy ratio of the State for the most recent 2-year period for which such information is available decreased as compared to the illegitimacy ratio of the State for the previous 2-year period, and the magnitude of the decrease for the State for the period is not exceeded by the magnitude of the corresponding decrease for 5 or more other States for the period. In the case of a State that is not a territory specified in subparagraph (B), the comparative magnitude of the decrease for the State shall be determined without regard to the magnitude of the corresponding decrease for any such territory.

[(bb) The rate of induced pregnancy terminations in the State for the calendar year for which the most recent data are available is less than the rate of induced pregnancy terminations in the State for calendar year 1995.

[(II) DISREGARD OF CHANGES IN DATA DUE TO CHANGED REPORTING METHODS.—In making the

determination required by subclause (I), the Secretary shall disregard—

[(aa) any difference between the illegitimacy ratio of a State for a fiscal year and the illegitimacy ratio of a State for fiscal year 1995 which is attributable to a change in State methods of reporting data used to calculate the illegitimacy ratio; and

[(bb) any difference between the rate of induced pregnancy terminations in a State for a calendar year and such rate for calendar year 1995 which is attributable to a change in State methods of reporting data used to calculate such rate.

[(ii) BONUS YEAR.—The term "bonus year" means calendar years 1999, 2000, 2001, 2002, and 2003.

[(iii) ILLEGITIMACY RATIO.—The term "illegitimacy ratio" means, with respect to a State and a period—

[(I) the number of out-of-wedlock births to mothers residing in the State that occurred during the period; divided by

[(II) the number of births to mothers residing in the State that occurred during the period.

[(D) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2003, such sums as are necessary for grants under this paragraph.]

(2) HEALTHY MARRIAGE PROMOTION GRANTS.—

(A) AUTHORITY.—The Secretary shall award competitive grants to States, territories, and tribal organizations for not more than 50 percent of the cost of developing and implementing innovative programs to promote and support healthy, married, 2-parent families.

(B) HEALTHY MARRIAGE PROMOTION ACTIVITIES.—Funds provided under subparagraph (A) shall be used to support any of the following programs or activities:

(i) Public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health.

(ii) Education in high schools on the value of marriage, relationship skills, and budgeting.

(iii) Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers.

(iv) Pre-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.

(v) Marriage enhancement and marriage skills training programs for married couples.

(vi) Divorce reduction programs that teach relationship skills.

(vii) Marriage mentoring programs which use married couples as role models and mentors in at-risk communities.

(viii) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

(C) VOLUNTARY PARTICIPATION.—

(i) IN GENERAL.—Participation in a program or activity described in any of clauses (iii) through (viii) of subparagraph (B) shall be voluntary.

(ii) REQUIREMENTS FOR RECEIPT OF FUNDS.—The Secretary may not award a grant under this paragraph to an applicant for the grant unless—

(I) the application for the grant describes—

(aa) how the programs or activities proposed in the application will address, as appropriate, issues of domestic violence; and

(bb) what the applicant will do, to the extent relevant, to ensure that participation in the programs or activities is voluntary, and to inform potential participants that their participation is voluntary; and

(II) the applicant agrees that, as a condition of receipt of the grant, the applicant will consult with experts in domestic violence or relevant community domestic violence coalitions in developing the programs and activities funded with the grant.

(D) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2006 through 2010 $100,000,000 for grants under this paragraph.

(3) SUPPLEMENTAL GRANT FOR POPULATION INCREASES IN CERTAIN STATES.—

(A) * * *

* * * * * * *

(E) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years [1998, 1999, 2000, and 2001] *2006 through 2009* such sums as are necessary for grants under this paragraph[, in a total amount not to exceed $800,000,000].

* * * * * * *

(G) BUDGET SCORING.—Notwithstanding section 257(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985, the baseline shall assume that no grant shall be made under this paragraph after fiscal year [2001] *2009*.

[(H) REAUTHORIZATION.—Notwithstanding any other provision of this paragraph—

[(i) any State that was a qualifying State under this paragraph for fiscal year 2001 or any prior fiscal year shall be entitled to receive from the Secretary for each

of fiscal years 2002 and 2003 a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year in which the State was a qualifying State;

[(ii) subparagraph (G) shall be applied as if "December 31, 2005" were substituted for "fiscal year 2001"; and

[(iii) out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2002 and 2003 such sums as are necessary for grants under this subparagraph.

[(4) BONUS TO REWARD HIGH PERFORMANCE STATES.—

[(A) IN GENERAL.—The Secretary shall make a grant pursuant to this paragraph to each State for each bonus year for which the State is a high performing State.

[(B) AMOUNT OF GRANT.—

[(i) IN GENERAL.—Subject to clause (ii) of this subparagraph, the Secretary shall determine the amount of the grant payable under this paragraph to a high performing State for a bonus year, which shall be based on the score assigned to the State under subparagraph (D)(i) for the fiscal year that immediately precedes the bonus year.

[(ii) LIMITATION.—The amount payable to a State under this paragraph for a bonus year shall not exceed 5 percent of the State family assistance grant.

[(C) FORMULA FOR MEASURING STATE PERFORMANCE.—Not later than 1 year after the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Secretary, in consultation with the National Governors' Association and the American Public Welfare Association, shall develop a formula for measuring State performance in operating the State program funded under this part so as to achieve the goals set forth in section 401(a).

[(D) SCORING OF STATE PERFORMANCE; SETTING OF PERFORMANCE THRESHOLDS.—For each bonus year, the Secretary shall—

[(i) use the formula developed under subparagraph (C) to assign a score to each eligible State for the fiscal year that immediately precedes the bonus year; and

[(ii) prescribe a performance threshold in such a manner so as to ensure that—

[(I) the average annual total amount of grants to be made under this paragraph for each bonus year equals $200,000,000; and

[(II) the total amount of grants to be made under this paragraph for all bonus years equals $1,000,000,000.

[(E) DEFINITIONS.—As used in this paragraph:

[(i) BONUS YEAR.—The term "bonus year" means fiscal years 1999, 2000, 2001, 2002, and 2003.

[(ii) HIGH PERFORMING STATE.—The term "high performing State" means, with respect to a bonus year, an eligible State whose score assigned pursuant to subparagraph (D)(i) for the fiscal year immediately preceding the bonus year equals or exceeds the performance threshold prescribed under subparagraph (D)(ii) for such preceding fiscal year.

[(F) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2003 $1,000,000,000 for grants under this paragraph.]

(H) FURTHER PRESERVATION OF GRANT AMOUNTS.—A State that was a qualifying State under this paragraph for fiscal year 2004 or any prior fiscal year shall be entitled to receive from the Secretary for each of fiscal years 2006 through 2009 a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year for which the State was a qualifying State.

(5) WELFARE-TO-WORK GRANTS.—

(A) FORMULA GRANTS.—

(i) * * *

(ii) WELFARE-TO-WORK STATE.—A State shall be considered a welfare-to-work State for a fiscal year for purposes of this paragraph if the Secretary of Labor determines that the State meets the following requirements:

(I) * * *

* * * * * * *

(III) The State has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section [413(j)] *413(i)*, and to cooperate with the conduct of any such evaluation.

* * * * * * *

(F) FUNDING FOR EVALUATIONS OF WELFARE-TO-WORK PROGRAMS.—0.6 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $9,000,000 of the amount so specified for fiscal year 1999 shall be reserved for use by the Secretary to carry out section [413(j)] *413(i)*.

(G) FUNDING FOR EVALUATION OF ABSTINENCE EDUCATION PROGRAMS.—

(i) * * *

(ii) AUTHORITY TO USE FUNDS FOR EVALUATIONS OF WELFARE-TO-WORK PROGRAMS.—Any such amount not required for such evaluations shall be available for use by the Secretary to carry out section [413(j)] *413(i)*.

(b) CONTINGENCY FUND.—

(1) * * *

(2) DEPOSITS INTO FUND.—Out of any money in the Treasury of the United States not otherwise appropriated, there are ap-

propriated for fiscal years [1997, 1998, 1999, 2000, 2001, 2002, and 2003] *2006 through 2010* such sums as are necessary for payment to the Fund in a total amount not to exceed $2,000,000,000[, reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii).].

(3) GRANTS.—

(A) * * *

* * * * * * *

(C) LIMITATIONS.—

(i) * * *

(ii) PAYMENTS TO ALL STATES.—The total amount paid to all States under subparagraph (A) during [fiscal years 1997 through 2006] *fiscal years 2006 through 2010* shall not exceed the total amount appropriated pursuant to paragraph (2).

* * * * * * *

(5) NEEDY STATE.—For purposes of paragraph (4), a State is a needy State for a month if—

(A) * * *

(B) as determined by the Secretary of Agriculture (in the discretion of the Secretary of Agriculture), the monthly average number of individuals (as of the last day of each month) participating in the food stamp program in the State in the then most recently concluded 3-month period for which data are available exceeds by not less than 10 percent the lesser of—

(i) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the food stamp program in the corresponding 3-month period in fiscal year 1994 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 *and the Food Stamp Act of 1977 as in effect during the corresponding 3-month period in the fiscal year preceding such most recently concluded 3-month period* had been in effect throughout fiscal year 1994; or

(ii) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the food stamp program in the corresponding 3-month period in fiscal year 1995 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 *and the Food Stamp Act of 1977 as in effect during the corresponding 3-month period in the fiscal year preceding such most recently concluded 3-month period* had been in effect throughout fiscal year 1995.

(6) ANNUAL RECONCILIATION.—

(A) IN GENERAL.—Notwithstanding paragraph (3), if the Secretary makes a payment to a State under this subsection in a fiscal year, then the State shall remit to the Secretary, within 1 year after the end of the first subse-

quent period of 3 consecutive months for which the State is not a needy State, an amount equal to the amount (if any) by which—

(i) * * *

(ii) the product of—

(I) the Federal medical assistance percentage for the State (as defined in section 1905(b), as such section was in effect on September 30, 1995); *and*

(II) the State's reimbursable expenditures for the fiscal year[; and].

[(III) 1/12 times the number of months during the fiscal year for which the Secretary made a payment to the State under such paragraph (3).]

(B) DEFINITIONS.—As used in subparagraph (A):

(i) REIMBURSABLE EXPENDITURES.—The term "reimbursable expenditures" means, with respect to a State and a fiscal year, the amount (if any) by which—

(I) * * *

(II) historic State expenditures (as defined in section 409(a)(7)(B)(iii))[, excluding any amount expended by the State for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994) for fiscal year 1994.].

(ii) COUNTABLE STATE EXPENDITURES.—The term "countable expenditures" means, with respect to a State and a fiscal year—

[(I) the qualified State expenditures (as defined in section 409(a)(7)(B)(i) (other than the expenditures described in subclause (I)(bb) of such section)) under the State program funded under this part for the fiscal year; plus]

(I) the qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for the fiscal year; plus

* * * * * * *

[(C) ADJUSTMENT OF STATE REMITTANCES.—

[(i) IN GENERAL.—The amount otherwise required by subparagraph (A) to be remitted by a State for a fiscal year shall be increased by the lesser of—

[(I) the total adjustment for the fiscal year, multiplied by the adjustment percentage for the State for the fiscal year; or

[(II) the unadjusted net payment to the State for the fiscal year.

[(ii) TOTAL ADJUSTMENT.—As used in clause (i), the term "total adjustment" means—

[(I) in the case of fiscal year 1998, $2,000,000;

[(II) in the case of fiscal year 1999, $9,000,000;

[(III) in the case of fiscal year 2000, $16,000,000; and

[(IV) in the case of fiscal year 2001, $13,000,000.

[(iii) ADJUSTMENT PERCENTAGE.—As used in clause (i), the term "adjustment percentage" means, with respect to a State and a fiscal year—

[(I) the unadjusted net payment to the State for the fiscal year; divided by

[(II) the sum of the unadjusted net payments to all States for the fiscal year.

[(iv) UNADJUSTED NET PAYMENT.—As used in this subparagraph, the term, "unadjusted net payment" means with respect to a State and a fiscal year—

[(I) the total amount paid to the State under paragraph (3) in the fiscal year; minus

[(II) the amount that, in the absence of this subparagraph, would be required by subparagraph (A) or by section 409(a)(10) to be remitted by the State in respect of the payment.]

* * * * * * *

SEC. 404. USE OF GRANTS.

(a) GENERAL RULES.—Subject to this part, a State to which a grant is made under section 403 may use the grant—

(1) in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with [assistance] *aid* in meeting home heating and cooling costs; or

(2) [in any manner that] *for any purposes or activities for which* the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995, or (at the option of the State) August 21, 1996.

* * * * * * *

[(c) AUTHORITY TO TREAT INTERSTATE IMMIGRANTS UNDER RULES OF FORMER STATE.—A State operating a program funded under this part may apply to a family the rules (including benefit amounts) of the program funded under this part of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months.]

(d) AUTHORITY TO USE PORTION OF GRANT FOR OTHER PURPOSES.—

(1) IN GENERAL.—Subject to paragraph (2), a State may use not more than [30] *50* percent of the amount of any grant made to the State under section 403(a) for a fiscal year to carry out a State program pursuant to any or all of the following provisions of law:

(A) * * *

* * * * * * *

(2) LIMITATION ON AMOUNT TRANSFERABLE TO TITLE XX PROGRAMS.—

(A) * * *

[(B) APPLICABLE PERCENT.—For purposes of subparagraph (A), the applicable percent is 4.25 percent in the case of fiscal year 2001 and each succeeding fiscal year.]

(B) APPLICABLE PERCENT.—For purposes of subparagraph (A), the applicable percent is 10 percent for fiscal year 2006 and each succeeding fiscal year.

* * * * * * *

[(e) AUTHORITY TO RESERVE CERTAIN AMOUNTS FOR ASSISTANCE.—A State or tribe may reserve amounts paid to the State or tribe under this part for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State or tribal program funded under this part.]

(e) AUTHORITY TO CARRYOVER OR RESERVE CERTAIN AMOUNTS FOR BENEFITS OR SERVICES OR FOR FUTURE CONTINGENCIES.—

(1) CARRYOVER.—A State or tribe may use a grant made to the State or tribe under this part for any fiscal year to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.

(2) CONTINGENCY RESERVE.—A State or tribe may designate any portion of a grant made to the State or tribe under this part as a contingency reserve for future needs, and may use any amount so designated to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part. If a State or tribe so designates a portion of such a grant, the State shall, on an annual basis, include in its report under section 411(a) the amount so designated.

(f) AUTHORITY TO OPERATE EMPLOYMENT PLACEMENT PROGRAM.—A State to which a grant is made under section 403 may use the grant to make payments (or provide job placement vouchers) to State-approved public and private job placement agencies that provide employment placement services to individuals who receive [assistance] *benefits or services* under the State program funded under this part.

* * * * * * *

(l) MARRIAGE PROMOTION.—A State, territory, or tribal organization to which a grant is made under section 403(a)(2) may use a grant made to the State, territory, or tribe under any other provision of section 403 for marriage promotion activities, and the amount of any such grant so used shall be considered State funds for purposes of section 403(a)(2).

* * * * * * *

[SEC. 406. FEDERAL LOANS FOR STATE WELFARE PROGRAMS.

[(a) LOAN AUTHORITY.—

[(1) IN GENERAL.—The Secretary shall make loans to any loan-eligible State, for a period to maturity of not more than 3 years.

[(2) LOAN-ELIGIBLE STATE.—As used in paragraph (1), the term "loan-eligible State" means a State against which a penalty has not been imposed under section 409(a)(1).

[(b) RATE OF INTEREST.—The Secretary shall charge and collect interest on any loan made under this section at a rate equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan.

[(c) USE OF LOAN.—A State shall use a loan made to the State under this section only for any purpose for which grant amounts received by the State under section 403(a) may be used, including—

[(1) welfare anti-fraud activities; and

[(2) the provision of assistance under the State program to Indian families that have moved from the service area of an Indian tribe with a tribal family assistance plan approved under section 412.

[(d) LIMITATION ON TOTAL AMOUNT OF LOANS TO A STATE.—The cumulative dollar amount of all loans made to a State under this section during fiscal years 1997 through 2003 shall not exceed 10 percent of the State family assistance grant.

[(e) LIMITATION ON TOTAL AMOUNT OF OUTSTANDING LOANS.—The total dollar amount of loans outstanding under this section may not exceed $1,700,000,000.

[(f) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary for the cost of loans under this section.

[SEC. 407. MANDATORY WORK REQUIREMENTS.

[(a) PARTICIPATION RATE REQUIREMENTS.—

[(1) ALL FAMILIES.—A State to which a grant is made under section 403 for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to all families receiving assistance under the State program funded under this part:

If the fiscal year is:	**[The minimum participation rate is:**
1997	25
1998	30
1999	35
2000	40
2001	45
2002 or thereafter	50.

[(2) 2-PARENT FAMILIES.—A State to which a grant is made under section 403 for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to 2-parent families receiving assistance under the State program funded under this part:

If the fiscal year is:	**[The minimum participation rate is:**
1997	75
1998	75
1999 or thereafter	90.

[(b) CALCULATION OF PARTICIPATION RATES.—

[(1) ALL FAMILIES.—

[(A) AVERAGE MONTHLY RATE.—For purposes of subsection (a)(1), the participation rate for all families of a State for a fiscal year is the average of the participation rates for all families of the State for each month in the fiscal year.

[(B) MONTHLY PARTICIPATION RATES.—The participation rate of a State for all families of the State for a month, expressed as a percentage, is—

[(i) the number of families receiving assistance under the State program funded under this part that

include an adult or a minor child head of household who is engaged in work for the month; divided by

[(ii) the amount by which—

[(I) the number of families receiving such assistance during the month that include an adult or a minor child head of household receiving such assistance; exceeds

[(II) the number of families receiving such assistance that are subject in such month to a penalty described in subsection (e)(1) but have not been subject to such penalty for more than 3 months within the preceding 12-month period (whether or not consecutive).

[(2) 2-PARENT FAMILIES.—

[(A) AVERAGE MONTHLY RATE.—For purposes of subsection (a)(2), the participation rate for 2-parent families of a State for a fiscal year is the average of the participation rates for 2-parent families of the State for each month in the fiscal year.

[(B) MONTHLY PARTICIPATION RATES.—The participation rate of a State for 2-parent families of the State for a month shall be calculated by use of the formula set forth in paragraph (1)(B), except that in the formula the term "number of 2-parent families" shall be substituted for the term "number of families" each place such latter term appears.

[(C) FAMILY WITH A DISABLED PARENT NOT TREATED AS A 2-PARENT FAMILY.—A family that includes a disabled parent shall not be considered a 2-parent family for purposes of subsections (a) and (b) of this section.]

SEC. 407. WORK PARTICIPATION REQUIREMENTS.

(a) PARTICIPATION RATE REQUIREMENTS.—A State to which a grant is made under section 403 for a fiscal year shall achieve a minimum participation rate equal to not less than—

(1) 50 percent for fiscal year 2006;

(2) 55 percent for fiscal year 2007;

(3) 60 percent for fiscal year 2008;

(4) 65 percent for fiscal year 2009; and

(5) 70 percent for fiscal year 2010 and each succeeding fiscal year.

(b) CALCULATION OF PARTICIPATION RATES.—

(1) AVERAGE MONTHLY RATE.—For purposes of subsection (a), the participation rate of a State for a fiscal year is the average of the participation rates of the State for each month in the fiscal year.

(2) MONTHLY PARTICIPATION RATES; INCORPORATION OF 40-HOUR WORK WEEK STANDARD.—

(A) IN GENERAL.—For purposes of paragraph (1), the participation rate of a State for a month is—

(i) the total number of countable hours (as defined in subsection (c)) with respect to the counted families for the State for the month; divided by

(ii) 160 multiplied by the number of counted families for the State for the month.

(B) COUNTED FAMILIES DEFINED.—

(i) IN GENERAL.—In subparagraph (A), the term "counted family" means, with respect to a State and a month, a family that includes a work-eligible individual and that receives assistance in the month under the State program funded under this part, subject to clause (ii).

(ii) STATE OPTION TO EXCLUDE CERTAIN FAMILIES.—At the option of a State, the term "counted family" shall not include—

(I) a family in the first month for which the family receives assistance from a State program funded under this part on the basis of the most recent application for such assistance;

(II) on a case-by-case basis, a family in which the youngest child has not attained 12 months of age; or

(III) a family that is subject to a sanction under this part or part D, but that has not been subject to such a sanction for more than 3 months (whether or not consecutive) in the preceding 12-month period.

(iii) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN OR TRIBAL WORK PROGRAM.—At the option of a State, the term "counted family" may include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412 or under a tribal work program to which funds are provided under this part.

(C) WORK-ELIGIBLE INDIVIDUAL DEFINED.—In this section, the term "work-eligible individual" means an individual—

(i) who is married or a single head of household; and

(ii) whose needs are (or, but for sanctions under this part or part D, would be) included in determining the amount of cash assistance to be provided to the family under the State program funded under this part.

(3) PRO RATA REDUCTION OF PARTICIPATION RATE DUE TO CASELOAD REDUCTIONS NOT REQUIRED BY FEDERAL LAW AND NOT RESULTING FROM CHANGES IN STATE ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The Secretary shall prescribe regulations for reducing the minimum participation rate otherwise required by this section for a fiscal year by the number of percentage points equal to the number of percentage points (if any) by which—

(i) * * *

[(ii) the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.]

(ii) the average monthly number of families that received assistance under the State program funded under this part during the base year.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

(B) ELIGIBILITY CHANGES NOT COUNTED.—The regulations required by subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part [and eligibility criteria under the State program operated under the State plan approved under part A (as such plan and such part were in effect on September 30, 1995)] *and the eligibility criteria in effect during the then applicable base year*. Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

(C) BASE YEAR DEFINED.—In this paragraph, the term "base year" means, with respect to a fiscal year—

(i) if the fiscal year is fiscal year 2006, fiscal year 1996;

(ii) if the fiscal year is fiscal year 2007, fiscal year 1998;

(iii) if the fiscal year is fiscal year 2008, fiscal year 2001; or

(iv) if the fiscal year is fiscal year 2009 or any succeeding fiscal year, the then 4th preceding fiscal year.

[(4) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN OR TRIBAL WORK PROGRAM.—For purposes of paragraphs (1)(B) and (2)(B), a State may, at its option, include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412 or under a tribal work program to which funds are provided under this part.

[(5) STATE OPTION FOR PARTICIPATION REQUIREMENT EXEMPTIONS.—For any fiscal year, a State may, at its option, not require an individual who is a single custodial parent caring for a child who has not attained 12 months of age to engage in work, and may disregard such an individual in determining the participation rates under subsection (a) for not more than 12 months.

[(c) ENGAGED IN WORK.—

[(1) GENERAL RULES.—

[(A) ALL FAMILIES.—For purposes of subsection (b)(1)(B)(i), a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection:

If the month is in fiscal year:	**[The minimum average number of hours per week is:**
1997	20
1998	20

1999	25
2000 or thereafter	30.

[(B) 2-PARENT FAMILIES.—For purposes of subsection (b)(2)(B), an individual is engaged in work for a month in a fiscal year if—

[(i) the individual and the other parent in the family are participating in work activities for a total of at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection; and

[(ii) if the family of the individual receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, the individual and the other parent in the family are participating in work activities for a total of at least 55 hours per week during the month, not fewer than 50 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d).

[(2) LIMITATIONS AND SPECIAL RULES.—

[(A) NUMBER OF WEEKS FOR WHICH JOB SEARCH COUNTS AS WORK.—

[(i) LIMITATION.—Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d)(6) of a State program funded under this part, after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States or the State is a needy State (within the meaning of section 403(b)(6)), 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

[(ii) LIMITED AUTHORITY TO COUNT LESS THAN FULL WEEK OF PARTICIPATION.—For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d)(6) for 3 or 4 days during a week as a week of participation in the activity by the individual.

[(B) SINGLE PARENT OR RELATIVE WITH CHILD UNDER AGE 6 DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS IF PARENT OR RELATIVE IS ENGAGED IN WORK FOR 20 HOURS PER WEEK.—For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient who is the only parent or caretaker relative in the family of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

[(C) SINGLE TEEN HEAD OF HOUSEHOLD OR MARRIED TEEN WHO MAINTAINS SATISFACTORY SCHOOL ATTENDANCE DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS.—For purposes of determining monthly participation rates under sub-section (b)(1)(B)(i), a recipient who is married or a head of household and has not attained 20 years of age is deemed to be engaged in work for a month in a fiscal year if the recipient—

[(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

[(ii) participates in education directly related to employment for an average of at least 20 hours per week during the month.

[(D) LIMITATION ON NUMBER OF PERSONS WHO MAY BE TREATED AS ENGAGED IN WORK BY REASON OF PARTICIPATION IN EDUCATIONAL ACTIVITIES.—For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), not more than 30 percent of the number of individuals in all families and in 2-parent families, respectively, in a State who are treated as engaged in work for a month may consist of individuals who are determined to be engaged in work for the month by reason of participation in vocational educational training, or (if the month is in fiscal year 2000 or thereafter) deemed to be engaged in work for the month by reason of subparagraph (C) of this paragraph.

[(d) WORK ACTIVITIES DEFINED.—As used in this section, the term "work activities" means—

[(1) unsubsidized employment;

[(2) subsidized private sector employment;

[(3) subsidized public sector employment;

[(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

[(5) on-the-job training;

[(6) job search and job readiness assistance;

[(7) community service programs;

[(8) vocational educational training (not to exceed 12 months with respect to any individual);

[(9) job skills training directly related to employment;

[(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

[(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

[(12) the provision of child care services to an individual who is participating in a community service program.]

(4) SUPERACHIEVER CREDIT.—

(A) IN GENERAL.—The participation rate, determined under paragraphs (1) and (2) of this subsection, of a superachiever State for a fiscal year shall be increased by the lesser of—

(i) the amount (if any) of the superachiever credit applicable to the State; or

(ii) the number of percentage points (if any) by which the minimum participation rate required by subsection (a) for the fiscal year exceeds 50 percent.

(B) SUPERACHIEVER STATE.—For purposes of subparagraph (A), a State is a superachiever State if the State caseload for fiscal year 2001 has declined by at least 60 percent from the State caseload for fiscal year 1995.

(C) AMOUNT OF CREDIT.—The superachiever credit applicable to a State is the number of percentage points (if any) by which the decline referred to in subparagraph (B) exceeds 60 percent.

(D) DEFINITIONS.—In this paragraph:

(i) STATE CASELOAD FOR FISCAL YEAR 2001.—The term "State caseload for fiscal year 2001" means the average monthly number of families that received assistance during fiscal year 2001 under the State program funded under this part.

(ii) STATE CASELOAD FOR FISCAL YEAR 1995.—The term "State caseload for fiscal year 1995" means the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.

(c) COUNTABLE HOURS.—

(1) DEFINITION.—In subsection (b)(2), the term "countable hours" means, with respect to a family for a month, the total number of hours in the month in which any member of the family who is a work-eligible individual is engaged in a direct work activity or other activities specified by the State (excluding an activity that does not address a purpose specified in section 401(a)), subject to the other provisions of this subsection.

(2) LIMITATIONS.—Subject to such regulations as the Secretary may prescribe:

(A) MINIMUM WEEKLY AVERAGE OF 24 HOURS OF DIRECT WORK ACTIVITIES REQUIRED.—If the work-eligible individuals in a family are engaged in a direct work activity for an average total of fewer than 24 hours per week in a month, then the number of countable hours with respect to the family for the month shall be zero.

(B) MAXIMUM WEEKLY AVERAGE OF 16 HOURS OF OTHER ACTIVITIES.—An average of not more than 16 hours per week of activities specified by the State (subject to the exclusion described in paragraph (1)) may be considered countable hours in a month with respect to a family.

(3) SPECIAL RULES.—For purposes of paragraph (1):

(A) PARTICIPATION IN QUALIFIED ACTIVITIES.—

(i) IN GENERAL.—If, with the approval of the State, the work-eligible individuals in a family are engaged in 1 or more qualified activities for an average total of at least 24 hours per week in a month, then all such engagement in the month shall be considered engagement in a direct work activity, subject to clause (iii).

(ii) QUALIFIED ACTIVITY DEFINED.—The term "qualified activity" means an activity specified by the State (subject to the exclusion described in paragraph (1)) that meets such standards and criteria as the State may specify, including—

(I) substance abuse counseling or treatment;

(II) rehabilitation treatment and services;

(III) work-related education or training directed at enabling the family member to work;

(IV) job search or job readiness assistance; and

(V) any other activity that addresses a purpose specified in section 401(a).

(iii) LIMITATION.—

(I) IN GENERAL.—Except as provided in subclause (II), clause (i) shall not apply to a family for more than 3 months in any period of 24 consecutive months.

(II) SPECIAL RULE APPLICABLE TO EDUCATION AND TRAINING.—A State may, on a case-by-case basis, apply clause (i) to a work-eligible individual so that participation by the individual in education or training, if needed to permit the individual to complete a certificate program or other work-related education or training directed at enabling the individual to fill a known job need in a local area, may be considered countable hours with respect to the family of the individual for not more than 4 months in any period of 24 consecutive months.

(B) SCHOOL ATTENDANCE BY TEEN HEAD OF HOUSEHOLD.—The work-eligible members of a family shall be considered to be engaged in a direct work activity for an average of 40 hours per week in a month if the family includes an individual who is married, or is a single head of household, who has not attained 20 years of age, and the individual—

(i) maintains satisfactory attendance at secondary school or the equivalent in the month; or

(ii) participates in education directly related to employment for an average of at least 20 hours per week in the month.

(d) DIRECT WORK ACTIVITY.—In this section, the term "direct work activity" means—

(1) unsubsidized employment;

(2) subsidized private sector employment;

(3) subsidized public sector employment;

(4) on-the-job training;

(5) supervised work experience; or

(6) supervised community service.

(e) PENALTIES AGAINST INDIVIDUALS.—

[(1) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part refuses to engage in work required in accordance with this section, the State shall—

[(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or

[(B) terminate such assistance,

subject to such good cause and other exceptions as the State may establish.]

(1) REDUCTION OR TERMINATION OF ASSISTANCE.—

(A) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under a State program funded under this part fails to engage in activities required in accordance with this section, or other activities required by the State under the program, and the family does not otherwise engage in activities in accordance with the self-sufficiency plan established for the family pursuant to section 408(b), the State shall—

(i) if the failure is partial or persists for not more than 1 month—

(I) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the failure occurs; or

(II) terminate all assistance to the family, subject to such good cause exceptions as the State may establish; or

(ii) if the failure is total and persists for at least 2 consecutive months, terminate all cash payments to the family including qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for at least 1 month and thereafter until the State determines that the individual has resumed full participation in the activities, subject to such good cause exceptions as the State may establish.

(B) SPECIAL RULE.—

(i) IN GENERAL.—In the event of a conflict between a requirement of clause (i)(II) or (ii) of subparagraph (A) and a requirement of a State constitution, or of a State statute that, before 1966, obligated local government to provide assistance to needy parents and children, the State constitutional or statutory requirement shall control.

(ii) LIMITATION.—Clause (i) of this subparagraph shall not apply after the 1-year period that begins with the date of the enactment of this subparagraph.

* * * * * * *

(f) NONDISPLACEMENT IN WORK ACTIVITIES.—

(1) IN GENERAL.—Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal Government may fill a vacant employment position in order to engage in a [work activity described in subsection (d)] *direct work activity*.

(2) NO FILLING OF CERTAIN VACANCIES.—No adult in a [work activity described in subsection (d)] *direct work activity* which

is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned—

(A) * * *

* * * * * * *

SEC. 408. PROHIBITIONS; REQUIREMENTS.

(a) IN GENERAL.—

(1) * * *

* * * * * * *

[(3) NO ASSISTANCE FOR FAMILIES NOT ASSIGNING CERTAIN SUPPORT RIGHTS TO THE STATE.—

[(A) IN GENERAL.—A State to which a grant is made under section 403 shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so provided to the family, which accrue (or have accrued) before the date the family ceases to receive assistance under the program, which assignment, on and after such date, shall not apply with respect to any support (other than support collected pursuant to section 464) which accrued before the family received such assistance and which the State has not collected by—

[(i)(I) September 30, 2000, if the assignment is executed on or after October 1, 1997, and before October 1, 2000; or

[(II) the date the family ceases to receive assistance under the program, if the assignment is executed on or after October 1, 2000; or

[(ii) if the State elects to distribute collections under section 457(a)(6), the date the family ceases to receive assistance under the program, if the assignment is executed on or after October 1, 1998.]

(3) NO ASSISTANCE FOR FAMILIES NOT ASSIGNING CERTAIN SUPPORT RIGHTS TO THE STATE.—

(A) IN GENERAL.—Subject to subparagraph (B), a State to which a grant is made under section 403 shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to—

(i) support from any other person which accrues during the period that the family receives assistance under the program; and

(ii) at the option of the State, support from any other person which has accrued before such period.

(B) LIMITATION.—The total amount of support that may be required to be provided with respect to rights assigned to a State by a family member pursuant to subparagraph

(A) shall not exceed the total amount of assistance provided by the State to the family.

* * * * * * *

(5) NO ASSISTANCE FOR TEENAGE PARENTS NOT LIVING IN ADULT-SUPERVISED SETTINGS.—

(A) * * *

(B) EXCEPTION.—

(i) PROVISION OF, OR [ASSISTANCE] *AID* IN LOCATING, ADULT-SUPERVISED LIVING ARRANGEMENT.—In the case of an individual who is described in clause (ii), the State agency referred to in section 402(a)(4) shall provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement, taking into consideration the needs and concerns of the individual, unless the State agency determines that the individual's current living arrangement is appropriate, and thereafter shall require that the individual and the minor child referred to in subparagraph (A)(ii)(II) reside in such living arrangement as a condition of the continued receipt of assistance under the State program funded under this part attributable to funds provided by the Federal Government (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to be appropriate).

* * * * * * *

(12) DRUG TESTING REQUIREMENTS.—A State to which a grant is made under section 403(a) for a fiscal year shall—

(A) require an individual who has applied for, or is a recipient of, assistance from the State program funded under this part to undergo a physical test designed to detect the use by the individual of any controlled substance (as defined in section 102(6) of the Controlled Substances Act) if the State has reason to believe that the person has unlawfully used such a substance recently;

(B) if a test administered pursuant to this paragraph indicates that an individual has so used such a substance recently, or if the State otherwise determines (on the basis of such indicators as the State may establish) that an individual is likely to have so used such a substance recently—

(i) ensure that the self-sufficiency plan developed under section 408(b) with respect to the individual addresses the use of the substance;

(ii) suspend the provision of cash assistance under the program to the family of the individual until a subsequent such test indicates that the individual has not been using the substance; and

(iii) require, as a condition of providing any benefit under the program to the family of the individual, that the individual comply with the self-sufficiency plan, including the provisions of the plan that address the use of the substance, and undergo additional such tests

every 30 or 60 days, as the State deems appropriate; and

(C) terminate for 3 years the participation in the program of the family of any individual who tests positive for such use of such a substance in such number of consecutive tests administered pursuant to this paragraph (which shall be not less than 3 and not more than 6) as the State deems appropriate.

[(b) INDIVIDUAL RESPONSIBILITY PLANS.—

[(1) ASSESSMENT.—The State agency responsible for administering the State program funded under this part shall make an initial assessment of the skills, prior work experience, and employability of each recipient of assistance under the program who—

[(A) has attained 18 years of age; or

[(B) has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school.

[(2) CONTENTS OF PLANS.—

[(A) IN GENERAL.—On the basis of the assessment made under subsection (a) with respect to an individual, the State agency, in consultation with the individual, may develop an individual responsibility plan for the individual, which—

[(i) sets forth an employment goal for the individual and a plan for moving the individual immediately into private sector employment;

[(ii) sets forth the obligations of the individual, which may include a requirement that the individual attend school, maintain certain grades and attendance, keep school age children of the individual in school, immunize children, attend parenting and money management classes, or do other things that will help the individual become and remain employed in the private sector;

[(iii) to the greatest extent possible is designed to move the individual into whatever private sector employment the individual is capable of handling as quickly as possible, and to increase the responsibility and amount of work the individual is to handle over time;

[(iv) describes the services the State will provide the individual so that the individual will be able to obtain and keep employment in the private sector, and describe the job counseling and other services that will be provided by the State; and

[(v) may require the individual to undergo appropriate substance abuse treatment.

[(B) TIMING.—The State agency may comply with paragraph (1) with respect to an individual—

[(i) within 90 days (or, at the option of the State, 180 days) after the effective date of this part, in the case of an individual who, as of such effective date, is a recipient of aid under the State plan approved under

part A (as in effect immediately before such effective date); or

[(ii) within 30 days (or, at the option of the State, 90 days) after the individual is determined to be eligible for such assistance, in the case of any other individual.

[(3) PENALTY FOR NONCOMPLIANCE BY INDIVIDUAL.—In addition to any other penalties required under the State program funded under this part, the State may reduce, by such amount as the State considers appropriate, the amount of assistance otherwise payable under the State program to a family that includes an individual who fails without good cause to comply with an individual responsibility plan signed by the individual.

[(4) STATE DISCRETION.—The exercise of the authority of this subsection shall be within the sole discretion of the State.]

(b) FAMILY SELF-SUFFICIENCY PLANS.—

(1) IN GENERAL.—A State to which a grant is made under section 403 shall—

(A) assess, in the manner deemed appropriate by the State, the skills, prior work experience, and employability of each work-eligible individual (as defined in section 407(b)(2)(C)) receiving assistance under the State program funded under this part;

(B) establish for each family that includes such an individual, in consultation as the State deems appropriate with the individual, a self-sufficiency plan that specifies appropriate activities described in the State plan submitted pursuant to section 402, including direct work activities as appropriate designed to assist the family in achieving their maximum degree of self-sufficiency, and that provides for the ongoing participation of the individual in the activities;

(C) require, at a minimum, each such individual to participate in activities in accordance with the self-sufficiency plan;

(D) monitor the participation of each such individual in the activities specified in the self-sufficiency plan, and regularly review the progress of the family toward self-sufficiency;

(E) upon such a review, revise the self-sufficiency plan and activities as the State deems appropriate.

(2) TIMING.—The State shall comply with paragraph (1) with respect to a family—

(A) in the case of a family that, as of October 1, 2005, is not receiving assistance from the State program funded under this part, not later than 60 days after the family first receives assistance on the basis of the most recent application for the assistance; or

(B) in the case of a family that, as of such date, is receiving the assistance, not later than 12 months after the date of enactment of this subsection.

(3) STATE DISCRETION.—A State shall have sole discretion, consistent with section 407, to define and design activities for families for purposes of this subsection, to develop methods for monitoring and reviewing progress pursuant to this subsection,

and to make modifications to the plan as the State deems appropriate to assist the individual in increasing their degree of self-sufficiency.

(4) RULE OF INTERPRETATION.—Nothing in this part shall preclude a State from—

(A) requiring participation in work and any other activities the State deems appropriate for helping families achieve self-sufficiency and improving child well-being; or

(B) using job search or other appropriate job readiness or work activities to assess the employability of individuals and to determine appropriate future engagement activities.

* * * * * * *

(h) STATE OPTION TO MAKE TANF PROGRAMS MANDATORY PARTNERS WITH ONE-STOP EMPLOYMENT TRAINING CENTERS.—For purposes of section 121(b) of the Workforce Investment Act of 1998, a State program funded under part A of title IV of the Social Security Act shall be considered a program referred to in paragraph (1)(B) of such section, unless, after the date of the enactment of this subsection, the Governor of the State notifies the Secretaries of Health and Human Services and Labor in writing of the decision of the Governor not to make the State program a mandatory partner.

SEC. 409. PENALTIES.

(a) IN GENERAL.—Subject to this section:

(1) * * *

* * * * * * *

(3) FAILURE TO SATISFY MINIMUM PARTICIPATION RATES *OR ESTABLISH FAMILY SELF-SUFFICIENCY PLAN.*—

(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 for a fiscal year has failed to comply with section 407(a) *or 408(b)* for the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to the applicable percentage of the State family assistance grant.

* * * * * * *

[(6) FAILURE TO TIMELY REPAY A FEDERAL LOAN FUND FOR STATE WELFARE PROGRAMS.—If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 406 within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.**]**

(7) FAILURE OF ANY STATE TO MAINTAIN CERTAIN LEVEL OF HISTORIC EFFORT.—

(A) IN GENERAL.—The Secretary shall reduce the grant payable to the State under section 403(a)(1) for **[**fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, or

2007] *fiscal year 2006, 2007, 2008, 2009, 2010, or 2011* by the amount (if any) by which qualified State expenditures for the then immediately preceding fiscal year are less than the applicable percentage of historic State expenditures with respect to such preceding fiscal year.

(B) DEFINITIONS.—As used in this paragraph:

(i) QUALIFIED STATE EXPENDITURES.—

(I) * * *

* * * * * * *

(V) COUNTING OF SPENDING ON NON-ELIGIBLE FAMILIES TO PREVENT AND REDUCE INCIDENCE OF OUT-OF-WEDLOCK BIRTHS, ENCOURAGE FORMATION AND MAINTENANCE OF HEALTHY, 2-PARENT MARRIED FAMILIES, OR ENCOURAGE RESPONSIBLE FATHERHOOD.—The term "qualified State expenditures" includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 401(a).

(VI) EXCLUSION OF FEDERAL TANF FUNDS USED FOR MARRIAGE PROMOTION ACTIVITIES.—Such term does not include the amount of any grant made to the State under section 403 that is expended for a marriage promotion activity.

(ii) APPLICABLE PERCENTAGE.—The term "applicable percentage" means [for fiscal years 1997 through 2006,] 80 percent (or, if the State meets the requirements of section 407(a) for the *preceding* fiscal year, 75 percent).

* * * * * * *

(10) FAILURE OF STATE RECEIVING AMOUNTS FROM CONTINGENCY FUND TO MAINTAIN 100 PERCENT OF HISTORIC EFFORT.—If, at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that the qualified State expenditures (as defined in paragraph (7)(B)(i) [(other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part]*)* for the fiscal year are less than 100 percent of historic State expenditures (as defined in paragraph (7)(B)(iii) of this subsection), [excluding any amount expended by the State for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994) for fiscal year 1994,] the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by the total of the amounts so paid to the State that the State has not remitted under section 403(b)(6).

* * * * * * *

(14) PENALTY FOR FAILURE TO REDUCE ASSISTANCE FOR RECIPIENTS REFUSING WITHOUT GOOD CAUSE TO WORK *OR REFUSING TO ENGAGE IN ACTIVITIES UNDER A FAMILY SELF-SUFFICIENCY PLAN.*—

(A) * * *

* * * * * * *

(15) PENALTY FOR FAILURE TO COMPLY WITH DRUG TESTING REQUIREMENTS.—If the Secretary determines that a State has not complied with section 408(a)(12) during a fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not less than 5 percent and not more than 10 percent of the State family assistance grant, as the Secretary deems appropriate based on the frequency and severity of the noncompliance.

(c) CORRECTIVE COMPLIANCE PLAN.—

(1) * * *

(2) EFFECT OF CORRECTING OR DISCONTINUING VIOLATION.—The Secretary may not impose any penalty under subsection (a) with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects or discontinues, as appropriate, the violation pursuant to the plan.

* * * * * * *

SEC. 411. DATA COLLECTION AND REPORTING.

(a) QUARTERLY REPORTS BY STATES.—

(1) GENERAL REPORTING REQUIREMENT.—

(A) CONTENTS OF REPORT.—Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance under the State program funded under this part (except for information relating to activities carried out under section 403(a)(5)) *and on families receiving assistance under State programs funded with other qualified State expenditures (as defined in section 409(a)(7)(B))*:

(i) * * *

(ii) Whether a child receiving such assistance or an adult in the family is receiving—

(I) * * *

* * * * * * *

(III) aid under a State plan approved under title XIV (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972)**[**)**]**;

* * * * * * *

(vii) The race and educational level of each adult *and minor parent* in the family.

(viii) The race **[**and educational level**]** of each child in the family.

(ix) Whether the family received subsidized housing, medical assistance under the State plan approved under title XIX, food stamps, or subsidized child care**[**, and if the latter 2, the amount received**]**.

(x) The number of months that the family has received [each type of] assistance under the program *and, if applicable, the reason for receipt of the assistance for a total of more than 60 months*.

(xi) If the adults participated in, and the number of hours per week of participation in, the following activities:

[(I) Education.

[(II) Subsidized private sector employment.

[(III) Unsubsidized employment.

[(IV) Public sector employment, work experience, or community service.

[(V) Job search.

[(VI) Job skills training or on-the-job training.

[(VII) Vocational education.]

(I) Subsidized private sector employment.

(II) Unsubsidized employment.

(III) Public sector employment, supervised work experience, or supervised community service.

(IV) On-the-job training.

(V) Job search and placement.

(VI) Training.

(VII) Education.

(VIII) Other activities directed at the purposes of this part, as specified in the State plan submitted pursuant to section 402.

(xii) Information necessary to calculate participation rates *and progress toward universal engagement* under section 407.

(xiii) The [type and] amount of assistance received under the program, including the amount of and reason for any reduction of assistance (including sanctions).

* * * * * * *

(xvi) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to—

(I) employment;

[(II) marriage;]

[(III)] *(II)* the prohibition set forth in section 408(a)(7);

[(IV)] *(III)* sanction; or

[(V)] *(IV)* State policy.

* * * * * * *

(xviii) The date the family first received assistance from the State program on the basis of the most recent application for such assistance.

(xix) Whether a self-sufficiency plan is established for the family in accordance with section 408(b).

(xx) With respect to any child in the family, the marital status of the parents at the birth of the child, and if the parents were not then married, whether the paternity of the child has been established.

(B) USE OF SAMPLES.—

(i) AUTHORITY.—A State may comply with subparagraph (A) by submitting disaggregated case record information on [a sample] *samples* of families selected through the use of scientifically acceptable sampling methods approved by the Secretary*, except that the Secretary may designate core data elements that must be reported on all families*.

(ii) SAMPLING AND OTHER METHODS.—The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid estimates of the performance of State programs [funded under this part] *described in subparagraph (A)*. The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

* * * * * * *

[(5) REPORT ON TRANSITIONAL SERVICES.—The report required by paragraph (1) for a fiscal quarter shall include the total amount expended by the State during the quarter to provide transitional services to a family that has ceased to receive assistance under this part because of employment, along with a description of such services.]

[(6)] *(5)* REPORT ON FAMILIES RECEIVING ASSISTANCE.—The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter—

(A) * * *

* * * * * * *

(6) REPORT ON FAMILIES THAT BECOME INELIGIBLE TO RECEIVE ASSISTANCE.—The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter the number of families and total number of individuals that, during the month, became ineligible to receive assistance under the State program funded under this part (broken down by the number of families that become so ineligible due to earnings, changes in family composition that result in increased earnings, sanctions, time limits, or other specified reasons).

(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to define the data elements *and to collect the necessary data* with respect to which reports are required by this [subsection] *section*, and shall consult with the Secretary of Labor [in defining the data elements with respect to programs operated with funds provided under section 403(a)(5).]*, the National Governors' Association, the American Public Human Services Association, the National Conference of State Legislatures, and others in defining the data elements.*

(b) ANNUAL REPORTS ON PROGRAM CHARACTERISTICS.—Not later than 90 days after the end of fiscal year 2006 and each succeeding fiscal year, each eligible State shall submit to the Secretary a report on the characteristics of the State program funded under this part and other State programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)). The report shall include, with respect to each such program, the program name, a description of

program activities, the program purpose, the program eligibility criteria, the sources of program funding, the number of program beneficiaries, sanction policies, and any program work requirements.

(c) MONTHLY REPORTS ON CASELOAD.—Not later than 3 months after the end of a calendar month that begins 1 year or more after the enactment of this subsection, each eligible State shall submit to the Secretary a report on the number of families and total number of individuals receiving assistance in the calendar month under the State program funded under this part.

(d) ANNUAL REPORT ON PERFORMANCE IMPROVEMENT.—Beginning with fiscal year 2007, not later than January 1 of each fiscal year, each eligible State shall submit to the Secretary a report on achievement and improvement during the preceding fiscal year under the numerical performance goals and measures under the State program funded under this part with respect to each of the matters described in section 402(a)(1)(A)(v).

[(b)] *(e)* ANNUAL REPORTS TO THE CONGRESS BY THE SECRETARY.—Not later than 6 months after the end of fiscal year 1997, [and each fiscal year thereafter] *and by July 1 of each fiscal year thereafter*, the Secretary shall transmit to the Congress a report describing—

(1) * * *

(2) the demographic and financial characteristics of [families applying for assistance,] families receiving assistance[,] and families that become ineligible to receive assistance;

(3) the characteristics of each State program funded under this part *and other programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))*; and

* * * * * * *

(f) INCREASED ANALYSIS OF STATE SINGLE AUDIT REPORTS.—

(1) IN GENERAL.—Within 3 months after a State submits to the Secretary a report pursuant to section 7502(a)(1)(A) of title 31, United States Code, the Secretary shall analyze the report for the purpose of identifying the extent and nature of problems related to the oversight by the State of nongovernmental entities with respect to contracts entered into by such entities with the State program funded under this part, and determining what additional actions may be appropriate to help prevent and correct the problems.

(2) INCLUSION OF PROGRAM OVERSIGHT SECTION IN ANNUAL REPORT TO THE CONGRESS.—The Secretary shall include in each report under subsection (e) a section on oversight of State programs funded under this part, including findings on the extent and nature of the problems referred to in paragraph (1), actions taken to resolve the problems, and to the extent the Secretary deems appropriate make recommendations on changes needed to resolve the problems.

SEC. 412. DIRECT FUNDING AND ADMINISTRATION BY INDIAN TRIBES.

(a) GRANTS FOR INDIAN TRIBES.—

(1) TRIBAL FAMILY ASSISTANCE GRANT.—

(A) IN GENERAL.—For each of fiscal years [1997, 1998, 1999, 2000, 2001, 2002, and 2003] *2006 through 2010*, the Secretary shall pay to each Indian tribe that has an ap-

proved tribal family assistance plan a tribal family assistance grant for the fiscal year in an amount equal to the amount determined under subparagraph (B), which shall be reduced for a fiscal year, on a pro rata basis for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect, and shall reduce the grant payable under section 403(a)(1) to any State in which lies the service area or areas of the Indian tribe by that portion of the amount so determined that is attributable to expenditures by the State.

* * * * * * *

(2) GRANTS FOR INDIAN TRIBES THAT RECEIVED JOBS FUNDS.—

(A) IN GENERAL.—For each of fiscal years [1997, 1998, 1999, 2000, 2001, 2002, and 2003] *2006 through 2010*, the Secretary shall pay to each eligible Indian tribe that proposes to operate a program described in subparagraph (C) a grant in an amount equal to the amount received by the Indian tribe in fiscal year 1994 under section 482(i) (as in effect during fiscal year 1994).

* * * * * * *

(3) WELFARE-TO-WORK GRANTS.—

(A) * * *

(B) WELFARE-TO-WORK TRIBE.—An Indian tribe shall be considered a welfare-to-work tribe for a fiscal year for purposes of this paragraph if the Indian tribe meets the following requirements:

(i) * * *

* * * * * * *

(iv) The Indian tribe has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section [413(j)] *413(i)*, and to cooperate with the conduct of any such evaluation.

(b) 3-YEAR TRIBAL FAMILY ASSISTANCE PLAN.—

(1) IN GENERAL.—Any Indian tribe that desires to receive a tribal family assistance grant shall submit to the Secretary a 3-year tribal family assistance plan that—

(A) * * *

* * * * * * *

(E) identifies the employment opportunities in or near the service area or areas of the Indian tribe and the manner in which the Indian tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan consistent with any applicable State standards; [and]

(F) applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code[.]*; and*

(G) provides an assurance that the State in which the tribe is located has been consulted regarding the plan and its design.

* * * * * * *

[(f) ELIGIBILITY FOR FEDERAL LOANS.—Section 406 shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such section applies to a State, except that section 406(c) shall be applied by substituting "section 412(a)" for "section 403(a)".]

[(g)] *(f)* PENALTIES.—

(1) * * *

* * * * * * *

[(h)] *(g)* DATA COLLECTION AND REPORTING.—Section 411 shall apply to an Indian tribe with an approved tribal family assistance plan.

[(i)] *(h)* SPECIAL RULE FOR INDIAN TRIBES IN ALASKA.—

(1) * * *

* * * * * * *

SEC. 413. RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.

(a) * * *

* * * * * * *

(d) ANNUAL RANKING OF STATES AND REVIEW OF MOST AND LEAST SUCCESSFUL WORK PROGRAMS.—

(1) ANNUAL RANKING OF STATES.—The Secretary shall rank annually the States to which grants are paid under section 403 in the order of their success in placing recipients of assistance under the State program funded under this part into [long-term private sector jobs] *private sector jobs, the success of the recipients in retaining employment, the ability of the recipients to increase their wages*, reducing the overall welfare caseload, and, when a practicable method for calculating this information becomes available, diverting individuals from formally applying to the State program and receiving assistance. In ranking States under this subsection, the Secretary shall take into account the average number of minor children living at home in families in the State that have incomes below the poverty line and the amount of funding provided each State for such families.

(2) ANNUAL REVIEW OF MOST AND LEAST SUCCESSFUL WORK PROGRAMS.—The Secretary shall review the programs of the 3 States most recently ranked highest under paragraph (1) and the 3 States most recently ranked lowest under paragraph (1) that provide parents with work experience, [assistance] *aid* in finding employment, and other work preparation activities and support services to enable the families of such parents to leave the program and become self-sufficient.

* * * * * * *

[(g) REPORT ON CIRCUMSTANCES OF CERTAIN CHILDREN AND FAMILIES.—

[(1) IN GENERAL.—Beginning 3 years after the date of the enactment of this section, the Secretary of Health and Human

Services shall prepare and submit to the Committees on Ways and Means and on Education and the Workforce of the House of Representatives and to the Committees on Finance and on Labor and Resources of the Senate annual reports that examine in detail the matters described in paragraph (2) with respect to each of the following groups for the period after such enactment:

[(A) Individuals who were children in families that have become ineligible for assistance under a State program funded under this part by reason of having reached a time limit on the provision of such assistance.

[(B) Children born after such date of enactment to parents who, at the time of such birth, had not attained 20 years of age.

[(C) Individuals who, after such date of enactment, became parents before attaining 20 years of age.

[(2) MATTERS DESCRIBED.—The matters described in this paragraph are the following:

[(A) The percentage of each group that has dropped out of secondary school (or the equivalent), and the percentage of each group at each level of educational attainment.

[(B) The percentage of each group that is employed.

[(C) The percentage of each group that has been convicted of a crime or has been adjudicated as a delinquent.

[(D) The rate at which the members of each group are born, or have children, out-of-wedlock, and the percentage of each group that is married.

[(E) The percentage of each group that continues to participate in State programs funded under this part.

[(F) The percentage of each group that has health insurance provided by a private entity (broken down by whether the insurance is provided through an employer or otherwise), the percentage that has health insurance provided by an agency of government, and the percentage that does not have health insurance.

[(G) The average income of the families of the members of each group.

[(H) Such other matters as the Secretary deems appropriate.]

[(h)] *(g)* FUNDING OF STUDIES AND DEMONSTRATIONS.—

(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $15,000,000 for each of fiscal years [1997 through 2002] *2006 through 2010* for the purpose of paying—

(A) * * *

* * * * * * *

[(i)] *(h)* CHILD POVERTY RATES.—

(1) * * *

* * * * * * *

[(j)] *(i)* EVALUATION OF WELFARE-TO-WORK PROGRAMS.—

(1) * * *

(2) REPORTS TO THE CONGRESS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development, shall submit to the Congress reports on the projects funded under [section] *sections* 403(a)(5) and 412(a)(3) and on the evaluations of the projects.

* * * * * * *

(j) PERFORMANCE IMPROVEMENT.—The Secretary, in consultation with the States, shall develop uniform performance measures designed to assess the degree of effectiveness, and the degree of improvement, of State programs funded under this part in accomplishing the purposes of this part.

(k) FUNDING FOR RESEARCH, DEMONSTRATIONS, AND TECHNICAL ASSISTANCE.—

(1) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $102,000,000 for each of fiscal years 2006 through 2010, which shall be available to the Secretary for the purpose of conducting and supporting research and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under this part, which shall be expended primarily on activities described in section 403(a)(2)(B), and which shall be in addition to any other funds made available under this part.

(2) SET ASIDE FOR DEMONSTRATION PROJECTS FOR COORDINATION OF PROVISION OF CHILD WELFARE AND TANF SERVICES TO TRIBAL FAMILIES AT RISK OF CHILD ABUSE OR NEGLECT.—

(A) IN GENERAL.—Of the amounts made available under paragraph (1) for a fiscal year, $2,000,000 shall be awarded on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

(B) USE OF FUNDS.—A grant made to such a project shall be used—

(i) to improve case management for families eligible for assistance from such a tribal program;

(ii) for supportive services and assistance to tribal children in out-of-home placements and the tribal families caring for such children, including families who adopt such children; and

(iii) for prevention services and assistance to tribal families at risk of child abuse and neglect.

(C) REPORTS.—The Secretary may require a recipient of funds awarded under this paragraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this paragraph.

(l) FUNDING FOR RESEARCH, DEMONSTRATIONS, AND TECHNICAL ASSISTANCE.—

(1) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $102,000,000 for each of fiscal years 2006 through 2010, which shall be available to the Secretary for the purpose of conducting and supporting research and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under this part, which shall be expended primarily on activities described in section 403(a)(2)(B), and which shall be in addition to any other funds made available under this part. The Secretary may not provide an entity with funds made available under this paragraph unless the entity agrees that, as a condition of receipt of the funds for a program or activity described in any of clauses (iii) through (viii) of section 403(a)(2)(B), the entity will comply with subclauses (I) and (II) of section 403(a)(2)(C)(ii).

(2) SET ASIDE FOR DEMONSTRATION PROJECTS FOR COORDINATION OF PROVISION OF CHILD WELFARE AND TANF SERVICES TO TRIBAL FAMILIES AT RISK OF CHILD ABUSE OR NEGLECT.—

(A) IN GENERAL.—Of the amounts made available under paragraph (1) for a fiscal year, $2,000,000 shall be awarded on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

(B) USE OF FUNDS.—A grant made to such a project shall be used—

(i) to improve case management for families eligible for assistance from such a tribal program;

(ii) for supportive services and assistance to tribal children in out-of-home placements and the tribal families caring for such children, including families who adopt such children; and

(iii) for prevention services and assistance to tribal families at risk of child abuse and neglect.

(C) REPORTS.—The Secretary may require a recipient of funds awarded under this paragraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this paragraph.

SEC. 414. STUDY BY THE CENSUS BUREAU.

[(a) IN GENERAL.—The Bureau of the Census shall continue to collect data on the 1992 and 1993 panels of the Survey of Income and Program Participation as necessary to obtain such information as will enable interested persons to evaluate the impact of the amendments made by title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on a random national sample of recipients of assistance under State programs funded under this part and (as appropriate) other low-income families, and in doing so, shall pay particular attention to the issues of out-of-

wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells, and shall obtain information about the status of children participating in such panels.]

(a) IN GENERAL.—The Bureau of the Census shall implement or enhance a longitudinal survey of program participation, developed in consultation with the Secretary and made available to interested parties, to allow for the assessment of the outcomes of continued welfare reform on the economic and child well-being of low-income families with children, including those who received assistance or services from a State program funded under this part, and, to the extent possible, shall provide State representative samples. The content of the survey should include such information as may be necessary to examine the issues of out-of-wedlock childbearing, marriage, welfare dependency and compliance with work requirements, the beginning and ending of spells of assistance, work, earnings and employment stability, and the well-being of children.

(b) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for each of fiscal years [1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003] *2006 through 2010* for payment to the Bureau of the Census to carry out subsection (a). *Funds appropriated under this subsection shall remain available through fiscal year 2010 to carry out subsection (a).*

* * * * * * *

SEC. 418. FUNDING FOR CHILD CARE.

(a) GENERAL CHILD CARE ENTITLEMENT.—

(1) * * *

* * * * * * *

(3) APPROPRIATION.—For grants under this section, there are appropriated—

(A) * * *

* * * * * * *

(E) $2,567,000,000 for fiscal year 2001; [and]

(F) $2,717,000,000 for each of fiscal years 2002 and 2003[.]*;*

(G) $2,717,000,000 for fiscal year 2006;

(H) $2,767,000,000 for fiscal year 2007;

(I) $2,817,000,000 for fiscal year 2008;

(J) $2,867,000,000 for fiscal year 2009; and

(K) $2,917,000,000 for fiscal year 2010.

* * * * * * *

SEC. 419. DEFINITIONS.

As used in this part:

(1) * * *

* * * * * * *

(6) ASSISTANCE.—

(A) IN GENERAL.—The term "assistance" means payment, by cash, voucher, or other means, to or for an individual or family for the purpose of meeting a subsistence need of the individual or family (including food, clothing, shelter,

and related items, but not including costs of transportation or child care).

(B) EXCEPTION.—The term "assistance" does not include a payment described in subparagraph (A) to or for an individual or family on a short-term, nonrecurring basis (as defined by the State in accordance with regulations prescribed by the Secretary).

* * * * * * *

PART C—FATHERHOOD PROGRAM

SEC. 441. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that there is substantial evidence strongly indicating the urgent need to promote and support involved, committed, and responsible fatherhood, and to encourage and support healthy marriages between parents raising children, including data demonstrating the following:

(1) In approximately 84 percent of cases where a parent is absent, that parent is the father.

(2) If current trends continue, half of all children born today will live apart from one of their parents, usually their father, at some point before they turn 18.

(3) Where families (whether intact or with a parent absent) are living in poverty, a significant factor is the father's lack of job skills.

(4) Committed and responsible fathering during infancy and early childhood contributes to the development of emotional security, curiosity, and math and verbal skills.

(5) An estimated 19,400,000 children (27 percent) live apart from their biological father.

(6) Forty percent of children under age 18 not living with their biological father had not seen their father even once in the last 12 months, according to national survey data.

(b) PURPOSES.—The purposes of this part are:

(1) To provide for projects and activities by public entities and by nonprofit community entities, including religious organizations, designed to test promising approaches to accomplishing the following objectives:

(A) Promoting responsible, caring, and effective parenting through counseling, mentoring, and parenting education, dissemination of educational materials and information on parenting skills, encouragement of positive father involvement, including the positive involvement of nonresident fathers, and other methods.

(B) Enhancing the abilities and commitment of unemployed or low-income fathers to provide material support for their families and to avoid or leave welfare programs by assisting them to take full advantage of education, job training, and job search programs, to improve work habits and work skills, to secure career advancement by activities such as outreach and information dissemination, coordination, as appropriate, with employment services and job training programs, including the One-Stop delivery system

established under title I of the Workforce Investment Act of 1998, encouragement and support of timely payment of current child support and regular payment toward past due child support obligations in appropriate cases, and other methods.

(C) Improving fathers' ability to effectively manage family business affairs by means such as education, counseling, and mentoring in matters including household management, budgeting, banking, and handling of financial transactions, time management, and home maintenance.

(D) Encouraging and supporting healthy marriages and married fatherhood through such activities as premarital education, including the use of premarital inventories, marriage preparation programs, skills-based marriage education programs, marital therapy, couples counseling, divorce education and reduction programs, divorce mediation and counseling, relationship skills enhancement programs, including those designed to reduce child abuse and domestic violence, and dissemination of information about the benefits of marriage for both parents and children.

(2) Through the projects and activities described in paragraph (1), to improve outcomes for children with respect to measures such as increased family income and economic security, improved school performance, better health, improved emotional and behavioral stability and social adjustment, and reduced risk of delinquency, crime, substance abuse, child abuse and neglect, teen sexual activity, and teen suicide.

(3) To evaluate the effectiveness of various approaches and to disseminate findings concerning outcomes and other information in order to encourage and facilitate the replication of effective approaches to accomplishing these objectives.

SEC. 442. DEFINITIONS.

In this part, the terms "Indian tribe" and "tribal organization" have the meanings given them in subsections (e) and (l), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act.

SEC. 443. COMPETITIVE GRANTS FOR SERVICE PROJECTS.

(a) IN GENERAL.—The Secretary may make grants for fiscal years 2006 through 2010 to public and nonprofit community entities, including religious organizations, and to Indian tribes and tribal organizations, for demonstration service projects and activities designed to test the effectiveness of various approaches to accomplish the objectives specified in section 441(b)(1).

(b) ELIGIBILITY CRITERIA FOR FULL SERVICE GRANTS.—In order to be eligible for a grant under this section, except as specified in subsection (c), an entity shall submit an application to the Secretary containing the following:

(1) PROJECT DESCRIPTION.—A statement including—

(A) a description of the project and how it will be carried out, including the geographical area to be covered and the number and characteristics of clients to be served, and how it will address each of the 4 objectives specified in section 441(b)(1); and

(B) a description of the methods to be used by the entity or its contractor to assess the extent to which the project was successful in accomplishing its specific objectives and the general objectives specified in section 441(b)(1).

(2) EXPERIENCE AND QUALIFICATIONS.—A demonstration of ability to carry out the project, by means such as demonstration of experience in successfully carrying out projects of similar design and scope, and such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs under parts A, B, and D of this title, including programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(7) SELF-INITIATED EVALUATION.—If the entity elects to contract for independent evaluation of the project (part or all of the cost of which may be paid for using grant funds), a commitment to submit to the Secretary a copy of the evaluation report within 30 days after completion of the report and not more than 1 year after completion of the project.

(8) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including random assignment of clients to service recipient and control groups, if determined by the Secretary to be appropriate, and affording the Secretary access to the project and to project-related records and documents, staff, and clients.

(c) ELIGIBILITY CRITERIA FOR LIMITED PURPOSE GRANTS.—In order to be eligible for a grant under this section in an amount under $25,000 per fiscal year, an entity shall submit an application to the Secretary containing the following:

(1) PROJECT DESCRIPTION.—A description of the project and how it will be carried out, including the number and characteristics of clients to be served, the proposed duration of the project, and how it will address at least 1 of the 4 objectives specified in section 441(b)(1).

(2) QUALIFICATIONS.—Such information as the Secretary may require as to the capacity of the entity to carry out the project, including any previous experience with similar activities.

(3) COORDINATION WITH RELATED PROGRAMS.—As required by the Secretary in appropriate cases, an undertaking to coordinate and cooperate with State and local entities responsible for specific programs relating to the objectives of the project including, as appropriate, jobs programs and programs serving children and families.

(4) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(5) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

(d) CONSIDERATIONS IN AWARDING GRANTS.—

(1) DIVERSITY OF PROJECTS.—In awarding grants under this section, the Secretary shall seek to achieve a balance among entities of differing sizes, entities in differing geographic areas, entities in urban and in rural areas, and entities employing differing methods of achieving the purposes of this section, including working with the State agency responsible for the administration of part D to help fathers satisfy child support arrearage obligations.

(2) PREFERENCE FOR PROJECTS SERVING LOW-INCOME FATHERS.—In awarding grants under this section, the Secretary may give preference to applications for projects in which a majority of the clients to be served are low-income fathers.

(e) FEDERAL SHARE.—

(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for a share of the cost of such project in such fiscal year equal to—

(A) up to 80 percent (or up to 90 percent, if the entity demonstrates to the Secretary's satisfaction circumstances limiting the entity's ability to secure non-Federal resources) in the case of a project under subsection (b); and

(B) up to 100 percent, in the case of a project under subsection (c).

(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

SEC. 444. MULTICITY, MULTISTATE DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for 2 multicity, multistate projects dem-

onstrating approaches to achieving the objectives specified in section 441(b)(1). One of the projects shall test the use of married couples to deliver program services.

(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

(2) EXPERIENCE WITH MULTICITY, MULTISTATE PROGRAMS AND GOVERNMENT COORDINATION.—The organization must have experience in simultaneously conducting such programs in more than 1 major metropolitan area in more than 1 State and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

(1) QUALIFICATIONS.—

(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

(A) IN GENERAL.—A detailed description of the proposed project design and how it will be carried out, which shall—

(i) provide for the project to be conducted in at least 3 major metropolitan areas;

(ii) state how it will address each of the 4 objectives specified in section 441(b)(1);

(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving low-income fathers (but the project need not make services available on a means-tested basis).

(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

(i) in consultation with the evaluator selected pursuant to section 445, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final over-

sight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(d) FEDERAL SHARE.—

(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

SEC. 445. EVALUATION.

(a) IN GENERAL.—The Secretary, directly or by contract or cooperative agreement, shall evaluate the effectiveness of service projects funded under sections 443 and 444 from the standpoint of the purposes specified in section 441(b)(1).

(b) EVALUATION METHODOLOGY.—Evaluations under this section shall—

(1) include, to the maximum extent feasible, random assignment of clients to service delivery and control groups and other appropriate comparisons of groups of individuals receiving and not receiving services;

(2) describe and measure the effectiveness of the projects in achieving their specific project goals; and

(3) describe and assess, as appropriate, the impact of such projects on marriage, parenting, domestic violence, child abuse and neglect, money management, employment and earnings, payment of child support, and child well-being, health, and education.

(c) EVALUATION REPORTS.—The Secretary shall publish the following reports on the results of the evaluation:

(1) An implementation evaluation report covering the first 24 months of the activities under this part to be completed by 36 months after initiation of such activities.

(2) A final report on the evaluation to be completed by September 30, 2013.

SEC. 446. PROJECTS OF NATIONAL SIGNIFICANCE.

The Secretary is authorized, by grant, contract, or cooperative agreement, to carry out projects and activities of national significance relating to fatherhood promotion, including—

(1) COLLECTION AND DISSEMINATION OF INFORMATION.—Assisting States, communities, and private entities, including religious organizations, in efforts to promote and support marriage and responsible fatherhood by collecting, evaluating, developing, and making available (through the Internet and by other means) to all interested parties information regarding approaches to accomplishing the objectives specified in section 441(b)(1).

(2) MEDIA CAMPAIGN.—Developing, promoting, and distributing to interested States, local governments, public agencies, and private nonprofit organizations, including charitable and religious organizations, a media campaign that promotes and encourages involved, committed, and responsible fatherhood and married fatherhood.

(3) TECHNICAL ASSISTANCE.—Providing technical assistance, including consultation and training, to public and private entities, including community organizations and faith-based organizations, in the implementation of local fatherhood promotion programs.

(4) RESEARCH.—Conducting research related to the purposes of this part.

SEC. 447. NONDISCRIMINATION.

The projects and activities assisted under this part shall be available on the same basis to all fathers and expectant fathers able to benefit from such projects and activities, including married and unmarried fathers and custodial and noncustodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers on the same basis as to fathers.

SEC. 448. AUTHORIZATION OF APPROPRIATIONS; RESERVATION FOR CERTAIN PURPOSE.

(a) AUTHORIZATION.—There are authorized to be appropriated $20,000,000 for each of fiscal years 2006 through 2010 to carry out the provisions of this part.

(b) RESERVATION.—Of the amount appropriated under this section for each fiscal year, not more than 15 percent shall be available for the costs of the multicity, multicounty, multistate demonstration projects under section 444, evaluations under section 445, and projects of national significance under section 446.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

* * * * * * *

DUTIES OF THE SECRETARY

SEC. 452. (a) * * *

* * * * * * *

(j) Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 1 percent of the total amount paid to the Federal Government pursuant to a plan approved under this part during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following the end of such preceding fiscal year), *or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater,* which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements, for—

(1) * * *

* * * * * * *

(k)(1) If the Secretary receives a certification by a State agency in accordance with the requirements of section 454(31) that an individual owes arrearages of child support in an amount exceeding **[**$5,000**]** *$2,500*, the Secretary shall transmit such certification to the Secretary of State for action (with respect to denial, revocation, or limitation of passports) pursuant to paragraph (2).

* * * * * * *

(m) COMPARISONS WITH INSURANCE INFORMATION.—

(1) IN GENERAL.—The Secretary, through the Federal Parent Locator Service, may—

(A) compare information concerning individuals owing past-due support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments, and

(B) furnish information resulting from such a comparison to the State agencies responsible for collecting child support from such individuals.

(2) LIABILITY.—An insurer (including any agent of an insurer) shall not be liable under any Federal or State law to any person for any disclosure provided for under this subsection, or

for any other action taken in good faith in accordance with this subsection.

FEDERAL PARENT LOCATOR SERVICE

SEC. 453. (a) * * *

* * * * * * *

(c) As used in subsection (a), the term "authorized person" means—

(1) any agent or attorney of any State *or of any Indian tribe or tribal organization* having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child and spousal support (including, when authorized under the State plan, any official of a political subdivision);

* * * * * * *

(j) INFORMATION COMPARISONS AND OTHER DISCLOSURES.—

(1) * * *

* * * * * * *

(6) INFORMATION COMPARISONS AND DISCLOSURE FOR ENFORCEMENT OF OBLIGATIONS ON HIGHER EDUCATION ACT LOANS AND GRANTS.—

(A) * * *

* * * * * * *

(F) REIMBURSEMENT OF HHS COSTS.—The Secretary of Education shall reimburse the Secretary, in accordance with subsection (k)(3), for the [additional] costs incurred by the Secretary in furnishing the information requested under this subparagraph.

* * * * * * *

[(7)] *(9)* INFORMATION COMPARISONS AND DISCLOSURE TO ASSIST IN FEDERAL DEBT COLLECTION.—

(A) * * *

* * * * * * *

(k) FEES.—

(1) * * *

* * * * * * *

(3) FOR INFORMATION FURNISHED TO STATE AND FEDERAL AGENCIES.—A State or Federal agency that receives information from the Secretary pursuant to this section *or section 452(m)* shall reimburse the Secretary for costs incurred by the Secretary in furnishing the information, at rates which the Secretary determines to be reasonable (which rates shall include payment for the costs of obtaining, verifying, maintaining, and comparing the information).

* * * * * * *

(o) USE OF SET-ASIDE FUNDS.—Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 2 percent of the total amount paid to the Federal Government

pursuant to a plan approved under this part during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following the end of such preceding fiscal year), *or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater,* which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements, for operation of the Federal Parent Locator Service under this section, to the extent such costs are not recovered through user fees. Amounts appropriated under this subsection ⟦for each of fiscal years 1997 through 2001⟧ shall remain available until expended.

* * * * * * *

STATE PLAN FOR CHILD AND SPOUSAL SUPPORT

SEC. 454. A State plan for child and spousal support must—

(1) * * *

* * * * * * *

(6) provide that—

(A) * * *

(B)*(i)* an application fee for furnishing such services shall be imposed on an individual, other than an individual receiving assistance under a State program funded under part A or E, or under a State plan approved under title XIX, or who is required by the State to cooperate with the State agency administering the program under this part pursuant to subsection (l) or (m) of section 6 of the Food Stamp Act of 1977, and shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which ⟦(i)⟧ *(I)* will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and ⟦(ii)⟧ *(II)* may vary among such individuals on the basis of ability to pay (as determined by the State); *and*

(ii) in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least $500 of support, the State shall impose an annual fee of $25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the 1st $500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the

plan, and such fees shall be considered income to the program);

* * * * * * *

(31) provide that the State agency will have in effect a procedure for certifying to the Secretary, for purposes of the procedure under section 452(k), determinations that individuals owe arrearages of child support in an amount exceeding [$5,000] *$2,500*, under which procedure—

(A) * * *

* * * * * * *

(33) provide that a State [that receives funding pursuant to section 428 and] that has within its borders Indian country (as defined in section 1151 of title 18, United States Code) may enter into cooperative agreements with an Indian tribe or tribal organization (as defined in subsections (e) and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), if the Indian tribe or tribal organization demonstrates that such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, or enforce support orders, or to enter support orders in accordance with child support guidelines established or adopted by such tribe or organization, under which the State and tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all collections pursuant to the functions performed by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute such collections in accordance with such agreement.

* * * * * * *

PAYMENTS TO STATES

SEC. 455. (a)(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount—

(A) * * *

* * * * * * *

except that no amount shall be paid to any State on account of amounts expended *from amounts paid to the State under section 458 or* to carry out an agreement which it has entered into pursuant to section 463. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989[, and]*;*

(C) 66 percent for [fiscal year 1990 and each fiscal year thereafter.] *fiscal years 1990 through 2006;*

(D) 62 percent for fiscal year 2007;

(E) 58 percent for fiscal year 2008;

(F) 54 percent for fiscal year 2009; and

(G) 50 percent for fiscal year 2010 and each fiscal year thereafter.

* * * * * * *

SEC. 457. DISTRIBUTION OF COLLECTED SUPPORT.

(a) IN GENERAL.—Subject to subsections (d) and (e), an amount collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

(1) FAMILIES RECEIVING ASSISTANCE.—In the case of a family receiving assistance from the State, the State shall—

(A) pay to the Federal Government the Federal share of the amount so collected *subject to paragraph (7)*; and

* * * * * * *

(2) FAMILIES THAT FORMERLY RECEIVED ASSISTANCE.—In the case of a family that formerly received assistance from the State:

(A) * * *

(B) PAYMENTS OF ARREARAGES.—To the extent that the amount so collected exceeds the amount required to be paid to the family for the month in which collected, the State shall*, except as provided in paragraph (8),* distribute the amount so collected as follows:

(i) * * *

* * * * * * *

[(3) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute the amount so collected to the family.]

(3) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).

* * * * * * *

(7) FEDERAL MATCHING FUNDS FOR LIMITED PASS THROUGH OF CHILD SUPPORT PAYMENTS TO FAMILIES RECEIVING TANF.—Notwithstanding paragraph (1), a State shall not be required to pay to the Federal Government the Federal share of an amount collected during a month on behalf of a family that is a recipient of assistance under the State program funded under part A, to the extent that—

(A) the State distributes the amount to the family;

(B) the total of the amounts so distributed to the family during the month—

(i) exceeds the amount (if any) that, as of December 31, 2001, was required under State law to be distributed to a family under paragraph (1)(B); and

(ii) does not exceed the greater of—

(I) $100; or

(II) $50 plus the amount described in clause (i); and

(C) the amount is disregarded in determining the amount and type of assistance provided to the family under the State program funded under part A.

(8) STATE OPTION TO PASS THROUGH ALL CHILD SUPPORT PAYMENTS TO FAMILIES THAT FORMERLY RECEIVED TANF.—In lieu of applying paragraph (2) to any family described in paragraph (2), a State may distribute to the family any amount collected during a month on behalf of the family.

(b) CONTINUATION OF ASSIGNMENTS.—Any rights to support obligations, assigned to a State as a condition of receiving assistance from the State under part A and in effect on September 30, 1997 (or such earlier date, on or after August 22, 1996, as the State may choose), **[**shall**]** *may* remain assigned after such date.

SEC. 459. CONSENT BY THE UNITED STATES TO INCOME WITHHOLDING, GARNISHMENT, AND SIMILAR PROCEEDINGS FOR ENFORCEMENT OF CHILD SUPPORT AND ALIMONY OBLIGATIONS.

(a) * * *

* * * * * * *

(h) MONEYS SUBJECT TO PROCESS.—

(1) IN GENERAL.—Subject to paragraph (2), moneys payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section—

(A) consist of—

(i) * * *

(ii) periodic benefits (including a periodic benefit as defined in section 228(h)(3)) or other payments—

(I) * * *

* * * * * * *

(V) by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces **[**who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation;**]***;*

* * * * * * *

(3) LIMITATIONS WITH RESPECT TO COMPENSATION PAID TO VETERANS FOR SERVICE-CONNECTED DISABILITIES.—Notwithstanding any other provision of this section:

(A) Compensation described in paragraph (1)(A)(ii)(V) shall not be subject to withholding pursuant to this section—

(i) for payment of alimony; or

(ii) for payment of child support if the individual is fewer than 60 days in arrears in payment of the support.

(B) Not more than 50 percent of any payment of compensation described in paragraph (1)(A)(ii)(V) may be withheld pursuant to this section.

COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS

SEC. 464. (a)(1) * * *

(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support ⟦(as that term is defined for purposes of this paragraph under subsection (c))⟧ which such State has agreed to collect under section 454(4)(A)(ii), and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed in accordance with section 457. This subsection may be executed by the Secretary of the Department of the Treasury or his designee.

* * * * * * *

(c)⟦(1) Except as provided in paragraph (2), as used in⟧ *In* this part the term "past-due support" means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child *(whether or not a minor)*, or of a child *(whether or not a minor)* and the parent with whom the child is living.

⟦(2) For purposes of subsection (a)(2), the term "past-due support" means only past-due support owed to or on behalf of a qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent).

⟦(3) For purposes of paragraph (2), the term "qualified child" means a child—

⟦(A) who is a minor; or

⟦(B)(i) who, while a minor, was determined to be disabled under title II or XVI; and

⟦(ii) for whom an order of support is in force.⟧

* * * * * * *

REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO IMPROVE EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT

SEC. 466. (a) In order to satisfy section 454(20)(A), each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Sec-

retary, to increase the effectiveness of the program which the State administers under this part:

(1) * * *

* * * * * * *

(10) REVIEW AND ADJUSTMENT OF SUPPORT ORDERS UPON REQUEST.—

(A) 3-YEAR CYCLE.—

(i) IN GENERAL.—Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either [parent, or,] *parent or* if there is an assignment under part A, [upon the request of the State agency under the State plan or of either parent,] the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved—

(I) * * *

* * * * * * *

(14) HIGH-VOLUME, AUTOMATED ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.—

(A) IN GENERAL.—Procedures under which—

(i) * * *

* * * * * * *

(iii) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other State *(but the assisting State may establish a corresponding case based on such other State's request for assistance)*; and

* * * * * * *

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

PURPOSE: APPROPRIATION

SEC. 470. For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would have been eligible for assistance under the State's plan approved under part A (as such plan was in effect on [June 1, 1995] *July 16, 1996*) and adoption assistance for children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

* * * * * * *

FOSTER CARE MAINTENANCE PAYMENTS PROGRAM

SEC. 472. [(a) Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section

475(4)) under this part with respect to a child who would have met the requirements of section 406(a) or of section 407 (as such sections were in effect on July 16, 1996) but for his removal from the home of a relative (specified in section 406(a)), if—

[(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) for a child have been made;

[(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 471, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 471 has made an agreement which is still in effect;

[(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial determination referred to in paragraph (1); and

[(4) such child—

[(A) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

[(B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 406(a) (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made.

In any case where the child is an alien disqualified under section 245A(h), 210(f), or 210A(d)(7) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 473(a)(2)(B)), with respect to that month, if he or she would have satisfied such requirements but for such disqualification. In determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than $10,000 shall be considered to be a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of such section 402(a)(7)(B)).]

(a) IN GENERAL.—

(1) ELIGIBILITY.—Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) into foster care if—

(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and

(B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

(2) REMOVAL AND FOSTER CARE PLACEMENT REQUIREMENTS.—The removal and foster care placement of a child meet the requirements of this paragraph if—

(A) the removal and foster care placement are in accordance with—

(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 471(a)(15) for a child have been made;

(B) the child's placement and care are the responsibility of—

(i) the State agency administering the State plan approved under section 471; or

(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and

(C) the child has been placed in a foster family home or child-care institution.

(3) AFDC ELIGIBILITY REQUIREMENT.—

(A) IN GENERAL.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

(B) RESOURCES DETERMINATION.—For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than $10,000 shall be considered a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of section 402(a)(7)(B)).

(4) ELIGIBILITY OF CERTAIN ALIEN CHILDREN.—Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, if the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.

* * * * * * *

(i) ADMINISTRATIVE COSTS ASSOCIATED WITH OTHERWISE ELIGIBLE CHILDREN NOT IN LICENSED FOSTER CARE SETTINGS.—Expenditures by a State that would be considered administrative expenditures for purposes of section 474(a)(3) if made with respect to a child who was residing in a foster family home or child-care institution shall be so considered with respect to a child not residing in such a home or institution—

(1) in the case of a child who has been removed in accordance with subsection (a) of this section from the home of a relative specified in section 406(a) (as in effect on July 16, 1996), only for expenditures—

(A) with respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster family home; or

(B) with respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the State; and

(2) in the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if—

(A) reasonable efforts are being made in accordance with section 471(a)(15) to prevent the need for, or if necessary to pursue, removal of the child from the home; and

(B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.

ADOPTION ASSISTANCE PROGRAM

SEC. 473. (a)(1) * * *

[(2) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if such child—

[(A)(i) at the time adoption proceedings were initiated, met the requirements of section 406(a) or section 407 (as such sections were in effect on July 16, 1996) or would have met such requirements except for his removal from the home of a relative (specified in section 406(a) (as so in effect)), either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or 403 (as such section was in effect on July 16, 1996)) or as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child,

[(ii) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits, or

[(iii) is a child whose costs in a foster family home or childcare institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B),

[(B)(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

[(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 406(a) (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, or

[(iii) is a child described in subparagraph (A)(ii) or (A)(iii), and

[(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

The last sentence of section 472(a) shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence. Any child who meets the requirements of subparagraph (C), who was determined eligible for adoption assistance payments under this part with respect to a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii).]

(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

(i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

(bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause;

(II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

(III) is a child whose costs in a foster family home or childcare institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and

(ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

(B) Section 472(a)(4) shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien described in such section.

(C) A child shall be treated as meeting the requirements of this paragraph for the purpose of paragraph (1)(B)(ii) if the child—

(i) meets the requirements of subparagraph (A)(ii);

(ii) was determined eligible for adoption assistance payments under this part with respect to a prior adoption;

(iii) is available for adoption because—

(I) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or

(II) the child's adoptive parents have died; and

(iv) fails to meet the requirements of subparagraph (A) but would meet such requirements if—

(I) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and

(II) the prior adoption were treated as never having occurred.

* * * * * * *

PAYMENTS TO STATES; ALLOTMENTS TO STATES

SEC. 474. (a) For each quarter beginning after September 30, 1980, each State which has a plan approved under this part shall be entitled to a payment equal to the sum of—

(1) * * *

* * * * * * *

(3) *subject to section 472(i)* an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan—

(A) * * *

* * * * * * *

TITLE XI—GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION

* * * * * * *

PART A—GENERAL PROVISIONS

* * * * * * *

SEC. 1108. ADDITIONAL GRANTS TO PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA; LIMITATION ON TOTAL PAYMENTS.

(a) LIMITATION ON TOTAL PAYMENTS TO EACH TERRITORY.—

(1) * * *

(2) CERTAIN PAYMENTS DISREGARDED.—Paragraph (1) of this subsection shall be applied without regard to any payment made under section 403(a)(2), 403(a)(4), 403(a)(5), [406,] or 413(f).

(b) ENTITLEMENT TO MATCHING GRANT.—

(1) * * *

(2) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years [1997 through 2003] *2006 through 2010*, such sums as are necessary for grants under this paragraph.

* * * * * * *

DEMONSTRATION PROJECTS

SEC. 1130. (a) AUTHORITY TO APPROVE DEMONSTRATION PROJECTS.—

(1) * * *

(2) LIMITATION.—The Secretary may authorize [not more than 10] demonstration projects under paragraph (1) in each of fiscal years 1998 through [2003] *2010*.

(b) WAIVER AUTHORITY.—The Secretary may waive compliance with any requirement of part B or E of title IV which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive—

(1) any provision of section 427 (as in effect before April 1, 1996), section [422(b)(9)] *422(b)(10)* (as in effect after such date), or section 479; or

* * * * * * *

(h) NO LIMIT ON NUMBER OF STATES THAT MAY BE GRANTED WAIVERS TO CONDUCT SAME OR SIMILAR DEMONSTRATION PROJECTS.—The Secretary shall not refuse to grant a waiver to a State under this section on the grounds that a purpose of the waiver or of the demonstration project for which the waiver is necessary would be the same as or similar to a purpose of another waiver or project that is or may be conducted under this section.

(i) NO LIMIT ON NUMBER OF WAIVERS GRANTED TO, OR DEMONSTRATION PROJECTS THAT MAY BE CONDUCTED BY, A SINGLE STATE.—The Secretary shall not impose any limit on the number of waivers that may be granted to a State, or the number of demonstration projects that a State may be authorized to conduct, under this section.

(j) STREAMLINED PROCESS FOR CONSIDERATION OF AMENDMENTS AND EXTENSIONS.—The Secretary shall develop a streamlined process for consideration of amendments and extensions proposed by States to demonstration projects conducted under this section.

(k) AVAILABILITY OF REPORTS.—The Secretary shall make available to any State or other interested party any report provided to the Secretary under subsection (f)(2), and any evaluation or report made by the Secretary with respect to a demonstration project conducted under this section, with a focus on information that may promote best practices and program improvements.

* * * * * * *

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

* * * * * * *

PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES

Payment of Benefits

SEC. 1631. (a)(1) * * *

* * * * * * *

(10)(A) If an individual is eligible for past-due monthly benefits under this title in an amount that (after any withholding for reimbursement to a State for interim assistance under subsection (g) and payment of attorney fees under subsection (d)(2)(B)) equals or exceeds the product of—

(i) [12] *3*, and

* * * * * * *

ADMINISTRATION

SEC. 1633. (a) * * *

* * * * * * *

(e)(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this title on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled as of a specified onset date. The Commissioner of Social Security shall review such a determination before any action is taken to implement the determination.

(2)(A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

(i) at least 20 percent of all determinations referred to in paragraph (1) that are made in fiscal year 2006;

(ii) at least 40 percent of all such determinations that are made in fiscal year 2007; and

(iii) at least 50 percent of all such determinations that are made in fiscal year 2008 or thereafter.

(B) In carrying out subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review the determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

* * * * * * *

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—BLOCK GRANTS FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sec. 101. Findings.

* * * * * * *

Sec. 117. Fatherhood program.

* * * * * * *

TITLE I—BLOCK GRANTS FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

* * * * * * *

SEC. 117. FATHERHOOD PROGRAM.

(a) IN GENERAL.—Title IV (42 U.S.C. 601–679b) is amended by inserting after part B the following:

"PART C—FATHERHOOD PROGRAM

"SEC. 441. FINDINGS AND PURPOSES.

"(a) FINDINGS.—The Congress finds that there is substantial evidence strongly indicating the urgent need to promote and support involved, committed, and responsible fatherhood, and to encourage and support healthy marriages between parents raising children, including data demonstrating the following:

"(1) In approximately 84 percent of cases where a parent is absent, that parent is the father.

"(2) If current trends continue, half of all children born today will live apart from one of their parents, usually their father, at some point before they turn 18.

"(3) Where families (whether intact or with a parent absent) are living in poverty, a significant factor is the father's lack of job skills.

"(4) Committed and responsible fathering during infancy and early childhood contributes to the development of emotional security, curiosity, and math and verbal skills.

"(5) An estimated 19,400,000 children (27 percent) live apart from their biological father.

"(6) Forty percent of children under age 18 not living with their biological father had not seen their father even once in the last 12 months, according to national survey data.

"(b) PURPOSES.—The purposes of this part are:

"(1) To provide for projects and activities by public entities and by nonprofit community entities, including religious organizations, designed to test promising approaches to accomplishing the following objectives:

"(A) Promoting responsible, caring, and effective parenting through counseling, mentoring, and parenting education, dissemination of educational materials and information on parenting skills, encouragement of positive father involvement, including the positive involvement of nonresident fathers, and other methods.

"(B) Enhancing the abilities and commitment of unemployed or low-income fathers to provide material support for their families and to avoid or leave welfare programs by assisting them to take full advantage of education, job training, and job search programs, to improve work habits and work skills, to secure career advancement by activities such as outreach and information dissemination, coordination, as appropriate, with employment services and job training programs, including the One-Stop delivery system established under title I of the Workforce Investment Act of 1998, encouragement and support of timely payment of current child support and regular payment toward past due child support obligations in appropriate cases, and other methods.

"(C) Improving fathers' ability to effectively manage family business affairs by means such as education, counseling, and mentoring in matters including household management, budgeting, banking, and handling of financial transactions, time management, and home maintenance.

"(D) Encouraging and supporting healthy marriages and married fatherhood through such activities as premarital education, including the use of premarital inventories, marriage preparation programs, skills-based marriage education programs, marital therapy, couples counseling, divorce education and reduction programs, divorce mediation and counseling, relationship skills enhancement programs, including those designed to reduce child abuse and domestic violence, and dissemination of information about the benefits of marriage for both parents and children.

"(2) Through the projects and activities described in paragraph (1), to improve outcomes for children with respect to measures such as increased family income and economic security, improved school performance, better health, improved emotional and behavioral stability and social adjustment, and reduced risk of delinquency, crime, substance abuse, child abuse and neglect, teen sexual activity, and teen suicide.

"(3) To evaluate the effectiveness of various approaches and to disseminate findings concerning outcomes and other informa-

tion in order to encourage and facilitate the replication of effective approaches to accomplishing these objectives.

"SEC. 442. DEFINITIONS.

"In this part, the terms 'Indian tribe' and 'tribal organization' have the meanings given them in subsections (e) and (l), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act.

"SEC. 443. COMPETITIVE GRANTS FOR SERVICE PROJECTS.

"(a) IN GENERAL.—The Secretary may make grants for fiscal years 2006 through 2010 to public and nonprofit community entities, including religious organizations, and to Indian tribes and tribal organizations, for demonstration service projects and activities designed to test the effectiveness of various approaches to accomplish the objectives specified in section 441(b)(1).

"(b) ELIGIBILITY CRITERIA FOR FULL SERVICE GRANTS.—In order to be eligible for a grant under this section, except as specified in subsection (c), an entity shall submit an application to the Secretary containing the following:

"(1) PROJECT DESCRIPTION.—A statement including—

"(A) a description of the project and how it will be carried out, including the geographical area to be covered and the number and characteristics of clients to be served, and how it will address each of the 4 objectives specified in section 441(b)(1); and

"(B) a description of the methods to be used by the entity or its contractor to assess the extent to which the project was successful in accomplishing its specific objectives and the general objectives specified in section 441(b)(1).

"(2) EXPERIENCE AND QUALIFICATIONS.—A demonstration of ability to carry out the project, by means such as demonstration of experience in successfully carrying out projects of similar design and scope, and such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

"(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

"(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

"(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs under parts A, B, and D of

this title, including programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

"(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

"(7) SELF-INITIATED EVALUATION.—If the entity elects to contract for independent evaluation of the project (part or all of the cost of which may be paid for using grant funds), a commitment to submit to the Secretary a copy of the evaluation report within 30 days after completion of the report and not more than 1 year after completion of the project.

"(8) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including random assignment of clients to service recipient and control groups, if determined by the Secretary to be appropriate, and affording the Secretary access to the project and to project-related records and documents, staff, and clients.

"(c) ELIGIBILITY CRITERIA FOR LIMITED PURPOSE GRANTS.—In order to be eligible for a grant under this section in an amount under $25,000 per fiscal year, an entity shall submit an application to the Secretary containing the following:

"(1) PROJECT DESCRIPTION.—A description of the project and how it will be carried out, including the number and characteristics of clients to be served, the proposed duration of the project, and how it will address at least 1 of the 4 objectives specified in section 441(b)(1).

"(2) QUALIFICATIONS.—Such information as the Secretary may require as to the capacity of the entity to carry out the project, including any previous experience with similar activities.

"(3) COORDINATION WITH RELATED PROGRAMS.—As required by the Secretary in appropriate cases, an undertaking to coordinate and cooperate with State and local entities responsible for specific programs relating to the objectives of the project including, as appropriate, jobs programs and programs serving children and families.

"(4) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

"(5) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

"(d) CONSIDERATIONS IN AWARDING GRANTS.—

"(1) DIVERSITY OF PROJECTS.—In awarding grants under this section, the Secretary shall seek to achieve a balance among entities of differing sizes, entities in differing geographic areas, entities in urban and in rural areas, and entities employing differing methods of achieving the purposes of this section, includ-

ing working with the State agency responsible for the administration of part D to help fathers satisfy child support arrearage obligations.

"(2) PREFERENCE FOR PROJECTS SERVING LOW-INCOME FATHERS.—In awarding grants under this section, the Secretary may give preference to applications for projects in which a majority of the clients to be served are low-income fathers.

"(e) FEDERAL SHARE.—

"(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for a share of the cost of such project in such fiscal year equal to—

"(A) up to 80 percent (or up to 90 percent, if the entity demonstrates to the Secretary's satisfaction circumstances limiting the entity's ability to secure non-Federal resources) in the case of a project under subsection (b); and

"(B) up to 100 percent, in the case of a project under subsection (c).

"(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

"SEC. 444. MULTICITY, MULTISTATE DEMONSTRATION PROJECTS.

"(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for 2 multicity, multistate projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). One of the projects shall test the use of married couples to deliver program services.

"(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

"(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

"(2) EXPERIENCE WITH MULTICITY, MULTISTATE PROGRAMS AND GOVERNMENT COORDINATION.—The organization must have experience in simultaneously conducting such programs in more than 1 major metropolitan area in more than 1 State and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

"(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

"(1) QUALIFICATIONS.—

"(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

"(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

"(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

"(A) IN GENERAL.—A detailed description of the proposed project design and how it will be carried out, which shall—

"(i) provide for the project to be conducted in at least 3 major metropolitan areas;

"(ii) state how it will address each of the 4 objectives specified in section 441(b)(1);

"(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

"(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving low-income fathers (but the project need not make services available on a means-tested basis).

"(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

"(i) in consultation with the evaluator selected pursuant to section 445, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

"(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

"(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

"(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

"(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

"(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

"(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

"(d) FEDERAL SHARE.—

"(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

"(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

"SEC. 445. EVALUATION.

"(a) IN GENERAL.—The Secretary, directly or by contract or cooperative agreement, shall evaluate the effectiveness of service projects funded under sections 443 and 444 from the standpoint of the purposes specified in section 441(b)(1).

"(b) EVALUATION METHODOLOGY.—Evaluations under this section shall—

"(1) include, to the maximum extent feasible, random assignment of clients to service delivery and control groups and other appropriate comparisons of groups of individuals receiving and not receiving services;

"(2) describe and measure the effectiveness of the projects in achieving their specific project goals; and

"(3) describe and assess, as appropriate, the impact of such projects on marriage, parenting, domestic violence, child abuse and neglect, money management, employment and earnings, payment of child support, and child well-being, health, and education.

"(c) EVALUATION REPORTS.—The Secretary shall publish the following reports on the results of the evaluation:

"(1) An implementation evaluation report covering the first 24 months of the activities under this part to be completed by 36 months after initiation of such activities.

"(2) A final report on the evaluation to be completed by September 30, 2013.

"SEC. 446. PROJECTS OF NATIONAL SIGNIFICANCE.

"The Secretary is authorized, by grant, contract, or cooperative agreement, to carry out projects and activities of national significance relating to fatherhood promotion, including—

"(1) COLLECTION AND DISSEMINATION OF INFORMATION.—Assisting States, communities, and private entities, including religious organizations, in efforts to promote and support marriage and responsible fatherhood by collecting, evaluating, devel-

oping, and making available (through the Internet and by other means) to all interested parties information regarding approaches to accomplishing the objectives specified in section 441(b)(1).

"(2) MEDIA CAMPAIGN.—Developing, promoting, and distributing to interested States, local governments, public agencies, and private nonprofit organizations, including charitable and religious organizations, a media campaign that promotes and encourages involved, committed, and responsible fatherhood and married fatherhood.

"(3) TECHNICAL ASSISTANCE.—Providing technical assistance, including consultation and training, to public and private entities, including community organizations and faith-based organizations, in the implementation of local fatherhood promotion programs.

"(4) RESEARCH.—Conducting research related to the purposes of this part.

"SEC. 447. NONDISCRIMINATION.

"The projects and activities assisted under this part shall be available on the same basis to all fathers and expectant fathers able to benefit from such projects and activities, including married and unmarried fathers and custodial and noncustodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers on the same basis as to fathers.

"SEC. 448. AUTHORIZATION OF APPROPRIATIONS; RESERVATION FOR CERTAIN PURPOSE.

"(a) AUTHORIZATION.—There are authorized to be appropriated $20,000,000 for each of fiscal years 2006 through 2010 to carry out the provisions of this part.

"(b) RESERVATION.—Of the amount appropriated under this section for each fiscal year, not more than 15 percent shall be available for the costs of the multicity, multicounty, multistate demonstration projects under section 444, evaluations under section 445, and projects of national significance under section 446.".

(b) INAPPLICABILITY OF EFFECTIVE DATE PROVISIONS.—Section 116 shall not apply to the amendment made by subsection (a) of this section.

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TARIFF ACT OF 1930

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TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

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Subtitle C—Reviews; Other Actions Regarding Agreements

Chapter 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

Sec. 751. Administrative review of determinations.

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[Sec. 754. Continued dumping and subsidy offset.]

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Subtitle C—Reviews; Other Actions Regarding Agreements

CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

* * * * * * *

[SEC. 754. CONTINUED DUMPING AND SUBSIDY OFFSET.

[(a) IN GENERAL.—Duties assessed pursuant to a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921 shall be distributed on an annual basis under this section to the affected domestic producers for qualifying expenditures. Such distribution shall be known as the "continued dumping and subsidy offset".

[(b) DEFINITIONS.—As used in this section:

[(1) AFFECTED DOMESTIC PRODUCER.—The term "affected domestic producer" means any manufacturer, producer, farmer, rancher, or worker representative (including associations of such persons) that—

[(A) was a petitioner or interested party in support of the petition with respect to which an antidumping duty order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

[(B) remains in operation.

Companies, businesses, or persons that have ceased the production of the product covered by the order or finding or who have been acquired by a company or business that is related to a company that opposed the investigation shall not be an affected domestic producer.

[(2) COMMISSIONER.—The term "Commissioner" means the Commissioner of Customs.

[(3) COMMISSION.—The term "Commission" means the United States International Trade Commission.

[(4) QUALIFYING EXPENDITURE.—The term "qualifying expenditure" means an expenditure incurred after the issuance of the antidumping duty finding or order or countervailing duty order in any of the following categories:

[(A) Manufacturing facilities.

[(B) Equipment.

[(C) Research and development.

[(D) Personnel training.

[(E) Acquisition of technology.

[(F) Health care benefits to employees paid for by the employer.

[(G) Pension benefits to employees paid for by the employer.

[(H) Environmental equipment, training, or technology.

[(I) Acquisition of raw materials and other inputs.

[(J) Working capital or other funds needed to maintain production.

[(5) RELATED TO.—A company, business, or person shall be considered to be "related to" another company, business, or person if—

[(A) the company, business, or person directly or indirectly controls or is controlled by the other company, business, or person,

[(B) a third party directly or indirectly controls both companies, businesses, or persons,

[(C) both companies, businesses, or persons directly or indirectly control a third party and there is reason to believe that the relationship causes the first company, business, or persons to act differently than a nonrelated party.

For purposes of this paragraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

[(c) DISTRIBUTION PROCEDURES.—The Commissioner shall prescribe procedures for distribution of the continued dumping or subsidies offset required by this section. Such distribution shall be made not later than 60 days after the first day of a fiscal year from duties assessed during the preceding fiscal year.

[(d) PARTIES ELIGIBLE FOR DISTRIBUTION OF ANTIDUMPING AND COUNTERVAILING DUTIES ASSESSED.—

[(1) LIST OF AFFECTED DOMESTIC PRODUCERS.—The Commission shall forward to the Commissioner within 60 days after the effective date of this section in the case of orders or findings in effect on January 1, 1999, or thereafter, or in any other case, within 60 days after the date an antidumping or countervailing duty order or finding is issued, a list of petitioners and persons with respect to each order and finding and a list of persons that indicate support of the petition by letter or through questionnaire response. In those cases in which a determination of injury was not required or the Commission's records do not permit an identification of those in support of a petition, the Commission shall consult with the administering authority to determine the identity of the petitioner and those domestic parties who have entered appearances during administrative reviews conducted by the administering authority under section 751.

[(2) PUBLICATION OF LIST; CERTIFICATION.—The Commissioner shall publish in the Federal Register at least 30 days before the distribution of a continued dumping and subsidy offset, a notice of intention to distribute the offset and the list of affected domestic producers potentially eligible for the distribution based on the list obtained from the Commission under paragraph (1). The Commissioner shall request a certification from each potentially eligible affected domestic producer—

[(A) that the producer desires to receive a distribution;

[(B) that the producer is eligible to receive the distribution as an affected domestic producer; and

[(C) the qualifying expenditures incurred by the producer since the issuance of the order or finding for which distribution under this section has not previously been made.

[(3) DISTRIBUTION OF FUNDS.—The Commissioner shall distribute all funds (including all interest earned on the funds) from assessed duties received in the preceding fiscal year to affected domestic producers based on the certifications described in paragraph (2). The distributions shall be made on a pro rata basis based on new and remaining qualifying expenditures.

[(e) SPECIAL ACCOUNTS.—

[(1) ESTABLISHMENTS.—Within 14 days after the effective date of this section, with respect to antidumping duty orders and findings and countervailing duty orders notified under subsection (d)(1), and within 14 days after the date an antidumping duty order or finding or countervailing duty order issued after the effective date takes effect, the Commissioner shall establish in the Treasury of the United States a special account with respect to each such order or finding.

[(2) DEPOSITS INTO ACCOUNTS.—The Commissioner shall deposit into the special accounts, all antidumping or countervailing duties (including interest earned on such duties) that are assessed after the effective date of this section under the antidumping order or finding or the countervailing duty order with respect to which the account was established.

[(3) TIME AND MANNER OF DISTRIBUTIONS.—Consistent with the requirements of subsections (c) and (d), the Commissioner shall by regulation prescribe the time and manner in which distribution of the funds in a special account shall be made.

[(4) TERMINATION.—A special account shall terminate after—

[(A) the order or finding with respect to which the account was established has terminated;

[(B) all entries relating to the order or finding are liquidated and duties assessed collected;

[(C) the Commissioner has provided notice and a final opportunity to obtain distribution pursuant to subsection (c); and

[(D) 90 days has elapsed from the date of the notice described in subparagraph (C).

Amounts not claimed within 90 days of the date of the notice described in subparagraph (C), shall be deposited into the general fund of the Treasury.]

* * * * * * *

DISSENTING VIEWS OF THE DEMOCRATIC MEMBERS

We strongly oppose the Republican budget reconciliation legislation brought before the Committee because it takes America in the wrong direction. The measure cuts assistance to families and children to finance additional tax breaks for the wealthy. Furthermore, as part of a two-step process (which includes a second bill on taxes), this legislation will drive our nation even deeper into debt, drowning future generations in an ever-growing sea of red ink.

We believe there is a better way. First, we need to revisit the endless stream of tax cuts going to those with incomes in excess of $200,000 a year. Studies have shown that it has been the tax cuts, not programs serving the neediest of families, that are most responsible for the deterioration in the budget outlook, and these tax cuts have produced little economic bang for the buck.

Second, on the spending side, there are a host of options to which the Committee could have turned to raise funds without targeting nation's underprivileged. For example, an amendment offered by Representatives Stark and Emanuel would have replaced the Republican bill with a proposal to eliminate billions of dollars of waste and corporate welfare. This amendment would have reduced overall federal spending *more* than the Republican bill without shredding the social safety net for America's families. In addition, the Democratic amendment would have increased resources to help working families find quality child care.

The amendment accomplished this by reforming payments to HMOs and other private plans under the Medicare Advantage program. Under current Medicare law, as amended by the Medicare Modernization Act of 2003, private plans are paid, on average, approximately 115 percent of the cost of traditional Medicare. This increased spending depletes the Medicare Part A Trust Fund and raises Medicare Part B premiums for all beneficiaries. The amendment would eliminate these overpayments. While plans would no longer be overpaid, neither would they be paid less than fee-for-service. Specifically, the amendment would save at least $20 billion over five years by:

- Repealing the Preferred Provider Organization slush fund that starts in 2007;
- Codifying the Administration's proposal to collect savings that result from reducing HMO payments to reflect the relative health of their enrollees;
- Basing payments to HMOs and other private plans on fee-for-service rates in the same area; and
- Eliminating the phony, unjustified medical education payment given to HMOs and other private plans in the Medicare Modernization Act of 2003.

These policies reflect MedPAC recommendations. Two of them were included in the Senate Finance Committee's Reconciliation

package that was reported out by Republicans just yesterday. They are sound policy, and deserve consideration.

Another amendment offered by Representative Cardin would have provided a temporary one percent Medicare payment increase to physicians, and protected beneficiary premiums from rising as a result of the increased physician fees.

Despite the fact that nearly the entire spectrum of spending programs within the Committee's jurisdiction was in the Chairman's bill, and despite that Medicare changes will obviously be discussed in any potential conference with the Senate, the Chair prohibited votes on the substance of these amendments. This deprived Members of an opportunity to express themselves on important Medicare issues that are likely to be discussed in any conference. It also clearly established that those supporting the Chairman prefer to protect insurance companies and target programs that predominantly serve low-income and vulnerable populations.

We find the Republican bill's impact on families and children particularly troubling. The legislation rehashes past, ill-conceived proposals from the majority on reauthorizing the Temporary Assistance for Needy Families (TANF) program. This GOP TANF bill has been roundly criticized by Governors, Mayors, poverty experts and religious leaders. We have articulated our many concerns about these policy provisions over the past four years, so we will not reiterate them here except to say that this version of the bill is even worse because it cuts $1 billion in funding for child care and TANF compared to past versions of the majority's proposal.

Beyond the proposed changes in TANF policies, the following represent our primary concerns about the Republican bill's impact on families and children.

- Cuts in Child Support—The Republican bill undermines the Federal commitment to collecting child support, which will reduce the amount of support ultimately sent to families. The bill would reduce Federal funding for child support enforcement by nearly 40% by 2010. The Congressional Budget Office estimates this will reduce collections being sent to families by $21.3 billion over the next 10 years. Republicans are proposing to slash funding for child support enforcement despite the fact that President Bush's budget cites the program as "effective" and "one of the highest rated block/formula grants of all reviewed programs government-wide." We see no wisdom in cutting child support payments to families, reducing our commitment to ensuring parental responsibility and sticking the States with a huge financial burden. It is therefore extremely unfortunate that the majority defeated an amendment by Representatives Levin and Pomeroy to reject these cuts.
- Cuts in Child Care Assistance—By not allowing child care funding to maintain pace with inflation, the bill will reduce the number of children receiving child care assistance by over 100,000 within five years. This reduction would occur at the same time the Republican bill proposes to dramatically increase work requirements for welfare recipients, which will require much more child care, not less. Combining both inadequate funding and new work requirements in welfare will cut child care coverage even more for low-income working families

who are *not* on welfare—by 270,000 children by 2010 according to one analysis.

• Cuts in Work Supports—The Temporary Assistance for Needy Families (TANF) program has not kept pace with inflation and has therefore lost 17% of its real value since it was established. The Republican bill continues this decline (leading to a 25% cut in the real value of TANF within five years). In addition, it eliminates the High Performance Bonus within TANF, cutting $1 billion from the program over the next five years (this bonus rewards States for job gains and employment retention and advancement among former welfare recipients). Only a little over one-third of TANF now goes towards cash assistance, with the remainder being spent on work supports and other aid to families.

• Cuts in Foster Care—The Republican bill includes two provisions that will reduce the number of children who are eligible for Federal foster care assistance, particularly those who live with grandparents and other relatives. First, the bill overturns an important court ruling (Rosales v. Thompson) issued by the Ninth Circuit Court in 2003 that resulted in more children becoming eligible for Federal foster care assistance in California and other western States. And second, the bill limits Federal assistance for case management services for otherwise eligible children who live with relatives whose homes have not been licensed.

Perhaps the Republican philosophy on issues related to families and children was most clearly reflected in the majority's vote to defeat an amendment by Representative McDermott to establish a general goal of reducing and ultimately eliminating child poverty.

In addition to opposing all of the previously mentioned cuts, we question the wisdom of cutting $700 million from the Supplemental Security Income (SSI) program, especially in the context of this bill designed to partially offset tax cuts. SSI acts as a safety net for aged and disabled Americans who have little or no Social Security or any other income.

Finally, we oppose the Republican proposal to repeal the Continued Dumping and Subsidy Offset Act, commonly known as the Byrd Amendment. This provision allows duties collected from unfair trade imports to be distributed to U.S. farmers and businesses and their workers—all of whom have been injured by foreign producers selling dumped or unfairly subsidized products in the United States, and all of whom continue to be injured even after an antidumping/antisubsidy order has been issued. The funds provided are essential to allow American companies to make needed investments in their workforce, plants and equipment—and to survive in the face of persistent unfair trade practices.

The Committee's action on the Byrd Amendment also raises serious questions about how the Committee intends to deal with trade law matters in the Doha Round. When we allow a provision of law like this to be repealed, we send a signal to our farmers, workers and businesses across the country that their government will not stand up for their rights and interests.

Congress has directed the Administration to resolve the World Trade Organization (WTO) dispute over the Byrd Amendment in

ongoing trade negotiations. Congress included language in the FY2004 and FY2005 omnibus appropriations bills that explicitly requires the Administration to conduct negotiations within the WTO to recognize the existing right of all countries to distribute monies collected from antidumping and countervailing duties as they determine appropriate. Changing or repealing provisions in the midst of ongoing negotiations in the WTO is tantamount to unilateral disarmament.

In addition, buckling under to international pressure on this critical measure would send a terrible signal and hurt the cause of free and fair trade. The WTO decision against this measure was unjustified and reflected overreaching and unjustified encroachment on U.S. sovereignty. WTO bureaucrats should not be permitted to dictate to the Congress how it may appropriate U.S. funds. Distrust of the WTO and world trading system will only grow if the United States submits to decisions of this kind.

Finally, maintaining a strong manufacturing and agricultural base is vital to the economic and national security of the United States. Ensuring fair trade enables U.S. manufacturers and their workers to make continued investments to preserve their global competitiveness. The Byrd Amendment plays a critical role in securing the competitiveness of American businesses and farmers, and therefore it is very unfortunate that the majority defeated an amendment by Representative Tubbs Jones to maintain this important provision.

America can do better, much better. We can come together and agree on a budget that speaks to our values. If sacrifices have to be made, then those who can afford to sacrifice should be first in line, rather than getting even more at the expense of everyone else. Sadly, the Republican bill goes in a very different direction, and for that reason, we oppose it.

JAMES A. MCDERMOTT.
WM. J. JEFFERSON.
XAVIER BECERRA.
MIKE THOMPSON.
RAHM EMANUEL.
STEPHANIE TUBBS JONES.
EARL POMEROY.
BEN CARDIN.
CHARLES B. RANGEL.
JOHN LEWIS.
PETE STARK.
JOHN B. LEWIS.
SANDER LEVIN.
MICHAEL R. MCNULTY.
RICHARD E. NEAL.

MISCELLANEOUS HOUSE REPORT REQUIREMENTS

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires with respect to each record vote on a motion to report a measure or matter of a public nature, and on any amendment offered to the measure or matter, the total number of votes cast for and against, and the names of members voting for and against must be included in the committee report.

On November 3, 2005, the committee met in open session, a quorum being present. The committee ordered reported the text of the Deficit Reduction Act of 2005 pursuant to the reconciliation instructions contained in the conference report on H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2006. The following votes were taken by the committee:

1. Mr. Ryun moved that the committee order reported with a favorable recommendation the text of the Deficit Reduction Act of 2005. The motion was agreed to by a rollcall vote of 21 ayes and 17 noes.

VOTE NO. 1

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. NUSSLE, Chairman	X			Mr. SPRATT, Ranking		X	
Mr. RYUN (KS)	X			Mr. MOORE		X	
Mr. CRENSHAW	X			Mr. NEAL		X	
Mr. PUTNAM	X			Ms. DeLAURO		X	
Mr. WICKER	X			Mr. EDWARDS		X	
Mr. HULSHOF	X			Mr. FORD		X	
Mr. BONNER	X			Mrs. CAPPS		X	
Mr. GARRETT	X			Mr. BAIRD		X	
Mr. BARRETT	X			Mr. COOPER		X	
Mr. McCOTTER	X			Mr. DAVIS		X	
Mr. DIAZ-BALART	X			Mr. JEFFERSON			
Mr. HENSARLING	X			Mr. ALLEN		X	
Mr. ROS-LEHTINEN	X			Mr. CASE		X	
Ms. LUNGREN	X			Ms. McKINNEY		X	

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. SESSIONS	X			Mr. CUELLAR		X	
Mr. RYAN (WI)	X			Ms. SCHWARTZ		X	
Mr. SIMPSON	X			Mr. KIND		X	
Mr. BRADLEY	X						
Mr. McHENRY	X						
Mr. MACK		X					
Mr. CONAWAY	X						
Mr. CHOCOLA	X						

MOTIONS ON RULE CONSIDERATION OF THE DEFICIT REDUCTION ACT OF 2005

1. MOTION LINKING TAX CUTS TO SPENDING CUTS

Representatives Neal, Case, Cooper, DeLauro, Edwards, and Schwartz moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Deficit Reduction Act of 2005 allow consideration of the Deficit Reduction Act of 2005 on the House floor only after the House has considered tax cut reconciliation legislation reported by the Ways and Means Committee pursuant to the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95). The motion was not agreed to by a rollcall vote of 17 ayes and 22 noes.

VOTE NO. 2

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. NUSSLE, Chairman		X		Mr. SPRATT, Ranking	X		
Mr. RYUN (KS)		X		Mr. MOORE	X		
Mr. CRENSHAW		X		Mr. NEAL	X		
Mr. PUTNAM		X		Ms. DeLAURO	X		
Mr WICKER		X		Mr. EDWARDS	X		
Mr. HULSHOF		X		Mr. FORD	X		
Mr BONNER		X		Mrs. CAPPS	X		
Mr. GARRETT		X		Mr. BAIRD	X		
Mr. BARRETT		X		Mr. COOPER	X		
Mr. McCOTTER		X		Mr. DAVIS	X		
Mr. DIAZ-BALART		X		Mr. JEFFERSON	X		
Mr HENSARLING		X		Mr. ALLEN	X		

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. ROS-LEHTINEN		X		Mr. CASE	X		
Ms. LUNGREN		X		Ms. McKINNEY	X		
Mr. SESSIONS		X		Mr. CUELLAR	X		
Mr. RYAN (WI)		X		Ms. SCHWARTZ	X		
Mr. SIMPSON		X		Mr. KIND	X		
Mr. BRADLEY		X					
Mr. McHENRY		X					
Mr. MACK		X					
Mr. CONAWAY		X					
Mr. CHOCOLA		X					

2. MOTION ON STUDENT LOANS

Representatives Kind, Capps, Cuellar, Edwards, Moore, and Schwartz moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Deficit Reduction Act of 2005 make in order an amendment that: (1) eliminates all new student-paid fees that increase the cost of receiving a student loan; and (2) makes other adjustments necessary to ensure that the amendment is deficit-neutral. The motion was not agreed to by a rollcall vote of 16 ayes and 22 noes.

VOTE NO. 3

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. NUSSLE, Chairman		X		Mr. SPRATT, Ranking	X		
Mr. RYUN (KS)		X		Mr. MOORE	X		
Mr. CRENSHAW		X		Mr. NEAL	X		
Mr. PUTNAM		X		Ms. DeLAURO	X		
Mr. WICKER		X		Mr. EDWARDS	X		
Mr. HULSHOF		X		Mr. FORD	X		
Mr. BONNER		X		Mrs. CAPPS	X		
Mr. GARRETT		X		Mr. BAIRD	X		
Mr. BARRETT		X		Mr. COOPER			
Mr. McCOTTER		X		Mr. DAVIS	X		
Mr. DIAZ-BALART		X		Mr. JEFFERSON	X		
Mr. HENSARLING		X		Mr. ALLEN	X		

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. ROS-LEHTINEN		X		Mr. CASE	X		
Ms. LUNGREN		X		Ms. McKINNEY	X		
Mr. SESSIONS		X		Mr. CUELLAR	X		
Mr. RYAN (WI)		X		Ms. SCHWARTZ	X		
Mr. SIMPSON		X		Mr. KIND	X		
Mr. BRADLEY		X					
Mr. McHENRY		X					
Mr. MACK		X					
Mr. CONAWAY		X					
Mr. CHOCOLA		X					

3. MOTION ON MEDICAID

Representatives Allen, Baird, Capps, Case, Cuellar, Davis, and Jefferson moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Deficit Reduction Act of 2005 make in order an amendment that: (1) strikes any Medicaid cuts that will negatively affect Medicaid beneficiaries such as cost sharing increases, new premiums and cuts to benefit packages; and (2) offsets the cost by making changes to Medicare Advantage payments consistent with the changes recommended by the Senate Finance Committee in its FY 2006 reconciliation submission and in amounts necessary to ensure that the amendment is deficit-neutral. The motion was not agreed to by a rollcall vote of 16 ayes and 22 noes.

VOTE NO. 4

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. NUSSLE, Chairman		X		Mr. SPRATT, Ranking	X		
Mr. RYUN (KS)		X		Mr. MOORE	X		
Mr. CRENSHAW		X		Mr. NEAL	X		
Mr. PUTNAM		X		Ms. DeLAURO	X		
Mr. WICKER		X		Mr. EDWARDS	X		
Mr. HULSHOF		X		Mr. FORD	X		
Mr. BONNER		X		Mrs. CAPPS	X		
Mr. GARRETT		X		Mr. BAIRD	X		
Mr. BARRETT		X		Mr. COOPER			
Mr. McCOTTER		X		Mr. DAVIS	X		

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. DIAZ-BALART		X		Mr. JEFFERSON	X		
Mr. HENSARLING		X		Mr. ALLEN	X		
Mr. ROS-LEHTINEN		X		Mr. CASE	X		
Ms. LUNGREN		X		Ms. McKINNEY	X		
Mr. SESSIONS		X		Mr. CUELLAR	X		
Mr. RYAN (WI)		X		Ms. SCHWARTZ	X		
Mr. SIMPSON		X		Mr. KIND	X		
Mr. BRADLEY		X					
Mr. McHENRY		X					
Mr. MACK		X					
Mr. CONAWAY		X					
Mr. CHOCOLA		X					

4. MOTION ON FOOD STAMPS AND CHILD SUPPORT

Representatives Davis, DeLauro, Capps, Jefferson, and Cuellar moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Deficit Reduction Act of 2005 make in order an amendment that strikes provisions that reduce the Federal matching rate for State expenditures on child support programs, eliminate the Federal match on State activities funded by Federal incentive payments, and cut food stamp benefits; and that makes other adjustments necessary to ensure that the amendment is deficit-neutral. The motion was not agreed to by a rollcall vote of 17 ayes and 20 noes.

VOTE NO. 5

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. NUSSLE, Chairman		X		Mr. SPRATT, Ranking	X		
Mr. RYUN (KS)		X		Mr. MOORE	X		
Mr. CRENSHAW		X		Mr. NEAL	X		
Mr. PUTNAM		X		Ms. DeLAURO	X		
Mr. WICKER		X		Mr. EDWARDS	X		
Mr. HULSHOF		X		Mr. FORD	X		
Mr. BONNER		X		Mrs. CAPPS	X		
Mr. GARRETT		X		Mr. BAIRD	X		

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. BARRETT		X		Mr. COOPER			
Mr. McCOTTER		X		Mr. DAVIS	X		
Mr. DIAZ–BALART	X			Mr. JEFFERSON	X		
Mr. HENSARLING		X		Mr. ALLEN	X		
Mr. ROS–LEHTINEN	X			Mr. CASE	X		
Ms. LUNGREN		X		Ms. McKINNEY			
Mr. SESSIONS		X		Mr. CUELLAR	X		
Mr. RYAN (WI)		X		Ms. SCHWARTZ	X		
Mr. SIMPSON		X		Mr. KIND	X		
Mr. BRADLEY		X					
Mr. McHENRY		X					
Mr. MACK		X					
Mr. CONAWAY		X					
Mr. CHOCOLA		X					

5. MOTION ON BYRD AMENDMENT

Representatives Jefferson and Spratt moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Deficit Reduction Act of 2005 make in order an amendment that strikes the provisions that repeal the Continued Dumping and Subsidy Offset Act (commonly known as the "Byrd Amendment") and that makes other adjustments necessary to ensure that the amendment is deficit-neutral. The motion was not agreed to by a rollcall vote of 17 ayes and 19 noes.

VOTE NO. 6

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. NUSSLE, Chairman		X		Mr. SPRATT, Ranking	X		
Mr. RYUN (KS)		X		Mr. MOORE	X		
Mr. CRENSHAW		X		Mr. NEAL	X		
Mr. PUTNAM		X		Ms. DeLAURO	X		
Mr. WICKER		X		Mr. EDWARDS	X		
Mr. HULSHOF		X		Mr. FORD	X		
Mr. BONNER		X		Mrs. CAPPS	X		
Mr. GARRETT		X		Mr. BAIRD	X		

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. BARRETT	X			Mr. COOPER			
Mr. McCOTTER		X		Mr. DAVIS	X		
Mr. DIAZ-BALART		X		Mr. JEFFERSON	X		
Mr. HENSARLING		X		Mr. ALLEN	X		
Mr. ROS-LEHTINEN		X		Mr. CASE	X		
Ms. LUNGREN		X		Ms. McKINNEY	X		
Mr. SESSIONS		X		Mr. CUELLAR	X		
Mr. RYAN (WI)		X		Ms. SCHWARTZ	X		
Mr. SIMPSON	X			Mr. KIND			
Mr. BRADLEY		X					
Mr. McHENRY							
Mr. MACK		X					
Mr. CONAWAY		X					
Mr. CHOCOLA		X					

6. MOTION ON LIHEAP

Representatives DeLauro and Davis moved that the Committee on the Budget direct its chairman to request, on behalf of the committee, that the rule for consideration of the Deficit Reduction Act of 2005 make in order an amendment that increases the amount of funding provided in the Act for the Low Income Home Energy Assistance Program from $1 billion to $3.093 billion and that imposes a temporary windfall profits tax on oil companies to ensure that the amendment is deficit-neutral. The motion was not agreed to by a rollcall vote of 15 ayes and 21 noes.

VOTE NO. 7

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. NUSSLE, Chairman		X		Mr. SPRATT, Ranking	X		
Mr. RYUN (KS)		X		Mr. MOORE	X		
Mr. CRENSHAW		X		Mr. NEAL	X		
Mr. PUTNAM		X		Ms. DeLAURO	X		
Mr. WICKER		X		Mr. EDWARDS	X		
Mr. HULSHOF		X		Mr. FORD	X		
Mr. BONNER		X		Mrs. CAPPS	X		
Mr. GARRETT		X		Mr. BAIRD	X		

Representative	Aye	No	Present	Representative	Aye	No	Present
Mr. BARRETT		X		Mr. COOPER			
Mr. McCOTTER		X		Mr. DAVIS	X		
Mr. DIAZ-BALART		X		Mr. JEFFERSON			
Mr. HENSARLING		X		Mr. ALLEN	X		
Mr. ROS-LEHTINEN		X		Mr. CASE	X		
Ms. LUNGREN		X		Ms. McKINNEY	X		
Mr. SESSIONS		X		Mr. CUELLAR			
Mr. RYAN (WI)		X		Ms. SCHWARTZ	X		
Mr. SIMPSON		X		Mr. KIND	X		
Mr. BRADLEY	X						
Mr. McHENRY		X					
Mr. MACK		X					
Mr. CONAWAY		X					
Mr. CHOCOLA		X					

STATEMENT ON COMMITTEE OVERSIGHT FINDINGS

Clause 3(c)(1) of rule XIII of the Rules of the House of Representatives requires the report of a committee on a measure that has been approved by the committee to contain oversight findings and recommendations required pursuant to clause (2)(b)(1) of rule X. The Committee on the Budget has examined its activities over the past year and has determined that there are no specific oversight findings on the text of the reported bill.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE ESTIMATE

Clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308 and 402 of the Congressional Budget Act require the report of a committee on a measure approved by the committee to include a timely submitted cost estimate by the Congressional Budget Office [CBO]. CBO provided separate estimates of the legislation submitted by each of the authorizing committees and are included under the appropriate titles.

STATEMENT ON GENERAL PERFORMANCE GOALS AND OBJECTIVES

Clause (3)(c)(4) of rule XIII of the Rules of the House of Representatives requires the report of a committee on a measure that has been approved by the committee to include a statement of general performance goals and objectives, including outcome-related goals and objectives, for which the measure authorizes funding. This measure is intended to reduce direct spending, and is reported

pursuant to section 201 of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2006.

CONSTITUTIONAL AUTHORITY STATEMENT

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires each report of a committee on a public bill or public joint resolution contain a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution. The Committee on the Budget states that its action in reporting this bill is derived from Article I of the Constitution, Section 5 ('Each House may determine the Rules of its Proceedings') and Section 8 ('The Congress shall have the power to make all Laws which shall be necessary and proper * * *').

CHANGES IN EXISTING LAW

Clause 3(e) of rule XIII of the Rules of the House of Representatives requires each report of a committee on a public bill or public joint resolution contain the text of statutes that are proposed to be repealed and a comparative print of that part of the bill proposed to be amended whenever the bill repeals or amends any statute. The required matter is included in the report language for each title of the legislative recommendations submitted by the appropriate authorization committees and reported to the House by the Committee on the Budget.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act of 1974 requires a statement of whether the provisions of the reported bill include unfunded mandates. The committee received a letter regarding unfunded mandates from the Director of the Congressional Budget Office. [See the Congressional Budget Office Cost Estimate under the appropriate title.]

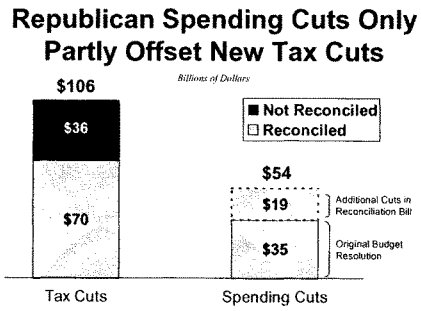
VIEWS OF THE MEMBERS OF COMMITTEES SUBMITTING RECONCILIATION RECOMMENDATIONS

Clause 2(c) of rule XIII of the Rules of the House of Representatives requires each report by a committee on a public matter to include any additional, minority, supplemental or dissenting views submitted pursuant to clause 2(l) of rule XI by one or more members of the committee. In addition, this report includes such views from members of committees submitting reconciliation recommendations pursuant to H. Con. Res. 95.

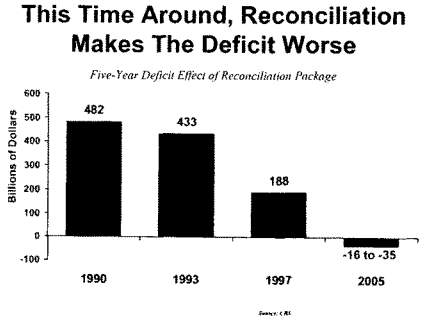
Democratic Views Opposing the Republican Spending Reconciliation Bill

Reps. John M. Spratt, Jr., Dennis Moore, Richard E. Neal, Rosa DeLauro, Chet Edwards, Harold E. Ford, Jr., Lois Capps, Brian Baird, Jim Cooper, Artur Davis, William J. Jefferson, Thomas H. Allen, Ed Case, Cynthia McKinney, Henry Cuellar, Allyson Y. Schwartz, and Ron Kind

The bill before us bears a bold title, the "Deficit Reduction Act of 2005," but it does not live up to its name. This bill springs from a budget resolution that does not reduce the deficit overall; it actually raises the deficit by billions of dollars.



Supporters claim that this bill will help pay for Hurricanes Katrina and Rita. In truth, this bill has nothing to do with paying for Katrina; it has everything to do with facilitating further tax cuts. This bill is part of a larger budget resolution that calls for a total of $106 billion in additional tax cuts: $70 billion in reconciled tax cuts, $36 billion in unreconciled tax cuts. The spending cuts in this bill are a first step. A second step follows in the form of tax cuts, and when the two are completed, the net result is an increase in the deficit of at least $50 billion. After the tax cuts are passed and in place, there will not be a dime left to pay for Katrina and Rita. The third step in this process is the budget resolution's reconciliation instruction that the debt ceiling be increased by $781 billion.



The original purpose of reconciliation was to rein in the deficit. The reconciliation bills this year will actually raise the deficit, for the reasons just mentioned. This year's budget resolution called for $106 billion in new tax cuts over five years. $70 billion of that total is assured a fast track through the Senate because it is "reconciled." The $54 billion in mandatory cuts contained in this bill will go to offset in part the revenues lost due to tax cuts. Nothing will go toward

deficit reduction or toward paying for Katrina, as long as there are $106 billion in new tax cuts in the budget.

Thus, we oppose this bill because, in the end, it will not reduce the deficit but will make the deficit worse.

This reconciliation bill with spending cuts will be used to offset another reconciliation bill with tax cuts, but the consideration of these two measures has been separated. The spending cuts will be on the floor as soon as this week; the tax cuts will be delayed at least a week later. This hiatus makes it possible to portray the spending cuts as deficit reduction. That is why in the Budget Committee Democrats offered a motion to remove that illusion. Our motion called on the Chairman to request that the Rules Committee report a rule that allows consideration of these spending cuts only after the tax cut reconciliation bill has been considered by the House.

We offered additional motions to address what we considered to be the worst, the most unfair cuts in services that people depend upon. We do not buy the claim that this bill is to pay for or partially offset the cost of Katrina. But we do believe that disaster relief is a form of shared sacrifice, part of a great social contract by which we acknowledge our interdependence. So, we believe that the cost of paying for Katrina should be spread equitably over the entire country, and not just loaded on those least able to bear it. Yet, that's what this bill does. Who bears the burden of the cuts made by this bill? Single mothers seeking child support from deadbeat dads. Students struggling to pay loans for their college education. Foster children. The sick and poor whose only access to health coverage is Medicaid, or whose nutrition depends on food stamps. Is this any way to pay for Hurricane Katrina?

Reconciliation Cuts Reflect Wrong Priorities

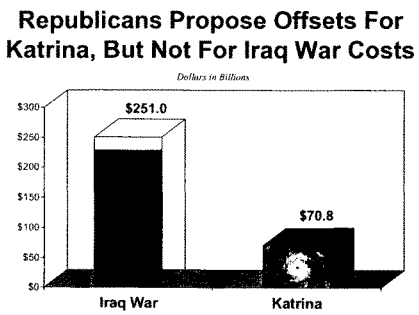
Medicaid	$11.9 Billion
Student Loans	$14.3 Billion
Child Support	$4.9 Billion
Food Stamps	$844 Million

- $11.9 billion in cuts to Medicaid, including cuts of $8.8 billion that fall upon beneficiaries through more cost-sharing, new premiums, and other cuts.
- $14.3 billion in spending cuts to student loan programs over five years, achieved largely through increases in the interest rates and fees that students pay.
- $4.9 billion in cuts to child support enforcement, which will radically cut back the states' capacity to enforce child support orders.
- $577 million in foster care cuts; $844 million in food stamp cuts; $732 million in SSI cuts.

Other provisions in this bill cut conservation by $504 million; cut rural development significantly; and cut out altogether the Byrd Amendment, which requires that the anti-dumping duties paid by offending foreign firms be shared with U.S. firms that are injured by imports dumped in our markets.

This reconciliation package claims, inaccurately, to offset the cost of Hurricane Katrina. Yet, many of the services cut, including food stamps and Medicaid, benefit the very people who have been uprooted and displaced.

We are mystified as to where this newfound interest in offsets comes from. Since 2003, we've had three huge supplementals for the cost of the war and reconstruction in Iraq come to us from the President. Any notion of offsetting those costs was dismissed out of hand. As we have asked before, why is it that you insist on offsetting the cost of rebuilding Biloxi, but not the cost of rebuilding Baghdad or Basra?



Some of the cuts identified as "savings" in today's bill may qualify as such superficially, but won't stand up to scrutiny. For example:

- The bill includes $6.2 billion in increased PBGC premiums, but these premiums are entrusted with a purpose, to pay pension benefit guaranties, and in the near future, these additional premiums will be spent for that very purpose. Republicans can claim these additional receipts as offsets to their tax cuts only because the federal government runs a cash-basis budget.

- The bill also includes ANWR drilling revenues of $2.5 billion, assuming that revenues will be split 50/50 between the federal government and Alaska. But Alaska insists that the proper division under the Alaska Statehood Act is 90/10.

- The funding cuts for child support enforcement simply shift the cost to the states, and worse yet, reduce child support collections by more than $20 billion over the next ten years. They are a flagrant case of false economy.

- One-time receipts from spectrum auctions are used to offset the recurring loss of revenues to permanent tax cuts. Furthermore, the cost of converter boxes is booked at $1 billion, though the likely cost is more like three times that amount.

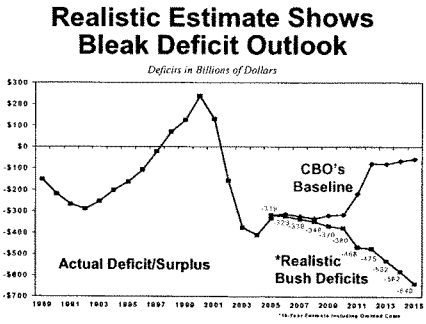
This bill also contains a proposal to split the Ninth Circuit. This proposal will cost money, not save money; and, moreover, proposals to restructure the courts do not belong in a fast-track budget bill. Indeed, this provision – which would be unlikely to be enacted by Congress under regular order – could be subject to a Senate point of order against the inclusion of extraneous provisions in a budget reconciliation package.

In short, there are many reasons that this legislation does not live up to its title. It makes deep and painful cuts all right, but it paves the way for new and additional tax cuts, despite an enormous deficit, and the end result is a bigger deficit. In this respect, today's legislation – like the budget resolution that set it in motion – is the latest in a series of fiscal actions that will have caused the debt ceiling of the United States to be raised by $3 trillion before this fiscal year is out.

When the Bush Administration took office in 2001, it inherited a surplus and blithely predicted that the surplus would endure, even if tax cuts were adopted. The Bush budget was adopted, and in fiscal year 2005, the bottom line was not a surplus of $269 billion as it had projected, but a deficit of $319 billion.

Realistic estimates show that these deficits are structural and will get worse, not better, over the next ten years, and that when the Bush Administration's full agenda is factored in, deficits will climb to $640 billion by 2015; the national debt will double; and debt service will more than double.

This reconciliation legislation will make deep and painful cuts, but it will not avert that outcome, or lead to balance in any time frame, and for these reasons, we must oppose it.



HOUSE BUDGET COMMITTEE

Democratic Caucus

The Honorable John M. Spratt Jr. ■ Ranking Democratic Member

B-71 Cannon HOB ■ Washington, DC 20515 ■ 202-226-7200 ■ www.house.gov/budget_democrats

November 4, 2005

Summary of Spending Reconciliation Bill Reported By House Budget Committee

This document has not been reviewed and approved by the Democratic Caucus of the Budget Committee and may not necessarily reflect the views of all members.

Table of Contents

Overview 1

Reconciliation Cuts by House Committee:
- Agriculture 4
- Education and the Workforce 7
- Energy and Commerce 10
- Financial Services 13
- Judiciary 14
- Resources 15
- Transportation and Infrastructure 17
- Ways and Means 18

Tables:
- Reconciliation Savings (by major program) 2
- House and Senate Reconciled Spending Cuts, 2006-2010 3
- Reconciled Spending Cuts (original and final House Committee cuts) . 20

Overview

The House Budget Committee has reported a spending reconciliation bill cutting a number of key services, including Medicaid, student loans, child support, and food stamps. The bill packages together the cuts submitted by eight House authorizing committees as part of this year's reconciliation process. In total, the bill cuts net mandatory spending by $53.9 billion over five years. Floor consideration is expected the week of November 7.

Key Points About Reconciliation

All of these spending cuts will be used to offset tax cuts, not the costs of hurricane response or deficit reduction.

Spending cuts threaten vital services, including services for hurricane victims.

Even with these spending cuts, the Republican budget resolution still increases the deficit by more than $100 billion over five years.

Republicans reveal a double standard in proposing to offset hurricane costs but not war costs or tax cuts.

The $53.9 billion in cuts marks a 56 percent increase from the $34.7 billion in reconciled spending cuts included in this year's budget resolution, and is almost $20 billion higher than the reconciliation cuts that the Senate passed this week.

Spending Cuts Offset Tax Cuts, Not Hurricane Costs or Deficit Reduction — While some may claim that these reconciled savings will be used to reduce the deficit or offset the cost of hurricane relief efforts, the reality is that these spending cuts will help finance, in part, the $106 billion of tax cuts – $70 billion protected under reconciliation procedures – included in this year's Republican budget resolution. Indeed, the Republican budget resolution called for reconciled spending cuts long before the hurricanes occurred.

Republican Claims About Offsetting Hurricane Costs Reveal Double Standard — The Republican claim about offsetting the cost of hurricane relief is inconsistent with the decision in recent years not to offset tax cuts or supplemental funding for Iraq and other purposes. Why does the Republican leadership insist on offsetting the cost of rebuilding Biloxi but not the cost of rebuilding Baghdad?

Spending Cuts Threaten Vital Services, Including Services for Hurricane Victims — To help finance more tax cuts, the reconciliation spending package cuts funding for priorities including Medicaid, student loans, child support, and food stamps. A number of these programs, like food stamps and Medicaid, benefit people who have been affected by the hurricanes.

Highlights of Controversial Cuts — The objectionable cuts included in the reconciliation package include the following:

- ***Medicaid*** — The bill cuts Medicaid spending by $11.9 billion, of which $8.8 billion will fall upon beneficiaries in the form of increases in cost-sharing and premiums, "flexibility" that will allow states to cut benefit packages for certain individuals, and provisions that will make it harder for some seniors to access needed long-term care.

- ***Student Loans*** — The bill cuts spending on student loan programs by $14.3 billion over five years primarily through increases in the interest rates and fees that students pay as well as some reductions in subsidies to lenders. At a time when college costs are rising faster than inflation, the Committee is making the largest cut in the history of the student loan programs.
- ***Food Stamps*** — The legislation imposes cuts to food stamps of $844 million over five years (2006-2010). Savings are achieved by adopting the President's proposal to limit categorical eligibility for food stamps to TANF recipients and increasing the in-country waiting period for legal immigrants to seven years. Under current law, 44 percent of those eligible for food stamps do not participate in the program. Changes such as these may mean even fewer vulnerable children and working families who qualify for nutrition benefits will actually receive them.
- ***Child Support*** — The legislation cuts $4.9 billion from child support programs over five years. This cut will reduce states' capacity to establish and enforce child support orders, which will result in custodial parents receiving $7.1 billion less child support over five years and $21.3 billion less over ten years.

Other Controversial Provisions – The package includes a number of other controversial provisions, including:

- ***Farm Programs*** — The bill cuts over $1 billion from commodity programs and $760 million from conservation programs.
- ***Byrd Amendment*** — The legislation includes a repeal of the Byrd Amendment, which provides that anti-dumping duties be distributed to companies affected by dumped or subsidized imports.

Reconciliation Savings

Billions of Dollars, 2006-2010	House	Senate
Medicaid and SCHIP	-11.9*	-4.3
Medicare	No Cut	-5.7
Student Loans	-14.3	-9.7
Child Support	-4.9	No Cut
Food Stamps	-0.8	No Cut
Farm & Conservation Programs	-1.8	-3.8
MILC Extension	No Provision	+1.0
ANWR	-2.5	-2.5
Byrd Amendment	-3.2	No Provision
Pension Insurance	-6.2	-6.7
Spectrum	-8.7	-6.0

* Does not reflect $2.6 billion in spending for Katrina health care relief, most of which is Medicaid

Note: all Senate totals reflect the bill reported by the Senate Budget Committee; some numbers may change as a result of amendments adopted during Senate floor action.

- ***Federal Housing Administration (FHA)*** — The bill cuts $270 million by limiting the Department of Housing and Urban Development's (HUD) authority to dispose of FHA-insured multifamily properties that have gone into default. By requiring HUD to secure annual appropriations in order to sell default properties at below-market rates or provide up-front rehabilitation grants to the buyers of these properties, the bill puts at risk HUD's ability to return these properties to the supply of privately owned affordable housing.

Republican Budget Resolution Increases Deficit — Republicans passed a budget resolution this spring that over five years was going to make the deficit $168 billion worse than if they took no budgetary action at all. Even though their spending reconciliation package is likely to reduce spending by about $19 billion more than envisioned by the budget resolution, the Republican resolution would still worsen the budget's bottom line by more than $100 billion.

Democrats Support Fiscal Responsibility — Democrats have a strong track record on fiscal responsibility. In the 1990s, President Clinton and Democrats in Congress worked together to move the budget from record deficits to record surpluses. The budget resolution offered by House Democrats this year balanced the budget by 2012, while the Republican budget never reaches balance, even with these proposed changes. Democrats also support reinstatement of the effective pay-as-you-go (PAYGO) rule that helped take the budget from record deficits in the early 1990s to a $236 billion surplus just five short years ago.

House and Senate Reconciled Spending Cuts, 2006-2010
(Outlays in Billions of dollars)

House Committees		*Senate Committees*	
Agriculture	-3.650	Agriculture, Nutrition, and Forestry	-3.014
Education and the Workforce	-20.422	Banking, Housing and Urban Affairs	-0.570
Energy and Commerce	-17.066	Commerce, Science, and Transportation	-5.984
Financial Services	-0.470	Energy and Natural Resources	-2.501
Judiciary	-0.428	Environment and Public Works	-0.030
Resources	-3.678	Finance	-10.006
Transportation & Infrastructure	-0.156	Health, Education, Labor, and Pensions	-16.431
Ways and Means	-8.048	Judiciary	-0.578
House Total, 2006-2010	***-$53.918***	***Senate Total, 2006-2010***	***-$39.114***

Note: all Senate totals reflect the bill reported by the Senate Budget Committee; unofficial estimates indicate that the total for the Senate-passed bill is less than $35 billion as a result of amendments adopted during Senate floor action.

Agriculture Committee

Amount Cut: $3.7 billion over five years.
Reconciliation Target: $3.0 billion.

The reconciliation package approved by the Agriculture Committee reduces spending by $3.7 billion over five years and by $567 million in 2006. In the face of record-high energy prices, natural disasters, and eligible populations having difficulty accessing certain benefits, Republicans chose to cut important safety net programs for farmers and vulnerable families. In contrast, the Senate Agriculture Committee made $3.0 billion in reconciled cuts with none of the cuts coming from food stamps. Instead, the Senate Committee's cuts came entirely from commodity, conservation, and research programs. The Senate Committee also extended the Milk Income Loss Contract (MILC) program at a cost of $998 million over five years.

Food Stamps

The House Agriculture Committee cut $844 million over five years by imposing two new limitations on who can get food stamps. First, the Committee adopted the President's proposal to make it more difficult for families receiving services through the Temporary Assistance for Needy Families (TANF) program to obtain food stamps. Under current law, families who qualify for TANF cash assistance or services such as child care may be deemed eligible for food stamps, as long as they also meet a separate income test specific to the Food Stamp Program. More than 40 states have opted to coordinate their eligibility rules in this way. The Committee legislation restricts this type of coordination to TANF cash assistance only. Low-income families receiving child care assistance or transportation subsidies to help them find and keep a job would now have to meet a different set of standards to qualify for food stamps. This added layer of complexity may deter even more eligible families from applying for food stamps. Right now, 44 percent of those eligible for food stamps do not receive any benefits. An estimated 225,000 people will lose food stamps under this provision, primarily low-income working families with children. In addition, thousands of children who lose food stamps under this provision will also lose access to child nutrition programs such as free school lunches.

The second cut adopted by the Committee prohibits legal immigrants from receiving food stamps until they have been in the United States for at least seven years. The 1996 welfare reform law made most legal immigrants ineligible for food stamps. Only three years ago, recognizing that the 1996 law was too draconian, Congress restored access to food stamps for immigrants who have been in the United States for at least five years. This provision will cause 70,000 legal immigrants, primarily low-income working families with children, to lose food stamps. While legal immigrant children as well as U.S.-born children of immigrants will not be subject to the seven-year waiting period, the reduction in food assistance resulting from the ineligibility of their parents will reduce the level of food assistance for everyone in the household.

Commodity Programs

The Committee cut commodity programs by $1.0 billion over five years and by $553 million in 2006.

- ***One Percent Reduction for Direct Payments*** — The reconciliation measure reduces the total amount of the direct payment to producers by one percent through 2009, saving $211 million over five years.
- ***Reduce Advance Direct Payment to 40 Percent*** — The measure reduces the percentage of direct payments for covered commodities and peanuts that can be paid in advance from 50 percent to 40 percent. This provision saves a total of $513 million.
- ***Eliminate the Cotton Step 2 Program*** — The reconciliation bill repeals the special marketing loan provisions for upland cotton known as "Step 2," which saves $282 million over five years.

Conservation Programs

The Committee cuts vital Farm Bill programs that would help farmers and ranchers protect and enhance natural resources. The Conservation Security Program (CSP), which rewards good conservation stewardship practices, is cut by $504 million over the 2006-2010 period. The Watershed Rehabilitation Program is eliminated, cutting $225 million that goes to localities to rehabilitate aging dams and other flood control structures that are beyond their lifespan and pose a hazard to life and property. The reconciliation bill also eliminates the Agriculture Management Assistance program, designed to assist producers in managing their financial risk, moving to organic production, and implementing conservation practices that will also enhance their productivity. This results in a cut of $31 million over five years. CBO has estimated that these cuts will provide $760 million in savings over the 2006-2010 period.

Rural Development, Research, and Energy Programs

The reconciliation package eliminated several programs related to rural development, research, and renewable energy. In recent years, funding for many of these programs has been limited or reduced by appropriations legislation in order to fund other agriculture programs. The following programs are cut under the Committee's bill:

- ***Renewable Energy Systems and Energy Efficiency Improvements Program*** — cut $23 million.
- ***Enhanced Access to Broadband Telecommunications Services in Rural Areas*** — cut $47 million.
- ***Value-Added Agricultural Product Market Development Program Grants*** — cut $160 million.
- ***Rural Business Investment Program*** — cut $89 million.
- ***Rural Business Strategic Investment Grants*** — cut $100 million.
- ***Rural Firefighters and Emergency Personnel Grants*** — cut $50 million.
- ***Initiative for Future Agriculture and Food Systems*** — cut $620 million.

The conference version of the Agriculture Appropriations bill also reduces or eliminates funding for each of the above programs for 2006. The estimate of the reconciliation bill assumes enactment of the Agriculture Appropriations bill, resulting in higher savings. This is because, in general, when the appropriations measure cancels mandatory funding for 2006, the program is not funded for 2006 but available funding in future years grows by the blocked amount.

Education and the Workforce Committee

Amount Cut: $20.4 billion over five years.
Reconciliation Target: $12.651 billion.

The Education and the Workforce Committee approved reconciliation legislation that cuts direct spending by a net of $20.4 billion over five years; those cuts are $7.8 billion more than required by the budget resolution and $4.0 billion more than approved by the Senate Committee on Health, Education, Labor, and Pensions (HELP).

The House Committee's reconciliation bill cuts $14.3 billion from student loan programs and raises $6.2 billion by increasing the premiums that employers pay to the Pension Benefit Guaranty Corporation. The Committee voted on a bipartisan basis to reject the creation of a new $2.5 billion voucher program for elementary and secondary students displaced by the Gulf Coast hurricanes. Despite a majority vote against this voucher program, Chairman Boehner has indicated that he may attempt to amend the legislation to include this provision.

Pension Benefit Guaranty Corporation (PBGC)

The Committee raises $6.2 billion over five years by increasing premiums that single-employer pension plans pay to the PBGC. First, the reconciliation bill increases the flat-rate premiums from $19 to $30 per participant in 2006. PBGC could then increase that rate by up to 20 percent annually for the next four years. Second, the bill creates a new $1,250 per participant premium that companies would pay annually for three years after they emerge from bankruptcy. The Senate HELP Committee creates an identical new post-bankruptcy premium but raises the flat-rate premium to $46.75 in 2006 and then indexes it to inflation. In addition, the Senate HELP Committee raises the per participant premium for multi-employer plans from the current $2.60 to $8.00 in 2006, and indexes it to inflation thereafter. Together, the Senate provisions raise $6.7 billion over five years.

Student Loan Cuts

The Committee's reconciliation bill cuts spending on student loan programs by $14.3 billion over five years through a combination of increases in the interest rates and fees that students pay, reductions in subsidies to lenders, and other changes. These changes could cost students up to $5,800 more in interest and fees over the life of their loans, according to estimates by the Committee on the Education and the Workforce minority. Democrats offered an amendment during Committee consideration that would have paid for increases in the federal aid available to help students pay for college by cutting subsidies to lenders.

The Senate HELP Committee cuts student loan spending by a net of $9.7 billion over five years. It makes similar – but not identical – cuts to lender subsidies and the rate of federal insurance against defaults. Unlike the House Committee, the Senate HELP Committee does not change the interest

rates students are slated to pay for new loans under current law. However, it does increase the rate on parent loans scheduled to go into effect in July 2006 from a fixed rate of 7.9 percent to 8.5 percent. Finally, the Senate HELP Committee package includes $8.0 billion in new spending that would supplement Pell Grants that does not exist in the House Committee package.

The major provisions in the House Education and the Workforce Committee measure are:

- ***Interest Rates for Students*** — New loans will have variable interest rates capped at 8.25 percent rather than the fixed 6.8 percent rate scheduled for next year. Students who consolidate their loans will have to pay a 1 percent premium if they want to lock in at the variable rate then in place, or they can choose a variable rate: students currently fix their rate based on the average of their underlying loans.

- ***More Fees for Students*** — Students getting Direct Loans will see their origination fees double – from an effective 1.5 percent to 3 percent in 2006 – before they eventually are reduced to 1 percent in 2010. This immediate increase in student origination fees may cause colleges to stop offering loans through the Direct Loan program, which is more efficient for the federal government than the competing Federal Family Education Loans (FFEL) program because it generally has lower federal subsidy costs. Students applying for FFEL loans will face a mandatory 1 percent insurance fee, which banks now often waive. In addition, students who consolidate their loans will have to pay a new 1 percent origination fee.

- ***Lender Subsidies and Fees*** — The bill eliminates the loans that guarantee certain lenders a minimum 9.5 percent return, and ends subsidies that pay lenders above a minimum rate of return (known as "floor income"). The bill also reduces the federal level of loan insurance and the percentage that collection agencies may keep on payments of a defaulted loan. Finally, the bill increases lender origination and consolidation fees.

- ***Budget Gimmick Jeopardizes Loan Programs*** — The bill eliminates all mandatory spending for administration of federal student loans, which shows a savings of $2.2 billion over five years. Either the money becomes appropriated funding, in which case there is no savings to the government, or it is cut, which jeopardizes the continuation of the federal student loan programs.

- ***Other Changes*** — The bill increases the amount that students may borrow from the federal loan programs during their first and second year of college without increasing the aggregate total allowed over five years. It also extends the loan forgiveness program for those who become qualified teachers of math, science, or special education.

Student Loan Changes in Reconciliation Bill (Outlays in Billions of Dollars)	
Student Interest Rates	***Cut, 2006-10***
• Charge variable interest rates capped at 8.25% on new loans.	*see note
• Let consolidators choose between a variable or higher fixed rate capped at 8.25%.	*see note
Student Fees	
• Levy a new 1% fee on all consolidation loans.	*see note
• Double origination fees on Direct Loans to 3%, before slowly lowering them to 1% in 2010. Gradually lower FFEL origination fees from 3% to zero in 2010.	3.720
• Require a 1% insurance fee (which some lenders now waive) on FFEL loans.	-1.470
Lenders	
• Eliminate all "guaranteed 9.5% return" loans.	-1.795
• Eliminate floor on lenders' rate of return.	*see note
• Reduce lender reinsurance and percent of default collections lenders can keep.	-1.410
• Raise lender origination and consolidation fees.	-1.825
Other	
• Increase limits on how much students may borrow in their first two years.	1.585
• End all mandatory spending for loan administration and it subject to appropriations.	-2.206
• Other small provisions.	0.619
• Interaction effects.	-0.298
Total, reconciled student loan cuts	**-14.260**

*Note: All four provisions combined save $11.180 billion.

Committee on Energy and Commerce

Amount Cut: $17.066 billion over five years.
Reconciliation Target: $14.734 billion.

The Energy and Commerce Committee submitted $17.1 billion in spending cuts over five years, consisting of $11.9 billion from net cuts to Medicaid and $8.7 billion in net savings from changes to spectrum policy. The Committee also includes new spending of $2.6 billion for Katrina health care relief (most of which is under Medicaid), and $1 billion for Katrina and Rita energy relief under the Low Income Home Energy Assistance Program (LIHEAP). The Committee makes a number of Medicaid cuts, including allowing increases in cost-sharing, imposition of premiums, and cuts to benefit packages that could cause more than 5 million children to lose their entitlement to preventive screening and medically necessary diagnostic and treatment services.

Medicaid

The Energy and Commerce Committee made gross cuts to Medicaid of $13.4 billion over five years, offset by $1.5 billion in new spending, for a net cut of $11.9 billion. This net cut of $11.9 billion is deeper than the Senate Finance Committee's net Medicaid cut of $4.3 billion. The Energy and Commerce cut also hits Medicaid beneficiaries harder. Specifically, under the Energy and Commerce Committee's recommendations, beneficiaries will face $10 billion in gross spending cuts, offset by $1.2 billion in new spending, for a net effect on beneficiaries of $8.8 billion in cuts.

- ***Increases Cost-Sharing and Imposes Premiums*** — The Committee saves $2.6 billion by allowing states to increase cost-sharing and impose new premiums on many categories of Medicaid beneficiaries. Under the reconciliation legislation states could, for the first time, let providers refuse care if a beneficiary cannot afford the co-payment. There is an extensive body of research demonstrating that when cost-sharing is increased significantly for low-income people, their use of essential health care services declines and their health status worsens.

- ***Allows State "Flexibility" to Cut Benefit Packages for***

SUMMARY OF MEDICAID CHANGES

Gross Cuts: $13.4 billion
New Spending: $1.5 billion
Net Cuts*: $11.9 billion

	Five-Year Cut
Increased Cost-Sharing and Premiums	-$2.6 billion
Benefit Package "Flexibility"	-$3.9 billion
Tightening of Asset Rules for Access to Long-Term Care	-$2.5 billion
Changes to Prescription Drug Payments	-$2.1 billion
Other Provisions	-$1.8 billion
Benefit Expansions	+$1.0 billion
Net Medicaid Cuts*	-$11.9 billion

*Does not reflect $2.6 billion in spending for Katrina health care relief, most of which is Medicaid.

Certain Beneficiaries — The Committee saves $3.9 billion by allowing states to cut benefit packages for certain beneficiaries. In doing so, a state can bypass an entitlement in current law that provides children with coverage of medical care and health services that will prevent and ameliorate the long-term effects of chronic illness and disability. This change could negatively affect more than one-fifth of children covered by Medicaid — more than 5 million children overall.

- ***Tightens Rules Governing Access to Long-Term Care*** — The Committee included $2.5 billion in savings by tightening the rules governing how assets are counted for determining eligibility for long-term care.

- ***Modifies Payments for Prescription Drugs*** — The bill saves $2.1 billion over five years by changing how Medicaid pays pharmacies for prescription drugs and modifying the Medicaid prescription drug rebate program.

- ***Benefit Expansions*** — The Committee included $1.0 billion in benefit expansions, including an expansion of home and community-based waivers.

- ***Other Provisions*** — Other provisions include tightening requirements governing how an applicant can prove citizenship and restricting access to case management for individuals with multiple complex illnesses, for savings of $1.8 billion.

Katrina Health Care Relief

The Committee submission includes $2.6 billion for Katrina health care relief, almost all of which is to provide full federal funding for the Medicaid and SCHIP costs of Hurricane Katrina evacuees who meet existing eligibility requirements, and for Medicaid and SCHIP recipients living in Louisiana, Mississippi, and certain counties in Alabama.

Spectrum Auctions

The Committee submitted about $8.7 billion in net savings over five years by making changes to spectrum policy. The Committee's submission requires that television broadcasters complete the transition to digital broadcasts by January 1, 2009, a transition that will free up the analog spectrum currently being used by the broadcasters. A portion of this spectrum will then be made available for public safety use, and another portion will be auctioned off – generating new receipts estimated to total about $10 billion.

- ***Insufficient Funding for Transition to Digital Television*** — An estimated 21 million households only have televisions that, unless modified, will not work once the transition to digital broadcasting is completed. The Committee's submission uses about $1 billion of the new receipts to finance and administer the purchase by consumers of the converter box needed to adapt analog television sets to receive digital broadcasts. This amount of funding is expected to be insufficient to hold consumers harmless for the cost of equipping analog

televisions with converter boxes. The Senate's reconciliation bill includes $3 billion for this purpose, and the Democratic substitute in the Energy and Commerce Committee would have provided such sums necessary – an estimated $3.5 billion to $4 billion – to finance these analog-to-digital converter boxes.

- ***Less Funding for Public Safety Equipment Than Democrats Proposed*** — The Committee unanimously approved an amendment to use $500 million of the auction proceeds to finance communications equipment for first responders – $235 million of which will be spent within the reconciliation window (2006-2010). This $500 million provision is less than 10 percent of the $5.8 billion proposed by Committee Democrats for this purpose.

Financial Services Committee

Amount Cut: $0.470 billion over five years.
Reconciliation Target: $0.470 billion.

The Financial Services reconciliation submission cuts spending by $470 million over five years by making changes to deposit insurance and the Federal Housing Administration.

Deposit Insurance

The Committee saved $200 million over five years by approving comprehensive legislation designed to modernize the federal deposit insurance system. The legislation increases the coverage limit on insured deposits from $100,000 to $130,000 for most accounts, and it sets up a new risk-based premium structure that will have the effect of increasing premiums paid by insured financial institutions. The new coverage limit is estimated to increase the cost of resolving failed financial institutions, thereby increasing spending by $400 million over five years. The new premium structure will bring in an estimated $600 million in new collections over the next five years, for net savings of $200 million.

Federal Housing Administration (FHA)

The Committee also saved $270 million over five years by eliminating mandatory spending and requiring annual appropriations for certain activities carried out by the Department of Housing and Urban Development (HUD) with regard to properties in mortgage default. Under current law, when FHA-insured multi-family properties go into mortgage default, HUD has authority to sell them at below-market prices in order to preserve the properties as affordable housing. HUD also has the authority to provide up-front rehabilitation grants to the buyers of defaulted properties. The legislation approved by the Committee makes HUD's use of these authorities subject to the availability of annual appropriations, which puts at risk HUD's ability to effectively deal with these properties so that they remain part of the supply of privately owned affordable housing. The requirement for appropriations sunsets after 2010.

Judiciary Committee

Amount Cut: $428 million over five years.
Reconciliation Target: $300 million.

The Judiciary Committee will raise a net total of $428 million by imposing a new fee for certain visa applications and authorizing legislation related to federal judgeships and courts. The Committee approved H.R. 3648, a bill that imposes fees for multinational employers seeking L-1 visas for temporary intracompany transferees. L-1 visas cover nonimmigrant transferees who work in managerial or executive capacities or provide services requiring specialized knowledge. The legislation requires multinational employers to pay a $1,500 fee for each L-1 visa petition. The fees will be deposited in the US Treasury. According to CBO, enacting this legislation will increase collections by $80 million for 2006, and by $500 million over years 2006 through 2010.

The Committee also submitted legislation that authorizes 93 new permanent and temporary judgeships and extends authority for specific judges among certain circuit, district, and bankruptcy courts. The legislation also modifies the circuit court system by redistributing some courts within the Ninth Judicial Circuit into the newly created Twelfth Judicial Circuit. According to CBO, enacting this legislation will increase direct spending by $4 million for 2006, and $72 million over years 2006 through 2010.

1110

Resources Committee

Amount Cut: $3.7 billion over five years.
Reconciliation Target: $2.4 billion.

The Committee reconciliation measure opens both the Arctic National Wildlife Refuge coastal plain and the Outer Continental Shelf leasing moratoria areas to oil and gas exploration, provides incentives for companies to mine gold and silver on public lands, fast-tracks the development of oil shale, and sells some federal lands. Last week, the Senate Energy and Natural Resources Committee passed its proposal that only included drilling in the Arctic; due to Byrd Rule limits, the Senate version does not include the labor and environment provisions in the House Resources Committee bill.

According to CBO, the Resources Committee package is slated to raise $3.7 billion in receipts to the federal government over the 2006-2010 period.

- ***Drilling in the Arctic*** — The Committee reconciliation measure opens the Arctic National Wildlife Refuge coastal plain to oil and gas exploration. CBO estimates that opening the Arctic to drilling will net $2.5 billion in proceeds to the federal government over the 2006-2010 period, after distribution of the same amount to the State of Alaska. The State of Alaska is entitled to 90 percent of the receipts under the Alaska Statehood Act and the State legislature opposes a unilateral change by Congress to a 50/50 split. This raises the prospect that the Treasury would ultimately receive only 10 percent of the Arctic proceeds if the State prevails in litigation.

- ***OCS Offshore Drilling*** — The Committee reconciliation measure opens the Outer Continental Shelf (OCS) to potential oil and gas exploration and development by repealing the offshore drilling moratorium that has been enacted annually by Congress since 1980. The measure includes an "opt out" provision for states. The reconciliation measure also prohibits the government from levying any additional royalties or fees on the oil and gas industry. CBO estimates that this will raise $891 million for the federal government from 2006-2010 (but only $319 million from 2006-2015 due to a provision for states that already permit offshore drilling that would offset 40 percent of the incoming proceeds and due to the diversion of funds to new programs).

- ***Mining Law Amendments*** — The Committee reconciliation measure includes a number of amendments related to mining, including the following:
  - Repeals the current moratorium on mining patents and allows mining companies and individuals to acquire federal land for $1,000 per acre (an increase over established levels, but nowhere near fair market value);
  - Grants companies the right to mine regardless of whether there is valuable mineral deposit within the claim. Under current law, a company must prove it has a properly

staked and maintained claim on a valuable mineral deposit before the right to mine is established. It also limits the government's ability to reject the transfer of public lands containing hardrock minerals; and

- Prohibits the government from levying any additional royalties or fees on mining operations.

CBO estimates that this will raise $158 million over five years.

- ***Other*** — The Committee reconciliation measure also overrides the recently enacted energy bill to restrict states' rights and subsidize the development of oil shale; sells public land in Nevada and Idaho to mining companies; and sells land in the District of Columbia, obstructing a bipartisan agreement reached between members of the House and the Administration to directly convey these parcels to the District of Columbia (the resulting legislation, H.R. 3699, passed out of the Government Reform Committee by voice vote on September 29, but was sequentially referred to the Resources Committee). CBO estimates that these provisions will raise $128 million over five years.

Transportation & Infrastructure Committee

Amount Cut: $156 million over five years.
Reconciliation Target: $103 million.

Increase Vessel Tonnage Duties

These fees are imposed on the cargo-carrying capacity of vessels that enter the United States from any foreign port or place, or that depart from and return to a United States port or place. The tonnage duties are assessed regardless of whether the vessel is carrying cargo.

In 1990, the 2 cents per ton duty on vessels arriving in the United States from a foreign port in North America, Central America, the West India Islands, the Bahama Islands, and Newfoundland was raised to 9 cents per ton, not to exceed 45 cents per ton per vessel in a single year. In addition, the 6 cents per ton duty on vessels arriving in the United States from any other foreign port was raised to 27 cents per ton, not to exceed $1.35 per ton in a single year. The higher fees were extended twice, but expired in 2002.

For 2006-2010, the Committee increases the 2-cent duty to 4.5 cents per ton, not to exceed 22.5 cents per ton in a single year, and increases the 6-cent duty to 13.5 cents per ton, not to exceed 67.5 cents per ton in a single year. CBO estimates that these changes will increase receipts by $156 million over the 2006-2010 period.

In contrast, the Senate Environment and Public Works Committee rescinded a portion of Alaska's transportation funding, reducing spending by $30 million over the 2006-2010 period. This provision in the recently enacted transportation bill allowed Alaska to spend all of its unobligated contract authority without further appropriation (*i.e.*, exempted the contract authority from obligation limitations).

Ways and Means Committee

Amount Cut: $8 billion over five years.
Reconciliation Target: $1 billion.

The Ways and Means reconciliation submission cuts spending by $8.0 billion over five years. More than half of the cuts come out of human services programs such as child support and foster care. A trade provision reduces spending by $3.2 billion.

Ways and Means Reconciliation Changes, 2006-2010 *(outlays in billions of dollars)*	
Child Support	-4.899
Foster Care	-0.577
Supplemental Security Income	-0.732
Temporary Assistance for Needy Families	+0.926
Child Care	+0.434
Continued Dumping and Subsidy Offset	-3.200
Total	***-$8.048***

In contrast, the Senate Finance Committee did not cut spending for any of these programs. Instead, the Finance Committee reached its reconciliation target through a total of $10 billion in cuts to Medicare and Medicaid over five years, including $5.7 billion in net Medicare cuts and $4.3 billion in net Medicaid cuts.

Human Services

Child Support — The Committee cut $4.9 billion over five years by reducing federal spending on child support programs run by states. Most of the savings result from reducing the federal matching rate to states from 66 percent to 50 percent of program costs. This cut will reduce states' capacity to help families establish legal child support orders and enforce orders to make sure that child support owed actually gets paid. This in turn will reduce the resources available to single parents and harm efforts to strengthen families by keeping both parents financially and emotionally involved in their children's lives. CBO estimates that the reconciliation bill's reduction in the federal commitment to child support programs will result in custodial parents receiving $7.1 billion less child support over five years and $21.3 billion less over ten years.

Foster Care — The Committee cut $397 million over five years by limiting children's eligibility for federally funded foster care payments (payments made to a foster care provider on behalf of the child). The Committee saved another $180 million by limiting circumstances under which states can receive federal funding for services provided to children in certain settings, such as non-licensed foster homes. These two provisions essentially shift costs to states. Unless states are able to devote

new resources to foster care, they may cut services and increase caseloads in a system that in many states is already overburdened and underfunded.

Supplemental Security Income (SSI) — The Committee cut spending by $425 million by requiring that retroactive SSI benefits exceeding three times the maximum monthly benefit (currently $579) be paid to beneficiaries in installments over the period of a year. Current law requires installment payments for retroactive SSI benefits exceeding 12 times the maximum benefit. About 750,000 individuals per year become eligible for SSI. Many are entitled to retroactive benefits resulting from the lengthy nature of the disability determination process. Initial determinations take three months, on average. The appeals process for denied claims often takes more than a year. The Committee also saved $307 million by requiring that the Social Security Administration review 50 percent of new disability benefit awards to ensure that the finding of disability is accurate before starting payments, thereby avoiding erroneous payments.

Welfare Reform — The Committee reconciliation package includes comprehensive legislation to renew the Temporary Assistance for Needy Families (TANF) program. The legislation freezes the basic block grant, increases work requirements, and eliminates two performance bonus programs (saving $1.1 billion). Part of the savings from eliminating the bonus programs is used to provide $349 million for new marriage promotion activities, and $409 million for new research projects. The legislation also extends supplemental grants, at a cost of $1.2 billion over five years. The net effect of the TANF provisions is to increase spending by $926 million over five years relative to CBO's estimate of current services. There appears to be an increase in spending only because the extension of supplemental grants is excluded by law from CBO's projections of current services, even though the grants have been in place for nine years. Adjusting for this scoring factor, total TANF spending in the bill actually declines by $239 million.

Child Care — The bill increases child care funding above current-law levels by $500 million over five years. This increase is not enough to keep pace with inflation, let alone cover the additional demand for child care created by the bill's increased work requirements for welfare recipients. Consequently, the total number of children receiving child care assistance will decline by more than 100,000 within five years. CBO estimates that complying with the increased work requirements in the Committee bill will increase states' costs over the next five years by $4.1 billion for child care and $4.2 billion for work activities. States will likely shift existing child care resources to TANF recipients facing new work requirements. The Center on Budget and Policy Priorities estimates that 270,000 children of low-wage working parents who are *not* on welfare would lose child care assistance as a result.

Continued Dumping and Subsidy Offset (Byrd Amendment)

The Committee saved $3.2 billion over five years by repealing the Continued Dumping and Subsidy Offset, also known as the Byrd Amendment. Current law requires that anti-dumping duties paid by overseas firms be distributed directly to the U.S. industries affected by the dumping. Repeal of this requirement means that the anti-dumping duties will stay in the Treasury.

Reconciled Spending Cuts
(Outlays in Billions of Dollars)

House Committee	*Budget Resolution*	*Excess Cuts Made*	*Total Cuts*
Agriculture	-3.000	-0.650	-3.650
Education and the Workforce	-12.651	-7.771	-20.422
Energy and Commerce	-14.734	-2.332	-17.066
Financial Services	-0.470	0.000	-0.470
Judiciary	-0.300	-0.128	-0.428
Resources	-2.400	-1.278	-3.678
Transportation and Infrastructure	-0.103	-0.053	-0.156
Ways and Means	-1.000	-7.048	-8.048
Total Cuts, 2006-2010	***-34.658***	***-19.260***	***-53.918***

MINORITY VIEWS

John M. Spratt, Jr., Ranking Member

Dennis Moore

Richard E. Neal

Rosa DeLauro

Chet Edwards

Harold E. Ford, Jr.

Lois Capps

Brian Baird

Jim Cooper

Artur Davis

William J. Jefferson

Thomas H. Allen

Ed Case

Cynthia McKinney

Henry Cuellar

Allyson Y. Schwartz

Ron Kind

○

LEGISLATIVE TEXT

A BILL To provide for reconciliation pursuant to section 201(a) of the concurrent resolution on the budget for fiscal year 2006

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Deficit Reduction Act of 2005".

SEC. 2. TABLE OF TITLES.

The table of titles is as follows:

TITLE I—COMMITTEE ON AGRICULTURE

TITLE II—COMMITTEE ON EDUCATION AND THE WORKFORCE

TITLE III—COMMITTEE ON ENERGY AND COMMERCE

TITLE IV—COMMITTEE ON FINANCIAL SERVICES

TITLE V—COMMITTEE ON THE JUDICIARY

TITLE VI—COMMITTEE ON RESOURCES

TITLE VII—COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

TITLE VIII—COMMITTEE ON WAYS AND MEANS

TITLE I—COMMITTEE ON AGRICULTURE

SECTION 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 2005".

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

Sec. 1001. Short title; table of contents.

Subtitle A—Commodity Programs

Sec. 1101. Percentage reduction in amount of direct payments for covered commodities and peanuts.
Sec. 1102. Reduction in percentage of direct payment amount authorized to be paid in advance.
Sec. 1103. Cotton competitiveness provisions.

Subtitle B—Conservation

Sec. 1201. Limitations on use of Commodity Credit Corporation funds to carry out watershed rehabilitation program.

Sec. 1202. Conservation security program.
Sec. 1203. Limitations on use of Commodity Credit Corporation funds to carry out agricultural management assistance program.

Subtitle C—Energy

Sec. 1301. Termination of use of Commodity Credit Corporation funds to carry out renewable energy systems and energy efficiency improvements program.

Subtitle D—Rural Development

Sec. 1401. Enhanced access to broadband telecommunications services in rural areas.
Sec. 1402. Value-added agricultural product market development grants.
Sec. 1403. Rural business investment program.
Sec. 1404. Rural business strategic investment grants.
Sec. 1405. Rural firefighters and emergency personnel grants.

Subtitle E—Research

Sec. 1501. Initiative for Future Food and Agriculture Systems.

Subtitle F—Nutrition

Sec. 1601. Eligible households.
Sec. 1602. Availability of commodities for the emergency food assistance program.
Sec. 1603. Residency requirement.
Sec. 1604. Disaster food stamp program.

Subtitle A—Commodity Programs

SEC. 1101. PERCENTAGE REDUCTION IN AMOUNT OF DIRECT PAYMENTS FOR COVERED COMMODITIES AND PEANUTS.

(a) COVERED COMMODITIES.—Section 1103 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7913) is amended—

(1) in subsection (c), by striking "The amount" and inserting "Except as provided in subsection (e), the amount"; and

(2) by adding at the end the following new subsection:

"(e) DIRECT PAYMENT AMOUNT REDUCTION.—Notwithstanding subsection (c), for the 2006 and 2007 crop years (and the 2008 and 2009 crop years if direct payments are provided under this section for those crop years), the Secretary shall reduce the total amount of the direct payment to be paid to the producers on a farm for a covered commodity for the crop year concerned by an amount equal to 1 percent of the direct payment amount otherwise determined for that farm for that covered commodity for that crop year. No reduction shall be made under the authority of this subsection if direct payments are made for the 2010 or any subsequent crop year of a covered commodity.".

(b) PEANUTS.—Section 1303 of such Act (7 U.S.C. 7953) is amended—

(1) in subsection (d), by striking "The amount" and inserting "Except as provided in subsection (f), the amount"; and

(2) by adding at the end the following new subsection:

"(f) DIRECT PAYMENT AMOUNT REDUCTION.—Notwithstanding subsection (d), for the 2006 and 2007 crops of peanuts (and the 2008 and 2009 crops of peanuts if direct payments are provided under this section for those crops), the Secretary shall reduce the total amount of the direct payment to be paid to the producers on a farm for that crop of peanuts by an amount equal to 1 percent of the direct payment amount otherwise determined for that farm

for that crop of peanuts. No reduction shall be made under the authority of this subsection if direct payments are made for the 2010 or any subsequent crop of peanuts.".

SEC. 1102. REDUCTION IN PERCENTAGE OF DIRECT PAYMENT AMOUNT AUTHORIZED TO BE PAID IN ADVANCE.

(a) COVERED COMMODITIES.—Section 1103(d)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7913(d)(2)) is amended in the first sentence by striking "2007 crop years" and inserting "2005 crop years and up to 40 percent of the direct payment for a covered commodity for each of the 2006 and 2007 crop years".

(b) PEANUTS.—Section 1303(e)(2) of such Act (7 U.S.C. 7953(e)(2)) is amended in the first sentence by striking "2007 crop years" and inserting "2005 crop years and up to 40 percent of the direct payment for each of the 2006 and 2007 crop years".

SEC. 1103. COTTON COMPETITIVENESS PROVISIONS.

(a) REPEAL OF AUTHORITY TO ISSUE COTTON USER MARKETING CERTIFICATES.—Section 1207 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7937) is amended—

(1) by striking the section heading and inserting the following: "**upland cotton import quotas.**";

(2) by striking subsection (a);

(3) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively;

(4) in subsection (a), as so redesignated—

(A) in paragraph (1)—

(i) in subparagraph (B), by striking ", adjusted for the value of any certificate issued under subsection (a),"; and

(ii) in subparagraph (C), by striking ", for the value of any certificates issued under subsection (a)"; and

(B) in paragraph (4), by striking "subsection (c)" and inserting "subsection (b)"; and

(5) in subsection (b)(2), as so redesignated, by striking "subsection (b)" and inserting "subsection (a)".

(b) CONFORMING AMENDMENT.—Section 136 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7236) is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on August 1, 2006.

Subtitle B—Conservation

SEC. 1201. LIMITATIONS ON USE OF COMMODITY CREDIT CORPORATION FUNDS TO CARRY OUT WATERSHED REHABILITATION PROGRAM.

(a) FISCAL YEAR 2007 FUNDING.—Subparagraph (E) of section 14(h)(1) of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012(h)(1)) is amended by striking "$65,000,000" and inserting "$50,000,000".

(b) TERMINATION OF MULTI-YEAR AVAILABILITY OF FUNDS.—Such section is further amended by striking ", to remain available until expended" in the matter preceding subparagraph (A).

(c) RESCISSION OF UNOBLIGATED PRIOR-YEAR FUNDS.—Funds previously made available under such section for a fiscal year and unobligated as of September 30, 2006, are hereby rescinded effective on that date.

SEC. 1202. CONSERVATION SECURITY PROGRAM.

(a) FUNDING.—Section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)) is amended—

(1) in the matter before paragraph (1), by striking "For" and inserting "Except as otherwise provided in this subsection, for"; and

(2) in paragraph (3), by striking "not more than $6,037,000,000" and all that follows through "2014." and inserting the following:

"not more than—

"(A) $2,213,000,000 for the period of fiscal years 2006 through 2010; and

"(B) $5,729,000,000 for the period of fiscal years 2006 through 2015.".

(b) DURATION.—Section 1238A(a) of such Act (16 U.S.C. 3838a(a)) is amended by striking "2007" and inserting "2011".

SEC. 1203. LIMITATIONS ON USE OF COMMODITY CREDIT CORPORATION FUNDS TO CARRY OUT AGRICULTURAL MANAGEMENT ASSISTANCE PROGRAM.

Section 524(b)(4)(B) of the Federal Crop Insurance Act (7 U.S.C. 1524(b)(4)(B)) is amended—

(1) in clause (i), by inserting before the period at the end the following: ", except fiscal years 2007 through 2010"; and

(2) in clauses (ii) and (iii), by striking "2007" both places it appears and inserting "2006".

Subtitle C—Energy

SEC. 1301. TERMINATION OF USE OF COMMODITY CREDIT CORPORATION FUNDS TO CARRY OUT RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS PROGRAM.

Section 9006(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106(f)) is amended by striking "2007" and inserting "2006".

Subtitle D—Rural Development

SEC. 1401. ENHANCED ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS.

(a) TERMINATION OF FISCAL YEAR 2007 FUNDING.—Subparagraph (B) of section 601(j)(1) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(j)(1)) is amended by striking "for each of fiscal years 2006 and 2007" and inserting "for fiscal year 2006".

(b) TERMINATION OF MULTI-YEAR AVAILABILITY OF FUNDS.—Such section is further amended by striking ", to remain available until expended" both places it appears.

(c) RESCISSION OF UNOBLIGATED PRIOR-YEAR FUNDS.—Funds previously made available under such section for a fiscal year and un-

obligated as of September 30, 2006, are hereby rescinded effective on that date.

SEC. 1402. VALUE-ADDED AGRICULTURAL PRODUCT MARKET DEVELOPMENT GRANTS.

(a) TERMINATION OF FISCAL YEAR 2007 FUNDING.—Section 231(b)(4) of the Agricultural Risk Protection Act of 2000 (Public Law 106–224; 7 U.S.C. 1621 note) is amended by striking "October 1, 2006" and inserting "October 1, 2005".

(b) TERMINATION OF MULTI-YEAR AVAILABILITY OF FUNDS.—Such section is further amended by striking ", to remain available until expended".

(c) RESCISSION OF UNOBLIGATED PRIOR-YEAR FUNDS.—Funds previously made available under such section for a fiscal year and unobligated as of September 30, 2006, are hereby rescinded effective on that date.

SEC. 1403. RURAL BUSINESS INVESTMENT PROGRAM.

(a) TERMINATION OF FISCAL YEAR 2007 AND SUBSEQUENT FUNDING.—Subsection (a)(1) of section 384S of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009cc–18) is amended by inserting after "necessary" the following: "through fiscal year 2006".

(b) TERMINATION OF MULTI-YEAR AVAILABILITY OF FUNDS.—Such section is further amended—

(1) by striking "(a) IN GENERAL.—"; and

(2) by striking subsection (b).

(c) RESCISSION OF UNOBLIGATED PRIOR-YEAR FUNDS.—Funds previously made available under such section and unobligated as of September 30, 2006, are hereby rescinded effective on that date.

SEC. 1404. RURAL BUSINESS STRATEGIC INVESTMENT GRANTS.

(a) TERMINATION OF MULTI-YEAR AVAILABILITY OF FUNDS.—Subsection (a) of section 385E of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009dd–4) is amended by striking ", to remain available until expended,".

(b) RESCISSION OF UNOBLIGATED PRIOR-YEAR FUNDS.—Funds previously made available under such section and unobligated as of September 30, 2006, are hereby rescinded effective on that date.

SEC. 1405. RURAL FIREFIGHTERS AND EMERGENCY PERSONNEL GRANTS.

(a) TERMINATION OF FISCAL YEAR 2007 FUNDING.—Section 6405(c) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 2655(c)) is amended by striking "2007" and inserting "2006".

(b) TERMINATION OF MULTI-YEAR AVAILABILITY OF FUNDS.—Such section is further amended by striking ", to remain available until expended".

(c) RESCISSION OF UNOBLIGATED PRIOR-YEAR FUNDS.—Funds previously made available under such section for a fiscal year and unobligated as of September 30, 2006, are hereby rescinded effective on that date.

Subtitle E—Research

SEC. 1501. INITIATIVE FOR FUTURE FOOD AND AGRICULTURE SYSTEMS.

(a) TERMINATION OF FISCAL YEAR 2007, 2008, AND 2009 TRANSFERS.—Subsection (b)(3)(D) of section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7621) is amended by striking "2006" and inserting "2009".

(b) TERMINATION OF MULTI-YEAR AVAILABILITY OF FISCAL YEAR 2006 FUNDS.—Paragraph (6) of subsection (f) of such section is amended to read as follows:

"(6) AVAILABILITY OF FUNDS.—

"(A) TWO-YEAR AVAILABILITY.—Except as provided in subparagraph (B), funds for grants under this section shall be available to the Secretary for obligation for a 2-year period beginning on the date of the transfer of the funds under subsection (b).

"(B) EXCEPTION FOR FISCAL YEAR 2006 TRANSFER.—In the case of the funds required to be transferred by subsection (b)(3)(C), the funds shall be available to the Secretary for obligation for the 1-year period beginning on October 1, 2005.".

Subtitle F—Nutrition

SEC. 1601. ELIGIBLE HOUSEHOLDS.

(a) ELIGIBLE HOUSEHOLDS.—Section 5 of the Food Stamp Act of 1977 (7 U.S.C. 2014) is amended—

(1) in the 2d sentence of subsection (a); and

(2) in subsection (j);

by striking "receives benefits" each place it appears and inserting "in fiscal years 2006 through 2010 receives cash assistance, and in any other fiscal year receives benefits,".

(b) EXTENSIONS.—The Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) is amended in—

(1) section 11(t)(1);

(2) section 16—

(A) in subparagraphs (A)(vii) and (E)(i) of subsection (h)(1); and

(B) in subparagraphs (A) and (B)(ii) of subsection (k)(3);

(3) section 17(b)(1)(B)(vi);

(4) section 18(a); and

(5) section 19(a)(2)(A)(ii);

by striking "2007" each place it appears and inserting "2011".

SEC. 1602. AVAILABILITY OF COMMODITIES FOR THE EMERGENCY FOOD ASSISTANCE PROGRAM.

Section 27(a) of the Food Stamp Act of 1977 (7 U.S.C. 2036(a)) is amended—

(1) by striking "2007," and inserting "2005 and for each of the fiscal years 2007 through 2011";

(2) by inserting ", and for fiscal year 2006 the Secretary shall purchase $152,000,000," before "of a variety"; and

(3) by adding at the end the following:

"Of the funds used to purchase commodities in accordance with this subsection for fiscal year 2006, $12,000,000 shall be used to purchase commodities for distribution to States that received a Presidential designation of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206) as a result of Hurricane Katrina or Hurricane Rita and States contiguous to those States.".

SEC. 1603. RESIDENCY REQUIREMENT.

Section 402(a)(2)(L) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(L)) is amended by striking "5 years or more" and inserting "7 years or more effective until September 30, 2010, and for a period of 5 years or more effective beginning on October 1, 2010,".

SEC. 1604. DISASTER FOOD STAMP PROGRAM.

Notwithstanding section 16(a) of the Food Stamp Act of 1977 (7 U.S.C. 2025(a)), the Secretary of Agriculture is authorized, at the discretion of the Secretary, to pay to State agencies 100 percent of the administrative costs incurred in the certification of, and issuance of benefits to, applicant households that become eligible to receive food stamp benefits under the disaster food stamp program eligibility standards in effect during the Presidentially declared emergency in response to Hurricane Katrina or Hurricane Rita.

TITLE II—COMMITTEE ON EDUCATION AND THE WORKFORCE

SECTION 2000. TABLE OF CONTENTS.

The table of contents of this title is as follows:

TITLE II—COMMITTEE ON EDUCATION AND THE WORKFORCE

Sec. 2000. Table of contents.

Subtitle A—Welfare Reform

PART 1—SHORT TITLE; REFERENCES

Sec. 2001. Short title.
Sec. 2002. References.

PART 2—TANF

Sec. 2011. Universal engagement and family self-sufficiency plan requirements.
Sec. 2012. Work participation requirements.
Sec. 2013. Work-related performance improvement.
Sec. 2014. Report on coordination.
Sec. 2015. Fatherhood program.
Sec. 2016. State option to make TANF programs mandatory partners with one-stop employment training centers.
Sec. 2017. Sense of the Congress.
Sec. 2018. Prohibition on offshoring.

PART 3—CHILD CARE

Sec. 2021. Short title.
Sec. 2022. Goals.
Sec. 2023. Authorization of appropriations.
Sec. 2024. Application and plan.
Sec. 2025. Activities to improve the quality of child care.
Sec. 2026. Reports and audits.
Sec. 2027. Report by Secretary.

Sec. 2028. Definitions.
Sec. 2029. Waiver authority to expand the availability of services under Child Care and Development Block Grant Act of 1990.

PART 4—STATE AND LOCAL FLEXIBILITY

Sec. 2041. Program coordination demonstration projects.

PART 5—EFFECTIVE DATE

Sec. 2051. Effective date.

Subtitle B—Higher Education

Sec. 2101. Short title.

PART 1—AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

Sec. 2111. References; effective date.
Sec. 2112. Modification of 50/50 Rule.
Sec. 2113. Reauthorization of Federal Family Education Loan Program.
Sec. 2114. Loan limits.
Sec. 2115. Interest rates and special allowances.
Sec. 2116. Additional loan terms and conditions.
Sec. 2117. Consolidation loan changes.
Sec. 2118. Deferment of student loans for military service.
Sec. 2119. Loan forgiveness for service in areas of national need.
Sec. 2120. Unsubsidized Stafford loans.
Sec. 2121. Elimination of termination dates from Taxpayer-Teacher Protection Act of 2004.
Sec. 2122. Loan fees from lenders.
Sec. 2123. Additional administrative provisions.
Sec. 2124. Funds for administrative expenses.
Sec. 2125. Significantly simplifying the student aid application process.
Sec. 2126. Additional need analysis amendments.
Sec. 2127. Definition of eligible program.
Sec. 2128. Distance education.
Sec. 2129. Student eligibility.
Sec. 2130. Institutional refunds.
Sec. 2131. College access initiative.
Sec. 2132. Cancellation of Student Loan Indebtedness For Survivors of Victims of the September 11, 2001, Attacks.
Sec. 2133. Independent evaluation of distance education programs.
Sec. 2134. Disbursement of student loans.

PART 2—HIGHER EDUCATION RELIEF

Sec. 2141. References.
Sec. 2142. Waivers and modifications.
Sec. 2143. Cancellation of institutional repayment by colleges and universities affected by a Gulf hurricane disaster.
Sec. 2144. Cancellation of student loans for cancelled enrollment periods.
Sec. 2145. Temporary deferment of student loan repayment.
Sec. 2146. No affect on grant and loan limits.
Sec. 2147. Teacher loan relief.
Sec. 2148. Expanding information dissemination regarding eligibility for Pell Grants.
Sec. 2149. Procedures.
Sec. 2150. Termination of authority.
Sec. 2151. Definitions.

Subtitle C—Pensions

Sec. 2201. Increases in PBGC premiums.

Subtitle A—Welfare Reform

PART 1—SHORT TITLE; REFERENCES

SEC. 2001. SHORT TITLE.

This subtitle may be cited as the "Personal Responsibility, Work, and Family Promotion Act of 2005".

SEC. 2002. REFERENCES.

Except as otherwise expressly provided, wherever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Social Security Act.

PART 2—TANF

SEC. 2011. UNIVERSAL ENGAGEMENT AND FAMILY SELF-SUFFICIENCY PLAN REQUIREMENTS.

(a) MODIFICATION OF STATE PLAN REQUIREMENTS.—Section 402(a)(1)(A) (42 U.S.C. 602(a)(1)(A)) is amended by striking clauses (ii) and (iii) and inserting the following:

"(ii) Require a parent or caretaker receiving assistance under the program to engage in work or alternative self-sufficiency activities (as defined by the State), consistent with section 407(e)(2).

"(iii) Require families receiving assistance under the program to engage in activities in accordance with family self-sufficiency plans developed pursuant to section 408(b).".

(b) ESTABLISHMENT OF FAMILY SELF-SUFFICIENCY PLANS.—

(1) IN GENERAL.—Section 408(b) (42 U.S.C. 608(b)) is amended to read as follows:

"(b) FAMILY SELF-SUFFICIENCY PLANS.—

"(1) IN GENERAL.—A State to which a grant is made under section 403 shall—

"(A) assess, in the manner deemed appropriate by the State, the skills, prior work experience, and employability of each work-eligible individual (as defined in section 407(b)(2)(C)) receiving assistance under the State program funded under this part;

"(B) establish for each family that includes such an individual, in consultation as the State deems appropriate with the individual, a self-sufficiency plan that specifies appropriate activities described in the State plan submitted pursuant to section 402, including direct work activities as appropriate designed to assist the family in achieving their maximum degree of self-sufficiency, and that provides for the ongoing participation of the individual in the activities;

"(C) require, at a minimum, each such individual to participate in activities in accordance with the self-sufficiency plan;

"(D) monitor the participation of each such individual in the activities specified in the self-sufficiency plan, and regularly review the progress of the family toward self-sufficiency;

"(E) upon such a review, revise the self-sufficiency plan and activities as the State deems appropriate.

"(2) TIMING.—The State shall comply with paragraph (1) with respect to a family—

"(A) in the case of a family that, as of October 1, 2005, is not receiving assistance from the State program funded under this part, not later than 60 days after the family first receives assistance on the basis of the most recent application for the assistance; or

"(B) in the case of a family that, as of such date, is receiving the assistance, not later than 12 months after the date of enactment of this subsection.

"(3) STATE DISCRETION.—A State shall have sole discretion, consistent with section 407, to define and design activities for families for purposes of this subsection, to develop methods for monitoring and reviewing progress pursuant to this subsection, and to make modifications to the plan as the State deems appropriate to assist the individual in increasing their degree of self-sufficiency.

"(4) RULE OF INTERPRETATION.—Nothing in this part shall preclude a State from--

"(A) requiring participation in work and any other activities the State deems appropriate for helping families achieve self-sufficiency and improving child well-being; or

"(B) using job search or other appropriate job readiness or work activities to assess the employability of individuals and to determine appropriate future engagement activities.".

(2) PENALTY FOR FAILURE TO ESTABLISH FAMILY SELF-SUFFICIENCY PLAN.—Section 409(a)(3) (42 U.S.C. 609(a)(3)) is amended—

(A) in the paragraph heading, by inserting "OR ESTABLISH FAMILY SELF-SUFFICIENCY PLAN" after "RATES"; and

(B) in subparagraph (A), by inserting "or 408(b)" after "407(a)".

SEC. 2012. WORK PARTICIPATION REQUIREMENTS.

(a) ELIMINATION OF SEPARATE PARTICIPATION RATE REQUIREMENTS FOR 2-PARENT FAMILIES.—

(1) Section 407 (42 U.S.C. 607) is amended in each of subsections (a) and (b) by striking paragraph (2).

(2) Section 407(b)(4) (42 U.S.C. 607(b)(4)) is amended by striking "paragraphs (1)(B) and (2)(B)" and inserting "paragraph (1)(B)".

(3) Section 407(c)(1) (42 U.S.C. 607(c)(1)) is amended by striking subparagraph (B).

(4) Section 407(c)(2)(D) (42 U.S.C. 607(c)(2)(D)) is amended by striking "paragraphs (1)(B)(i) and (2)(B) of subsection (b)" and inserting "subsection (b)(1)(B)(i)".

(b) WORK PARTICIPATION REQUIREMENTS.—Section 407 (42 U.S.C. 607) is amended by striking all that precedes subsection (b)(3) and inserting the following:

"SEC. 407. WORK PARTICIPATION REQUIREMENTS.

"(a) PARTICIPATION RATE REQUIREMENTS.—A State to which a grant is made under section 403 for a fiscal year shall achieve a minimum participation rate equal to not less than—

"(1) 50 percent for fiscal year 2006;

"(2) 55 percent for fiscal year 2007;

"(3) 60 percent for fiscal year 2008;

"(4) 65 percent for fiscal year 2009; and

"(5) 70 percent for fiscal year 2010 and each succeeding fiscal year.

"(b) CALCULATION OF PARTICIPATION RATES.—

"(1) AVERAGE MONTHLY RATE.—For purposes of subsection (a), the participation rate of a State for a fiscal year is the average of the participation rates of the State for each month in the fiscal year.

"(2) MONTHLY PARTICIPATION RATES; INCORPORATION OF 40-HOUR WORK WEEK STANDARD.—

"(A) IN GENERAL.—For purposes of paragraph (1), the participation rate of a State for a month is—

"(i) the total number of countable hours (as defined in subsection (c)) with respect to the counted families for the State for the month; divided by

"(ii) 160 multiplied by the number of counted families for the State for the month.

"(B) COUNTED FAMILIES DEFINED.—

"(i) IN GENERAL.—In subparagraph (A), the term 'counted family' means, with respect to a State and a month, a family that includes a work-eligible individual and that receives assistance in the month under the State program funded under this part, subject to clause (ii).

"(ii) STATE OPTION TO EXCLUDE CERTAIN FAMILIES.—At the option of a State, the term 'counted family' shall not include—

"(I) a family in the first month for which the family receives assistance from a State program funded under this part on the basis of the most recent application for such assistance;

"(II) on a case-by-case basis, a family in which the youngest child has not attained 12 months of age; or

"(III) a family that is subject to a sanction under this part or part D, but that has not been subject to such a sanction for more than 3 months (whether or not consecutive) in the preceding 12-month period.

"(iii) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN OR TRIBAL WORK PROGRAM.—At the option of a State, the term 'counted family' may include families in the State that are receiving assistance under a trib-

al family assistance plan approved under section 412 or under a tribal work program to which funds are provided under this part.

"(C) WORK-ELIGIBLE INDIVIDUAL DEFINED.—In this section, the term 'work-eligible individual' means an individual—

"(i) who is married or a single head of household; and

"(ii) whose needs are (or, but for sanctions under this part or part D, would be) included in determining the amount of cash assistance to be provided to the family under the State program funded under this part.".

(c) RECALIBRATION OF CASELOAD REDUCTION CREDIT.—

(1) IN GENERAL.—Section 407(b)(3)(A)(ii) (42 U.S.C. 607(b)(3)(A)(ii)) is amended to read as follows:

"(ii) the average monthly number of families that received assistance under the State program funded under this part during the base year.".

(2) CONFORMING AMENDMENT.—Section 407(b)(3)(B) (42 U.S.C. 607(b)(3)(B)) is amended by striking "and eligibility criteria" and all that follows through the close parenthesis and inserting "and the eligibility criteria in effect during the then applicable base year".

(3) BASE YEAR DEFINED.—Section 407(b)(3) (42 U.S.C. 607(b)(3)) is amended by adding at the end the following:

"(C) BASE YEAR DEFINED.—In this paragraph, the term 'base year' means, with respect to a fiscal year—

"(i) if the fiscal year is fiscal year 2006, fiscal year 1996;

"(ii) if the fiscal year is fiscal year 2007, fiscal year 1998;

"(iii) if the fiscal year is fiscal year 2008, fiscal year 2001; or

"(iv) if the fiscal year is fiscal year 2009 or any succeeding fiscal year, the then 4th preceding fiscal year.".

(d) SUPERACHIEVER CREDIT.—Section 407(b) (42 U.S.C. 607(b)) is amended by striking paragraphs (4) and (5) and inserting the following:

"(4) SUPERACHIEVER CREDIT.—

"(A) IN GENERAL.—The participation rate, determined under paragraphs (1) and (2) of this subsection, of a superachiever State for a fiscal year shall be increased by the lesser of—

"(i) the amount (if any) of the superachiever credit applicable to the State; or

"(ii) the number of percentage points (if any) by which the minimum participation rate required by subsection (a) for the fiscal year exceeds 50 percent.

"(B) SUPERACHIEVER STATE.—For purposes of subparagraph (A), a State is a superachiever State if the State caseload for fiscal year 2001 has declined by at least 60 percent from the State caseload for fiscal year 1995.

"(C) AMOUNT OF CREDIT.—The superachiever credit applicable to a State is the number of percentage points (if any) by which the decline referred to in subparagraph (B) exceeds 60 percent.

"(D) DEFINITIONS.—In this paragraph:

"(i) STATE CASELOAD FOR FISCAL YEAR 2001.—The term 'State caseload for fiscal year 2001' means the average monthly number of families that received assistance during fiscal year 2001 under the State program funded under this part.

"(ii) STATE CASELOAD FOR FISCAL YEAR 1995.—The term 'State caseload for fiscal year 1995' means the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.".

(e) COUNTABLE HOURS.—Section 407 (42 U.S.C. 607) is amended by striking subsections (c) and (d) and inserting the following:

"(c) COUNTABLE HOURS.—

"(1) DEFINITION.—In subsection (b)(2), the term 'countable hours' means, with respect to a family for a month, the total number of hours in the month in which any member of the family who is a work-eligible individual is engaged in a direct work activity or other activities specified by the State (excluding an activity that does not address a purpose specified in section 401(a)), subject to the other provisions of this subsection.

"(2) LIMITATIONS.—Subject to such regulations as the Secretary may prescribe:

"(A) MINIMUM WEEKLY AVERAGE OF 24 HOURS OF DIRECT WORK ACTIVITIES REQUIRED.—If the work-eligible individuals in a family are engaged in a direct work activity for an average total of fewer than 24 hours per week in a month, then the number of countable hours with respect to the family for the month shall be zero.

"(B) MAXIMUM WEEKLY AVERAGE OF 16 HOURS OF OTHER ACTIVITIES.—An average of not more than 16 hours per week of activities specified by the State (subject to the exclusion described in paragraph (1)) may be considered countable hours in a month with respect to a family.

"(3) SPECIAL RULES.—For purposes of paragraph (1):

"(A) PARTICIPATION IN QUALIFIED ACTIVITIES.—

"(i) IN GENERAL.—If, with the approval of the State, the work-eligible individuals in a family are engaged in 1 or more qualified activities for an average total of at least 24 hours per week in a month, then all such engagement in the month shall be considered engagement in a direct work activity, subject to clause (iii).

"(ii) QUALIFIED ACTIVITY DEFINED.—The term 'qualified activity' means an activity specified by the State (subject to the exclusion described in paragraph (1)) that meets such standards and criteria as the State may specify, including—

"(I) substance abuse counseling or treatment;

"(II) rehabilitation treatment and services;

"(III) work-related education or training directed at enabling the family member to work;

"(IV) job search or job readiness assistance; and

"(V) any other activity that addresses a purpose specified in section 401(a).

"(iii) LIMITATION.—

"(I) IN GENERAL.—Except as provided in subclause (II), clause (i) shall not apply to a family for more than 3 months in any period of 24 consecutive months.

"(II) SPECIAL RULE APPLICABLE TO EDUCATION AND TRAINING.—A State may, on a case-by-case basis, apply clause (i) to a work-eligible individual so that participation by the individual in education or training, if needed to permit the individual to complete a certificate program or other work-related education or training directed at enabling the individual to fill a known job need in a local area, may be considered countable hours with respect to the family of the individual for not more than 4 months in any period of 24 consecutive months.

"(B) SCHOOL ATTENDANCE BY TEEN HEAD OF HOUSEHOLD.—The work-eligible members of a family shall be considered to be engaged in a direct work activity for an average of 40 hours per week in a month if the family includes an individual who is married, or is a single head of household, who has not attained 20 years of age, and the individual—

"(i) maintains satisfactory attendance at secondary school or the equivalent in the month; or

"(ii) participates in education directly related to employment for an average of at least 20 hours per week in the month.

"(C) PARENTAL PARTICIPATION IN SCHOOLS.—Each work-eligible individual in a family shall make verified visits at least twice per school year to the school of each of the individual's minor dependent children required to attend school under the law of the State in which the minor children reside, during the period in which the family receives assistance under the program funded under this part. Hours spent in such activity may be specified by the State as countable hours for purposes of paragraph (2)(B).

"(d) DIRECT WORK ACTIVITY.—In this section, the term 'direct work activity' means—

"(1) unsubsidized employment;

"(2) subsidized private sector employment;

"(3) subsidized public sector employment;

"(4) on-the-job training;

"(5) supervised work experience; or

"(6) supervised community service.".

(f) PENALTIES AGAINST INDIVIDUALS.—Section 407(e)(1) (42 U.S.C. 607(e)(1)) is amended to read as follows:

"(1) REDUCTION OR TERMINATION OF ASSISTANCE.—

"(A) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under a State program funded under this part fails to engage in activities required in accordance with this section, or other activities required by the State under the program, and the family does not otherwise engage in activities in accordance with the self-sufficiency plan established for the family pursuant to section 408(b), the State shall—

"(i) if the failure is partial or persists for not more than 1 month—

"(I) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the failure occurs; or

"(II) terminate all assistance to the family, subject to such good cause exceptions as the State may establish; or

"(ii) if the failure is total and persists for at least 2 consecutive months, terminate all cash payments to the family including qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for at least 1 month and thereafter until the State determines that the individual has resumed full participation in the activities, subject to such good cause exceptions as the State may establish.

"(B) SPECIAL RULE.—

"(i) IN GENERAL.—In the event of a conflict between a requirement of clause (i)(II) or (ii) of subparagraph (A) and a requirement of a State constitution, or of a State statute that, before 1966, obligated local government to provide assistance to needy parents and children, the State constitutional or statutory requirement shall control.

"(ii) LIMITATION.—Clause (i) of this subparagraph shall not apply after the 1-year period that begins with the date of the enactment of this subparagraph.".

(g) CONFORMING AMENDMENTS.—

(1) Section 407(f) (42 U.S.C. 607(f)) is amended in each of paragraphs (1) and (2) by striking "work activity described in subsection (d)" and inserting "direct work activity".

(2) The heading of section 409(a)(14) (42 U.S.C. 609(a)(14)) is amended by inserting "OR REFUSING TO ENGAGE IN ACTIVITIES UNDER A FAMILY SELF-SUFFICIENCY PLAN" after "WORK".

SEC. 2013. WORK-RELATED PERFORMANCE IMPROVEMENT.

(a) STATE PLANS.—Section 402(a)(1) (42 U.S.C. 602(a)) is amended—

(1) in subparagraph (A), by adding at the end the following:

"(vii) The document shall—

"(I) describe how the State will pursue ending dependence of needy families on government benefits and reducing poverty by promoting job preparation and work;

"(II) include specific, numerical, and measurable performance objectives for accomplishing subclause (I); and

"(III) describe the methodology that the State will use to measure State performance in relation to each such objective.

"(viii) Describe any strategies and programs the State may be undertaking to address—

"(I) employment retention and advancement for recipients of assistance under the program, including placement into high-demand jobs, and whether the jobs are identified using labor market information;

"(II) services for struggling and noncompliant families, and for clients with special problems; and

"(III) program integration, including the extent to which employment and training services under the program are provided through the One-Stop delivery system created under the Workforce Investment Act of 1998, and the extent to which former recipients of such assistance have access to additional core, intensive, or training services funded through such Act."; and

(2) in subparagraph (B), by striking clause (iv).

(b) REPORT ON ANNUAL PERFORMANCE IMPROVEMENT.—Section 411 (42 U.S.C. 611) is amended by adding at the end the following:

"(c) ANNUAL REPORT ON PERFORMANCE IMPROVEMENT.—Beginning with fiscal year 2007, not later than January 1 of each fiscal year, each eligible State shall submit to the Secretary a report on achievement and improvement during the preceding fiscal year under the numerical performance goals and measures under the State program funded under this part with respect to the matter described in section 402(a)(1)(A)(vii).".

(c) ANNUAL RANKING OF STATES.—Section 413(d)(1) (42 U.S.C. 613(d)(1)) is amended by striking "long-term private sector jobs," and inserting "private sector jobs, the success of the recipients in retaining employment, the ability of the recipients to increase their wages,".

(d) PERFORMANCE IMPROVEMENT.—Section 413 (42 U.S.C. 613) is amended by adding at the end the following:

"(k) PERFORMANCE IMPROVEMENT.—The Secretary, in consultation with States, shall develop uniform performance measures designed to assess the degree of effectiveness, and the degree of improvement, of State programs funded under this part in accomplishing the work-related purposes of this part.".

SEC. 2014. REPORT ON COORDINATION.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services and the Secretary of Labor shall jointly submit a report to the Congress describing common or conflicting data elements, definitions, performance measures, and reporting requirements in the Workforce Investment Act of 1998 and part A of title IV of the Social Security Act, and, to the degree each Secretary deems appropriate, at the

discretion of either Secretary, any other program administered by the respective Secretary, to allow greater coordination between the welfare and workforce development systems.

SEC. 2015. FATHERHOOD PROGRAM.

(a) SHORT TITLE.—This section may be cited as the "Promotion and Support of Responsible Fatherhood and Healthy Marriage Act of 2005".

(b) FATHERHOOD PROGRAM.—

(1) IN GENERAL.—Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193) is amended by adding at the end the following:

"SEC. 117. FATHERHOOD PROGRAM.

"(a) IN GENERAL.—Title IV (42 U.S.C. 601–679b) is amended by inserting after part B the following:

'PART C—FATHERHOOD PROGRAM

'SEC. 441. FINDINGS AND PURPOSES.

'(a) FINDINGS.—The Congress finds that there is substantial evidence strongly indicating the urgent need to promote and support involved, committed, and responsible fatherhood, and to encourage and support healthy marriages between parents raising children, including data demonstrating the following:

'(1) In approximately 84 percent of cases where a parent is absent, that parent is the father.

'(2) If current trends continue, half of all children born today will live apart from one of their parents, usually their father, at some point before they turn 18.

'(3) Where families (whether intact or with a parent absent) are living in poverty, a significant factor is the father's lack of job skills.

'(4) Committed and responsible fathering during infancy and early childhood contributes to the development of emotional security, curiosity, and math and verbal skills.

'(5) An estimated 19,400,000 children (27 percent) live apart from their biological father.

'(6) Forty percent of children under age 18 not living with their biological father had not seen their father even once in the last 12 months, according to national survey data.

'(b) PURPOSES.—The purposes of this part are:

'(1) To provide for projects and activities by public entities and by nonprofit community entities, including religious organizations, designed to test promising approaches to accomplishing the following objectives:

'(A) Promoting responsible, caring, and effective parenting through counseling, mentoring, and parenting education, dissemination of educational materials and information on parenting skills, encouragement of positive father involvement, including the positive involvement of nonresident fathers, and other methods.

'(B) Enhancing the abilities and commitment of unemployed or low-income fathers to provide material support for their families and to avoid or leave welfare programs

by assisting them to take full advantage of education, job training, and job search programs, to improve work habits and work skills, to secure career advancement by activities such as outreach and information dissemination, coordination, as appropriate, with employment services and job training programs, including the One-Stop delivery system established under title I of the Workforce Investment Act of 1998, encouragement and support of timely payment of current child support and regular payment toward past due child support obligations in appropriate cases, and other methods.

'(C) Improving fathers' ability to effectively manage family business affairs by means such as education, counseling, and mentoring in matters including household management, budgeting, banking, and handling of financial transactions, time management, and home maintenance.

'(D) Encouraging and supporting healthy marriages and married fatherhood through such activities as premarital education, including the use of premarital inventories, marriage preparation programs, skills-based marriage education programs, marital therapy, couples counseling, divorce education and reduction programs, divorce mediation and counseling, relationship skills enhancement programs, including those designed to reduce child abuse and domestic violence, and dissemination of information about the benefits of marriage for both parents and children.

'(2) Through the projects and activities described in paragraph (1), to improve outcomes for children with respect to measures such as increased family income and economic security, improved school performance, better health, improved emotional and behavioral stability and social adjustment, and reduced risk of delinquency, crime, substance abuse, child abuse and neglect, teen sexual activity, and teen suicide.

'(3) To evaluate the effectiveness of various approaches and to disseminate findings concerning outcomes and other information in order to encourage and facilitate the replication of effective approaches to accomplishing these objectives.

'SEC. 442. DEFINITIONS.

'In this part, the terms "Indian tribe" and "tribal organization" have the meanings given them in subsections (e) and (l), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act.

'SEC. 443. COMPETITIVE GRANTS FOR SERVICE PROJECTS.

'(a) IN GENERAL.—The Secretary may make grants for fiscal years 2006 through 2010 to public and nonprofit community entities, including religious organizations, and to Indian tribes and tribal organizations, for demonstration service projects and activities designed to test the effectiveness of various approaches to accomplish the objectives specified in section 441(b)(1).

'(b) ELIGIBILITY CRITERIA FOR FULL SERVICE GRANTS.—In order to be eligible for a grant under this section, except as specified in

subsection (c), an entity shall submit an application to the Secretary containing the following:

'(1) PROJECT DESCRIPTION.—A statement including—

'(A) a description of the project and how it will be carried out, including the geographical area to be covered and the number and characteristics of clients to be served, and how it will address each of the 4 objectives specified in section 441(b)(1); and

'(B) a description of the methods to be used by the entity or its contractor to assess the extent to which the project was successful in accomplishing its specific objectives and the general objectives specified in section 441(b)(1).

'(2) EXPERIENCE AND QUALIFICATIONS.—A demonstration of ability to carry out the project, by means such as demonstration of experience in successfully carrying out projects of similar design and scope, and such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

'(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

'(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

'(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs under parts A, B, and D of this title, including programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

'(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(7) SELF-INITIATED EVALUATION.—If the entity elects to contract for independent evaluation of the project (part or all of the cost of which may be paid for using grant funds), a commitment to submit to the Secretary a copy of the evaluation report within 30 days after completion of the report and not more than 1 year after completion of the project.

'(8) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including random assignment of clients to service recipient and control

groups, if determined by the Secretary to be appropriate, and affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(c) ELIGIBILITY CRITERIA FOR LIMITED PURPOSE GRANTS.—In order to be eligible for a grant under this section in an amount under $25,000 per fiscal year, an entity shall submit an application to the Secretary containing the following:

'(1) PROJECT DESCRIPTION.—A description of the project and how it will be carried out, including the number and characteristics of clients to be served, the proposed duration of the project, and how it will address at least 1 of the 4 objectives specified in section 441(b)(1).

'(2) QUALIFICATIONS.—Such information as the Secretary may require as to the capacity of the entity to carry out the project, including any previous experience with similar activities.

'(3) COORDINATION WITH RELATED PROGRAMS.—As required by the Secretary in appropriate cases, an undertaking to coordinate and cooperate with State and local entities responsible for specific programs relating to the objectives of the project including, as appropriate, jobs programs and programs serving children and families.

'(4) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(5) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(d) CONSIDERATIONS IN AWARDING GRANTS.—

'(1) DIVERSITY OF PROJECTS.—In awarding grants under this section, the Secretary shall seek to achieve a balance among entities of differing sizes, entities in differing geographic areas, entities in urban and in rural areas, and entities employing differing methods of achieving the purposes of this section, including working with the State agency responsible for the administration of part D to help fathers satisfy child support arrearage obligations.

'(2) PREFERENCE FOR PROJECTS SERVING LOW-INCOME FATHERS.—In awarding grants under this section, the Secretary may give preference to applications for projects in which a majority of the clients to be served are low-income fathers.

'(e) FEDERAL SHARE.—

'(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for a share of the cost of such project in such fiscal year equal to—

'(A) up to 80 percent (or up to 90 percent, if the entity demonstrates to the Secretary's satisfaction circumstances limiting the entity's ability to secure non-Federal resources) in the case of a project under subsection (b); and

'(B) up to 100 percent, in the case of a project under subsection (c).

'(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

'SEC. 444. MULTICITY, MULTISTATE DEMONSTRATION PROJECTS.

'(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for 2 multicity, multistate projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). One of the projects shall test the use of married couples to deliver program services.

'(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

'(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

'(2) EXPERIENCE WITH MULTICITY, MULTISTATE PROGRAMS AND GOVERNMENT COORDINATION.—The organization must have experience in simultaneously conducting such programs in more than 1 major metropolitan area in more than 1 State and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

'(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

'(1) QUALIFICATIONS.—

'(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

'(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

'(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

'(A) IN GENERAL.—A detailed description of the proposed project design and how it will be carried out, which shall—

'(i) provide for the project to be conducted in at least 3 major metropolitan areas;

'(ii) state how it will address each of the 4 objectives specified in section 441(b)(1);

'(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

'(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving

low-income fathers (but the project need not make services available on a means-tested basis).

'(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

'(i) in consultation with the evaluator selected pursuant to section 446, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

'(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

'(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

'(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

'(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

'(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(d) FEDERAL SHARE.—

'(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

'(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

'SEC. 445. ECONOMIC INCENTIVE DEMONSTRATION PROJECTS.

'(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for two to five projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). Drawing on the success of economic-incentive programs in demonstrating strong employment effects for low-income mothers, projects shall test the use of economic incentives combined with a comprehensive approach to addressing employment barriers to encourage non-custodial parents to enter the workforce and to contribute financially and emotionally to their children. The Secretary may make grants based on the level of innovation, comprehensiveness, and likelihood to achieve the goal of increased employment by the applicant.

'(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

'(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

'(2) EXPERIENCE ADDRESSING MULTIPLE BARRIERS TO EMPLOYMENT.—The organization must have experience in conducting such programs and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

'(3) NEGOTIATED AGREEMENTS WITH STATE AND LOCAL AGENCIES FOR APPROPRIATE POLICY CHANGES TO ADDRESS BARRIERS TO EMPLOYMENT.—The organization must have agreements in place with State and local government agencies, including State or local agencies responsible for child support enforcement and workforce development, to incorporate appropriate policy changes proposed to address barriers to employment.

'(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

'(1) QUALIFICATIONS.—

'(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

'(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

'(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

'(A) IN GENERAL.—A detailed description of the proposed project design and how the project will be carried out, which shall—

'(i) state how the project will address each of the 4 objectives specified in section 441(b)(1);

'(ii) state how the project will address employment barriers across programs (such as child support, criminal justice, and workforce development programs) using both sanctions and compliance along with monetary incentives for obtaining employment, with earning subsidies contingent upon work and child support payment;

'(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

'(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving low-income fathers (but the project need not make services available on a means-tested basis).

'(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

'(i) in consultation with the evaluator selected pursuant to section 446, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

'(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

'(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

'(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate

with providers of services addressing such problems, as appropriate.

'(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

'(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(d) FEDERAL SHARE.—

'(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

'(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

'SEC. 446. EVALUATION.

'(a) IN GENERAL.—The Secretary, directly or by contract or cooperative agreement, shall evaluate the effectiveness of service projects funded under sections 443 and 444 from the standpoint of the purposes specified in section 441(b)(1).

'(b) EVALUATION METHODOLOGY.—Evaluations under this section shall—

'(1) include, to the maximum extent feasible, random assignment of clients to service delivery and control groups and other appropriate comparisons of groups of individuals receiving and not receiving services;

'(2) describe and measure the effectiveness of the projects in achieving their specific project goals; and

'(3) describe and assess, as appropriate, the impact of such projects on marriage, parenting, domestic violence, child abuse and neglect, money management, employment and earnings, payment of child support, and child well-being, health, and education.

'(c) EVALUATION REPORTS.—The Secretary shall publish the following reports on the results of the evaluation:

'(1) An implementation evaluation report covering the first 24 months of the activities under this part to be completed by 36 months after initiation of such activities.

'(2) A final report on the evaluation to be completed by September 30, 2013.

'SEC. 447. PROJECTS OF NATIONAL SIGNIFICANCE.

'The Secretary is authorized, by grant, contract, or cooperative agreement, to carry out projects and activities of national significance relating to fatherhood promotion, including—

'(1) COLLECTION AND DISSEMINATION OF INFORMATION.—Assisting States, communities, and private entities, including re-

ligious organizations, in efforts to promote and support marriage and responsible fatherhood by collecting, evaluating, developing, and making available (through the Internet and by other means) to all interested parties information regarding approaches to accomplishing the objectives specified in section 441(b)(1).

'(2) MEDIA CAMPAIGN.—Developing, promoting, and distributing to interested States, local governments, public agencies, and private nonprofit organizations, including charitable and religious organizations, a media campaign that promotes and encourages involved, committed, and responsible fatherhood and married fatherhood.

'(3) TECHNICAL ASSISTANCE.—Providing technical assistance, including consultation and training, to public and private entities, including community organizations and faith-based organizations, in the implementation of local fatherhood promotion programs.

'(4) RESEARCH.—Conducting research related to the purposes of this part.

'SEC. 448. NONDISCRIMINATION.

'The projects and activities assisted under this part shall be available on the same basis to all fathers and expectant fathers able to benefit from such projects and activities, including married and unmarried fathers and custodial and noncustodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers on the same basis as to fathers.

'SEC. 449. AUTHORIZATION OF APPROPRIATIONS; RESERVATION FOR CERTAIN PURPOSE.

'(a) AUTHORIZATION.—There are authorized to be appropriated $20,000,000 for each of fiscal years 2006 through 2010 to carry out the provisions of this part.

'(b) RESERVATION.—Of the amount appropriated under this section for each fiscal year, not more than 35 percent shall be available for the costs of the multicity, multicounty, multistate demonstration projects under section 444, the economic incentives demonstration projects under section 445, evaluations under section 446, and projects of national significance under section 447, with not less than $5,000,000 allocated to the economic incentives demonstration project under section 445.'.

"(b) INAPPLICABILITY OF EFFECTIVE DATE PROVISIONS.—Section 116 shall not apply to the amendment made by subsection (a) of this section.".

(2) CLERICAL AMENDMENT.—Section 2 of such Act is amended in the table of contents by inserting after the item relating to section 116 the following new item:

"Sec. 117. Fatherhood program.".

SEC. 2016. STATE OPTION TO MAKE TANF PROGRAMS MANDATORY PARTNERS WITH ONE-STOP EMPLOYMENT TRAINING CENTERS.

Section 408 (42 U.S.C. 608) is amended by adding at the end the following:

"(h) STATE OPTION TO MAKE TANF PROGRAMS MANDATORY PARTNERS WITH ONE-STOP EMPLOYMENT TRAINING CENTERS.—For pur-

poses of section 121(b) of the Workforce Investment Act of 1998, a State program funded under part A of title IV of the Social Security Act shall be considered a program referred to in paragraph (1)(B) of such section, unless, after the date of the enactment of this subsection, the Governor of the State notifies the Secretaries of Health and Human Services and Labor in writing of the decision of the Governor not to make the State program a mandatory partner.".

SEC. 2017. SENSE OF THE CONGRESS.

It is the sense of the Congress that a State welfare-to-work program should include a mentoring program.

SEC. 2018. PROHIBITION ON OFFSHORING.

Section 408(a) (42 U.S.C. 608(a)) is amended by adding at the end the following:

"(12) PROHIBITION ON OFFSHORING.—A State to which a grant is made under section 403 shall not use any part of the grant—

"(A) to enter into a contract with an entity that, directly or through a subcontractor, provides any service, activity or function described under this part at a location outside the United States; or

"(B) to reduce employment in the United States through use of 1 or more employees outside the United States.".

PART 3—CHILD CARE

SEC. 2021. SHORT TITLE.

This part may be cited as the "Caring for Children Act of 2005".

SEC. 2022. GOALS.

(a) GOALS.—Section 658A(b) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9801 note) is amended—

(1) in paragraph (3) by striking "encourage" and inserting "assist",

(2) by amending paragraph (4) to read as follows:

"(4) to assist States to provide child care to low-income parents;",

(3) by redesignating paragraph (5) as paragraph (7), and

(4) by inserting after paragraph (4) the following:

"(5) to encourage States to improve the quality of child care available to families;

"(6) to promote school readiness by encouraging the exposure of young children in child care to nurturing environments and developmentally-appropriate activities, including activities to foster early cognitive and literacy development; and".

(b) CONFORMING AMENDMENT.—Section 658E(c)(3)(B) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(c)(3)(B)) is amended by striking "through (5)" and inserting "through (7)".

SEC. 2023. AUTHORIZATION OF APPROPRIATIONS.

Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking "is" and inserting "are", and

(2) by striking "$1,000,000,000 for each of the fiscal years 1996 through 2002" and inserting "$2,300,000,000 for fiscal year 2006, $2,500,000,000 for fiscal year 2007, $2,700,000,000 for fiscal year 2008, $2,900,000,000 for fiscal year 2009, and $3,100,000,000 for fiscal year 2010".

SEC. 2024. APPLICATION AND PLAN.

Section 658E(c)(2) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858C(c)(2)) is amended—

(1) by amending subparagraph (D) to read as follows:

"(D) CONSUMER AND CHILD CARE PROVIDER EDUCATION INFORMATION.—

"(i) CERTIFICATION.—Certify that the State will collect and disseminate, through resource and referral services and other means as determined by the State, to parents of eligible children, child care providers, and the general public, information regarding—

"(I) the promotion of informed child care choices, including information about the quality and availability of child care services;

"(II) research and best practices on children's development, including early cognitive development;

"(III) the availability of assistance to obtain child care services; and

"(IV) other programs for which families that receive child care services for which financial assistance is provided under this subchapter may be eligible, including the food stamp program, the WIC program under section 17 of the Child Nutrition Act of 1966, the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act, Head Start programs, Early Head Start programs, services and activities under section 619 and part C of the Individuals with Disabilities Education Act, and the medicaid and SCHIP programs under titles XIX and XXI of the Social Security Act.

"(ii) INFORMATION.—Information provided to parents shall be in plain language and, to the extent practicable, be in a language that such parents can understand.", and

(2) by inserting after subparagraph (H) the following:

"(I) COORDINATION WITH OTHER EARLY CHILD CARE SERVICES AND EARLY CHILDHOOD EDUCATION PROGRAMS.—Demonstrate how the State is coordinating child care services provided under this subchapter with Head Start programs, Early Head Start programs, Early Reading First, Even Start, Ready-To-Learn Television, services and activities under section 619 and part C of the Individuals with Disabilities Education Act, State pre-kindergarten programs, and other early childhood education programs to expand accessibility to and continuity of care and early education consistent with the goals of this Act, without displacing

services provided by the current early care and education delivery system.

"(J) PUBLIC-PRIVATE PARTNERSHIPS.—Demonstrate how the State encourages partnerships with private and other public entities to leverage existing service delivery systems of early childhood education and increase the supply and quality of child care services.

"(K) CHILD CARE SERVICE QUALITY.—

"(i) CERTIFICATION.—For each fiscal year after fiscal year 2006, certify that during the then preceding fiscal year the State was in compliance with section 658G and describe how funds were used to comply with such section during such preceding fiscal year.

"(ii) STRATEGY.—For each fiscal year after fiscal year 2006, contain an outline of the strategy the State will implement during such fiscal year for which the State plan is submitted, to address the quality of child care services in the State available from eligible child care providers, and include in such strategy—

"(I) a statement specifying how the State will address the activities described in paragraphs (1), (2), and (3) of section 658G;

"(II) a description of measures for evaluating the quality improvements generated by the activities listed in each of such paragraphs that the State will use to evaluate its progress in improving the quality of such child care services;

"(III) a list of State-developed child care service quality targets for such fiscal year quantified on the basis of such measures; and

"(IV) for each fiscal year after fiscal year 2006, a report on the progress made to achieve such targets during the then preceding fiscal year.

"(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to require that the State apply measures for evaluating quality to specific types of child care providers.

"(L) ACCESS TO CARE FOR CERTAIN POPULATIONS.—Demonstrate how the State is addressing the child care needs of parents eligible for child care services for which financial assistance is provided under this subchapter who have children with special needs, are limited English proficient, work nontraditional hours, or require child care services for infants or toddlers.".

SEC. 2025. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.

Section 658G of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858e) is amended to read as follows:

"SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE SERVICES.

"A State that receives funds to carry out this subchapter for a fiscal year, shall use not less than 6 percent of the amount of such funds for activities provided through resource and referral services and other means, that are designed to improve the quality of child

care services in the State available from eligible child care providers. Such activities include—

"(1) programs that provide training, education, and other professional development activities to enhance the skills of the child care workforce, including training opportunities for caregivers in informal care settings;

"(2) activities within child care settings to enhance early learning for young children, to promote early literacy, and to foster school readiness;

"(3) initiatives to increase the retention and compensation of child care providers, including tiered reimbursement rates for providers that meet quality standards as defined by the State; or

"(4) other activities deemed by the State to improve the quality of child care services provided in such State.".

SEC. 2026. REPORTS AND AUDITS.

Section 658K(a)(1)(B)(iii) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858i(a)(1)(B)(iii)) is amended by inserting "ethnicity, primary language," after "race,".

SEC. 2027. REPORT BY SECRETARY.

Section 658L of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858j) is amended to read as follows:

"SEC. 658L. REPORT BY SECRETARY.

"(a) REPORT REQUIRED.—Not later than October 1, 2007, and biennially thereafter, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report that contains the following:

"(1) A summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 658K.

"(2) Aggregated statistics on the supply of, demand for, and quality of child care, early education, and non-school-hours programs.

"(3) An assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

"(b) COLLECTION OF INFORMATION.—The Secretary may utilize the national child care data system available through resource and referral organizations at the local, State, and national level to collect the information required by subsection (a)(2).".

SEC. 2028. DEFINITIONS.

(a) ELIGIBLE CHILDREN.—Section 658P(4)(B) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858N(4)(B)) is amended by striking "85 percent of the State median income" and inserting "income levels as established by the State, prioritized by need,".

(b) LIMITED ENGLISH PROFICIENT.—Section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n) is amended—

(1) by redesignating paragraph (9) as paragraph (10); and

(2) by inserting after paragraph (8) the following:

"(9) LIMITED ENGLISH PROFICIENT.—The term 'limited English proficient' means with respect to an individual, that such individual—

"(A)(i) was not born in the United States or has a native language that is not English;

"(ii)(I) is a Native American, an Alaska Native, or a native resident of a territory or possession of the United States; and

"(II) comes from an environment in which a language that is not English has had a significant impact on such individual's level of English language proficiency; or

"(iii) is migratory, has a native language that is not English, and comes from an environment in which a language that is not English is dominant; and

"(B) has difficultly in speaking or understanding the English language to an extent that may be sufficient to deny such individual—

"(i) the ability to successfully achieve in classrooms in which the language of instruction is English; or

"(ii) the opportunity to fully participate in society.".

SEC. 2029. WAIVER AUTHORITY TO EXPAND THE AVAILABILITY OF SERVICES UNDER CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT OF 1990.

(a) WAIVER AUTHORITY.—For such period up to June 30, 2006, and to such extent as the Secretary considers to be appropriate, the Secretary of Health and Human Service may waive or modify, for any affected State, and any State serving significant numbers of individuals adversely affected by a Gulf hurricane disaster, provisions of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.)—

(1) relating to Federal income limitations on eligibility to receive child care services for which assistance is provided under such Act,

(2) relating to work requirements applicable to eligibility to receive child care services for which assistance is provided under such Act,

(3) relating to limitations on the use of funds under section 658G of the Child Care and Development Block Grant Act of 1990, and

(4) preventing children designated as evacuees from receiving priority for child care services provided under such Act, except that children residing in a State and currently receiving services should not lose such services in order to accommodate evacuee children,

for purposes of easing State fiscal burdens and providing child care services to children orphaned, or of families displaced, as a result of a Gulf hurricane disaster.

(b) DEFINITIONS.—For purposes of this section:

(1) AFFECTED STATE.—The term "affected State" means the State of Alabama, Florida, Louisiana, Mississippi, or Texas.

(2) GULF HURRICANE DISASTER.—The term "Gulf hurricane disaster" means a major disaster that the President declared to exist, in accordance with section 401 of the Robert T. Staf-

ford Disaster Relief and Emergency Assistance Act, and that was caused by Hurricane Katrina or Hurricane Rita.

(3) INDIVIDUAL ADVERSELY AFFECTED BY A GULF HURRICANE DISASTER.—The term "individual adversely affected by a Gulf hurricane disaster" means an individual who, on August 29, 2005, was living, working, or attending school in an area in which the President has declared to exist a Gulf hurricane disaster.

PART 4—STATE AND LOCAL FLEXIBILITY

SEC. 2041. PROGRAM COORDINATION DEMONSTRATION PROJECTS.

(a) PURPOSE.—The purpose of this section is to establish a program of demonstration projects in a State or portion of a State to coordinate multiple public assistance, workforce development, and other programs, for the purpose of supporting working individuals and families, helping families escape welfare dependency, promoting child well-being, or helping build stronger families, using innovative approaches to strengthen service systems and provide more coordinated and effective service delivery.

(b) DEFINITIONS.—In this section:

(1) ADMINISTERING SECRETARY.—The term "administering Secretary" means, with respect to a qualified program, the head of the Federal agency responsible for administering the program.

(2) QUALIFIED PROGRAM.—The term "qualified program" means—

(A) activities funded under title I of the Workforce Investment Act of 1998, except subtitle C of such title;

(B) a demonstration project authorized under section 505 of the Family Support Act of 1988;

(C) activities funded under the Wagner-Peyser Act;

(D) activities funded under the Adult Education and Family Literacy Act; or

(E) activities funded under the Child Care and Development Block Grant Act of 1990;

(c) APPLICATION REQUIREMENTS.—The head of a State entity or of a sub-State entity administering 2 or more qualified programs proposed to be included in a demonstration project under this section shall (or, if the project is proposed to include qualified programs administered by 2 or more such entities, the heads of the administering entities (each of whom shall be considered an applicant for purposes of this section) shall jointly) submit to the administering Secretary of each such program an application that contains the following:

(1) PROGRAMS INCLUDED.—A statement identifying each qualified program to be included in the project, and describing how the purposes of each such program will be achieved by the project.

(2) POPULATION SERVED.—A statement identifying the population to be served by the project and specifying the eligibility criteria to be used.

(3) DESCRIPTION AND JUSTIFICATION.—A detailed description of the project, including—

(A) a description of how the project is expected to improve or enhance achievement of the purposes of the programs to be included in the project, from the standpoint of quality, of cost-effectiveness, or of both; and

(B) a description of the performance objectives for the project, including any proposed modifications to the performance measures and reporting requirements used in the programs.

(4) WAIVERS REQUESTED.—A description of the statutory and regulatory requirements with respect to which a waiver is requested in order to carry out the project, and a justification of the need for each such waiver.

(5) COST NEUTRALITY.—Such information and assurances as necessary to establish to the satisfaction of the administering Secretary, in consultation with the Director of the Office of Management and Budget, that the proposed project is reasonably expected to meet the applicable cost neutrality requirements of subsection (d)(4).

(6) EVALUATION AND REPORTS.—An assurance that the applicant will conduct ongoing and final evaluations of the project, and make interim and final reports to the administering Secretary, at such times and in such manner as the administering Secretary may require.

(7) OTHER INFORMATION AND ASSURANCES.—Such other information and assurances as the administering Secretary may require.

(d) APPROVAL OF APPLICATIONS.—

(1) IN GENERAL.—The administering Secretary with respect to a qualified program that is identified in an application submitted pursuant to subsection (c) may approve the application and, except as provided in paragraph (2), waive any requirement applicable to the program, to the extent consistent with this section and necessary and appropriate for the conduct of the demonstration project proposed in the application, if the administering Secretary determines that the project—

(A) has a reasonable likelihood of achieving the objectives of the programs to be included in the project;

(B) may reasonably be expected to meet the applicable cost neutrality requirements of paragraph (4), as determined by the Director of the Office of Management and Budget; and

(C) includes the coordination of 2 or more qualified programs.

(2) PROVISIONS EXCLUDED FROM WAIVER AUTHORITY.—A waiver shall not be granted under paragraph (1)—

(A) with respect to any provision of law relating to—

(i) civil rights or prohibition of discrimination;

(ii) purposes or goals of any program;

(iii) maintenance of effort requirements;

(iv) health or safety;

(v) labor standards under the Fair Labor Standards Act of 1938; or

(vi) environmental protection;

(B) with respect to section 241(a) of the Adult Education and Family Literacy Act;

(C) in the case of a program under the Workforce Investment Act, with respect to any requirement the waiver of which would violate section 189(i)(4)(A)(i) of such Act;

(D) with respect to any requirement that a State pass through to a sub-State entity part or all of an amount paid to the State;

(E) if the waiver would waive any funding restriction or limitation provided in an appropriations Act, or would have the effect of transferring appropriated funds from 1 appropriations account to another; or

(F) except as otherwise provided by statute, if the waiver would waive any funding restriction applicable to a program authorized under an Act which is not an appropriations Act (but not including program requirements such as application procedures, performance standards, reporting requirements, or eligibility standards), or would have the effect of transferring funds from a program for which there is direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to another program.

(3) AGREEMENT OF EACH ADMINISTERING SECRETARY REQUIRED.—

(A) IN GENERAL.—An applicant may not conduct a demonstration project under this section unless each administering Secretary with respect to any program proposed to be included in the project has approved the application to conduct the project.

(B) AGREEMENT WITH RESPECT TO FUNDING AND IMPLEMENTATION.—Before approving an application to conduct a demonstration project under this section, an administering Secretary shall have in place an agreement with the applicant with respect to the payment of funds and responsibilities required of the administering Secretary with respect to the project.

(4) COST-NEUTRALITY REQUIREMENT.—

(A) GENERAL RULE.—Notwithstanding any other provision of law (except subparagraph (B)), the total of the amounts that may be paid by the Federal Government for a fiscal year with respect to the programs in the State in which an entity conducting a demonstration project under this section is located that are affected by the project shall not exceed the estimated total amount that the Federal Government would have paid for the fiscal year with respect to the programs if the project had not been conducted, as determined by the Director of the Office of Management and Budget.

(B) SPECIAL RULE.—If an applicant submits to the Director of the Office of Management and Budget a request to apply the rules of this subparagraph to the programs in the State in which the applicant is located that are affected by a demonstration project proposed in an application submitted by the applicant pursuant to this section,

during such period of not more than 5 consecutive fiscal years in which the project is in effect, and the Director determines, on the basis of supporting information provided by the applicant, to grant the request, then, notwithstanding any other provision of law, the total of the amounts that may be paid by the Federal Government for the period with respect to the programs shall not exceed the estimated total amount that the Federal Government would have paid for the period with respect to the programs if the project had not been conducted.

(5) 90-DAY APPROVAL DEADLINE.—

(A) IN GENERAL.—If an administering Secretary receives an application to conduct a demonstration project under this section and does not disapprove the application within 90 days after the receipt, then—

(i) the administering Secretary is deemed to have approved the application for such period as is requested in the application, except to the extent inconsistent with subsection (e); and

(ii) any waiver requested in the application which applies to a qualified program that is identified in the application and is administered by the administering Secretary is deemed to be granted, except to the extent inconsistent with paragraph (2) or (4) of this subsection.

(B) DEADLINE EXTENDED IF ADDITIONAL INFORMATION IS SOUGHT.—The 90-day period referred to in subparagraph (A) shall not include any period that begins with the date the Secretary requests the applicant to provide additional information with respect to the application and ends with the date the additional information is provided.

(e) DURATION OF PROJECTS.—A demonstration project under this section may be approved for a term of not more than 5 years.

(f) REPORTS TO CONGRESS.—

(1) REPORT ON DISPOSITION OF APPLICATIONS.—Within 90 days after an administering Secretary receives an application submitted pursuant to this section, the administering Secretary shall submit to each Committee of the Congress which has jurisdiction over a qualified program identified in the application notice of the receipt, a description of the decision of the administering Secretary with respect to the application, and the reasons for approving or disapproving the application.

(2) REPORTS ON PROJECTS.—Each administering Secretary shall provide annually to the Congress a report concerning demonstration projects approved under this section, including—

(A) the projects approved for each applicant;

(B) the number of waivers granted under this section, and the specific statutory provisions waived;

(C) how well each project for which a waiver is granted is improving or enhancing program achievement from the standpoint of quality, cost-effectiveness, or both;

(D) how well each project for which a waiver is granted is meeting the performance objectives specified in subsection (c)(3)(B);

(E) how each project for which a waiver is granted is conforming with the cost-neutrality requirements of subsection (d)(4); and

(F) to the extent the administering Secretary deems appropriate, recommendations for modification of programs based on outcomes of the projects.

PART 5—EFFECTIVE DATE

SEC. 2051. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this subtitle, this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

(b) EXCEPTION.—In the case of a State plan under part A of title IV of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this subtitle, the effective date of the amendments imposing the additional requirements shall be 3 months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

Subtitle B—Higher Education

SEC. 2101. SHORT TITLE.

This subtitle may be cited as the "Higher Education Budget Reconciliation Act of 2005".

PART 1—AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

SEC. 2111. REFERENCES; EFFECTIVE DATE.

(a) REFERENCES.—Except as otherwise expressly provided, whenever in this part 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 Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

(b) EFFECTIVE DATE.—Except as otherwise provided in this part, the amendments made by this part shall be effective on the date of enactment of this Act.

SEC. 2112. MODIFICATION OF 50/50 RULE.

Section 102(a)(3) (20 U.S.C. 1002(a)(3)) is amended—

(1) in subparagraph (A), by inserting "(excluding courses offered by telecommunications as defined in section 484(*l*)(4))" after "courses by correspondence"; and

(2) in subparagraph (B), by inserting "(excluding courses offered by telecommunications as defined in section 484(*l*)(4))" after "correspondence courses".

SEC. 2113. REAUTHORIZATION OF FEDERAL FAMILY EDUCATION LOAN PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 421(b)(5) (20 U.S.C. 1071(b)(5)) is amended by striking "an administrative cost allowance" and inserting "a loan processing and issuance fee".

(b) EXTENSION OF AUTHORITY.—

(1) FEDERAL INSURANCE LIMITATIONS.—Section 424(a) (20 U.S.C. 1074(a)) is amended—

(A) by striking "2004" and inserting "2012"; and

(B) by striking "2008" and inserting "2016".

(2) GUARANTEED LOANS.—Section 428(a)(5) (20 U.S.C. 1078(a)(5)) is amended—

(A) by striking "2004" and inserting "2012"; and

(B) by striking "2008" and inserting "2016".

(3) CONSOLIDATION LOANS.—Section 428C(e) (20 U.S.C. 1078–3(e)) is amended by striking "2004" and inserting "2012".

SEC. 2114. LOAN LIMITS.

(a) FEDERAL INSURANCE LIMITS.—Section 425(a)(1)(A) (20 U.S.C. 1075(a)(1)(A)) is amended—

(1) in clause (i)(I), by striking "$2,625" and inserting "$3,500"; and

(2) in clause (ii)(I), by striking "$3,500" and inserting "$4,500".

(b) GUARANTEE LIMITS.—Section 428(b)(1)(A) (20 U.S.C. 1078(b)(1)(A)) is amended—

(1) in clause (i)(I), by striking "$2,625" and inserting "$3,500"; and

(2) in clause (ii)(I), by striking "$3,500" and inserting "$4,500".

(c) COUNTING OF CONSOLIDATION LOANS AGAINST LIMITS.—Section 428C(a)(3)(B) (20 U.S.C. 1078–3(a)(3)(B)) is amended by adding at the end the following new clause:

"(ii) Loans made under this section shall, to the extent used to pay off the outstanding principal balance on loans made under this title, excluding capitalized interest, be counted against the applicable limitations on aggregate indebtedness contained in sections 425(a)(2), 428(b)(1)(B), 428H(d), 455, and 464(a)(2)(B).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any loan made, insured, or guaranteed under part B or part D of title IV of the Higher Education Act of 1965 for which the first disbursement of principal is made on or after July 1, 2007.

SEC. 2115. INTEREST RATES AND SPECIAL ALLOWANCES.

(a) FFEL INTEREST RATES.—Section 427A (20 U.S.C. 1077a(k)) is amended—

(1) in subsection (k)—

(A) by striking ", AND BEFORE JULY 1, 2006" in the heading of such subsection; and

(B) by striking ", and before July 1, 2006," each place it appears in paragraphs (1), (2), and (3);

(2) by striking subsection (*l*); and

(3) by redesignating subsections (m) and (n) as subsections (*l*) and (m), respectively.

(b) DIRECT LOAN INTEREST RATES.—Section 455(b) (20 U.S.C. 1087e(b)) is amended—

(1) in paragraph (6)—

(A) by striking ", AND BEFORE JULY 1, 2006" in the heading of such paragraph; and

(B) by striking ", and before July 1, 2006," each place it appears in subparagraphs (A), (B), and (C);

(2) by striking paragraph (7); and

(3) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

(c) CONSOLIDATION LOAN INTEREST RATES.—

(1) FFEL LOANS.—Section 427A(k) (20 U.S.C. 1077a(k)) is further amended—

(A) in the heading of paragraph (4), by inserting "BEFORE JULY 1, 2006" after "LOANS";

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

"(5) CONSOLIDATION LOANS ON OR AFTER JULY 1, 2006.—

"(A) BORROWER ELECTION.—With respect to any consolidation loan under section 428C for which the application is received by an eligible lender on or after July 1, 2006, the applicable rate of interest shall, at the election of the borrower at the time of application for the loan, be either at the rate determined under subparagraph (B) or the rate determined under subparagraph (C).

"(B) VARIABLE RATE.—Except as provided in subparagraph (D), the rate determined under this subparagraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and, for such 12-month period, not be more than—

"(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

"(ii) 2.3 percent,

except that such rate shall not exceed 8.25 percent.

"(C) FIXED RATE.—Except as provided in subparagraph (D), the rate determined under this subparagraph shall be determined for the duration of the term of the loan on the July 1 that is or precedes the date on which the application is received by an eligible lender, and shall be, for such duration, not more than—

"(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to the June 1 immediately preceding such July 1; plus

"(ii) 3.3 percent,

except that such rate shall not exceed 8.25 percent.

"(D) CONSOLIDATION OF PLUS LOANS.—In the case of any such consolidation loan that is used to repay loans each of which was made under section 428B or was a Federal Di-

rect PLUS Loan (or both), the rates determined under clauses (B) and (C) shall be determined—

"(i) by substituting '3.1 percent' for '2.3 percent';

"(ii) by substituting '4.1 percent' for '3.3 percent'; and

"(iii) by substituting '9.0 percent' for '8.25 percent'.".

(2) DIRECT LOANS.—Section 455(b)(6) (20 U.S.C. 1087e(b)(6)) is further amended—

(A) in the heading of subparagraph (D), by inserting "BEFORE JULY 1, 2006" after "LOANS"

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by inserting after subparagraph (D) the following:

"(E) CONSOLIDATION LOANS ON OR AFTER JULY 1, 2006.—

"(i) BORROWER ELECTION.—Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct Consolidation Loan for which the application is received by the Secretary on or after July 1, 2006, the applicable rate of interest shall, at the election of the borrower at the time of application for the loan, be either at the rate determined under clause (ii) or the rate determined under clause (iii).

"(ii) VARIABLE RATE.—Except as provided in clause (iv), the rate determined under this clause shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and, for such 12-month period, be equal to—

"(I) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

"(II) 2.3 percent,

except that such rate shall not exceed 8.25 percent.

"(iii) FIXED RATE.—Except as provided in clause (iv), the rate determined under this clause shall be determined for the duration of the term of the loan on the July 1 that is or precedes the date on which the application is received by the Secretary, and shall be, for such duration, equal to—

"(I) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to the June 1 immediately preceding such July 1; plus

"(II) 3.3 percent,

except that such rate shall not exceed 8.25 percent.

"(iv) CONSOLIDATION OF PLUS LOANS.—In the case of any such Federal Direct Consolidation Loan that is used to repay loans each of which was made under section 428B or was a Federal Direct PLUS Loan (or both), the rates determined under clauses (ii) and (iii) shall be determined—

"(I) by substituting '3.1 percent' for '2.3 percent';

"(II) by substituting '4.1 percent' for '3.3 percent'; and

"(III) by substituting '9.0 percent' for '8.25 percent'.".

(d) CONSOLIDATION LOAN CONFORMING AMENDMENT.—Section 428C(c)(1)(A)(ii) (20 U.S.C. 1078–3(c)(1)(A)(ii)) is amended by striking "section 427A(*l*)(3)" and inserting "section 427A(k)(5)".

(e) CONFORMING AMENDMENTS FOR SPECIAL ALLOWANCES.—

(1) AMENDMENT.—Subparagraph (I) of section 438(b)(2) (20 U.S.C. 1087–1(b)(2)) is amended—

(A) by striking clause (ii) and inserting the following:

"(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan for which the first disbursement is made on or after January 1, 2000, and for which the applicable interest rate is described in section 427A(k)(2), clause (i)(III) of this subparagraph shall be applied by substituting '1.74 percent' for '2.34 percent'.";

(B) in clause (iii),

(i) by striking "or (*l*)(2)"; and

(ii) by striking ", subject to clause (v) of this subparagraph";

(C) in clause (iv)—

(i) by striking "or (*l*)(3)" and inserting "or (k)(5)"; and

(ii) by striking ", subject to clause (vi) of this subparagraph"; and

(D) by striking clauses (v), (vi), and (vii) and inserting the following:

"(v) RECAPTURE OF EXCESS INTEREST.—

"(I) EXCESS CREDITED.—With respect to a loan on which the applicable interest rate is determined under section 427A(k) and for which the first disbursement of principal is made on or after July 1, 2006, if the applicable interest rate for any 3-month period exceeds the special allowance support level applicable to such loan under this subparagraph for such period, then an adjustment shall be made by calculating the excess interest in the amount computed under subclause (II) of this clause, and by crediting the excess interest to the Government not less often than annually.

"(II) CALCULATION OF EXCESS.—The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

"(aa) the applicable interest rate minus the special allowance support level determined under this subparagraph; multiplied by

"(bb) the average daily principal balance of the loan (not including unearned interest added to principal) during such calendar quarter; divided by

"(cc) four.

"(III) SPECIAL ALLOWANCE SUPPORT LEVEL.—For purposes of this clause, the term 'special allowance support level' means, for any loan, a number

expressed as a percentage equal to the sum of the rates determined under subclauses (I) and (III) of clause (i), and applying any substitution rules applicable to such loan under clauses (ii), (iii), and (iv) in determining such sum.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall not apply with respect to any special allowance payment made under section 438 of the Higher Education Act of 1965 (20 U.S.C 1087–1) before July 1, 2006.

SEC. 2116. ADDITIONAL LOAN TERMS AND CONDITIONS.

(a) FEDERAL DEFAULT FEES.—

(1) IN GENERAL.—Subparagraph (H) of section 428(b)(1) (20 U.S.C. 1078(b)(1)(H)) is amended to read as follows:

"(H) provides—

"(i) for loans for which the first disbursement of principal is made before July, 1, 2006, for the collection of a single insurance premium equal to not more than 1.0 percent of the principal amount of the loan, by deduction proportionately from each installment payment of the proceeds of the loan to the borrower, and ensures that the proceeds of the premium will not be used for incentive payments to lenders; or

"(ii) for loans for which the first disbursement of principal is made on or after July 1, 2006, for the collection and deposit into the Federal Student Loan Reserve Fund under section 422A of a Federal default fee of 1.0 percent of the principal amount of such loan, which shall be deducted proportionately from each installment payment of the proceeds of the loan to the borrower prior to payment to the borrower, and ensures that the proceeds of the Federal default fee will not be used for incentive payments to lenders;".

(2) UNSUBSIDIZED LOANS.—Section 428H(h) (20 U.S.C. 1078–8(h)) is amended by adding at the end the following new sentence: "Effective for loans for which the first disbursement of principal is made on or after July 1, 2006, in lieu of the insurance premium authorized under the preceding sentence, each State or nonprofit private institution or organization having an agreement with the Secretary under section 428(b)(1) shall collect and deposit into the Federal Student Loan Reserve Fund under section 422A a Federal default fee of 1.0 percent of the principal amount of the loan, obtained by deduction proportionately from each installment payment of the proceeds of the loan to the borrower. The Federal default fee shall not be used for incentive payments to lenders.".

(3) VOLUNTARY FLEXIBLE AGREEMENTS.—Section 428A(a)(1) (20 U.S.C. 1078–1(a)(1)) is amended—

(A) by striking "or" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting "; or"; and

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

"(C) the Federal default fee required by section 428(b)(1)(H) and the second sentence of section 428H(h).".

(b) DISBURSEMENT.—Section 428(b)(1)(N) (20 U.S.C. 1078(b)(1)(N)) is amended—

(1) in clause (i), by inserting "(including an eligible foreign institution, except as provided in clause (ii))" after "institution"; and

(2) in clause (ii), by striking "or at an eligible foreign institution".

(c) REPAYMENT PLANS.—

(1) FFEL LOANS.—Section 428(b)(9)(A) (20 U.S.C. 1078(b)(9)(A)) is amended—

(A) by inserting before the semicolon at the end of clause (ii) the following: ", and the Secretary may not restrict the proportions or ratios by which such payments may be graduated with the informed agreement of the borrower";

(B) by striking "and" at the end of clause (iii);

(C) by redesignating clause (iv) as clause (v); and

(D) by inserting after clause (iii) the following new clause:

"(iv) a delayed repayment plan under which the borrower makes scheduled payments for not more than 2 years that are annually not less than the amount of interest due or $600, whichever is greater, and then makes payments in accordance with clause (i), (ii), or (iii); and".

(2) DIRECT LOANS.—Section 455(d)(1) (20 U.S.C. 1087e(d)(1)) is amended—

(A) by redesignating subparagraph (D) as subparagraph (E); and

(B) by striking subparagraphs (A), (B), and (C) and inserting the following:

"(A) a standard repayment plan, consistent with subsection (a)(1) of this section and with section 428(b)(9)(A)(i);

"(B) a graduated repayment plan, consistent with section 428(b)(9)(A)(ii);

"(C) an extended repayment plan, consistent with section 428(b)(9)(A)(v), except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L);

"(D) a delayed repayment plan under which the borrower makes scheduled payments for not more than 2 years that are annually not less than the amount of interest due or $600, whichever is greater, and then makes payments in accordance with subparagraph (A), (B), or (C); and".

(d) ORIGINATION FEES.—

(1) FFEL PROGRAM.—Paragraph (2) of section 438(c) (20 U.S.C. 1087–1(c)) is amended—

(A) by striking the designation and heading of such paragraph and inserting the following:

"(2) AMOUNT OF ORIGINATION FEES.—

"(A) IN GENERAL.—"; and

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

"(B) SUBSEQUENT REDUCTIONS.—Subparagraph (A) shall be applied to loans made under this part (other than loans made under sections 428C and 439(o))—

"(i) by substituting '2.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2007;

"(ii) by substituting '1.5 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

"(iii) by substituting '1.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

"(iv) by substituting '0.5 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

"(v) by substituting '0.0 percent' for '3.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.".

(2) DIRECT LOAN PROGRAM.—Subsection (c) of section 455 (20 U.S.C. 1087e(c)) is amended to read as follows:

"(c) LOAN FEE.—

"(1) IN GENERAL.—The Secretary shall charge the borrower of a loan made under this part an origination fee of 4.0 percent of the principal amount of loan.

"(2) SUBSEQUENT REDUCTION.—Paragraph (1) shall be applied to loans made under this part, other than Federal Direct Consolidation loans and Federal Direct PLUS loans—

"(A) by substituting 'not more or less than 3.0 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2006, and before July 1, 2007;

"(B) by substituting 'not more or less than 2.5 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2007, and before July 1, 2008;

"(C) by substituting 'not more or less than 2.0 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2008, and before July 1, 2009;

"(D) by substituting 'not more or less than 1.5 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2009, and before July 1, 2010; and

"(E) by substituting 'not more or less than 1.0 percent' for '4.0 percent' with respect to loans for which the first disbursement of principal is made on or after July 1, 2010.

"(3) WAIVERS AND REPAYMENT INCENTIVES PROHIBITED.—Beginning with loans made on or after July 1, 2006, the Secretary is prohibited—

"(A) from waiving any amount of the loan fee prescribed under this section as part of a repayment incentive in section 455(b)(7); and

"(B) from providing any repayment incentive before the borrower enters repayment.".

(e) CONSOLIDATION LOAN OFFSET CHARGE.—

(1) FFEL CONSOLIDATION LOANS.—Section 438(c) (20 U.S.C. 1087–1(c)) is further amended—

(A) in paragraph (1)(A), by inserting after "paragraph (2) of this subsection" the following: "and the amount the lender is authorized to collect as a consolidation loan offset charge in accordance with paragraph (9) of this subsection";

(B) in paragraph (1)(B)—

(i) by inserting "and the consolidation loan offset charge" after "origination fee"; and

(ii) by inserting "and consolidation loan offset charges" after "origination fees";

(C) in paragraphs (3) and (4), by inserting "and consolidation loan offset charge" after "origination fee" each place it appears;

(D) in paragraph (5)—

(i) by inserting "or consolidation loan offset charge" after "origination fee"; and

(ii) by inserting "or consolidation loan offset charges" after "origination fees";

(E) in paragraph (7)—

(i) by inserting "and consolidation loan offset charges" after "origination fees"; and

(ii) by striking "428A or"; and

(F) by adding at the end the following new paragraph:

"(9) CONSOLIDATION LOAN OFFSET CHARGE.—For any loan under section 428C, the lender is authorized to collect a consolidation loan offset charge in an amount not to exceed 1.0 percent of the principal amount of the loan. Such amount may be added to the principal amount of the loan for repayment by the borrower.".

(2) DIRECT LOANS.—Section 455(c) (20 U.S.C. 1087e(c)), as amended by subsection (d)(2) of this section, is further amended by adding at the end the following new paragraph:

"(4) CONSOLIDATION LOAN OFFSET CHARGES.—For any Federal Direct Consolidation Loan, the Secretary shall collect a consolidation loan offset charge in an amount not more or less than 1.0 percent of the principal amount of the loan. Such amount may be added to the principal amount of the loan for repayment by the borrower. Such amount is not subject to the requirements of paragraph (3) of this subsection.".

SEC. 2117. CONSOLIDATION LOAN CHANGES.

(a) CROSS-CONSOLIDATION BETWEEN PROGRAMS.—Section 428C (20 U.S.C. 1078–3) is amended—

(1) in subsection (a)(3)(B)(i)—

(A) by inserting "or under section 455(g)" after "under this section" both places it appears;

(B) by inserting "under both sections" after "terminates"

(C) by striking "and" at the end of subclause (III);

(D) by striking the period at the end of subclause (IV) and inserting "; and"; and

(E) by adding at the end the following new subclause:

"(V) an individual may obtain a subsequent consolidation loan under section 455(g) only for the purposes of obtaining an income contingent repayment plan, and only if the loan has been submitted to the guaranty agency for default aversion."; and

(2) in subsection (b)(5), by striking the first sentence and inserting the following: "In the event that a lender with an agreement under subsection (a)(1) of this section denies a consolidation loan application submitted to it by an eligible borrower under this section, or denies an application submitted to it by such a borrower for a consolidation loan with income-sensitive repayment terms, the Secretary shall offer any such borrower who applies for it, a Federal Direct Consolidation loan. The Secretary shall offer such a loan to a borrower who has defaulted, for the purpose of resolving the default.".

(b) REPEAL OF IN-SCHOOL CONSOLIDATION.—

(1) DEFINITION OF REPAYMENT PERIOD.—Section 428(b)(7)(A) (20 U.S.C. 1078(b)(7)(A)) is amended by striking "shall begin—" and all that follows through "earlier date." and inserting the following: "shall begin the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).".

(2) CONFORMING CHANGE TO ELIGIBLE BORROWER DEFINITION.—Section 428C(a)(3)(A)(ii)(I) (20 U.S.C. 1078–3(a)(3)(A)(ii)(I)) is amended by inserting "as determined under section 428(b)(7)(A)" after "repayment status".

(c) INTEREST PAYMENT REBATE FEE.—Section 428C(f)(2) (20 U.S.C. 1078–2(f)(2)) is amended—

(1) by striking "SPECIAL RULE.—" and inserting "SPECIAL RULES.—(A)"; and

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

"(B) For consolidation loans based on applications received on or after July 1, 2006, if 90 percent or more of the total principal and accrued unpaid interest outstanding on the loans held, directly or indirectly, by any holder is comprised of principal and accrued unpaid interest owed on consolidation loans, the rebate described in paragraph (1) for such holder shall be equal to 1.30 percent of the principal plus accrued unpaid interest on such loans.".

(d) ADDITIONAL AMENDMENTS.—Section 428C (20 U.S.C. 1078–3) is amended—

(1) in subsection (a)(3), by striking subparagraph (C); and

(2) in subsection (b)(1)—

(A) by striking everything after "under this section" the first place it appears in subparagraph (A) and inserting the following: "and that, if all the borrower's loans under this part are held by a single holder, the borrower has notified such holder that the borrower is seeking to obtain a consolidation loan under this section;";

(B) by striking "(i) which" and all that follows through "and (ii)" in subparagraph (C);

(C) by striking "and" at the end of subparagraph (E);

(D) by redesignating subparagraph (F) as subparagraph (G); and

(E) by inserting after subparagraph (E) the following new subparagraph:

"(F) that the lender of the consolidation loan shall, upon application for such loan, provide the borrower with a clear and conspicuous notice of at least the following information:

"(i) the effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

"(ii) the effects of consolidation on a borrower's underlying loan benefits, including loan forgiveness, cancellation, deferment, and reduced interest rates on those underlying loans;

"(iii) the ability of the borrower to prepay the loan, pay on a shorter schedule, and to change repayment plans;

"(iv) that borrower benefit programs may vary among different loan holders, and a description of how the borrower benefits may vary among different loan holders;

"(v) the tax benefits for which borrowers may be eligible;

"(vi) the consequences of default; and

"(vii) that by making the application the applicant is not obligated to agree to take the consolidation loan; and".

(e) EFFECTIVE DATE FOR SINGLE HOLDER AMENDMENT.—The amendment made by subsection (d)(2)(A) shall apply with respect to any loan made under section 428C of the Higher Education Act of 1965 (20 U.S.C. 1078–3) for which the application is received by an eligible lender on or after July 1, 2006.

(f) CONFORMING AMENDMENTS TO DIRECT LOAN PROGRAM.—Section 455 (20 U.S.C. 1087e) is amended

(1) in subsection (a)(1) by inserting "428C," after "428B,";

(2) in subsection (a)(2)—

(A) by striking "and" at the end of subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following:

"(C) section 428C shall be known as 'Federal Direct Consolidation Loans'; and "; and

(3) in subsection (g)—

(A) by striking the second sentence; and

(B) by adding at the end the following new sentences: "To be eligible for a consolidation loan under this part, a borrower must meet the eligibility criteria set forth in section 428C(a)(3). The Secretary, upon application for such a loan, shall comply with the requirements applicable to a lender under section 428C(b)(1)(F).".

SEC. 2118. DEFERMENT OF STUDENT LOANS FOR MILITARY SERVICE.

(a) FEDERAL FAMILY EDUCATION LOANS.—Section 428(b)(1)(M) (20 U.S.C. 1078(b)(1)(M)) is amended—

(1) by striking "or" at the end of clause (ii);

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following new clause:

"(iii) not in excess of 3 years during which the borrower—

"(I) is serving on active duty during a war or other military operation or national emergency; or

"(II) is performing qualifying National Guard duty during a war or other military operation or national emergency; or".

(b) DIRECT LOANS.—Section 455(f)(2) (20 U.S.C. 1087e(f)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) not in excess of 3 years during which the borrower—

"(i) is serving on active duty during a war or other military operation or national emergency; or

"(ii) is performing qualifying National Guard duty during a war or other military operation or national emergency; or".

(c) PERKINS LOANS.—Section 464(c)(2)(A) (20 U.S.C. 1087dd(c)(2)(A)) is amended—

(1) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(2) by inserting after clause (ii) the following new clause:

"(iii) not in excess of 3 years during which the borrower—

"(I) is serving on active duty during a war or other military operation or national emergency; or

"(II) is performing qualifying National Guard duty during a war or other military operation or national emergency;".

(d) DEFINITIONS.—Section 481 (20 U.S.C. 1088) is amended by adding at the end the following new subsection:

"(d) DEFINITIONS FOR MILITARY DEFERMENTS.—For purposes of parts B, D, and E of this title:

"(1) ACTIVE DUTY.—The term 'active duty' has the meaning given such term in section 101(d)(1) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

"(2) MILITARY OPERATION.—The term 'military operation' means a contingency operation as such term is defined in section 101(a)(13) of title 10, United States Code.

"(3) NATIONAL EMERGENCY.—The term 'national emergency' means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

"(4) SERVING ON ACTIVE DUTY.—The term 'serving on active duty during a war or other military operation or national emergency' means service by an individual who is—

"(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10, United States Code, or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

"(B) any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

"(5) QUALIFYING NATIONAL GUARD DUTY.—The term 'qualifying National Guard duty during a war or other military operation or national emergency' means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, in connection with a war, other military operation, or a national emergency declared by the President and supported by Federal funds.".

(e) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed to authorize any refunding of any repayment of a loan.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, to an individual who is a new borrower (within the meaning of section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003)) on or after such date.

SEC. 2119. LOAN FORGIVENESS FOR SERVICE IN AREAS OF NATIONAL NEED.

Section 428K (20 U.S.C. 1078–11) is amended to read as follows:

"SEC. 428K. LOAN FORGIVENESS FOR SERVICE IN AREAS OF NATIONAL NEED.

"(a) PURPOSES.—The purposes of this section are—

"(1) to encourage highly trained individuals to enter and continue in service in areas of national need; and

"(2) to reduce the burden of student debt for Americans who dedicate their careers to service in areas of national need.

"(b) PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary is authorized to carry out a program of assuming the obligation to repay, pursuant to subsections (c)(2) and (d), a qualified loan amount for a loan made, insured, or guaranteed under this part or part D (other than loans made under section 428B and 428C and comparable loans made under part D), for any new borrower after the date of enactment of the Higher Education Budget Reconciliation Act of 2005, who—

"(A) has been employed full-time for at least 5 consecutive complete school, academic, or calendar years, as appropriate, in an area of national need described in subsection (c); and

"(B) is not in default on a loan for which the borrower seeks forgiveness.

"(2) AWARD BASIS.—Loan repayment under this section shall be on a first-come, first-served basis pursuant to the designation under subsection (c) and subject to the availability of appropriations.

"(3) REGULATIONS.—The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

"(c) AREAS OF NATIONAL NEED.—

"(1) STATUTORY CATEGORIES.—For purposes of this section, an individual shall be treated as employed in an area of national need if the individual is employed full-time and is any of the following:

"(A) EARLY CHILDHOOD EDUCATORS.—An individual who is employed as an early childhood educator in an eligible preschool program or child care facility in a low-income community, and who is involved directly in the care, development and education of infants, toddlers, or young children through age five.

"(B) NURSES.—An individual who is employed—

"(i) as a nurse in a clinical setting; or

"(ii) as a member of the nursing faculty at an accredited school of nursing (as those terms are defined in section 801 of the Public Health Service Act (42 U.S.C. 296)).

"(C) FOREIGN LANGUAGE SPECIALISTS.—An individual who has obtained a baccalaureate degree in a critical foreign language and is employed—

"(i) in an elementary or secondary school as a teacher of a critical foreign language; or

"(ii) in an agency of the United States Government in a position that regularly requires the use of such critical foreign language.

"(D) LIBRARIANS.—An individual who is employed as a librarian in—

"(i) a public library that serves a geographic area within which the public schools have a combined average of 30 percent or more of their total student enrollments composed of children counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965; or

"(ii) an elementary or secondary school which is in the school district of a local educational agency which is eligible in such year for assistance pursuant to title I of the Elementary and Secondary Education Act of 1965, and which for the purpose of this paragraph and for that year has been determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the

school is located) to be a school in which the enrollment of children counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 exceeds 30 percent of the total enrollment of that school.

"(E) HIGHLY QUALIFIED TEACHERS: BILINGUAL EDUCATION AND LOW-INCOME COMMUNITIES.—An individual who—

"(i) is highly qualified as such term is defined in section 9101 of the Elementary and Secondary Education Act of 1965; and

"(ii)(I) is employed as a teacher of bilingual education; or

"(II) is employed as a teacher for service in a public or nonprofit private elementary or secondary school which is in the school district of a local educational agency which is eligible in such year for assistance pursuant to title I of the Elementary and Secondary Education Act of 1965, and which for the purpose of this paragraph and for that year has been determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 exceeds 40 percent of the total enrollment of that school.

"(F) FIRST RESPONDERS IN LOW-INCOME COMMUNITIES.—An individual who—

"(i) is employed as a firefighter, police officer, or emergency medical technician; and

"(ii) serves as such in a low-income community.

"(G) CHILD WELFARE WORKERS.—An individual who—

"(i) has obtained a degree in social work or a related field with a focus on serving children and families; and

"(ii) is employed in public or private child welfare services.

"(H) SPEECH-LANGUAGE PATHOLOGISTS.—An individual who is a speech-language pathologist, who is employed in an eligible preschool program or an elementary or secondary school, and who has, at a minimum, a graduate degree in speech-language pathology, or communication sciences and disorders.

"(I) ADDITIONAL AREAS OF NATIONAL NEED.—An individual who is employed in an area designated by the Secretary under paragraph (2) and has completed a baccalaureate or advanced degree related to such area.

"(2) DESIGNATION OF ADDITIONAL AREAS OF NATIONAL NEED.—After consultation with appropriate Federal, State, and community-based agencies and organizations, the Secretary shall designate additional areas of national need in which an individual may be employed full-time to be eligible for loan repayment under this section. In making such designations, the Secretary shall take into account the extent to which—

"(A) the national interest in the area is compelling;

"(B) the area suffers from a critical lack of qualified personnel; and

"(C) other Federal programs support the area concerned.

"(d) QUALIFIED LOAN AMOUNT.—Subject to the availability of appropriations, the Secretary shall repay not more than $5,000 in the aggregate of the loan obligation on a loan made under section 428 or 428H that is outstanding after the completion of the fifth consecutive school, academic, or calendar year, as appropriate, described in subsection (b)(1).

"(e) CONSTRUCTION.—Nothing in this section shall be construed to authorize the refunding of any repayment of a loan made under section 428 or 428H.

"(f) INELIGIBILITY OF NATIONAL SERVICE AWARD RECIPIENTS.—No student borrower may, for the same service, receive a benefit under both this section and subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.).

"(g) INELIGIBILITY FOR DOUBLE BENEFITS.—No borrower may receive a reduction of loan obligations under both this section and section 428J or 460.

"(h) DEFINITIONS.—In this section

"(1) CHILD CARE FACILITY.—The term 'child care facility' means a facility, including a home, that—

"(A) provides for the education and care of children from birth through age 5; and

"(B) meets any applicable State or local government licensing, certification, approval, or registration requirements.

"(2) CRITICAL FOREIGN LANGUAGE.—The term 'critical foreign language' includes the languages of Arabic, Korean, Japanese, Chinese, Pashto, Persian-Farsi, Serbian-Croatian, Russian, Portuguese, and any other language identified by the Secretary of Education, in consultation with the Defense Language Institute, the Foreign Service Institute, and the National Security Education Program, as a critical foreign language need.

"(3) EARLY CHILDHOOD EDUCATOR.—The term 'early childhood educator' means an early childhood educator employed in an eligible preschool program who has completed a baccalaureate or advanced degree in early childhood development, early childhood education, or in a field related to early childhood education.

"(4) ELIGIBLE PRESCHOOL PROGRAM.—The term 'eligible preschool program' means a program that provides for the care, development, and education of infants, toddlers, or young children through age 5, meets any applicable State or local government licensing, certification, approval, and registration requirements, and is operated by—

"(A) a public or private school that may be supported, sponsored, supervised, or administered by a local educational agency;

"(B) a Head Start agency serving as a grantee designated under the Head Start Act (42 U.S.C. 9831 et seq.);

"(C) a nonprofit or community based organization; or

"(D) a child care program, including a home.

"(5) LOW-INCOME COMMUNITY.—In this subsection, the term 'low-income community' means a community in which 70 percent of households earn less than 85 percent of the State median household income.

"(6) NURSE.—The term 'nurse' means a nurse who meets all of the following:

"(A) The nurse graduated from—

"(i) an accredited school of nursing (as those terms are defined in section 801 of the Public Health Service Act (42 U.S.C. 296));

"(ii) a nursing center; or

"(iii) an academic health center that provides nurse training.

"(B) The nurse holds a valid and unrestricted license to practice nursing in the State in which the nurse practices in a clinical setting.

"(C) The nurse holds one or more of the following:

"(i) A graduate degree in nursing, or an equivalent degree.

"(ii) A nursing degree from a collegiate school of nursing (as defined in section 801 of the Public Health Service Act (42 U.S.C. 296)).

"(iii) A nursing degree from an associate degree school of nursing (as defined in section 801 of the Public Health Service Act (42 U.S.C. 296)).

"(iv) A nursing degree from a diploma school of nursing (as defined in section 801 of the Public Health Service Act (42 U.S.C. 296)).

"(7) SPEECH-LANGUAGE PATHOLOGIST.—The term 'speech-language pathologist' means a speech-language pathologist who meets all of the following:

"(A) the speech-language pathologist has received, at a minimum, a graduate degree in speech-language pathology or communication sciences and disorders from an institution of higher education accredited by an agency or association recognized by the Secretary pursuant to section 496(a) of this Act; and

"(B) the speech-language pathologist meets or exceeds the qualifications described in section 1861(ll)(3) of the Social Security Act (42 U.S.C. 1395x(3)).

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.".

SEC. 2120. UNSUBSIDIZED STAFFORD LOANS.

(a) AMENDMENT.—Section 428H(d)(2)(C) (20 U.S.C. 1078–8(d)(2)(C)) is amended by striking "$10,000" and inserting "$12,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to loans for which the first disbursement of principal is made on or after July 1, 2007.

SEC. 2121. ELIMINATION OF TERMINATION DATES FROM TAXPAYER-TEACHER PROTECTION ACT OF 2004.

(a) EXTENSION OF LIMITATIONS ON SPECIAL ALLOWANCE FOR LOANS FROM THE PROCEEDS OF TAX EXEMPT ISSUES.—Section 438(b)(2)(B) (20 U.S.C. 1087–1(b)(2)(B)) is amended—

(1) in clause (iv), by striking "and before January 1, 2006,"; and

(2) in clause (v)(II)—

(A) by striking "and before January 1, 2006," each place it appears in divisions (aa) and (bb); and

(B) by striking ", and before January 1, 2006" in division (cc).

(b) ADDITIONAL LIMITATION ON SPECIAL ALLOWANCE FOR LOANS FROM THE PROCEEDS OF TAX EXEMPT ISSUES.—Section 438(b)(2)(B) (20 U.S.C 1087–1(b)(2)(B)) is further amended by adding at the end thereof the following new clause:

"(vi) Notwithstanding clauses (i), (ii), and (v), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, as the case may be, for a holder of loans—

"(I) that were made or purchased on or after October 1, 2005; or

"(II) that were not earning a quarterly rate of special allowance determined under clauses (i) or (ii) of subparagraph (B) of this paragraph (20 U.S.C. 1087–1(b)(2)(b)) as of October 1, 2005.".

(c) ELIMINATION OF EFFECTIVE DATE LIMITATION ON HIGHER TEACHER LOAN FORGIVENESS BENEFITS.—Paragraph (3) of section 3(b) of the Taxpayer-Teacher Protection Act of 2004 (20 U.S.C. 1078–10 note) is amended by striking ", and before October 1, 2005".

(d) ADDITIONAL CHANGES TO TEACHER LOAN FORGIVENESS PROVISIONS.—

(1) FFEL PROVISIONS.—Section 428J (20 U.S.C. 1078–10) is amended—

(A) in subsection (b)(1)(B), by inserting after "1965" the following: ", or meets the requirements of subsection (g)(3)";

(B) in subsection (c)(3)—

(i) by striking "and" at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(iii) by inserting after subparagraph (B) the following new subparagraph:

"(C) an elementary or secondary school teacher who primarily teaches reading—

"(i) who meets the requirements of subsection (b);

"(ii) who has obtained a separate reading instruction credential from the State in which the teacher is employed; and

"(iii) who is certified by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is employed to teach reading—

"(I) as being proficient in teaching the essential components of reading instruction as defined in section 1208 of the Elementary and Secondary Education Act of 1965; and

"(II) as having such credential."; and

(C) in subsection (g), by adding at the end the following new paragraph:

"(3) PRIVATE SCHOOL TEACHERS.—An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection (a)(1)(B), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher must be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965, and the score achieved by such teacher on each test must equal or exceed the average passing score of those 5 States.".

(2) DIRECT LOAN PROVISIONS.—Section 460 (20 U.S.C. 1087j) is amended—

(A) in subsection (b)(1)(A)(ii), by inserting after "1965" the following: ", or meets the requirements of subsection (g)(3)";

(B) in subsection (c)(3)—

(i) by striking "and" at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(iii) by inserting after subparagraph (B) the following new subparagraph:

"(C) an elementary or secondary school teacher who primarily teaches reading—

"(i) who meets the requirements of subsection (b);

"(ii) who has obtained a separate reading instruction credential from the State in which the teacher is employed; and

"(iii) who is certified by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is employed to teach reading—

"(I) as being proficient in teaching the essential components of reading instruction as defined in section 1208 of the Elementary and Secondary Education Act of 1965; and

"(II) as having such credential."; and

(C) in subsection (g), by adding at the end the following new paragraph:

"(3) PRIVATE SCHOOL TEACHERS.—An individual who is employed as a teacher in a private school and is exempt from State certification requirements (unless otherwise applicable under State law), may, in lieu of the requirement of subsection

(a)(1)(A)(ii), have such employment treated as qualifying employment under this section if such individual is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas. For such purposes, the competency tests taken by such a private school teacher must be recognized by 5 or more States for the purpose of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965, and the score achieved by such teacher on each test must equal or exceed the average passing score of those 5 States.".

SEC. 2122. LOAN FEES FROM LENDERS.

Section 438(d)(2) (20 U.S.C. 1087–1(d)(2)) is amended to read as follows:

"(2) AMOUNT OF LOAN FEES.—The amount of the loan fee which shall be deducted under paragraph (1) shall be equal to—

"(A) 0.50 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after October 1, 1993, and before July 1, 2006; and

"(B) 1.0 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after July 1, 2006.".

SEC. 2123. ADDITIONAL ADMINISTRATIVE PROVISIONS.

(a) TREATMENT OF EXEMPT CLAIMS.—

(1) INSURANCE COVERAGE.—Section 428(b)(1)(G) (20 U.S.C. 1078(b)(1)(G)) is amended by inserting before the semicolon at the end the following: "and 100 percent of the unpaid principal amount of exempt claims as defined in subsection (c)(1)(G)".

(2) TREATMENT.—Section 428(c)(1) (20 U.S.C. 1078(c)(1)) is amended—

(A) by redesignating subparagraph (G) as subparagraph (H), and moving such subparagraph 2 em spaces to the left; and

(B) by inserting after subparagraph (F) the following new subparagraph:

"(G)(i) Notwithstanding any other provisions of this section, in the case of exempt claims, the Secretary shall apply the provisions of—

"(I) the fourth sentence of subparagraph (A) by substituting '100 percent' for '95 percent';

"(II) subparagraph (B)(i) by substituting '100 percent' for '85 percent'; and

"(III) subparagraph (B)(ii) by substituting '100 percent' for '75 percent'.

"(ii) For purposes of clause (i) of this subparagraph, the term 'exempt claims' means claims with respect to loans for which it is determined that the borrower (or the student on whose behalf a parent has borrowed), without the lender's or the institution's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the

borrower or the student to be ineligible for all or a portion of the loan or for interest benefits thereon.".

(b) REDUCTION OF INSURANCE PERCENTAGE.—

(1) INSURANCE PERCENTAGE REDUCTION.—Section 428(b)(1)(G) as amended by subsection (a)(1) is further amended by inserting after the matter inserted by such subsection the following: ", except, for any loan for which the first disbursement of principal is made on or after July 1, 2006, the preceding provisions of this subparagraph shall be applied by substituting '96 percent' for '98 percent' ".

(2) INCREASE INSURANCE FOR EXCEPTIONAL PERFORMANCE.—Section 428I (20 U.S.C. 1078–9) is amended to read as follows:

"SEC. 428I. SPECIAL INSURANCE AND REINSURANCE RULES FOR EXCEPTIONAL PERFORMANCE.

"(a) DESIGNATION OF LENDERS AND SERVICERS.—

"(1) IN GENERAL.—Whenever the Secretary determines that an eligible lender or servicer meets the performance measures required by paragraph (2), the Secretary shall designate that eligible lender or servicer, as the case may be, for exceptional performance. The Secretary shall notify each appropriate guaranty agency of the eligible lenders and servicers designated under this section.

"(2) PERFORMANCE MEASURES.—

"(A) In determining whether to award a lender or servicer the exceptional performance designation, the Secretary shall require that the lender or servicer be performing at or above the 95 percentile of the industry, and demonstrate improved performance against the lender's or servicer's average of the last 3 years on the factors described in subparagraph (B).

"(B) The factors on which the Secretary shall require improvement shall include—

"(i) delinquency rates;

"(ii) the rate at which delinquent accounts are restored to good standing;

"(iii) default rates;

"(iv) the rate of rejected claims; and

"(v) any other such measures as determined by the Secretary.

"(C) In addition, the Secretary shall not make any award of such a designation unless the consequence of the designation is cost-neutral to the Federal Government.

"(3) ADDITIONAL INFORMATION ON LENDERS AND SERVICERS.—Each appropriate guaranty agency shall provide the Secretary with such other information in its possession regarding an eligible lender or servicer desiring designation as may relate to the Secretary's determination under paragraph (1), including but not limited to any information suggesting that the application of a lender or servicer for designation should not be approved.

"(4) DETERMINATIONS BY THE SECRETARY.—

"(A) The Secretary shall designate an eligible lender or servicer for exceptional performance if the eligible lender

or servicer meets the performance measures required by paragraph (2).

"(B) The Secretary shall make the determination under paragraph (1) based upon the documentation submitted by the eligible lender or servicer as specified in regulation, such other information as provided by any guaranty agency under paragraph (3), and any information in the possession of the Secretary or submitted by any other agency or office of the Federal Government.

"(C) The Secretary shall inform the eligible lender or servicer and the appropriate guaranty agency that its application for designation as an exceptional performance lender or servicer has been approved or disapproved.

"(5) TRANSITION.—

"(A) Any eligible lender or servicer designated for exceptional performance as of the day before the date of enactment of the Higher Education Budget Reconciliation Act of 2005 shall continue to be so designated, and subject to the requirements of this section as in effect on that day (including revocation), until the performance standards described in paragraph (2) are established.

"(B) The Secretary shall not designate any additional eligible lenders or servicers for exceptional performance until those performance standards are established.

"(b) PAYMENT TO LENDERS AND SERVICERS.—A guaranty agency shall pay, to each eligible lender or servicer (as agent for an eligible lender) designated under subsection (a), 98 percent of the unpaid principal and interest of all loans for which claims are submitted for payment by that eligible lender or servicer for the one-year period following the receipt by the guaranty agency of the notification of designation under this section, or until the guaranty agency receives notice from the Secretary that the designation of the lender or servicer under subsection (a)(2) has been revoked.

"(c) REVOCATION AUTHORITY.—

"(1) The Secretary shall revoke the designation of a lender or a servicer under subsection (a) if the Secretary determines that the lender or servicer has failed to meet the performance standards required by subsection (a)(2).

"(2) Notwithstanding any other provision of this section, a designation under subsection (a) may be revoked at any time by the Secretary, in the Secretary's discretion, if the Secretary determines that the eligible lender or servicer has failed to meet the criteria and performance standards established by the Secretary in regulation, or if the Secretary believes the lender or servicer may have engaged in fraud in securing designation under subsection (a), or is failing to service loans in accordance with program regulations.

"(d) DOCUMENTATION.—Nothing in this section shall restrict or limit the authority of guaranty agencies to require the submission of claims documentation evidencing servicing performed on loans, except that the guaranty agency may not require greater documentation than that required for lenders and servicers not designated under subsection (a).

"(e) SPECIAL RULE.—Reimbursements made by the Secretary on loans submitted for claim by an eligible lender or loan servicer designated for exceptional performance under this section shall not be subject to additional review by the Secretary or repurchase by the guaranty agency for any reason other than a determination by the Secretary that the eligible lender or loan servicer engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance.

"(f) LIMITATION.—Nothing in this section shall be construed to affect the processing of claims on student loans of eligible lenders not subject to this section.

"(g) CLAIMS.—A lender or servicer designated under subsection (a) failing to service loans or otherwise comply with applicable program regulations shall be considered in violation of section 3729 of title 31, United States Code.

"(h) TERMINATION.—The Secretary may terminate the designation of lenders and servicers under this section if he determines that termination would be in the fiscal interest of the United States.

"(i) DEFINITIONS.—As used in this section—

"(1) the term 'eligible loan' means a loan made, insured, or guaranteed under this part; and

"(2) the term 'servicer' means an entity servicing and collecting student loans that—

"(A) has substantial experience in servicing and collecting consumer loans or student loans;

"(B) has an independent financial audit annually which is furnished to the Secretary and any other parties designated by the Secretary;

"(C) has business systems which are capable of meeting the requirements of this part;

"(D) has adequate personnel who are knowledgeable about the student loan programs authorized by this part; and

"(E) does not have any owner, majority shareholder, director, or officer of the entity who has been convicted of a felony.".

(3) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this subsection shall apply with respect to loans for which the first disbursement of principal is made on or after July 1, 2006.

(c) DOCUMENTATION OF FORBEARANCE AGREEMENTS.—Section 428(c) (20 U.S.C. 1078(c)) is further amended—

(1) in paragraph (3)(A)(i)—

(A) by striking "in writing"; and

(B) by inserting "and documented in accordance with paragraph (10)" after "approval of the insurer"; and

(2) by adding at the end the following new paragraph:

"(10) DOCUMENTATION OF FORBEARANCE AGREEMENTS.—For the purposes of paragraph (3), the terms of forbearance agreed to by the parties shall be documented by confirming the agreement of the borrower by notice to the borrower from the lender, and by recording the terms in the borrower's file.".

(d) CONSOLIDATION OF DEFAULTED LOANS.—Section 428(c) (20 U.S.C. 1078(c)) is further amended—

(1) in paragraph (2)(A)—

(A) by inserting "(i)" after "including"; and

(B) by inserting before the semicolon at the end the following: "and (ii) requirements establishing procedures to preclude consolidation lending from being an excessive proportion of guaranty agency recoveries on defaulted loans under this part";

(2) in paragraph (2)(D), by striking "paragraph (6)" and inserting "paragraph (6)(A)"; and

(3) in paragraph (6)—

(A) by inserting "(A)" before "For the purpose of paragraph (2)(D),";

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(C) by adding at the end the following new subparagraphs:

"(B) A guaranty agency shall—

"(i) on or after October 1, 2006—

"(I) not charge the borrower collection costs in an amount in excess of 18.5 percent of the outstanding principal and interest of a defaulted loan that is paid off through consolidation by the borrower under this title; and

"(II) remit to the Secretary a portion of the collection charge under subclause (I) equal to 8.5 percent of the outstanding principal and interest of such defaulted loan; and

"(ii) on and after October 1, 2009, remit to the Secretary the entire amount charged under clause (i)(I) with respect to each defaulted loan that is paid off with excess consolidation proceeds.

"(C) For purposes of subparagraph (B), the term 'excess consolidation proceeds' means, with respect to any guaranty agency for any Federal fiscal year beginning on or after October 1, 2009, the proceeds of consolidation of defaulted loans under this title that exceed 45 percent of the agency's total collections on defaulted loans in such Federal fiscal year.".

(e) COLLECTION RETENTION PERCENTAGES.—Clause (ii) of section 428(c)(6)(B) (20 U.S.C. 1078(c)(6)(B)), as redesignated by subsection (d)(3) of this section, is amended to read as follows:

"(ii) an amount equal to 24 percent of such payments for use in accordance with section 422B, except that—

"(I) beginning on October 1, 2003, and ending on October 1, 2006, this clause shall be applied by substituting '23 percent' for '24 percent'; and

"(II) beginning on October 1, 2006, this clause shall be applied by substituting '20 percent' for '24 percent'.".

(f) VOLUNTARY FLEXIBLE AGREEMENTS.—Section 428A (20 U.S.C. 1078–1) is amended—

(1) in subsection (a)(1)(B), by striking "unless the Secretary" and all that follows through "designated guarantor";

(2) by striking paragraph (2) of subsection (a);

(3) in paragraph (4)(B) of subsection (a), by striking "and any waivers provided to other guaranty agencies under paragraph (2)";

(4) by redesignating paragraphs (3) and (4) of subsection (a) as paragraphs (2) and (3), respectively; and

(5) by striking paragraph (3) of subsection (c) and inserting the following:

"(3) NOTICE TO INTERESTED PARTIES.—Once the Secretary reaches a tentative agreement in principle under this section, the Secretary shall publish in the Federal Register a notice that invites interested parties to comment on the proposed agreement. The notice shall state how to obtain a copy of the tentative agreement in principle and shall give interested parties no less than 30 days to provide comments. The Secretary may consider such comments prior to providing the notices pursuant to paragraph (2).".

(g) FRAUD: REPAYMENT REQUIRED.—Section 428B(a)(1) (20 U.S.C. 1078–2(a)(1)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) in the case of a parent who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, such parent has completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud; and".

(h) DEFAULT REDUCTION PROGRAM.—Section 428F(a)(1) (20 U.S.C. 1078–6(a)(1)) is amended—

(1) in subparagraph (A), by striking "consecutive payments for 12 months" and inserting "9 payments made within 20 days of the due date during 10 consecutive months";

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) A guaranty agency may charge the borrower and retain collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest at the time of sale of a loan rehabilitated under subparagraph (A).".

(i) FINANCIAL AND ECONOMIC LITERACY.—

(1) DEFAULT REDUCTION PROGRAM.—Section 428F is further amended by adding at the end the following:

"(c) FINANCIAL AND ECONOMIC LITERACY.—Where appropriate, each program described under subsection (b) shall include making financial and economic education materials available to the borrower.".

(2) PROGRAM ASSISTANCE FOR BORROWERS.—Section 432(k)(1) (20 U.S.C. 1082(k)(1)) is amended by striking "and offering" and all that follows through the period and inserting ", offering loan repayment matching provisions as part of employee ben-

efit packages, and providing employees with financial and economic education and counseling.".

(j) CREDIT BUREAU ORGANIZATION AGREEMENTS.—Section 430A(a) (20 U.S.C. 1080a(a)) is amended by striking "agreements with credit bureau organizations" and inserting "an agreement with each national credit bureau organization (as described in section 603(p) of the Fair Credit Reporting Act)".

(k) UNIFORM ADMINISTRATIVE AND CLAIMS PROCEDURE.—Section 432(l)(1)(H) (20 U.S.C. 1082(l)(1)(H)) is amended by inserting "and anticipated graduation date" after "status change".

(l) DEFAULT REDUCTION MANAGEMENT.—Section 432 is further amended—

(1) by striking subsection (n); and

(2) by redesignating subsections (o) and (p) as subsections (n) and (o), respectively.

(m) SCHOOLS AS LENDERS.—Paragraph (2) of section 435(d) (20 U.S.C. 1085(d)(2)) is amended to read as follows:

"(2) REQUIREMENTS FOR ELIGIBLE INSTITUTIONS.—

"(A) IN GENERAL.—To be an eligible lender under this part, an eligible institution—

"(i) shall employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending such institution;

"(ii) shall not be a home study school;

"(iii) shall not—

"(I) make a loan to any undergraduate student;

"(II) make a loan other than a loan under section 428 or 428H to a graduate or professional student; or

"(III) make a loan to a borrower who is not enrolled at that institution;

"(iv) shall award any contract for financing, servicing, or administration of loans under this title on a competitive basis;

"(v) shall offer loans that carry an origination fee or an interest rate, or both, that are less than such fee or rate authorized under the provisions of this title;

"(vi) shall not have a cohort default rate (as defined in section 435(m)) greater than 10 percent;

"(vii) shall, for any year for which the institution engages in activities as an eligible lender, provide for a compliance audit conducted in accordance with section 428(b)(1)(U)(iii)(I), and the regulations thereunder, and submit the results of such audit to the Secretary; and

"(viii) shall use any proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the Department of Education, and any proceeds from the sale or other disposition of loans, for need-based grant programs.

"(B) ADMINISTRATIVE EXPENSES.—An eligible lender under subparagraph (A) shall be permitted to use a por-

tion of the proceeds described in subparagraph (A)(viii) for reasonable and direct administrative expenses.

"(C) SUPPLEMENT, NOT SUPPLANT.—An eligible lender under subparagraph (A) shall ensure that the proceeds described in subparagraph (A)(viii) are used to supplement, and not to supplant, non-Federal funds that would otherwise be used for need-based grant programs.".

(n) DISABILITY DETERMINATIONS.—Section 437(a) (20 U.S.C. 1087(a)) is amended by adding at the end the following new sentence: "In making such determination of permanent and total disability, the Secretary shall not require a borrower who has been certified as permanently and totally disabled by the Department of Veterans Affairs or the Social Security Administration to present further documentation of disability for purposes of this title.".

(o) TREATMENT OF FALSELY CERTIFIED BORROWERS.—Section 437(c)(1) (20 U.S.C. 1087(c)(1)) is amended by inserting "or parent's eligibility" after "such student's eligibility".

(p) PERFECTION OF SECURITY INTERESTS.—Section 439(d) (20 U.S.C. 1087–2(d)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(q) ADDITIONAL TECHNICAL AMENDMENTS.—

(1) Section 428(a)(2)(A) (20 U.S.C. 1078(a)(2)(A)) is amended—

(A) by striking "and" at the end of subclause (II) of clause (i); and

(B) by moving the margin of clause (iii) two ems to the left.

(2) Section 428(a)(3)(A)(v) (20 U.S.C. 1078(a)(3)(A)(v)) is amended—

(A) by striking "or" at the end of subclause (I);

(B) by striking the period at the end of subclause (II) and inserting "; or"; and

(C) by adding after subclause (II) the following new subclause:

"(III) in the case of a loan disbursed through an escrow agent, 3 days before the first disbursement of the loan.".

(3) Section 428(c)(1)(A) (20 U.S.C. 1078(c)(1)(A)) is amended by striking "45 days" in the last sentence and inserting "30 days".

(4) Section 428(i)(1) (20 U.S.C. 1078(i)(1)) is amended by striking "21 days" in the third sentence and inserting "10 days".

(5) Section 428G(e) (20 U.S.C. 1078–7(e)) is amended by striking ", made to a student to cover the cost of attendance at an eligible institution outside the United States,".

(6) Section 428H(e) (20 U.S.C. 1078–8(e)) is amended by striking paragraph (6) and inserting the following:

"(6) TIME LIMITS ON BILLING INTEREST.—A lender may not receive interest on a loan under this section from a borrower for any period that precedes the dates described in section 428(a)(3)(A)(v).".

(7) Section 432(m)(1)(B) (20 U.S.C. 1082(m)(1)(B)) is amended—

(A) in clause (i), by inserting "and" after the semicolon at the end; and

(B) in clause (ii), by striking "; and" and inserting a period.

(8) Section 438(b)(4)(B) (20 U.S.C. 1087–1(b)(4)(B)) is amended by striking "shall be computed" and all that follows through "to the loan" and inserting "described in subparagraph (A) shall be computed using the interest rate described in section 3902(a) of title 31, United States Code,".

SEC. 2124. FUNDS FOR ADMINISTRATIVE EXPENSES.

Section 458 is amended to read as follows:

"SEC. 458. FUNDS FOR ADMINISTRATIVE EXPENSES.

"(a) ADMINISTRATIVE EXPENSES.—

"(1) MANDATORY FUNDS FOR FISCAL YEAR 2006.—For fiscal year 2006, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for—

"(A) administrative costs under this part and part B, including the costs of the direct student loan programs under this part; and

"(B) account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsections (b) and (c),

not to exceed (from such funds not otherwise appropriated) $820,000,000 in fiscal year 2006.

"(2) AUTHORIZATION FOR ADMINISTRATIVE COSTS BEGINNING IN FISCAL YEAR 2007.—For each of the fiscal years 2007 through 2011, there are authorized to be appropriated such sums as may be necessary for administrative costs under this part and part B, including the costs of the direct student loan programs under this part.

"(3) CONTINUING MANDATORY FUNDS FOR ACCOUNT MAINTENANCE FEES.—For each of the fiscal years 2007 through 2011, there shall be available to the Secretary, from funds not otherwise appropriated, funds to be obligated for account maintenance fees payable to guaranty agencies under part B and calculated in accordance with subsection (b).

"(4) ACCOUNT MAINENANCE FEES.—Account maintenance fees under paragraph (3) shall be paid quarterly and deposited in the Agency Operating Fund established under section 422B.

"(5) CARRYOVER.—The Secretary may carry over funds made available under this section to a subsequent fiscal year.

"(b) CALCULATION BASIS.—Account maintenance fees payable to guaranty agencies under subsection (a)(3) shall not exceed the basis of 0.10 percent of the original principal amount of outstanding loans on which insurance was issued under part B.

"(c) BUDGET JUSTIFICATION.—No funds may be expended under this section unless the Secretary includes in the Department of Education's annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year,

and the projection of activities and costs for each remaining year for which administrative expenses under this section are made available.".

SEC. 2125. SIGNIFICANTLY SIMPLIFYING THE STUDENT AID APPLICATION PROCESS.

(a) EXPANDING THE AUTO-ZERO AND FURTHER SIMPLIFYING THE SIMPLIFIED NEEDS TEST.—

(1) SIMPLIFIED NEEDS TEST.—Section 479 (20 U.S.C. 1087ss) is amended—

(A) in subsection (b)—

(i) in paragraph (1)—

(I) by striking clause (i) of subparagraph (A) and inserting the following:

"(i) the student's parents file, or are eligible to file, a form described in paragraph (3) or certify that they are not required to file an income tax return, and the student files, or is eligible to file, such a form or certifies that the student is not required to file an income tax return, or the student's parents, or the student, received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and"; and

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

"(i) the student (and the student's spouse, if any) files, or is eligible to file, a form described in paragraph (3) or certifies that the student (and the student's spouse, if any) is not required to file an income tax return, or the student (and the student's spouse, if any) received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined under subsection (d); and"; and

(ii) in paragraph (3), by striking "A student or family files a form described in this subsection, or subsection (c), as the case may be, if the student or family, respectively, files" and inserting "In the case of an independent student, the student, or in the case of a dependent student, the parent, files a form described in this subsection, or subsection (c), as the case may be, if the student or parent, as appropriate, files";

(B) in subsection (c)—

(i) in paragraph (1), by striking subparagraph (A) and inserting the following:

"(A) the student's parents file, or are eligible to file, a form described in subsection (b)(3) or certify that they are not required to file an income tax return, and the student files, or is eligible to file, such a form or certifies that the student is not required to file an income tax return, or the student's parents, or the student, received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined in subsection (d); and"; and

(ii) in paragraph (2), by striking subparagraph (A) and inserting the following:

"(A) the student (and the student's spouse, if any) files, or is eligible to file, a form described in subsection (b)(3) or certifies that the student (and the student's spouse, if any) is not required to file an income tax return, or the student (and the student's spouse, if any) received benefits at some time during the previous 12-month period under a means-tested Federal benefit program as defined in subsection (d); and"; and

(C) by adding at the end the following new subsections:

"(d) DEFINITION OF MEANS-TESTED FEDERAL BENEFIT PROGRAM.—For the purposes of this section, the term 'means-tested Federal benefit program' means a mandatory spending program of the Federal Government, other than a program under this title, in which eligibility for the program's benefits, or the amount of such benefits, or both, are determined on the basis of income or resources of the individual or family seeking the benefit, and may include such programs as the supplemental security income program under title XVI of the Social Security Act, the food stamp program under the Food Stamp Act of 1977, the free and reduced price school lunch program established under the Richard B. Russell National School Lunch Act, the temporary assistance to needy families program established under part A of title IV of the Social Security Act, and the women, infants and children program established under Section 17 of the Child Nutrition Act of 1966, and other programs identified by the Secretary.

"(e) REPORTING REQUIREMENTS.—The Secretary shall regularly evaluate the impact of the eligibility guidelines in subsections (b)(1)(A)(i), (b)(1)(B)(i), (c)(1)(A) and (c)(2)(A) of this section. In particular, the Secretary shall evaluate whether using receipt of benefits under a means-tested Federal benefit program (as defined in subsection (d)) for eligibility continues to target the Simplified Needs Test, to the greatest extent possible, for use by low- and moderate-income students and their families.".

(b) IMPROVEMENTS TO PAPER AND ELECTRONIC FORMS.—

(1) COMMON FINANCIAL AID FORM DEVELOPMENT AND PROCESSING.—Section 483(a) (20 U.S.C. 1090(a)) is amended—

(A) by striking paragraphs (1), (2), and (5);

(B) by redesignating paragraphs (3), (4), (6), and (7), as paragraphs (9), (10), (11), and (12), respectively;

(C) by inserting before paragraph (9), as redesignated by subparagraph (B), the following:

"(1) IN GENERAL.—The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance under parts A through E (other than subpart 4 of part A). These forms shall be made available to applicants in both paper and electronic formats and shall be referred to as the 'Free Application for Federal Student Aid' or the 'FAFSA' .

"(2) EARLY ESTIMATES.—

"(A) IN GENERAL.—The Secretary shall permit applicants to complete such forms as described in this subsection in the 4 years prior to enrollment in order to obtain a non-binding estimate of the family contribution, as defined in section 473. The estimate shall clearly and conspicuously indicate that it is only an estimate of family contribution, and may not reflect the actual family contribution of the applicant that shall be used to determine the grant, loan, or work assistance that the applicant may receive under this title when enrolled in a program of postsecondary education. Such applicants shall be permitted to update information submitted on forms described in this subsection using the process required under paragraph (5)(A).

"(B) EVALUATION.—Two years after the early estimates are implemented under this paragraph and from data gathered from the early estimates, the Secretary shall evaluate the differences between initial, non-binding early estimates and the final financial aid award made available under this title.

"(C) REPORT.—The Secretary shall provide a report to the authorizing committees on the results of the evaluation.

"(3) PAPER FORMAT.—

"(A) IN GENERAL.—The Secretary shall produce, distribute, and process common forms in paper format to meet the requirements of paragraph (1). The Secretary shall develop a common paper form for applicants who do not meet the requirements of subparagraph (B).

"(B) EZ FAFSA.—

"(i) IN GENERAL.—The Secretary shall develop and use a simplified paper application form, to be known as the 'EZ FAFSA', to be used for applicants meeting the requirements of section 479(c).

"(ii) REDUCED DATA REQUIREMENTS.—The form under this subparagraph shall permit an applicant to submit, for financial assistance purposes, only the data elements required to make a determination of whether the applicant meets the requirements under section 479(c).

"(iii) STATE DATA.—The Secretary shall include on the form under this subparagraph such data items as may be necessary to award State financial assistance, as provided under paragraph (6), except that the Secretary shall not include a State's data if that State does not permit its applicants for State assistance to use the form under this subparagraph.

"(iv) FREE AVAILABILITY AND PROCESSING.—The provisions of paragraph (7) shall apply to the form under this subparagraph, and the data collected by means of the form under this subparagraph shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (9).

"(v) TESTING.—The Secretary shall conduct appropriate field testing on the form under this subparagraph.

"(C) PROMOTING THE USE OF ELECTRONIC FAFSA.—

"(i) IN GENERAL.—The Secretary shall—

"(I) develop a form that uses skip logic to simplify the application process for applicants; and

"(II) make all efforts to encourage applicants to utilize the electronic forms described in paragraph (4).

"(ii) MAINTENANCE OF THE FAFSA IN A PRINTABLE ELECTRONIC FILE.—The Secretary shall maintain a version of the paper forms described in subparagraphs (A) and (B) in a printable electronic file that is easily portable. The printable electronic file will be made easily accessible and downloadable to students on the same website used to provide students with the electronic application forms described in paragraph (4) of this subsection. The Secretary shall enable students to submit a form created under this subparagraph that is downloaded and printed from an electronic file format in order to meet the filing requirements of this section and in order to receive aid from programs under this title.

"(iii) REPORTING REQUIREMENT.—The Secretary shall report annually to Congress on the impact of the digital divide on students completing applications for title IV aid described under this paragraph and paragraph (4). The Secretary will also report on the steps taken to eliminate the digital divide and phase out the paper form described in subparagraph (A) of this paragraph. The Secretary's report will specifically address the impact of the digital divide on the following student populations: dependent students, independent students without dependents, and independent students with dependents other than a spouse.

"(4) ELECTRONIC FORMAT.—

"(A) IN GENERAL.—The Secretary shall produce, distribute, and process common forms in electronic format to meet the requirements of paragraph (1). The Secretary shall develop common electronic forms for applicants who do not meet the requirements of subparagraph (C) of this paragraph.

"(B) STATE DATA.—The Secretary shall include on the common electronic forms space for information that needs to be submitted from the applicant to be eligible for State financial assistance, as provided under paragraph (6), except the Secretary shall not require applicants to complete data required by any State other than the applicant's State of residence.

"(C) SIMPLIFIED APPLICATIONS: FAFSA ON THE WEB.—

"(i) IN GENERAL.—The Secretary shall develop and use a simplified electronic application form to be used by applicants meeting the requirements under sub-

section (c) of section 479 and an additional, separate simplified electronic application form to be used by applicants meeting the requirements under subsection (b) of section 479.

"(ii) REDUCED DATA REQUIREMENTS.—The simplified electronic application forms shall permit an applicant to submit for financial assistance purposes only the data elements required to make a determination of whether the applicant meets the requirements under subsection (b) or (c) of section 479.

"(iii) STATE DATA.—The Secretary shall include on the simplified electronic application forms such data items as may be necessary to award state financial assistance, as provided under paragraph (6), except that the Secretary shall not require applicants to complete data required by any State other than the applicant's State of residence.

"(iv) AVAILABILITY AND PROCESSING.—The data collected by means of the simplified electronic application forms shall be available to institutions of higher education, guaranty agencies, and States in accordance with paragraph (9).

"(v) TESTING.—The Secretary shall conduct appropriate field testing on the forms developed under this subparagraph.

"(D) USE OF FORMS.—Nothing in this subsection shall be construed to prohibit the use of the forms developed by the Secretary pursuant to this paragraph by an eligible institution, eligible lender, guaranty agency, State grant agency, private computer software provider, a consortium thereof, or such other entities as the Secretary may designate.

"(E) PRIVACY.—The Secretary shall ensure that data collection under this paragraph complies with section 552a of title 5, United States Code, and that any entity using the electronic version of the forms developed by the Secretary pursuant to this paragraph shall maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of the information, and to protect against security threats, or unauthorized uses or disclosures of the information provided on the electronic version of the forms. Data collected by such electronic version of the forms shall be used only for the application, award, and administration of aid awarded under this title, State aid, or aid awarded by eligible institutions or such entities as the Secretary may designate. No data collected by such electronic version of the forms shall be used for making final aid awards under this title until such data have been processed by the Secretary or a contractor or designee of the Secretary, and an expected family contribution has been calculated by the Secretary, except as may be permitted under this title.

"(F) SIGNATURE.—Notwithstanding any other provision of this Act, the Secretary may permit an electronic form

under this paragraph to be submitted with an electronic signature.

"(5) STREAMLINING.—

"(A) STREAMLINED REAPPLICATION PROCESS.—

"(i) IN GENERAL.—The Secretary shall develop streamlined reapplication forms and processes, including both paper and electronic reapplication processes, consistent with the requirements of this subsection, for an applicant who applies for financial assistance under this title—

"(I) in the academic year succeeding the year in which such applicant first applied for financial assistance under this title; or

"(II) in any succeeding academic years.

"(ii) MECHANISMS FOR REAPPLICATION.—The Secretary shall develop appropriate mechanisms to support reapplication.

"(iii) IDENTIFICATION OF UPDATED DATA.—The Secretary shall determine, in cooperation with States, institutions of higher education, agencies, and organizations involved in student financial assistance, the data elements that can be updated from the previous academic year's application.

"(iv) REDUCED DATA AUTHORIZED.—Nothing in this title shall be construed as limiting the authority of the Secretary to reduce the number of data elements required of reapplicants.

"(v) ZERO FAMILY CONTRIBUTION.—Applicants determined to have a zero family contribution pursuant to section 479(c) shall not be required to provide any financial data in a reapplication form, except that which is necessary to determine eligibility under such section.

"(B) REDUCTION OF DATA ELEMENTS.—

"(i) REDUCTION ENCOURAGED.—Of the number of data elements on the FAFSA on the date of enactment of the Higher Education Budget Reconciliation Act of 2005 (including questions on the FAFSA for the purposes described in paragraph (6)), the Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall continue to reduce the number of such data elements following the date of enactment. Reductions of data elements under paragraph (3)(B), (4)(C), or (5)(A)(iv) shall not be counted towards the reduction referred to in this paragraph unless those data elements are reduced for all applicants.

"(ii) REPORT.—The Secretary shall annually report to the House of Representatives and the Senate on the progress made of reducing data elements.

"(6) STATE REQUIREMENTS.—

"(A) IN GENERAL.—The Secretary shall include on the forms developed under this subsection, such State-specific data items as the Secretary determines are necessary to

meet State requirements for State need-based financial aid under section 415C, except as provided in paragraphs (3)(B)(iii) and (4)(C)(iii) of this subsection. Such items shall be selected in consultation with State agencies in order to assist in the awarding of State financial assistance in accordance with the terms of this subsection, except as provided in paragraphs (3)(B)(iii) and (4)(C)(iii) of this subsection. The number of such data items shall not be less than the number included on the form on October 7, 1998, unless a State notifies the Secretary that the State no longer requires those data items for the distribution of State need-based financial aid.

"(B) ANNUAL REVIEW.—The Secretary shall conduct an annual review process to determine which forms and data items the States require to award State need-based financial aid and other application requirements that the States may impose.

"(C) STATE USE OF SIMPLIFIED FORMS.—The Secretary shall encourage States to take such steps as necessary to encourage the use of simplified application forms, including those described in paragraphs (3)(B) and (4)(C), to meet the requirements under subsection (b) or (c) of section 479.

"(D) FEDERAL REGISTER NOTICE.—The Secretary shall publish on an annual basis a notice in the Federal Register requiring State agencies to inform the Secretary—

"(i) if the State agency is unable to permit applicants to utilize the simplified application forms described in paragraphs (3)(B) and (4)(C); and

"(ii) of the State-specific data that the State agency requires for delivery of State need-based financial aid.

"(E) STATE NOTIFICATION TO THE SECRETARY.—

"(i) IN GENERAL.—Each State agency shall notify the Secretary—

"(I) whether the State permits an applicant to file a form described in paragraph (3)(B) or paragraph (4)(C) of this subsection for purposes of determining eligibility for State need-based financial aid; and

"(II) the State-specific data that the State agency requires for delivery of State need-based financial aid.

"(ii) ACCEPTANCE OF FORMS.—In the event that a State does not permit an applicant to file a form described in paragraph (3)(B) or paragraph (4)(C) of this subsection for purposes of determining eligibility for State need-based financial aid—

"(I) the State shall notify the Secretary if the State is not permitted to do so because of either State law or because of agency policy; and

"(II) the notification under subclause (I) shall include an estimate of the program cost to permit applicants to complete simplified application

forms under paragraphs (3)(B) and paragraph (4)(C) of this subsection.

"(iii) LACK OF NOTIFICATION BY THE STATE.—If a State does not notify the Secretary pursuant to clause (i), the Secretary shall—

"(I) permit residents of that State to complete simplified application forms under paragraphs (3)(B) and paragraph (4)(C) of this subsection; and

"(II) not require any resident of that State to complete any data previously required by that State under this section.

"(7) CHARGES TO STUDENTS AND PARENTS FOR USE OF FORMS PROHIBITED.—

"(A) FEES PROHIBITED.—The FAFSA, in whatever form (including the EZ–FAFSA, paper, electronic, simplified, or reapplication), shall be produced, distributed, and processed by the Secretary and no parent or student shall be charged a fee by any entity for the collection, processing, or delivery of financial aid through the use of the FAFSA. The need and eligibility of a student for financial assistance under parts A through E of this title (other than under subpart 4 of part A) may only be determined by using the FAFSA developed by the Secretary pursuant to this subsection. No student may receive assistance under parts A through E of this title (other than under subpart 4 of part A), except by use of the FAFSA developed by the Secretary pursuant to this subsection. No data collected on a form, worksheet, or other document for which a fee is charged shall be used to complete the FAFSA.

"(B) NOTICE.—Any entity that provides to students or parents, or charges students or parents for, any value-added services with respect to or in connection with the FAFSA, such as completion of the FAFSA, submission of the FAFSA, or tracking of the FAFSA for a student, shall provide to students and parents clear and conspicuous notice that—

"(i) the FAFSA is a free Federal student aid application;

"(ii) the FAFSA can be completed without professional assistance; and

"(iii) includes the current Internet address for the FAFSA on the Department's web site.

"(8) APPLICATION PROCESSING CYCLE.—The Secretary shall enable students to submit a form created under this subsection in order to meet the filing requirements of this section and in order to receive aid from programs under this title and shall initiate the processing of applications under this subsection as early as practicable prior to January 1 of the student's planned year of enrollment.".

(2) MASTER CALENDAR.—Section 482(a)(1)(B) (20 U.S.C. 1089) is amended to read as follows:

"(B) by March 1: proposed modifications, updates, and notices pursuant to sections 478, 479(c)(2)(C), and 483(a)(6) published in the Federal Register;".

(c) INCREASING ACCESS TO TECHNOLOGY.—Section 483 (20 U.S.C. 1090) is further amended by adding at the end the following:

"(f) ADDRESSING THE DIGITAL DIVIDE.—The Secretary shall utilize savings accrued by moving more applicants to the electronic forms described in subsection (a)(4) to improve access to the electronic forms described in subsection (a)(4) for applicants meeting the requirements of section 479(c).".

(d) EXPANDING THE DEFINITION OF AN INDEPENDENT STUDENT.—Section 480(d) (20 U.S.C.1087vv(d)) is amended by striking paragraph (2) and inserting the following:

"(2) is an orphan, in foster care, or a ward of the court, or was in foster care or a ward of the court until the individual reached the age of 18;".

SEC. 2126. ADDITIONAL NEED ANALYSIS AMENDMENTS.

(a) INCOME PROTECTION ALLOWANCE FOR DEPENDENT STUDENTS.——

(1) AMENDMENT.—Section 475(g)(2)(D) (20 U.S.C. 1087oo(g)(2)(D)) is amended by striking "$2,200" and inserting "$3,000".

(2) CONFORMING AMENDMENT.—Section 478(b) (20 U.S.C. 1087rr(b)) is amended by adding at the end the following new paragraph:

"(3) REVISED AMOUNTS AFTER INCREASE.—Notwithstanding paragraph (2), for each academic year after academic year 2006–2007, the Secretary shall publish in the Federal Register a revised income protection allowance for the purpose of section 475(g)(2)(D). Such revised allowance shall be developed by increasing the dollar amount contained in such section by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2005 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to determinations of need for periods of enrollment beginning on or after July 1, 2006.

(b) EMPLOYMENT EXPENSE ALLOWANCE.—Section 478(h) (20 U.S.C. 1087rr(h)) is amended—

(1) by striking "476(b)(4)(B),"; and

(2) by striking "meals away from home, apparel and upkeep, transportation, and housekeeping services" and inserting "food away from home, apparel, transportation, and household furnishings and operations".

(c) DISCRETION OF STUDENT FINANCIAL AID ADMINISTRATORS.—Section 479A(a) (20 U.S.C. 1087tt(a)) is amended—

(1) by striking "(a) IN GENERAL.—" and inserting the following:

"(a) AUTHORITY TO MAKE ADJUSTMENTS.—

"(1) ADJUSTMENTS FOR SPECIAL CIRCUMSTANCES.—";

(2) by inserting before "Special circumstances may" the following:

"(2) SPECIAL CIRCUMSTANCES DEFINED.—";

(3) by inserting "a student's status as a ward of the court at any time prior to attaining 18 years of age, a student's status

as an individual who was adopted at or after age 13, a student's status as a homeless or unaccompanied youth (as defined in section 725 of the McKinney-Vento Homeless Assistance Act)," after "487,";

(4) by inserting before "Adequate documentation" the following:

"(3) DOCUMENTATION AND USE OF SUPPLEMENTARY INFORMATION.—"; and

(5) by inserting before "No student" the following:

"(4) FEES FOR SUPPLEMENTARY INFORMATION PROHIBITED.—".

(d) TREATING ACTIVE DUTY MEMBERS OF THE ARMED FORCES AS INDEPENDENT STUDENTS.—Section 480(d)(3) (20 U.S.C. 1087vv(d)(3)) is amended by inserting before the semicolon at the end the following: "or is currently serving on active duty in the Armed Forces for other than training purposes".

(e) EXCLUDABLE INCOME.—Section 480(e) (20 U.S.C. 1087vv(e)) is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(5) any part of any distribution from a qualified tuition program established under section 529 of the Internal Revenue Code of 1986 that is not includable in gross income under such section 529.".

(f) TREATMENT OF SAVINGS PLANS.—

(1) AMENDMENT.—Section 480(f) (20 U.S.C. 1087vv(f)) is amended—

(A) in paragraph (1), by inserting "qualified tuition programs established under section 529 of the Internal Revenue Code of 1986 (26 U.S.C. 529), except as provided in paragraph (2)," after "tax shelters,";

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following new paragraph:

"(2) A qualified tuition program shall not be considered an asset of a dependent student under section 475 of this part. The value of a qualified tuition program for purposes of determining the assets of parents or independent students shall be—

"(A) the refund value of any tuition credits or certificates purchased under section 529 of the Internal Revenue Code of 1986 (26 U.S.C. 529) on behalf of a beneficiary; or

"(B) the current balance of any account which is established under such section for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.".

(2) CONFORMING AMENDMENT.—Section 480(j) (20 U.S.C. 1087vv(j)) is amended—

(A) by striking "; TUITION PREPAYMENT PLANS" in the heading of such subsection;

(B) by striking paragraph (2);

(C) in paragraph (3), by inserting ", or a distribution that is not includable in gross income under section 529 of such Code," after "1986"; and

(D) by redesignating paragraph (3) as paragraph (2).

(g) TREATMENT OF FAMILY OWNERSHIP OF SMALL BUSINESSES.—Section 480(f)(3) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(f)(3)), as redesignated by subsection (f) of this section, is amended—

(1) in subparagraph (A), by striking "or";

(2) in subparagraph (B), by striking the period at the end and inserting "; or"; and

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

"(C) a small business with not more than 100 full-time or full-time equivalent employees (or any part of such a small business) that is owned and controlled by the family.".

(h) DESIGNATED ASSISTANCE.—Section 480(j) (20 U.S.C. 1087vv(j)) is amended by adding after paragraph (2) (as redesignated by subsection (f)(2)(D) of this section) the following new paragraph:

"(3) Notwithstanding paragraph (1) and section 472, assistance not received under this title may be excluded from both estimated financial assistance and cost of attendance, if that assistance is provided by a State and is designated by such State to offset a specific component of the cost of attendance. If that assistance is excluded from either estimated financial assistance or cost of attendance, it shall be excluded from both.".

SEC. 2127. DEFINITION OF ELIGIBLE PROGRAM.

Section 481(b) (20 U.S.C. 1088(b)) is amended by adding at the end the following new paragraph:

"(3) For purposes of this title, an eligible program includes an instructional program that utilizes direct assessment of student learning, or recognizes the direct assessment of student learning, in lieu of credit hours or clock hours as the measure of student learning. In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to be eligible. The Secretary shall provide an annual report to Congress identifying the programs made eligible under this paragraph.".

SEC. 2128. DISTANCE EDUCATION.

(a) DISTANCE EDUCATION: ELIGIBLE PROGRAM.—Section 481(b) (20 U.S.C. 1088(b)) is amended by adding after paragraph (3) (as added by section 2127 of this Act) the following new paragraph:

"(4) An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for the purposes of this title if the program is offered by an institution, other than a foreign institution, that has been evaluated and determined (before or after the date of enactment of this paragraph) to have the capability to effectively deliver distance education programs by an accrediting agency or association that—

"(A) is recognized by the Secretary under subpart 2 of Part H; and

"(B) has evaluation of distance education programs within the scope of its recognition, as described in section 496(n)(3).".

(b) CORRESPONDENCE COURSES.—Section 484(*l*)(1) (20 U.S.C. 1091(*l*)(1)) is amended—

(1) in subparagraph (A)—

(A) by striking "for a program of study of 1 year or longer"; and

(B) by striking "unless the total" and all that follows through "courses at the institution"; and

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

"(B) EXCEPTION.—Subparagraph (A) does not apply to an institution or school described in section 3(3)(C) of the Carl D. Perkins Vocational and Technical Education Act of 1998.".

SEC. 2129. STUDENT ELIGIBILITY.

(a) FRAUD: REPAYMENT REQUIRED.—Section 484(a) (20 U.S.C. 1091(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; and"; and

(2) by adding at the end the following new paragraph:

"(6) if the student has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, have completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud.".

(b) TECHNICAL AMENDMENT.—Section 484(b)(5) (20 U.S.C. 1091(b)(5)) is amended by inserting "or parent (on behalf of a student)" after "student".

(c) LOAN INELIGIBILITY BASED ON INVOLUNTARY CIVIL COMMITMENT FOR SEXUAL OFFENSES.—Section 484(b)(5) (20 U.S.C. 1091(b)(5)) is further amended by inserting before the period the following: ", and no student who is subject to an involuntary civil commitment upon completion of a period of incarceration for a sexual offense (as determined under regulations of the Secretary) is eligible to receive a loan under this title".

(d) FREELY ASSOCIATED STATES.—Section 484(j) (20 U.S.C. 1091(j)) is amended by inserting "and shall be eligible only for assistance under subpart 1 of part A thereafter," after "part C,".

(e) VERIFICATION OF INCOME DATE.—Paragraph (1) of section 484(q) (20 U.S.C. 1091(q)) is amended to read as follows:

"(1) CONFIRMATION WITH IRS.—The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the information specified in section 6103(l)(13) of the Internal Revenue Code of 1986 reported by applicants (including parents) under this title on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.".

(f) SUSPENSION OF ELIGIBILITY FOR DRUG OFFENSES.—Section 484(r)(1) (20 U.S.C. 1091(r)(1)) is amended by striking everything preceding the table and inserting the following:

"(1) IN GENERAL.—A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following table:".

SEC. 2130. INSTITUTIONAL REFUNDS.

Section 484B (20 U.S.C. 1091b) is amended—

(1) in subsection (a)(1), by inserting "subpart 4 of part A or" after "received under";

(2) in subsection (a)(2), by striking "takes a leave" and by inserting "takes one or more leaves";

(3) in subsection (a)(3)(B)(ii), by inserting "(as determined in accordance with subsection (d))" after "student has completed";

(4) in subsection (a)(4), by amending subparagraph (A) to read as follows:

"(A) IN GENERAL.—After determining the eligibility of the student for a late disbursement or post-withdrawal disbursement (as required in regulations prescribed by the Secretary), the institution of higher education shall contact the borrower and obtain confirmation that the loan funds are still required by the borrower. In making such contact, the institution shall explain to the borrower the borrower's obligation to repay the funds following any such disbursement. The institution shall document in the borrower's file the result of such contact and the final determination made concerning such disbursement.";

(5) in subsection (b)(1), by inserting "no later than 45 days from the determination of withdrawal" after "return";

(6) in subsection (b)(2), by amending subparagraph (C) to read as follows:

"(C) GRANT OVERPAYMENT REQUIREMENTS.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), a student shall only be required to return grant assistance in the amount (if any) by which—

"(I) the amount to be returned by the student (as determined under subparagraphs (A) and (B)), exceeds

"(II) 50 percent of the total grant assistance received by the student under this title for the payment period or period of enrollment.

"(ii) MINIMUM.—A student shall not be required to return amounts of $50 or less."; and

(7) in subsection (d), by striking "(a)(3)(B)(i)" and inserting "(a)(3)(B)".

SEC. 2131. COLLEGE ACCESS INITIATIVE.

Part G is further amended by inserting after section 485C (20 U.S.C. 1092c) the following new section:

"SEC. 485D. COLLEGE ACCESS INITIATIVE.

"(a) STATE-BY-STATE INFORMATION.—The Secretary shall direct each guaranty agency with which the Secretary has an agreement under section 428(c) to provide to the Secretary the information necessary for the development of web links and access for students and families to a comprehensive listing of the postsecondary education opportunities, programs, publications, Internet Web sites, and other services available in the States for which such agency serves as the designated guarantor.

"(b) GUARANTY AGENCY ACTIVITIES.—

"(1) PLAN AND ACTIVITY REQUIRED.—Each guaranty agency with which the Secretary has an agreement under section 428(c) shall develop a plan and undertake the activity necessary to gather the information required under subsection (a) and to make such information available to the public and to the Secretary in a form and manner as prescribed by the Secretary.

"(2) ACTIVITIES.—Each guaranty agency shall undertake such activities as are necessary to promote access to postsecondary education for students through providing information on college planning, career preparation, and paying for college. The guaranty agency shall publicize such information and coordinate such activities with other entities that either provide or distribute such information in the States for which such guaranty agency serves as the designated guarantor.

"(3) FUNDING.—The activities required by this section may be funded from the guaranty agency's operating account established pursuant to section 422B and, to the extent funds remain, from earnings on the restricted account established pursuant to section 422(h)(4).

"(c) ACCESS TO INFORMATION.—

"(1) SECRETARY'S RESPONSIBILITY.—The Secretary shall ensure the availability of the information provided by the guaranty agencies in accordance with this section to students, parents, and other interested individuals, through web links or other methods prescribed by the Secretary.

"(2) GUARANTY AGENCY RESPONSIBILITY.—The guaranty agencies shall ensure that the information required by this section is available without charge in printed format for students and parents requesting such information.

"(3) PUBLICITY.—Within 270 days after the date of enactment of the Higher Education Budget Reconciliation Act of 2005, the Secretary and guaranty agencies shall publicize the availability of the information required by this section, with special emphasis on ensuring that populations that are traditionally underrepresented in postsecondary education are made aware of the availability of such information.".

SEC. 2132. CANCELLATION OF STUDENT LOAN INDEBTEDNESS FOR SURVIVORS OF VICTIMS OF THE SEPTEMBER 11, 2001, ATTACKS.

(a) DEFINITIONS.—For purposes of this section:

(1) ELIGIBLE PUBLIC SERVANT.—The term "eligible public servant" means an individual who, as determined in accordance with regulations of the Secretary—

(A) served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(B) died (or dies) or became (or becomes) permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) ELIGIBLE VICTIM.—The term "eligible victim" means an individual who, as determined in accordance with regulations of the Secretary, died (or dies) or became (or becomes) perma-

nently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) ELIGIBLE PARENT.—The term "eligible parent" means the parent of an eligible victim if—

(A) the parent owes a Federal student loan that is a consolidation loan that was used to repay a PLUS loan incurred on behalf of such eligible victim; or

(B) the parent owes a Federal student loan that is a PLUS loan incurred on behalf of an eligible victim.

(4) SECRETARY.—The term "Secretary" means the Secretary of Education.

(5) FEDERAL STUDENT LOAN.—The term "Federal student loan" means any loan made, insured, or guaranteed under part B, D, or E of title IV of the Higher Education Act of 1965.

(b) RELIEF FROM INDEBTEDNESS.—

(1) IN GENERAL.—The Secretary shall provide for the discharge or cancellation of—

(A) the Federal student loan indebtedness of the spouse of an eligible public servant, as determined in accordance with regulations of the Secretary, including any consolidation loan that was used jointly by the eligible public servant and his or her spouse to repay the Federal student loans of the spouse and the eligible public servant;

(B) the portion incurred on behalf of the eligible victim (other than an eligible public servant), of a Federal student loan that is a consolidation loan that was used jointly by the eligible victim and his or her spouse, as determined in accordance with regulations of the Secretary, to repay the Federal student loans of the eligible victim and his or her spouse;

(C) the portion of the consolidation loan indebtedness of an eligible parent that was incurred on behalf of an eligible victim; and

(D) the PLUS loan indebtedness of an eligible parent that was incurred on behalf of an eligible victim.

(2) METHOD OF DISCHARGE OR CANCELLATION.—A loan required to be discharged or canceled under paragraph (1) shall be discharged or canceled by the method used under section 437(a), 455(a)(1), or 464(c)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1087(a), 1087e(a)(1), 1087dd(c)(1)(F)), whichever is applicable to such loan.

(c) FACILITATION OF CLAIMS.—The Secretary shall—

(1) establish procedures for the filing of applications for discharge or cancellation under this section by regulations that shall be prescribed and published within 90 days after the date of enactment of this Act and without regard to the requirements of section 553 of title 5, United States Code; and

(2) take such actions as may be necessary to publicize the availability of discharge or cancellation of Federal student loan indebtedness under this section.

(d) AVAILABILITY OF FUNDS FOR PAYMENTS.—Funds available for the purposes of making payments to lenders in accordance with section 437(a) for the discharge of indebtedness of deceased or dis-

abled individuals shall be available for making payments under section 437(a) to lenders of loans as required by this section.

(e) APPLICABLE TO OUTSTANDING DEBT.—The provisions of this section shall be applied to discharge or cancel only Federal student loans (including consolidation loans) on which amounts were owed on September 11, 2001. Nothing in this section shall be construed to authorize any refunding of any repayment of a loan.

SEC. 2133. INDEPENDENT EVALUATION OF DISTANCE EDUCATION PROGRAMS.

(a) INDEPENDENT EVALUATION.—The Secretary of Education shall enter into an agreement with the National Academy of Sciences to conduct a scientifically correct and statistically valid evaluation of the quality of distance education programs, as compared to campus-based education programs, at institutions of higher education. Such evaluation shall include—

(1) identification of the elements by which the quality of distance education, as compared to campus-based education, can be assessed, including elements such as subject matter, interactivity, and student outcomes;

(2) identification of distance and campus-based education program success, with respect to student achievement, in relation to the mission of the institution of higher education; and

(3) identification of the types of students (including classification of types of students based on student age) who most benefit from distance education programs, the types of students who most benefit from campus-based education programs, and the types of students who do not benefit from distance education programs, by assessing elements including access to higher education, job placement rates, undergraduate graduation rates, and graduate and professional degree attainment rates.

(b) SCOPE.—The National Academy of Sciences shall select for participation in the evaluation under subsection (a) a diverse group of institutions of higher education with respect to size, mission, and geographic distribution.

(c) INTERIM AND FINAL REPORTS.—The agreement under subsection (a) shall require that the National Academy of Sciences submit to the Secretary of Education, the Committee on Health, Education, Labor and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives—

(1) an interim report regarding the evaluation under subsection (a) not later than December 31, 2007; and

(2) a final report regarding such evaluation not later than December 31, 2009.

SEC. 2134. DISBURSEMENT OF STUDENT LOANS.

Section 422(d) of the Higher Education Amendments of 1998 (Public Law 105–244; 112 Stat. 1696) is amended by adding at the end the following new sentence: "Such amendments shall also be effective on and after July 1, 2006.".

PART 2—HIGHER EDUCATION RELIEF

SEC. 2141. REFERENCES.

References in this part to "the Act" are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

SEC. 2142. WAIVERS AND MODIFICATIONS.

Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education is authorized to waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the Act, or any student or institutional eligibility provisions in the Act, as the Secretary of Education deems necessary in connection with a Gulf hurricane disaster to ensure that—

(1) the calculation of expected family contribution under section 474 of the Act used in the determination of need for student financial assistance under title IV of the Act for any affected student (and the determination of such need for his or her family, if applicable), is modified to reflect any changes in the financial condition of such affected student and his or her family resulting from a Gulf hurricane disaster; and

(2) institutions of higher education, systems of institutions, or consortia of institutions that are located in an area affected by a Gulf hurricane disaster, or that are serving affected students, are eligible, notwithstanding section 486(d) of the Act, to apply for participation in the distance education demonstration program under section 486 of the Act, except that the Secretary of Education shall include in reports under section 486(f) of the Act an identification of those institutions, systems, and consortia that were granted participation in the demonstration program due to a Gulf hurricane disaster.

SEC. 2143. CANCELLATION OF INSTITUTIONAL REPAYMENT BY COLLEGES AND UNIVERSITIES AFFECTED BY A GULF HURRICANE DISASTER.

Notwithstanding any provision of title IV of the Act or any regulation issued thereunder, the Secretary of Education shall cancel any obligation of an affected institution to return or repay any funds the institution received before the date of enactment of this Act for, or on behalf of, its students under subpart 1 or 3 of part A or parts B, C, D, or E of title IV of the Act for any cancelled enrollment period.

SEC. 2144. CANCELLATION OF STUDENT LOANS FOR CANCELLED ENROLLMENT PERIODS.

(a) LOAN FORGIVENESS AUTHORIZED.—Notwithstanding any provision of title IV of the Act, the Secretary shall discharge all loan amounts under parts B and D of title IV of the Act, and cancel any loan made under part E of such title, disbursed to, or on behalf of, an affected student for a cancelled enrollment period.

(b) REIMBURSEMENT.—The Secretary of Education shall—

(1) reimburse each affected institution for any amounts discharged under subsection (a) with respect to a loan under part E of title IV of the Act in the same manner as is required by section 465(b) of the Act with respect to a loan cancelled under section 465(a) of the Act; and

(2) reimburse lenders for the purpose of discharging any loan amounts disbursed to, or on behalf of, an affected student under part B of title IV of the Act for a cancelled enrollment period.

(c) LIMITATION ON CONSOLIDATION LOANS.—A loan amount for a loan made under section 428C of the Act or a Federal Direct Consolidation Loan may be eligible for discharge under this section only to the extent that such loan amount was used to repay a loan to an affected student for a cancelled enrollment period.

(d) CONSTRUCTION.—Nothing in this section shall be construed to authorize any refunding of any repayment of a loan.

SEC. 2145. TEMPORARY DEFERMENT OF STUDENT LOAN REPAYMENT.

An affected individual who is a borrower of a qualified student loan or a qualified parent loan shall be granted a deferment, not in excess of 6 months, during which periodic installments of principal need not be paid, and interest—

(1) shall accrue and be paid by the Secretary, in the case of a loan made under section 428, 428B, 428C, or 428H of the Act;

(2) shall accrue and be paid by the Secretary to the Perkins loan fund held by the institution of higher education that made the loan, in the case of a loan made under part E of title IV of the Act; and

(3) shall not accrue, in the case of a Federal Direct Loan made under part D of such title.

SEC. 2146. NO AFFECT ON GRANT AND LOAN LIMITS.

Notwithstanding any provision of title IV of the Act or any regulation issued thereunder, no grant or loan funds received by an affected student under title IV of the Act for a cancelled enrollment period shall be counted against such affected student's annual or aggregate grant or loan limits for the receipt of grants or loans under that title.

SEC. 2147. TEACHER LOAN RELIEF.

The Secretary of Education may waive the requirement of sections 428J(b)(1) and 460(b)(1)(A) of the Higher Education Act of 1965 that the 5 years of qualifying service be consecutive academic years for any teacher whose employment was interrupted if—

(1) the teacher was employed in qualifying service, at the time of a Gulf hurricane disaster, in a school located in an area affected by a Gulf hurricane disaster; and

(2) the teacher resumes qualifying service not later than the beginning of academic year 2006–2007 in that school or any other school in which employment is qualifying service under such section.

SEC. 2148. EXPANDING INFORMATION DISSEMINATION REGARDING ELIGIBILITY FOR PELL GRANTS.

(a) IN GENERAL.—The Secretary of Education shall make special efforts, in conjunction with State efforts, to notify affected students and if applicable, their parents, who qualify for means-tested Federal benefit programs, of their potential eligibility for a maximum Pell Grant, and shall disseminate such informational materials as the Secretary of Education deems appropriate.

(b) MEANS-TESTED FEDERAL BENEFIT PROGRAM.—For the purpose of this section, the term "means-tested Federal benefit program" means a mandatory spending program of the Federal Government, other than a program under the Act, in which eligibility for the program's benefits, or the amount of such benefits, or both, are determined on the basis of income or resources of the individual or family seeking the benefit, and may include such programs as the supplemental security income program under title XVI of the Social Security Act, the food stamp program under the Food Stamp Act of 1977, the free and reduced price school lunch program established under the Richard B. Russell National School Lunch Act, the temporary assistance to needy families program established under part A of title IV of the Social Security Act, and the women, infants, and children program established under section 17 of the Child Nutrition Act of 1966, and other programs identified by the Secretary of Education.

SEC. 2149. PROCEDURES.

(a) DEADLINES AND PROCEDURES.—Sections 482(c) and 492 of the Act (20 U.S.C. 1089(c), 1098a) shall not apply to any waivers, modifications, or actions initiated by the Secretary of Education under this part.

(b) CASE-BY-CASE BASIS.—The Secretary of Education is not required to exercise any waiver or modification authority under this part on a case-by-case basis.

SEC. 2150. TERMINATION OF AUTHORITY.

The authority of the Secretary of Education to issue waivers or modifications under this part shall expire at the conclusion of the 2005–2006 academic year, but the expiration of such authority shall not affect the continuing validity of any such waivers or modifications after such academic year.

SEC. 2151. DEFINITIONS.

For the purposes of this part, the following terms have the following meanings:

(1) AFFECTED INDIVIDUAL.—The term "affected individual" means an individual who has applied for or received student financial assistance under title IV of the Higher Education Act of 1965, and—

(A) who is an affected student; or

(B) whose primary place of employment or residency was, as of August 29, 2005, in an area affected by a Gulf hurricane disaster.

(2) AFFECTED INSTITUTION.—The term "affected institution" means an institution of higher education that—

(A) is located in an area affected by a Gulf hurricane disaster; and

(B) has temporarily ceased operations as a consequence of a Gulf hurricane disaster, as determined by the Secretary of Education.

(3) AFFECTED STATE.—The term "affected State" means the State of Alabama, Florida, Louisiana, Mississippi, or Texas.

(4) AFFECTED STUDENT.—The term "affected student" means an individual who has applied for or received student financial

assistance under title IV of the Higher Education Act of 1965, and who—

(A) was enrolled or accepted for enrollment, as of August 29, 2005, at an institution of higher education in an area affected by a Gulf hurricane disaster;

(B) was a dependent student enrolled or accepted for enrollment at an institution of higher education that is not in an area affected by a Gulf hurricane disaster, but whose parents resided or were employed, as of August 29, 2005, in an area affected by a Gulf hurricane disaster; or

(C) was enrolled or accepted for enrollment at an institution of higher education, as of August 29, 2005, and whose attendance was interrupted because of a Gulf hurricane disaster.

(5) AREA AFFECTED BY A GULF HURRICANE DISASTER.—The term "area affected by a Gulf hurricane disaster" means a county or parish, in an affected State, that has been designated by the Federal Emergency Management Agency for disaster assistance for individuals and households as a result of Hurricane Katrina or Hurricane Rita.

(6) CANCELLED ENROLLMENT PERIOD.—The term "cancelled enrollment period" means any period of enrollment at an affected institution during the academic year 2005.

(7) GULF HURRICANE DISASTER.—The term "Gulf hurricane disaster" means a major disaster that the President declared to exist, in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and that was caused by Hurricane Katrina or Hurricane Rita.

(8) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given such term in section 102 of the Higher Education Act of 1965, except that the term does not include institutions under subsection (a)(1)(C) of that section.

(9) QUALIFIED STUDENT LOAN.—The term "qualified student loan" means any loan made, insured, or guaranteed under part B, D, or E of title IV of the Higher Education Act of 1965, other than a loan under section 428B of such title or a Federal Direct Plus loan.

(10) QUALIFIED PARENT LOAN.—The term "qualified parent loan" means a loan made under section 428B of title IV of the Higher Education Act of 1965 or a Federal Direct Plus loan.

Subtitle C—Pensions

SEC. 2201. INCREASES IN PBGC PREMIUMS.

(a) FLAT-RATE PREMIUMS.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended by striking "$19" and inserting "$30".

(b) ADJUSTMENT FOR INFLATION.—Paragraph (3) of section 4006(a) of such Act (29 U.S.C. 1306(a)) is amended by adding at the end the following new subparagraph:

"(F) For each plan year beginning after 2006, there shall be substituted for the $30 dollar amount in subparagraph (A)(i) the

amount equal to the product derived by multiplying the premium rate, as in effect under this paragraph immediately prior to such plan year for basic benefits guaranteed by the corporation under section 4022 for single-employer plans, by the ratio of—

"(i) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

"(ii) the national average wage index (as so defined) for the first of the 3 calendar years preceding the calendar year in which the plan year begins,

with such product, if not a multiple of $1, being rounded to the next higher multiple of $1 where such product is a multiple of $0.50 but not of $1, and to the nearest multiple of $1 in any other case.".

(c) ADDITIONAL DISCRETIONARY INCREASE.—Paragraph (3) of section 4006(a) of such Act (as amended by subsection (b) of this section) is further amended by adding at the end the following new subparagraph:

"(G)(i) The corporation may increase under this subparagraph, effective for plan years commencing with or during any calendar year after 2006, the premium rate otherwise in effect under this section for basic benefits guaranteed by it under section 4022 for single-employer plans if the corporation determines that such increase is necessary to achieve actuarial soundness in the plan termination insurance program under this title.

"(ii) The amount of any premium rate described in clause (i), as increased under this subparagraph for plan years commencing with or during any calendar year, may not exceed by more than 20 percent the amount of the premium rate, in effect under this paragraph for plan years commencing with or during such calendar year for basic benefits guaranteed by the corporation under section 4022 for single-employer plans, as determined for plan years commencing with or during such calendar year without regard to this subparagraph.

"(iii) The preceding provisions of this subparagraph shall apply in connection with plan years commencing with or during any calendar year only if—

"(I) the corporation transmits to each House of the Congress and to the Comptroller General its proposal for the increase in the premium rate for plan years commencing with or during such calendar year, subject to Congressional review under chapter 8 of title 5 of the United States Code (relating to Congressional review of agency rulemaking) not later than 120 calendar days after the beginning of the preceding calendar year, and

"(II) a joint resolution disapproving such increase has not been enacted as provided in section 802 of such title, within the 60-day period described in section 802(a) of such title.

The proposal transmitted by the corporation shall include a description of the methodologies and assumptions used in formulating its proposal. At the time of the transmittal of any such proposal to each House of the Congress pursuant to subclause (I), the corporation shall transmit a copy of such proposal to the Committee on

Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate. Any such proposal shall, for purposes of chapter 8 of such title 5, be treated as a rule which is a major rule.".

(d) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—Subsection (a) of section 4006 of such Act (29 U.S.C. 1306) is amended by adding at the end the following:

"(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

"(A) IN GENERAL.—If there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) or section 4042, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to $1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

"(B) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—If the plan is terminated under 4041(c)(2)(B)(ii) or under section 4042 and, as of the termination date, a person who is (as of such date) a contributing sponsor of the plan or a member of such sponsor's controlled group has filed or has had filed against such person a petition seeking reorganization in a case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State (or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) shall not apply to such plan until the date of the discharge of such person in such case.

"(C) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'applicable 12-month period' means—

"(I) the 12-month period beginning with the first month following the month in which the termination date occurs, and

"(II) each of the first two 12-month periods immediately following the period described in subclause (I).

"(ii) PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—In any case in which the requirements of subparagraph (B) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the 12-month period described in clause (i)(I) shall be the 12-month period beginning with the first month following the month which includes the earliest date as of which each such person is discharged in the case described in such clause in connection with such person.

"(D) COORDINATION WITH SECTION 4007.—

"(i) Notwithstanding section 4007—

"(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

"(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

"(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.".

(e) CONFORMING AMENDMENTS.—

(1) Section 4006(a)(2) of such Act (29 U.S.C. 1306(a)(2)) is amended, in the matter following subparagraph (E), by inserting "paragraph (3)(G) of this subsection or" after "Except as provided in".

(2) Section 4006(b)(1) of such Act (29 U.S.C. 1306(b)(1)) is amended by inserting "or a proposal for a premium rate increase under subsection (a)(3)(G)" after "or (E)".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (d) shall apply with respect to terminations for which the termination date occurs on or after the date of the enactment of this Act.

(B) TREATMENT OF CASES IN BANKRUPTCY.—In any case in which the requirements of subparagraph (B) of section 4007(a)(7) of the Employee Retirement Income Security Act of 1974 (as added by subsection (d)) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the amendment made by subsection (d) shall apply with respect to any such termination described in such subparagraph (B), notwithstanding subparagraph (A) of this paragraph, if the case under title 11, United States Code, or under any similar law of a State or political subdivision of a State (referred to in such subparagraph (B)) commenced after October 26, 2005.

(3) SPECIAL RULE IF SUBSEQUENT SAVINGS ENACTED.—The amendments made by this section shall not take effect if, after the date of enactment of this Act and before January 1, 2006, a Federal law is enacted which—

(A) provides for decreases in Federal outlays which in the aggregate are less than the decreases in Federal outlays by reason of the amendments made by this section; and

(B) specifically provides that such decreases are to be in lieu of the decreases in Federal outlays by reason of the amendments made by this section.

TITLE III—COMMITTEE ON ENERGY AND COMMERCE

SUBTITLE A—MEDICAID

Sec. 3100. Short title of subtitle; rule of construction with regard to Katrina evacuees.

Chapter 1—Payment for Prescription Drugs

Sec. 3101. Federal upper limit (FUL).
Sec. 3102. Collection and submission of utilization data for certain physician administered drugs.
Sec. 3103. Improved regulation of drugs sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act.
Sec. 3104. Children's hospital participation in section 340B drug discount program.
Sec. 3105. Improving patient outcomes through greater reliance on science and best practices.

Chapter 2—Reform of Asset Transfer Rules

Sec. 3111. Lengthening look-back period; change in beginning date for period of ineligibility.
Sec. 3112. Disclosure and treatment of annuities and of large transactions.
Sec. 3113. Application of "income-first" rule in applying community spouse's income before assets in providing support of community spouse.
Sec. 3114. Disqualification for long-term care assistance for individuals with substantial home equity.
Sec. 3115. Enforceability of continuing care retirement communities (CCRC) and life care community admission contracts.

Chapter 3—Flexibility in Cost Sharing and Benefits

Sec. 3121. State option for alternative medicaid premiums and cost sharing.
Sec. 3122. Special rules for cost sharing for prescription drugs.
Sec. 3123. Emergency room copayments for non-emergency care.
Sec. 3124. Use of benchmark benefit packages.
Sec. 3125. State option to establish non-emergency medical transportation program.
Sec. 3126. Exempting women covered under breast or cervical cancer program.

Chapter 4—Expanded Access to Certain Benefits

Sec. 3131. Expanded access to home and community-based services for the elderly and disabled.
Sec. 3132. Optional choice of self-directed personal assistance services (cash and counseling).
Sec. 3133. Expansion of State long-term care partnership program.
Sec. 3134. Health opportunity accounts.

Chapter 5—Other Provisions

Sec. 3141. Increase in medicaid payments to insular areas.
Sec. 3142. Managed care organization provider tax reform.
Sec. 3143. Medicaid transformation grants.
Sec. 3144. Enhancing third party identification and payment.
Sec. 3145. Improved enforcement of documentation requirements.
Sec. 3146. Reforms of targeted case management.
Sec. 3147. Emergency services furnished by non-contract providers for medicaid managed care enrollees.
Sec. 3148. Adjustment in computation of medicaid FMAP to disregard an extraordinary employer pension contribution.

Subtitle B—Katrina Health Care Relief

Sec. 3201. Targeted medicaid relief for States affected by Hurricane Katrina.
Sec. 3202. State high risk health insurance pool funding.
Sec. 3203. Recomputation of HPSA, MUA, and MUP designations within Hurricane Katrina affected areas.

Sec. 3204. Waiver of certain requirements applicable to the provision of health care in areas impacted by Hurricane Katrina.
Sec. 3205. FMAP hold harmless for Katrina impact.

Subtitle C—Katrina and Rita Energy Relief

Sec. 3301. Hurricanes Katrina and Rita energy relief.

Subtitle D—Digital Television Transition

Sec. 3401. Short title.
Sec. 3402. Findings.
Sec. 3403. Analog spectrum recovery: hard deadline.
Sec. 3404. Auction of recovered spectrum.
Sec. 3405. Digital Television Conversion Fund.
Sec. 3406. Public Safety Interoperable Communications Fund.
Sec. 3407. NYC 9/11 Digital Transition Fund.
Sec. 3408. Low-power television transition provisions.
Sec. 3409. Consumer education regarding analog televisions.
Sec. 3410. Additional provisions.
Sec. 3411. Deployment of broadband wireless technologies.
Sec. 3412. Sense of Congress.
Sec. 3413. Band plan revision required.

Subtitle A—Medicaid

SEC. 3100. SHORT TITLE OF SUBTITLE; RULE OF CONSTRUCTION WITH REGARD TO KATRINA EVACUEES.

(a) SHORT TITLE.—This subtitle may be cited as the "Medicaid Reconciliation Act of 2005".

(b) RULE OF CONSTRUCTION WITH REGARD TO KATRINA EVACUEES.—None of the provisions of the following chapters of this subtitle shall apply during the 11-month period beginning September 1, 2005, to individuals entitled to medical assistance under title XIX of the Social Security Act by reason of their residence in a parish in the State of Louisiana, or a county in the State of Mississippi or Alabama, for which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) as a result of Hurricane Katrina and which the President has determined, before September 14, 2005, warrants individual and public assistance from the Federal Government under such Act.

CHAPTER 1—PAYMENT FOR PRESCRIPTION DRUGS

SEC. 3101. FEDERAL UPPER LIMIT (FUL).

(a) IN GENERAL.—Subsection (e) of section 1927 of the Social Security Act (42 U.S.C. 1396r–8) is amended to read as follows:

"(e) PHARMACY REIMBURSEMENT LIMITS.—

"(1) FEDERAL UPPER LIMIT FOR INGREDIENT COST OF COVERED OUTPATIENT DRUGS.—

"(A) IN GENERAL.—Subject to subparagraph (B), no Federal financial participation shall be available for payment for the ingredient cost of a covered outpatient drug in excess of the Federal upper limit for that drug established under paragraph (2).

"(B) OPTIONAL CARVE OUT.—A State may elect not to apply subparagraph (A) to payment for either or both of the following:

"(i) Drugs dispensed by specialty pharmacies (such as those dispensing only immunosuppressive drugs), as defined by the Secretary.

"(ii) Drugs administered by a physician in a physician's office.

"(2) FEDERAL UPPER LIMIT.—

"(A) IN GENERAL.—Except as provided in subparagraph (D) and subject to paragraph (5), the Federal upper limit established under this paragraph for the ingredient cost of a—

"(i) single source drug, is 106 percent of the RAMP (as defined in subparagraph (B)(i)) for that drug; and

"(ii) multiple source drug, is 120 percent of the volume weighted average RAMP (as determined under subparagraph (C)) for that drug.

A drug product that is a single source drug and that becomes a multiple source drug shall continue to be treated under this subsection as a single source drug until the Secretary determines that there are sufficient data to compile the volume weighted average RAMP for that drug.

"(B) RAMP AND RELATED PROVISIONS.—For purposes of this subsection:

"(i) RAMP DEFINED.—The term 'RAMP' means, with respect to a covered outpatient drug by a manufacturer for a calendar quarter and subject to clauses (ii) and (iii), the average price paid to a manufacturer for the drug in the United States in the quarter by wholesalers for drugs distributed to retail pharmacies, excluding service fees that are paid by the manufacturer to an entity and that represent fair market value for a bona-fide service provided by the entity.

"(ii) SALES EXEMPTED FROM COMPUTATION.—The RAMP under clause (i) shall exclude any of the following:

"(I) Sales exempt from inclusion in the determination of best price under subsection (c)(1)(C)(i).

"(II) Such other sales as the Secretary identifies as sales to an entity that are merely nominal in amount under subsection (c)(1)(C)(ii)(III).

"(iii) SALE PRICE NET OF DISCOUNTS.—In calculating the RAMP under clause (i), such RAMP shall include any of the following:

"(I) Cash discounts and volume discounts.

"(II) Free goods that are contingent upon any purchase requirement.

"(III) Sales at a nominal price that are contingent upon any purchase requirement or agreement.

"(IV) Chargebacks, rebates (not including rebates provided under an agreement under this section), or any other direct or indirect discounts.

"(V) Any other price concessions, which may be based on recommendations of the Inspector General of the Department of Health and Human Services, that would result in a reduction of the cost to the purchaser.

"(iv) RETAIL PHARMACY.—For purposes of this subsection, the term 'retail pharmacy' does not include mail-order only pharmacies or any pharmacy at a nursing facility or home.

"(C) VOLUME WEIGHTED AVERAGE RAMP DEFINED.—For purposes of this subsection, for all drug products included within the same multiple source drug billing and payment code (or such other methodology as may be specified by the Secretary), the volume weighted average RAMP is the volume weighted average of the RAMPs reported under subsection (b)(3)(A)(iv) determined by—

"(i) computing the sum of the products (for each National Drug Code assigned to such drug products) of—

"(I) the manufacturer's RAMP (as defined in subparagraph (B)); and

"(II) the total number of units specified under section 1847A(b)(2) sold; and

"(ii) dividing the sum determined under clause (i) by the sum of the total number of units under clause (i)(II) for all National Drug Codes assigned to such drug products.

"(D) EXCEPTION FOR INITIAL SALES PERIODS.—

"(i) IN GENERAL.—In the case of a single source drug during an initial sales period (not to exceed 2 calendar quarters) in which data on sales for the drug are not sufficiently available from the manufacturer to compute the RAMP or the volume weighted average RAMP under subparagraph (C), the Federal upper limit for the ingredient cost of such drug during such period shall be the wholesale acquisition cost (as defined in clause (ii)) for the drug.

"(ii) WHOLESALE ACQUISITION COST.—For purposes of clause (i), the term 'wholesale acquisition cost' means, with respect to a single source drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data.

"(E) UPDATES; DATA COLLECTION.—

"(i) FREQUENCY OF DETERMINATION.—The Secretary shall update the Federal upper limits applicable under this paragraph on at least a quarterly basis, taking into account the most recent data collected for purposes of determining such limits and the Food and Drug Administration's most recent publication of 'Approved Drug Products with Therapeutic Equivalence Evaluations'.

"(ii) COLLECTION OF DATA.—Data on RAMP is collected under subsection (b)(3)(A)(iv).

"(F) AUTHORITY TO ENTER CONTRACTS.—The Secretary may enter into contracts with appropriate entities to determine RAMPs and other data necessary to calculate the Federal upper limit for a covered outpatient drug established under this subsection and to calculate that payment limit.

"(3) DISPENSING FEES.—

"(A) IN GENERAL.—A State which provides medical assistance for covered outpatient drugs shall pay a dispensing fee for each covered outpatient drug in accordance with this paragraph. A State may vary the amount of such dispensing fees, including taking into account the special circumstances of pharmacies that are serving rural or underserved areas or that are sole community pharmacies, so long as such variation is consistent with subparagraph (B).

"(B) DISPENSING FEE PAYMENT FOR MULTIPLE SOURCE DRUGS.—A State shall establish a dispensing fee under this title for a covered outpatient drug that is treated as a multiple source drug under paragraph (2)(A) (whether or not it may be an innovator multiple source drug) in an amount that is not less than $8 per prescription unit. The Secretary shall define what constitutes a prescription unit for purposes of the previous sentence.

"(4) EFFECT ON STATE MAXIMUM ALLOWABLE COST LIMITATIONS.—This section shall not supersede or affect provisions in effect prior to January 1, 1991, or after December 31, 1994, relating to any maximum allowable cost limitation established by a State for payment by the State for covered outpatient drugs, and rebates shall be made under this section without regard to whether or not payment by the State for such drugs is subject to such a limitation or the amount of such a limitation.

"(5) EVALUATION OF USE OF RETAIL SURVEY PRICE METHODOLOGY.—

"(A) IN GENERAL.—The Secretary may develop a methodology to set the Federal upper limit based on the reported retail survey price, as most recently reported under subparagraph (C), instead of a percentage of RAMP or volume weighted average RAMP as described in paragraph (2).

"(B) INITIAL APPLICATION.—For 2007, the Secretary may use this methodology for a limited number of covered outpatient drugs, including both single source and multiple source drugs, selected by the Secretary in a manner so as to be representative of the classes of drugs dispensed under this title.

"(C) DETERMINATION OF RETAIL SURVEY PRICE FOR COVERED OUTPATIENT DRUGS.—

"(i) USE OF VENDOR.—The Secretary may contract services for the determination of retail survey prices for covered outpatient drugs that represent a nationwide average of pharmacy sales costs for such drugs, net of all discounts and rebates. Such a contract shall be awarded for a term of 2 years.

"(ii) USE OF COMPETITIVE BIDDING.—In contracting for such services, the Secretary shall competitively bid for an outside vendor that has a demonstrated history in—

"(I) surveying and determining, on a representative nationwide basis, retail prices for ingredient costs of prescription drugs;

"(II) working with retail pharmacies, commercial payers, and States in obtaining and disseminating such price information; and

"(III) collecting and reporting such price information on at least a monthly basis.

"(iii) ADDITIONAL PROVISIONS.—A contract with a vendor under this subparagraph shall include such terms and conditions as the Secretary shall specify, including the following:

"(I) The vendor must monitor the marketplace and report to the Secretary each time there is a new covered outpatient drug available nationwide.

"(II) The vendor must update the Secretary no less often than monthly on the retail survey prices for multiple source drugs.

"(III) The vendor must apply methods for independently confirming retail survey prices.

"(iv) AVAILABILITY OF INFORMATION TO STATES.—Information on retail survey prices obtained under this subparagraph, including applicable information on single source drugs, shall be provided to States on an ongoing, timely basis.

"(D) STATE USE OF RETAIL SURVEY PRICE DATA.—

"(i) DISTRIBUTION OF PRICE DATA.—The Secretary shall devise and implement a means for electronic distribution to each State agency designated under section 1902(a)(5) with responsibility for the administration or supervision of the administration of the State plan under this title of the retail survey price determined under this paragraph.

"(ii) AUTHORITY TO ESTABLISH PAYMENT RATES BASED ON DATA.—A State may use the price data received in accordance with clause (i) in establishing payment rates for the ingredient costs and dispensing fees for covered outpatient drugs dispensed to individuals eligible for medical assistance under this title.

"(6) LIMITATION ON JUDICIAL REVIEW.—There shall be no administrative or judicial review of—

"(A) the Secretary's determinations of Federal upper limits, RAMPs, and volume weighted average RAMPs under this subsection, including the assignment of National Drug Codes to billing and payment classes;

"(B) the Secretary's disclosure to States of the average manufacturer prices, RAMPs, volume weighted average RAMPs, and retail survey prices;

"(C) determinations under this subsection by the Secretary of covered outpatient drugs which are dispensed by

a specialty pharmacy or administered by a physician in a physician's office;

"(D) the contracting and calculations process under this subsection; and

"(E) the method to allocate rebates, chargebacks, and other price concessions to a quarter if specified by the Secretary.".

(b) CONFORMING AMENDMENTS.—

(1) REPORTING RAMP-RELATED INFORMATION.—Subsection (b)(3)(A) of such section is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the period at the end of clause (iii) and inserting "; and"; and

(C) by inserting after clause (iii) the following new clause:

"(iv) for calendar quarters beginning on or after July 1, 2006, in conjunction with reporting required under clause (i) and by National Drug Code (including package size)—

"(I) the manufacturer's RAMP (as defined in subsection (e)(2)(B)(i)) and the total number of units required to compute the volume weighted average RAMP under subsection (e)(2)(C);

"(II) if required to make payment under subsection (e)(2)(D), the manufacturer's wholesale acquisition cost, as defined in clause (ii) of such subsection; and

"(III) information on those sales that were made at a nominal price or otherwise described in subsection (e)(2)(B)(ii)(II);

for all covered outpatient drugs.".

(2) DISCLOSURE TO STATES.—Subsection (b)(3)(D) of such section is amended—

(A) by striking "and" at the end of clause (ii);

(B) by striking the period at the end of clause (iii) and inserting ", and"; and

(C) by inserting after clause (iii) the following new clause:

"(iv) to States to carry out this title.".

(3) LIMITATIONS ON FEDERAL FINANCIAL PARTICIPATION.—Section 1903(i) of such Act (42 U.S.C. 1396b(i)) is amended—

(A) in paragraph (10)(A), by striking "and" at the end;

(B) in paragraph (10)(B), by striking "or" at the end and inserting "and";

(C) by adding at the end of paragraph (10) the following:

"(C) with respect to any amount expended for the ingredient cost of a covered outpatient drug that exceeds the Federal upper limit for that drug established and applied under section 1927(e); or"; and

(D) in paragraph (21), as inserted by section 104(b) of Public Law 109–91, by inserting before the period at the end the following: "or described in subparagraph (B) or (C) of section 1927(d)(2)".

(c) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section take effect with respect to a State on the later of—

(1) January 1, 2007; or

(2) the date that is 6 months after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(d) GAO STUDY ON DISPENSING FEES.—The Comptroller General of the United States shall conduct a study on the appropriateness in payment levels to pharmacies for dispensing fees under the medicaid program, including payment to specialty pharmacies. Not later than 9 months after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on such study.

(e) IG REPORT ON USE OF RAMP AND RETAIL SURVEY PRICES.—Not later than 2 years after the date of the enactment of this Act, the Inspector General of the Department of Health and Human Services shall submit to Congress a report on the appropriateness of using RAMPs and retail survey prices, rather than the average manufacturer prices or other price measures, as the basis for establishing a Federal upper limit for reimbursement for covered outpatient drugs under the medicaid program.

SEC. 3102. COLLECTION AND SUBMISSION OF UTILIZATION DATA FOR CERTAIN PHYSICIAN ADMINISTERED DRUGS.

(a) IN GENERAL.—Section 1927(a) of the Social Security Act (42 U.S.C. 1396r–8(a)) is amended by adding at the end the following new paragraph:

"(7) REQUIREMENT FOR SUBMISSION OF UTILIZATION DATA FOR CERTAIN PHYSICIAN ADMINISTERED DRUGS.—

"(A) SINGLE SOURCE DRUGS.—In order for payment to be available under section 1903(a) for a covered outpatient drug that is a single source drug that is physician administered (as determined by the Secretary), and that is administered on or after January 1, 2006, the State shall provide for the submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section for drugs administered for which payment is made under this title.

"(B) MULTIPLE SOURCE DRUGS.—

"(i) IN GENERAL.—Not later than January 1, 2007, the information shall be submitted under subparagraph (A) using National Drug Code codes unless the Secretary specifies that an alternative coding system should be used.

"(ii) IDENTIFICATION OF MOST FREQUENTLY PHYSICIAN ADMINISTERED MULTIPLE SOURCE DRUGS.—Not later than January 1, 2007, the Secretary shall publish a list of the 20 physician administered multiple source drugs that the Secretary determines have the highest dollar volume of physician administered drugs dispensed under this title. The Secretary may modify such list from year to year to reflect changes in such volume.

"(iii) REQUIREMENT.—In order for payment to be available under section 1903(a) for a covered out-

patient drug that is a multiple source drug that is physician administered (as determined by the Secretary), that is on the list published under clause (ii), and that is administered on or after January 1, 2008, the State shall provide for the submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section.

"(C) HARDSHIP WAIVER.—The Secretary may delay the application of subparagraph (A) or (B), or both, in the case of a State to prevent hardship to States which require additional time to implement the reporting system required under the respective subparagraph.".

(b) LIMITATION ON PAYMENT.—Section 1903(i)(10) of such Act (42 U.S.C. 1396b(i)(10)), as amended by section 3101(b)(3), is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking "or" at the end of subparagraph (C) and inserting "and"; and

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

"(D) with respect to covered outpatient drugs described in section 1927(a)(7), unless information respecting utilization data and coding on such drugs that is required to be submitted under such section is submitted in accordance with such section; or".

SEC. 3103. IMPROVED REGULATION OF DRUGS SOLD UNDER A NEW DRUG APPLICATION APPROVED UNDER SECTION 505(c) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) INCLUSION WITH OTHER REPORTED AVERAGE MANUFACTURER AND BEST PRICES.—Section 1927(b)(3)(A) of the Social Security Act (42 U.S.C. 1396r–8(b)(3)(A)) is amended—

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

"(i) not later than 30 days after the last day of each rebate period under the agreement—

"(I) on the average manufacturer price (as defined in subsection (k)(1)) for covered outpatient drugs for the rebate period under the agreement (including for all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act); and

"(II) for single source drugs and innovator multiple source drugs (including all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act), on the manufacturer's best price (as defined in subsection (c)(1)(C)) for such drugs for the rebate period under the agreement;"; and

(2) in clause (ii), by inserting "(including for such drugs that are sold under a new drug application approved under section

505(c) of the Federal Food, Drug, and Cosmetic Act)" after "drugs".

(b) CONFORMING AMENDMENTS.—Section 1927 of such Act (42 U.S.C. 1396r–8) is amended—

(1) in subsection (c)(1)(C)—

(A) in clause (i), in the matter preceding subclause (I), by inserting after "or innovator multiple source drug of a manufacturer" the following: "(including any other such drug of a manufacturer that is sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act)"; and

(B) in clause (ii)—

(i) in subclause (II), by striking "and" at the end;

(ii) in subclause (III), by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

"(IV) in the case of a manufacturer that approves, allows, or otherwise permits any other drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act, shall be inclusive of the lowest price for such authorized drug available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding those prices described in subclauses (I) through (IV) of clause (i).."; and

(2) in subsection (k)—

(A) in paragraph (1)—

(i) by striking "The term" and inserting the following:

"(A) IN GENERAL.—The term"; and

(ii) by adding at the end the following:

"(B) INCLUSION OF SECTION 505(c) DRUGS.—In the case of a manufacturer that approves, allows, or otherwise permits any drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act, such term shall be inclusive of the average price paid for such authorized drug by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.".

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

SEC. 3104. CHILDREN'S HOSPITAL PARTICIPATION IN SECTION 340B DRUG DISCOUNT PROGRAM.

(a) IN GENERAL.—Section 1927(a)(5)(B) of the Social Security Act (42 U.S.C. 1396r–8(a)(5)(B)) is amended by inserting before the period at the end the following: "and a children's hospital described in section 1886(d)(1)(B)(iii) which meets the requirements of clauses (i) and (iii) of section 340B(b)(4)(L) of the Public Health Service Act and which would meet the requirements of clause (ii) of such section if that clause were applied by taking into account

the percentage of care provided by the hospital to patients eligible for medical assistance under a State plan under this title".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to drugs purchased on or after the date of the enactment of this Act.

SEC. 3105. IMPROVING PATIENT OUTCOMES THROUGH GREATER RELIANCE ON SCIENCE AND BEST PRACTICES.

(a) IN GENERAL.—Section 1927 of Social Security Act (42 U.S.C. 1396r–8) is amended—

(1) in subsection (d)(5)—

(A) in the matter before subparagraph (A), by striking "providing for such approval—" and inserting "providing for such approval meets the following requirements:";

(B) in subparagraph (A)—

(i) by inserting "The system" before "provides"; and

(ii) by striking "; and" and inserting a period;

(C) in subparagraph (B)—

(i) by striking "except" and inserting "Except"; and

(ii) by inserting "the system" before "provides"; and

(D) by adding at the end the following new subparagraphs:

"(C) The system provides that an atypical antipsychotic or antidepressant single source drug may be placed on a list of drugs subject to prior authorization only where a drug use review board has determined, based on the strength of the scientific evidence and standards of practice, including assessing peer-reviewed medical literature, pharmacoeconomic studies, outcomes research data and such other information as the board determines to be appropriate, that placing the drug on prior approval or otherwise imposing restrictions on its use is not likely to harm patients or increase overall medical costs.

"(D) The system provides that where a response is not received to a request for authorization of an atypical antipsychotic or antidepressant drug prescribed within 24 hours after the prescription is transmitted, payment is made for a 30 day supply of a medication that the prescriber certifies is medically necessary."; and

(2) in subsection (g)(3)(C), by inserting after clause (iii) the following new clause:

"(iv) The development and oversight of prior authorization programs described in subsection (d)(5).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2007.

CHAPTER 2—REFORM OF ASSET TRANSFER RULES

SEC. 3111. LENGTHENING LOOK-BACK PERIOD; CHANGE IN BEGINNING DATE FOR PERIOD OF INELIGIBILITY.

(a) LENGTHENING LOOK-BACK PERIOD FOR ALL DISPOSALS TO 5 YEARS.—Section 1917(c)(1)(B)(i) of the Social Security Act (42 U.S.C. 1396p(c)(1)(B)(i)) is amended by inserting "or in the case of

any other disposal of assets made on or after the date of the enactment of the Medicaid Reconciliation Act of 2005" before ", 60 months".

(b) CHANGE IN BEGINNING DATE FOR PERIOD OF INELIGIBILITY.—Section 1917(c)(1)(D) of such Act (42 U.S.C. 1396p(c)(1)(D)) is amended—

(1) by striking "(D) The date" and inserting "(D)(i) In the case of a transfer of asset made before the date of the enactment of the Medicaid Reconciliation Act of 2005, the date"; and

(2) by adding at the end the following new clause:

"(ii) In the case of a transfer of asset made on or after the date of the enactment of the Medicaid Reconciliation Act of 2005, the date specified in this subparagraph is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and is receiving services described in subparagraph (C) but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.".

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

(d) AVAILABILITY OF HARDSHIP WAIVERS.—Each State shall provide for a hardship waiver process in accordance with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C. 1396p(c)(2)(D))—

(1) under which an undue hardship exists when application of the transfer of assets provision would deprive the individual—

(A) of medical care such that the individual's health or life would be endangered; or

(B) of food, clothing, shelter, or other necessities of life; and

(2) which provides for—

(A) notice to recipients that an undue hardship exception exists;

(B) a timely process for determining whether an undue hardship waiver will be granted; and

(C) a process under which an adverse determination can be appealed.

(e) ADDITIONAL PROVISIONS ON HARDSHIP WAIVERS.—

(1) APPLICATION BY FACILITY.—Section 1917(c)(2) of the Social Security Act (42 U.S.C. 1396p(c)(2)) is amended—

(A) by striking the semicolon at the end of subparagraph (D) and inserting a period; and

(B) by adding after and below such subparagraph the following:

"The procedures established under subparagraph (D) shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the legal guardian of the individual.".

(2) AUTHORITY TO MAKE BED HOLD PAYMENTS FOR HARDSHIP APPLICANTS.—Such section is further amended by adding at the end the following: "While an application for an undue hardship waiver

is pending under subparagraph (D) in the case of an individual who is a resident of a nursing facility, if the application meets such criteria as the Secretary specifies, the State may provide for payments for nursing facility services in order to hold the bed for the individual at the facility, but not in excess of payments for 30 days.".

SEC. 3112. DISCLOSURE AND TREATMENT OF ANNUITIES AND OF LARGE TRANSACTIONS.

(a) IN GENERAL.—Section 1917 of the Social Security Act (42 U.S.C. 1396p) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e)(1) In order to meet the requirements of this section for purposes of section 1902(a)(18), a State shall require, as a condition for the provision of medical assistance for services described in subsection (c)(1)(C)(i) (relating to long-term care services) for an individual, the application of the individual for such assistance (including any recertification of eligibility for such assistance) shall disclose the following:

"(A) A description of any interest the individual or community spouse has in an annuity (or similar financial instrument which provides for the conversion of a countable asset to a noncountable asset, as may be specified by the Secretary), regardless of whether the annuity is irrevocable or is treated as an asset.

"(B) Full information (as specified by the Secretary) concerning any transaction involving the transfer or disposal of assets during the previous period of 60 months, if the transaction exceeded $100,000, without regard to whether the transfer or disposal was for fair market value. For purposes of applying the previous sentence under this subsection, all transactions of $5,000 or more occurring within a 12-month period shall be treated as a single transaction. The dollar amounts specified in the first and second sentences of this subparagraph shall be increased, beginning with 2007, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000 in the case of the first sentence and $100 in the case of the second sentence.

Such application or recertification form shall include a statement that under paragraph (2) the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of the provision of such medical assistance.

"(2)(A) In the case of any annuity in which an institutionalized individual or community spouse has an interest, if medical assistance is furnished to the individual for services described in subsection (c)(1)(C)(i), by virtue of the provision of such assistance the State becomes the remainder beneficiary in the first position for the total amount of such medical assistance paid on behalf of the individual under this title (or, where there is a community spouse or minor or disabled child in such first position, in the position immediately succeeding the position of such spouse or child or both).

"(B) In the case of disclosure concerning an annuity under paragraph (1)(A), the State shall notify the issuer of the annuity of the

right of the State under subparagraph (A) as a preferred remainder beneficiary in the annuity for medical assistance furnished to the individual. Nothing in this paragraph shall be construed as preventing such an issuer from notifying persons with any other remainder interest of the State's remainder interest under subparagraph (A).

"(C) In the case of such an issuer receiving notice under subparagraph (B), the State may require the issuer to notify the State when there is a change in the amount of income or principal being withdrawn from the amount that was being withdrawn at the time of the most recent disclosure described in paragraph (1)(A). A State shall take such information into account in determining the amount of the State's obligations for medical assistance or in the individual's eligibility for such assistance.

"(3)(A) For purposes of subsection (c)(1), a transaction described in paragraph (1)(B) shall be deemed as the transfer of an asset for less than fair market value unless the individual demonstrates to the satisfaction of the State that the transfer of the asset was for fair market value.

"(B) The Secretary may provide guidance to States on categories of arms length transactions (such as the purchase of a commercial annuity) that could be generally treated as a transfer of asset for fair market value.

"(4) Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1)(A).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions (including the purchase of an annuity) occurring on or after the date of the enactment of this Act.

SEC. 3113. APPLICATION OF "INCOME-FIRST" RULE IN APPLYING COMMUNITY SPOUSE'S INCOME BEFORE ASSETS IN PROVIDING SUPPORT OF COMMUNITY SPOUSE.

(a) IN GENERAL.—Section 1924(d) of the Social Security Act (42 U.S.C. 1396r–5(d)) is amended by adding at the end the following new paragraph:

"(6) APPLICATION OF 'INCOME FIRST' RULE FOR FUNDING COMMUNITY SPOUSE MONTHLY INCOME ALLOWANCE.—For purposes of this subsection and subsection (e), any transfer or allocation made from an institutionalized spouse to meet the need of a community spouse for a community spouse monthly income allowance under paragraph (1)(B) shall be first made from income of the institutionalized spouse and then only when the income is not available from the resources of such institutionalized spouse.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transfers and allocations made on or after the date of the enactment of this Act by individuals who become institutionalized spouses on or after such date.

SEC. 3114. DISQUALIFICATION FOR LONG-TERM CARE ASSISTANCE FOR INDIVIDUALS WITH SUBSTANTIAL HOME EQUITY.

(a) IN GENERAL.—Section 1917 of the Social Security Act, as amended by section 3112, is further amended by redesignating sub-

section (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f)(1) Notwithstanding any other provision of this title, subject to paragraph (2), in determining eligibility of an individual for medical assistance with respect to nursing facility services or other long-term care services, the individual shall not be eligible for such assistance if the individual's equity interest in the individual's home exceeds $500,000. The dollar amount specified in the preceding sentence shall be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000.

"(2) Paragraph (1) shall not apply with respect to an individual if—

"(A) the spouse of such individual, or

"(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614,

is lawfully residing in the individual's home.

"(3) Nothing in this subsection shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

"(4) The Secretary shall establish a process whereby paragraph (1) is waived in the case of a demonstrated hardship.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who are determined eligible for medical assistance with respect to nursing facility services or other long-term care services based on an application filed on or after January 1, 2006.

SEC. 3115. ENFORCEABILITY OF CONTINUING CARE RETIREMENT COMMUNITIES (CCRC) AND LIFE CARE COMMUNITY ADMISSION CONTRACTS.

(a) ADMISSION POLICIES OF NURSING FACILITIES.—Section 1919(c)(5) of the Social Security Act (42 U.S.C. 1396r(c)(5)) is amended—

(1) in subparagraph (A)(i)(II), by inserting "subject to clause (v)," after "(II)"; and

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

"(v) TREATMENT OF CONTINUING CARE RETIREMENT COMMUNITIES ADMISSION CONTRACTS.—Notwithstanding subclause (II) of subparagraph (A)(i), subject to subsections (c) and (d) of section 1924, contracts for admission to a State licensed, registered, certified, or equivalent continuing care retirement community or life care community, including services in a nursing facility that is part of such community, may require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance.".

(b) TREATMENT OF ENTRANCE FEES.—Section 1917 of such Act (42 U.S.C. 1396p), as amended by sections 3112(a) and 3114(a), is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) TREATMENT OF ENTRANCE FEES OF INDIVIDUALS RESIDING IN CONTINUING CARE RETIREMENT COMMUNITIES.—

"(1) IN GENERAL.—For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this title, the rules specified in paragraph (2) shall apply to individuals residing in continuing care retirement communities or life care communities that collect an entrance fee on admission from such individuals.

"(2) TREATMENT OF ENTRANCE FEE.—For purposes of this subsection, an individual's entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that—

"(A) the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

"(B) the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

"(C) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

"(3) TREATMENT IN RELATION TO SPOUSAL SHARE.—To the extent that an entrance fee is determined to be an available resource to an individual applying for medical assistance and the individual has a community spouse as defined in section 1924(h), the entrance fee shall be considered in the computation of spousal share pursuant to section 1924(c).".

CHAPTER 3—FLEXIBILITY IN COST SHARING AND BENEFITS

SEC. 3121. STATE OPTION FOR ALTERNATIVE MEDICAID PREMIUMS AND COST SHARING.

(a) IN GENERAL.—Title XIX of the Social Security Act is amended by inserting after section 1916 the following new section:

"STATE OPTION FOR ALTERNATIVE PREMIUMS AND COST SHARING

"SEC. 1916A. (a) STATE FLEXIBILITY.—

"(1) IN GENERAL.—Notwithstanding sections 1916 and 1902(a)(10)(B), a State, at its option and through a State plan amendment, may impose premiums and cost sharing for any group of individuals (as specified by the State) and for any type of services (and may vary such premiums and cost sharing among such groups or types, including through the use of tiered cost sharing for prescription drugs) consistent with the limitations established under this section. Nothing in this sec-

tion shall be construed as superseding (or preventing the application of) section 1916(g).

"(2) DEFINITIONS.—In this section:

"(A) PREMIUM.—The term 'premium' includes any enrollment fee or similar charge.

"(B) COST SHARING.—The term 'cost sharing' includes any deduction, deductible, copayment, or similar charge.

"(b) LIMITATIONS ON EXERCISE OF AUTHORITY.—

"(1) INDIVIDUALS WITH FAMILY INCOME BELOW 100 PERCENT OF POVERTY LEVEL.—In the case of an individual whose family income does not exceed 100 percent of the Federal poverty level applicable to a family of the size involved, subject to subsections (c)(2) and (e)(2)(A), the limitations otherwise provided under subsections (a) and (b) of section 1916 shall continue to apply and no premium will be imposed under the plan, except that the total annual aggregate amount of cost sharing imposed (including any increased cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved for the year involved.

"(2) INDIVIDUALS WITH FAMILY INCOME ABOVE 100 PERCENT OF POVERTY LEVEL.—In the case of an individual whose family income exceeds 100 percent of the Federal poverty level applicable to a family of the size involved, the total annual aggregate amount of premiums and cost sharing imposed (including any increase and cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved for the year involved.

"(3) ADDITIONAL LIMITATIONS.—

"(A) PREMIUMS.—No premiums shall be imposed under this section with respect to the following:

"(i) Individuals under 18 years of age that are required to be provided medical assistance under section 1902(a)(10)(A)(i), and including individuals with respect to whom adoption or foster care assistance is made available under part E of title IV without regard to age.

"(ii) Pregnant women.

"(iii) Any terminally ill individual who is receiving hospice care (as defined in section 1905(o)).

"(iv) Any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

"(B) COST SHARING.—Subject to the succeeding provisions of this section, no cost sharing shall be imposed under this section with respect to the following:

"(i) Services furnished to individuals under 18 years of age that are required to be provided medical assistance under section 1902(a)(10)(A)(i), and including services furnished to individuals with respect to whom

adoption or foster care assistance is made available under part E of title IV without regard to age.

"(ii) Preventive services (such as well baby and well child care and immunizations) provided to children under 18 years of age regardless of family income.

"(iii) Services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy.

"(iv) Services furnished to a terminally ill individual who is receiving hospice care (as defined in section 1905(o)).

"(v) Services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

"(vi) Emergency services (as defined by the Secretary for purposes of section 1916(a)(2)(D)).

"(vii) Family planning services and supplies described in section 1905(a)(4)(C).

"(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing a State from exempting additional classes of individuals from premiums under this section or from exempting additional individuals or services from cost sharing under this section.

"(4) INDEXING NOMINAL AMOUNTS.—In applying section 1916 under paragraph (1) with respect to cost sharing that is 'nominal' in amount—

"(A) the Secretary shall phase-in an increase in such amount over a 3 year period (beginning January 1, 2006) so that—

"(i) a $3 nominal amount in 2005 would be increased to be a $5 nominal amount in 2008; and

"(ii) other nominal amounts would be increased by a proportional amount (with appropriate rounding) during such period; and

"(B) the Secretary shall increase such 'nominal' amounts for each subsequent year (beginning with 2009) by the annual percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) as rounded up in an appropriate manner.

"(5) DETERMINATIONS OF FAMILY INCOME.—In applying this subsection, family income shall be determined in a manner specified by the State for purposes of this subsection, including the use of such disregards as the State may provide. Family income shall be determined for such period and at such periodicity as the State may provide under this title.

"(6) POVERTY LINE DEFINED.—For purposes of this section, the term 'poverty line' has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42

U.S.C. 9902(2)), including any revision required by such section.

"(7) CONSTRUCTION.—Nothing in this section shall be construed—

"(A) as preventing a State from further limiting the premiums and cost sharing imposed under this section beyond the limitations provided under this subsection;

"(B) as affecting the authority of the Secretary through waiver to modify limitations on premiums and cost sharing under this subsection; or

"(C) as affecting any such waiver of requirements in effect under this title before the date of the enactment of this section with regard to the imposition of premiums and cost sharing.

"(d) ENFORCEABILITY OF PREMIUMS AND OTHER COST SHARING.—

"(1) PREMIUMS.—Notwithstanding section 1916(c)(3) and section 1902(a)(10)(B), a State may, at its option, condition the provision of medical assistance for an individual upon prepayment of a premium authorized to be imposed under this section, or may terminate eligibility for such medical assistance on the basis of failure to pay such a premium but shall not terminate eligibility of an individual for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. A State may apply the previous sentence for some or all groups of beneficiaries as specified by the State and may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

"(2) COST SHARING.—Notwithstanding section 1916(e) or any other provision of law, a State may permit a provider participating under the State plan to require, as a condition for the provision of care, items, or services to an individual entitled to medical assistance under this title for such care, items, or services, the payment of any cost sharing authorized to be imposed under this section with respect to such care, items, or services. Nothing in this paragraph shall be construed as preventing a provider from reducing or waiving the application of such cost sharing.".

(b) CONFORMING AMENDMENT.—Section 1916(f) of such Act (42 U.S.C. 1396o(f)) is amended by inserting "and section 1916A" after "(b)(3)".

(c) GAO STUDY OF IMPACT OF PREMIUMS AND COST SHARING.—The Comptroller General of the United States shall conduct a study on the impact of premiums and cost sharing under the medicaid program on access to, and utilization of, services. Not later than January 1, 2008, the Comptroller General shall submit to Congress a report on such study.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to cost sharing imposed for items and services furnished on or after January 1, 2006.

SEC. 3122. SPECIAL RULES FOR COST SHARING FOR PRESCRIPTION DRUGS.

(a) IN GENERAL.—Section 1916A of the Social Security Act, as inserted by section 3121, is amended by inserting after subsection (b) the following new subsection:

"(c) SPECIAL RULES FOR COST SHARING FOR PRESCRIPTION DRUGS.—

"(1) IN GENERAL.—In order to encourage beneficiaries to use drugs (in this subsection referred to as 'preferred drugs') identified by the State as the least (or less) costly effective prescription drugs within a class of drugs (as defined by the State), with respect to one or more groups of beneficiaries specified by the State, subject to paragraphs (2) and (5), the State may—

"(A) provide an increase in cost sharing (above the nominal level otherwise permitted under section 1916 or subsection (b), but subject to paragraphs (2) and (3)) with respect to drugs that are not preferred drugs within a class; and

"(B) waive or reduce the cost sharing otherwise applicable for preferred drugs within such class and shall not apply any such cost sharing for such preferred drugs for individuals for whom cost sharing may not otherwise be imposed under subsection (b)(3)(B).

"(2) LIMITATIONS.—

"(A) BY INCOME GROUP AS A MULTIPLE OF NOMINAL AMOUNTS.—In no case may the increase in cost sharing under paragraph (1)(A) with respect to a non-preferred drug exceed, in the case of an individual whose family income is—

"(i) below 100 percent of the poverty line applicable to a family of the size involved, the amount of nominal cost sharing (as otherwise determined under subsection (b));

"(ii) at least 100 percent, but below 150 percent, of the poverty line applicable to a family of the size involved, two times the amount of nominal cost sharing (as otherwise determined under subsection (b)); or

"(iii) at least 150 percent of the poverty line applicable to a family of the size involved, three times the amount of nominal cost sharing (as otherwise determined under subsection (b)).

"(B) LIMITATION TO NOMINAL FOR EXEMPT POPULATIONS.—In the case of an individual who is otherwise not subject to cost sharing due to the application of subsection (b)(3), any increase in cost sharing under paragraph (1)(A) with respect to a non-preferred drug may not exceed a nominal amount (as otherwise determined under subsection (b)).

"(C) CONTINUED APPLICATION OF AGGREGATE CAP.—In addition to the limitations imposed under subparagraphs (A) and (B), any increase in cost sharing under paragraph (1)(A) continues to be subject to the aggregate cap on cost sharing applied under paragraph (1) or (2) of subsection (b), as the case may be.

"(D) TRICARE PHARMACY BENEFIT PROGRAM LIMITATIONS.—In no case may a State—

"(i) treat as a non-preferred drug under this subsection a drug that is treated as a preferred drug under the TRICARE pharmacy benefit program established under section 1074g of title 10, United States Code, as such program is in effect on the date of the enactment of this section; or

"(ii) impose cost sharing under this subsection that exceeds the cost sharing imposed under the standards under such pharmacy benefit program, as such program is in effect as of the date of the enactment of this section.

"(3) WAIVER.—In carrying out paragraph (1), a State shall provide for the application of cost sharing levels applicable to a preferred drug in the case of a drug that is not a preferred drug if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual or both.

"(4) EXCLUSION AUTHORITY.—Nothing in this subsection shall be construed as preventing a State from excluding from paragraph (1) specified drugs or classes of drugs.

"(5) PRIOR AUTHORIZATION AND APPEALS PROCESS.—A State may not provide for increased cost sharing under this subsection unless the State has implemented for outpatient prescription drugs a system for prior authorization and an appeals process for determinations relating to prior authorization.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost sharing imposed for items and services furnished on or after October 1, 2006.

SEC. 3123. EMERGENCY ROOM COPAYMENTS FOR NON-EMERGENCY CARE.

(a) IN GENERAL.—Section 1916A of the Social Security Act, as inserted by section 3121 and as amended by section 3122, is further amended by adding at the end the following new subsection:

"(e) STATE OPTION FOR IMPOSING COST SHARING FOR NON-EMERGENCY CARE FURNISHED IN AN HOSPITAL EMERGENCY ROOM.—

"(1) IN GENERAL.—Notwithstanding section 1916 or the previous provisions of this section, but subject to the limitations of paragraph (2), a State may, by amendment to its State plan under this title, impose cost sharing for non-emergency services furnished to an individual (within one or more groups of individuals specified by the State) in a hospital emergency department under this subsection if the following conditions are met:

"(A) ACCESS TO NON-EMERGENCY ROOM PROVIDER.—The individual has actually available and accessible (as such terms are applied by the Secretary under section 1916(b)(3)) an alternate non-emergency services provider with respect to such services.

"(B) NOTICE.—The physician or hospital must inform the beneficiary after the appropriate screening assessment, but

before providing the non-emergency services, of the following:

"(i) The hospital may require the payment of the State specified cost sharing before the service can be provided.

"(ii) The name and location of an alternate non-emergency services provider (described in subparagraph (A)) that is actually available and accessible (as described in such subparagraph).

"(iii) The fact that such alternate provider can provide the services without the imposition of the increase in cost sharing described in clause (i).

"(iv) The hospital provides a referral to coordinate scheduling of this treatment.

Nothing in this subsection shall be construed as preventing a State from applying (or waiving) cost sharing otherwise permissible under this section to services described in clause (iii).

"(2) LIMITATIONS.—

"(A) FOR POOREST BENEFICIARIES.—In the case of an individual described in subsection (b)(1), the cost sharing imposed under this subsection may not exceed twice the amount determined to be nominal under this section, subject to the percent of income limitation otherwise applicable under subsection (b)(1).

"(B) APPLICATION TO EXEMPT POPULATIONS.—In the case of an individual who is otherwise not subject to cost sharing under subsection (b)(3), a State may impose cost sharing under paragraph (1) for care in an amount that does not exceed a nominal amount (as otherwise determined under subsection (b)) so long as no cost sharing is imposed to receive such care through an outpatient department or other alternative health care provider in the geographic area of the hospital emergency department involved.

"(C) CONTINUED APPLICATION OF AGGREGATE CAP.—In addition to the limitations imposed under subparagraphs (A) and (B), any increase in cost sharing under paragraph (1) continues to be subject to the aggregate cap on cost sharing applied under paragraph (1) or (2) of subsection (b), as the case may be.

"(3) CONSTRUCTION.—Nothing in this section shall be construed—

"(A) to limit a hospital's obligations with respect to screening and stabilizing treatment of an emergency medical condition under section 1867; or

"(B) to modify any obligations under either State or Federal standards relating to the application of a prudent-layperson standard with respect to payment or coverage of emergency services by any managed care organization.

"(4) DETERMINATION STANDARD.—No hospital or physician that makes a determination with respect to the imposition of cost sharing under this subsection shall be liable in any civil action or proceeding for such determination absent a finding by clear and convincing evidence of gross negligence by the hos-

pital or physician. The previous sentence shall not affect any liability under section 1867 or otherwise applicable under State law based upon the provision (or failure to provide) care.

"(5) DEFINITIONS.—For purposes of this subsection:

"(A) NON-EMERGENCY SERVICES.—The term 'non-emergency services' means any care or services furnished in a emergency department of a hospital that the physician determines do not constitute an appropriate medical screening examination or stabilizing examination and treatment screening required to be provided by the hospital under section 1867.

"(B) ALTERNATE NON-EMERGENCY SERVICES PROVIDER.—The term 'alternative non-emergency services provider' means, with respect to non-emergency services for the diagnosis or treatment of a condition, a health care provider, such as a physician's office, health care clinic, community health center, hospital outpatient department, or similar health care provider, that provides clinically appropriate services for such diagnosis or treatment of the condition within a clinically appropriate time of the provision of such non-emergency services and that is participating in the program under this title.".

(b) GRANT FUNDS FOR ESTABLISHMENT OF ALTERNATE NON-EMERGENCY SERVICES PROVIDERS.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end the following new subsection:

"(x) PAYMENTS FOR ESTABLISHMENT OF ALTERNATE NON-EMERGENCY SERVICES PROVIDERS.—

"(1) PAYMENTS.—In addition to the payments otherwise provided under subsection (a), subject to paragraph (2), the Secretary shall provide for payments to States under such subsection for the establishment of alternate non-emergency service providers (as defined in section 1916A(f)(5)(B)), or networks of such providers.

"(2) LIMITATION.—The total amount of payments under this subsection shall be equal to, and shall not exceed, $100,000,000 during the four-year period beginning with 2006. This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

"(3) PREFERENCE.—In providing for payments to States under this subsection, the Secretary shall provide preference to States that establish, or provide for, alternate non-emergency services providers or networks of such providers that—

"(A) serve rural or underserved areas where beneficiaries under this title may not have regular access to providers of primary care services; or

"(B) are in partnership with local community hospitals.

"(4) FORM AND MANNER OF PAYMENT.—Payment to a State under this subsection shall be made only upon the filing of such application in such form and in such manner as the Secretary shall specify. Payment to a State under this subsection

shall be made in the same manner as other payments under section 1903(a).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to non-emergency services furnished on or after the date of the enactment of this Act.

SEC. 3124. USE OF BENCHMARK BENEFIT PACKAGES.

Title XIX of the Social Security Act is amended by redesignating section 1936 as section 1937 and by inserting after section 1935 the following new section:

"STATE FLEXIBILITY IN BENEFIT PACKAGES

"SEC. 1936. (a) STATE OPTION OF PROVIDING BENCHMARK BENEFITS.—

"(1) AUTHORITY.—

"(A) IN GENERAL.—Notwithstanding any other provision of this title, a State, at its option as a State plan amendment, may provide for medical assistance under this title to individuals within one or more groups of individuals specified by the State through enrollment in coverage that provides—

"(i) benchmark coverage described in subsection (b)(1) and, for a qualifying child, benchmark dental coverage as defined in subparagraph (F); or

"(ii) benchmark equivalent coverage described in subsection (b)(2)and, for a qualifying child, benchmark dental coverage as defined in subparagraph (F).

"(B) LIMITATION.—The State may only exercise the option under subparagraph (A) for eligibility categories that had been established before the date of the enactment of this section.

"(C) OPTION OF WRAP-AROUND BENEFITS.—In the case of coverage described in subparagraph (A), a State, at its option, may provide such wrap-around or additional benefits as the State may specify.

"(D) TREATMENT AS MEDICAL ASSISTANCE.—Payment of premiums for such coverage under this subsection shall be treated as payment of other insurance premiums described in the third sentence of section 1905(a).

"(E) QUALIFYING CHILD DEFINED.—For purposes of subparagraph (A), the term 'qualifying child' means a child under 18 years of age with a family income below 133 percent of the poverty line applicable to a family of the size involved.

"(F) BENCHMARK DENTAL COVERAGE.—For purposes of subparagraph (A), the term 'benchmark dental coverage' means, with respect to a State, dental benefits coverage that is equivalent to or better than the dental coverage offered under the dental benefit plan that covers the greatest number of individuals in the State who are not entitled to medical assistance under this title.

"(2) APPLICATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a State may require that a full-benefit eligible indi-

vidual (as defined in subparagraph (C)) within a group obtain benefits under this title through enrollment in coverage described in paragraph (1)(A). A State may apply the previous sentence to individuals within one or more groups of such individuals.

"(B) LIMITATION ON APPLICATION.—A State may not require under subparagraph (A) an individual to obtain benefits through enrollment described in paragraph (1)(A) if the individual is within one of the following categories of individuals:

"(i) MANDATORY PREGNANT WOMEN AND CHILDREN.—The individual is a pregnant woman or child under 18 years of age who is required to be covered under the State plan under section 1902(a)(10)(A)(i).

"(ii) DUAL ELIGIBLES.—The individual is entitled to benefits under any part of title XVIII.

"(iii) TERMINALLY ILL HOSPICE PATIENTS.—The individual is terminally ill and is receiving benefits for hospice care under this title.

"(iv) ELIGIBLE ON BASIS OF INSTITUTIONALIZATION.—The individual is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

"(v) MEDICALLY FRAIL AND SPECIAL MEDICAL NEEDS INDIVIDUALS.—The individual is medically frail or otherwise an individual with special medical needs (as identified in accordance with regulations of the Secretary).

"(vi) BENEFICIARIES QUALIFYING FOR LONG-TERM CARE SERVICES.—The individual qualifies based on medical condition for medical assistance for long-term care services described in section 1917(c)(1)(C).

"(C) FULL-BENEFIT ELIGIBLE INDIVIDUALS.—

"(i) IN GENERAL.—For purposes of this paragraph, subject to clause (ii), the term 'full-benefit eligible individual' means for a State for a month an individual who is determined eligible by the State for medical assistance for all services defined in section 1905(a) which are covered under the State plan under this title for such month under section 1902(a)(10)(A) or under any other category of eligibility for medical assistance for all such services under this title, as determined by the Secretary.

"(ii) EXCLUSION OF MEDICALLY NEEDY AND SPEND-DOWN POPULATIONS.—Such term shall not include an individual determined to be eligible by the State for medical assistance under section 1902(a)(10)(C) or by reason of section 1902(f) or otherwise eligible based on a reduction of income based on costs incurred for medical or other remedial care.

"(b) BENCHMARK BENEFIT PACKAGES.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), each of the following coverage shall be considered to be benchmark coverage:

"(A) FEHBP-EQUIVALENT HEALTH INSURANCE COVERAGE.—The standard Blue Cross/Blue Shield preferred provider option service benefit plan, described in and offered under section 8903(1) of title 5, United States Code.

"(B) STATE EMPLOYEE COVERAGE.—A health benefits coverage plan that is offered and generally available to State employees in the State involved.

"(C) COVERAGE OFFERED THROUGH HMO.—The health insurance coverage plan that—

"(i) is offered by a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act), and

"(ii) has the largest insured commercial, non-medicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State involved.

"(2) BENCHMARK-EQUIVALENT COVERAGE.—For purposes of subsection (a)(1), coverage that meets the following requirement shall be considered to be benchmark-equivalent coverage:

"(A) INCLUSION OF BASIC SERVICES.—The coverage includes benefits for items and services within each of the following categories of basic services:

"(i) Inpatient and outpatient hospital services.

"(ii) Physicians' surgical and medical services.

"(iii) Laboratory and x-ray services.

"(iv) Well-baby and well-child care, including age-appropriate immunizations.

"(v) Other appropriate preventive services, as designated by the Secretary.

"(B) AGGREGATE ACTUARIAL VALUE EQUIVALENT TO BENCHMARK PACKAGE.—The coverage has an aggregate actuarial value that is at least actuarially equivalent to one of the benchmark benefit packages described in paragraph (1).

"(C) SUBSTANTIAL ACTUARIAL VALUE FOR ADDITIONAL SERVICES INCLUDED IN BENCHMARK PACKAGE.—With respect to each of the following categories of additional services for which coverage is provided under the benchmark benefit package used under subparagraph (B), the coverage has an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of services in such package:

"(i) Coverage of prescription drugs.

"(ii) Mental health services.

"(iii) Vision services.

"(iv) Hearing services.

"(3) DETERMINATION OF ACTUARIAL VALUE.—The actuarial value of coverage of benchmark benefit packages shall be set forth in an actuarial opinion in an actuarial report that has been prepared—

"(A) by an individual who is a member of the American Academy of Actuaries;

"(B) using generally accepted actuarial principles and methodologies;

"(C) using a standardized set of utilization and price factors;

"(D) using a standardized population that is representative of the population involved;

"(E) applying the same principles and factors in comparing the value of different coverage (or categories of services);

"(F) without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and

"(G) taking into account the ability of a State to reduce benefits by taking into account the increase in actuarial value of benefits coverage offered under this title that results from the limitations on cost sharing under such coverage.

The actuary preparing the opinion shall select and specify in the memorandum the standardized set and population to be used under subparagraphs (C) and (D).

"(4) COVERAGE OF RURAL HEALTH CLINIC AND FQHC SERVICES.—Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark equivalent coverage under this section unless—

"(A) the individual has access, through such coverage or otherwise, to services described in subparagraphs (B) and (C) of section 1905(a)(2); and

"(B) payment for such services is made in accordance with the requirements of section 1902(bb).".

SEC. 3125. STATE OPTION TO ESTABLISH NON-EMERGENCY MEDICAL TRANSPORTATION PROGRAM.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (66), by striking "and" at the end;

(2) in paragraph (67) by striking the period at the end and inserting "; and"; and

(3) by inserting after paragraph (67) the following:

"(68) at the option of the State and notwithstanding paragraph (10)(B) or (23), provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide transportation for individuals eligible for medical assistance under the State plan who need access to medical care or services and have no other means of transportation which—

"(A) may include a wheelchair van, taxi, stretcher car, bus passes and tickets, secured transportation, and such other transportation as the Secretary determines appropriate; and

"(B) may be conducted under contract with a broker who—

"(i) is selected through a competitive bidding process based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs;

"(ii) has oversight procedures to monitor beneficiary access and complaints and ensure that transport personnel are licensed, qualified, competent, and courteous;

"(iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services; and

"(iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on the prohibitions on physician referrals under section 1877 and such other prohibitions and requirements as the Secretary determines to be appropriate).".

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

(c) IG REPORT ON UTILIZATION.—Not later than January 1, 2007, the Inspector General of the Department of Health and Human Services shall submit to Congress a report that examines the nonemergency medical transportation brokerage programs implemented under section 1902(a)(68) of the Social Security Act, as inserted by subsection (a). The report shall include findings regarding conflicts of interest and improper utilization of transportation services under such programs, as well as recommendations for improvements in such programs.

SEC. 3126. EXEMPTING WOMEN COVERED UNDER BREAST OR CERVICAL CANCER PROGRAM.

Notwithstanding any other provision of law, none of provisions of the previous sections of this chapter, or amendments made by such sections, shall apply to women who are receiving medical assistance by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII), 1396a(aa)).

CHAPTER 4—EXPANDED ACCESS TO CERTAIN BENEFITS

SEC. 3131. EXPANDED ACCESS TO HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY AND DISABLED.

(a) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(1) in paragraph (27), by striking "and" at the end;

(2) by redesignating paragraph (28) as paragraph (29); and

(3) by inserting after paragraph (27) the following new paragraph:

"(28) subject to section 1902(cc), home and community-based services (within the scope of services described in paragraph (4)(B) of section 1915(c) for which the Secretary has the au-

thority to approve a waiver and not including room and board) provided pursuant to a written plan of care for individuals—

"(A) who are 65 years of age or older, who are disabled (as defined under the State plan), who are persons with developmental disabilities or mental retardation or persons with related conditions, or who are within a subgroup thereof under the State plan;

"(B) with respect to whom there has been a determination, in the manner described in paragraph (1) of such section, that but for the provision of such services the individuals would require the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan; and

"(C) who qualify for medical assistance under the eligibility standards in effect in the State (which may include standards in effect under an approved waiver) as of the date of the enactment of this paragraph; and".

(b) CONDITIONS.—Section 1902 of such Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(cc) PROVISION OF HOME AND COMMUNITY-BASED SERVICES UNDER STATE PLAN.—

"(1) CONDITIONS.—A State may provide home and community-based services under section 1905(a)(28), other than through a waiver or demonstration project under section 1915 or 1115, only if the following conditions are met:

"(A) EXPIRATION OF PREVIOUS WAIVER.—Any State waiver or demonstration project under either such section with respect to services for individuals described in such section has expired.

"(B) INFORMATION.—The State must monitor and report to the Secretary, in a form and manner specified by the Secretary and on a quarterly basis, enrollment and expenditures for provision of such services under such section.

"(2) OPTIONS.—Notwithstanding any other provision of this title, in a State's provision of services under section 1905(a)(28)—

"(A) a State is not required to comply with the requirements of section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community);

"(B) a State may limit the number of individuals who are eligible for such services and may establish waiting lists for the receipt of such services; and

"(C) a State may limit the amount, duration, and scope of such services.

Nothing in this section shall be construed as applying the previous sentence to any items or services other than home and community-based services provided under section 1905(a)(28).

"(3) USE OF ELECTRONIC DATA.—The State shall permit health care providers to comply with documentation and data requirements imposed with respect to home and community-

based services through the maintenance of data in electronic form rather than in paper form.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to home and community-based services furnished on or after October 1, 2006.

SEC. 3132. OPTIONAL CHOICE OF SELF-DIRECTED PERSONAL ASSISTANCE SERVICES (CASH AND COUNSELING).

(a) EXEMPTION FROM CERTAIN REQUIREMENTS.—Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended by adding at the end the following new subsection:

"(i)(1) A State may provide, as 'medical assistance', payment for part or all of the cost of self-directed personal assistance services (other than room and board) under the plan which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that, but for the provision of such services, the individuals would require and receive personal care services under the plan, or home and community-based services provided pursuant to a waiver under subsection (c). Self-directed personal assistance services may not be provided under this subsection to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, not related by blood or marriage.

"(2) The Secretary shall not grant approval for a State self-directed personal assistance services program under this section unless the State provides assurances satisfactory to the Secretary of the following:

"(A) Necessary safeguards have been taken to protect the health and welfare of individuals provided services under the program, and to assure financial accountability for funds expended with respect to such services.

"(B) The State will provide, with respect to individuals who—

"(i) are entitled to medical assistance for personal care services under the plan, or receive home and community-based services under a waiver granted under subsection (c);

"(ii) may require self-directed personal assistance services; and

"(iii) may be eligible for self-directed personal assistance services,

an evaluation of the need for personal care under the plan, or personal services under a waiver granted under subsection (c).

"(C) Such individuals who are determined to be likely to require personal care under the plan, or home and community-based services under a waiver granted under subsection (c) are informed of the feasible alternatives, if available under the State's self-directed personal assistance services program, at the choice of such individuals, to the provision of personal care services under the plan, or personal assistance services under a waiver granted under subsection (c).

"(D) The State will provide for a support system that ensures participants in the self-directed personal assistance services program are appropriately assessed and counseled prior to enrollment and are able to manage their budgets. Additional

counseling and management support may be provided at the request of the participant.

"(E) The State will provide to the Secretary an annual report on the number of individuals served and total expenditures on their behalf in the aggregate. The State shall also provide an evaluation of overall impact on the health and welfare of participating individuals compared to non-participants every three years.

"(3) A State may provide self-directed personal assistance services under the State plan without regard to the requirements of section 1902(a)(1) and may limit the population eligible to receive these services and limit the number of persons served without regard to section 1902(a)(10)(B).

"(4)(A) For purposes of this subsection, the term 'self-directed personal assistance services' means personal care and related services, or home and community-based services otherwise available under the plan under this title or subsection (c), that are provided to an eligible participant under a self-directed personal assistance services program under this section, under which individuals, within an approved self-directed services plan and budget, purchase personal assistance and related services, and permits participants to hire, fire, supervise, and manage the individuals providing such services.

"(B) At the election of the State—

"(i) a participant may choose to use any individual capable of providing the assigned tasks including legally liable relatives as paid providers of the services; and

"(ii) the individual may use the individual's budget to acquire items that increase independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

"(5) For purpose of this section, the term 'approved self-directed services plan and budget' means, with respect to a participant, the establishment of a plan and budget for the provision of self-directed personal assistance services, consistent with the following requirements:

"(A) SELF-DIRECTION.—The participant (or in the case of a participant who is a minor child, the participant's parent or guardian, or in the case of an incapacitated adult, another individual recognized by State law to act on behalf of the participant) exercises choice and control over the budget, planning, and purchase of self-directed personal assistance services, including the amount, duration, scope, provider, and location of service provision.

"(B) ASSESSMENT OF NEEDS.—There is an assessment of the needs, strengths, and preferences of the participants for such services.

"(C) SERVICE PLAN.—A plan for such services (and supports for such services) for the participant has been developed and approved by the State based on such assessment through a person-centered process that—

"(i) builds upon the participant's capacity to engage in activities that promote community life and that respects the participant's preferences, choices, and abilities; and

"(ii) involves families, friends, and professionals in the planning or delivery of services or supports as desired or required by the participant.

"(D) SERVICE BUDGET.—A budget for such services and supports for the participant has been developed and approved by the State based on such assessment and plan and on a methodology that uses valid, reliable cost data, is open to public inspection, and includes a calculation of the expected cost of such services if those services were not self-directed. The budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.

"(E) APPLICATION OF QUALITY ASSURANCE AND RISK MANAGEMENT.—There are appropriate quality assurance and risk management techniques used in establishing and implementing such plan and budget that recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities.

"(6) A State may employ a financial management entity to make payments to providers, track costs, and make reports under the program. Payment for the activities of the financial management entity shall be at the administrative rate established in section 1903(a).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 2006.

SEC. 3133. EXPANSION OF STATE LONG-TERM CARE PARTNERSHIP PROGRAM.

(a) IN GENERAL.—Section 1917(b)(1)(C) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)) is amended—

(1) in clause (ii), by inserting "or which has a State plan amendment that provides for a qualified State long-term care insurance partnership (as defined in clause (iii))" after "1993,"; and

(2) by adding at the end the following new clauses:

"(iii) For purposes of this paragraph, the term 'qualified State long-term care insurance partnership' means an approved State plan amendment under this title that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy (including a certificate issued under a group insurance contract), if the following requirements are met:

"(I) The policy covers an insured who was a resident of such State when coverage first became effective under the policy.

"(II) The policy is a qualified long-term care insurance policy (as defined in section 7702B(b) of the Internal Revenue Code of 1986) issued on or after the first day of the first calendar quarter in which the plan amendment was submitted to the Secretary.

"(III) If the policy does not provide some level of inflation protection, the insured was offered, before the policy was sold, a long-term care insurance policy that provides some level of inflation protection.

"(IV) The State Medicaid agency under section 1902(a)(5) provides information and technical assistance to the State insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training or demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.

"(V) The issuer of the policy provides regular reports to the Secretary that include, in accordance with regulations of the Secretary (promulgated after consultation with the States), notification regarding when all benefits provided under the policy have been paid and the amount of such benefits paid, when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.

"(VI) The State does not impose any requirement affecting the terms or benefits of such a policy unless the State imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

In the case of a long-term care insurance policy which is exchanged for another such policy, subclause (I) shall be applied based on the coverage of the first such policy that was exchanged.

"(iv) The Secretary—

"(I) as appropriate, shall provide copies of the reports described in clause (iii)(V) to the State involved; and

"(II) shall promote the education of consumers regarding qualified State long-term care insurance partnerships.

"(v) The Secretary, in consultation with other appropriate Federal agencies, issuers of long-term care insurance, the National Association of Insurance Commissioners, and State insurance commissioners, shall develop recommendations for Congress to authorize and fund a uniform minimum data set to be reported electronically by all issuers of long-term care insurance policies under qualified State long-term care insurance partnerships to a secure, centralized electronic query and report-generating mechanism that the State, the Secretary, and other Federal agencies can access.".

(b) CONSTRUCTION.—Nothing in the amendments made by subsection (a) shall be construed as affecting the treatment of long-term care insurance policies that will be, are, or were provided under a State plan amendment described in section 1917(b)(1)(C)(ii) of the Social Security Act that was approved as of May 14, 1993.

(c) EFFECTIVE DATE.—A State plan amendment that provides for a qualified State long-term care insurance partnership under the amendments made by subsection (a) may provide that such amend-

ment is effective for long-term care insurance policies issued on or after a date, specified in the amendment, that is not earlier than the first day of the first calendar quarter in which the plan amendment was submitted to the Secretary of Health and Human Services.

(d) STANDARDS FOR RECIPROCAL RECOGNITION AMONG PARTNERSHIP STATES.—In order to permit portability in long-term care insurance policies purchased under State long-term care insurance partnerships, the Secretary of Health and Human Services may develop, in consultation with the States and the National Association of Insurance Commissioners, uniform standards for reciprocal recognition of such policies among States with qualified State long-term care insurance partnerships.

SEC. 3134. HEALTH OPPORTUNITY ACCOUNTS.

Title XIX of the Social Security Act, as amended by section 3124, is amended—

(1) by redesignating section 1937 as section 1938; and

(2) by inserting after section 1936 the following new section:

"HEALTH OPPORTUNITY ACCOUNTS

"SEC. 1937. (a) AUTHORITY.—

"(1) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary shall establish a demonstration program under which States may provide under their State plans under this title (including such a plan operating under a statewide waiver under section 1115) in accordance with this section for the provision of alternative benefits consistent with subsection (c) for eligible population groups in one or more geographic areas of the State specified by the State. An amendment under the previous sentence is referred to in this section as a 'State demonstration program'.

"(2) INITIAL DEMONSTRATION.—The demonstration program under this section shall begin on January 1, 2006. During the first 5 years of such program, the Secretary shall not approve more than 10 State demonstration programs, with each State demonstration program covering one or more geographic areas specified by the State. After such 5-year period—

"(A) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that a State demonstration program previously implemented has been unsuccessful, such a demonstration program may be extended or made permanent in the State; and

"(B) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that all State demonstration programs previously implemented were unsuccessful, other States may implement State demonstration programs.

"(3) APPROVAL.—The Secretary shall not approve a State demonstration program under paragraph (1) unless the program includes the following:

"(A) Creating patient awareness of the high cost of medical care.

"(B) Providing incentives to patients to seek preventive care services.

"(C) Reducing inappropriate use of health care services.

"(D) Enabling patients to take responsibility for health outcomes.

"(E) Providing enrollment counselors and ongoing education activities.

"(F) Providing transactions involving health opportunity accounts to be conducted electronically and without cash.

"(G) Providing access to negotiated provider payment rates consistent with this section.

Nothing in this section shall be construed as preventing a State demonstration program from providing incentives for patients obtaining appropriate preventive care (as defined for purposes of section 223(c)(2)(C) of the Internal Revenue Code of 1986), such as additional account contributions for an individual demonstrating healthy prevention practices.

"(4) NO REQUIREMENT FOR STATEWIDENESS.—Nothing in this section or any other provision of law shall be construed to require that a State must provide for the implementation of a State demonstration program on a Statewide basis.

"(5) REPORTS.—The Secretary shall periodically submit to Congress reports regarding the success of State demonstration programs.

"(b) ELIGIBLE POPULATION GROUPS.—

"(1) IN GENERAL.—A State demonstration program under this section shall specify the eligible population groups consistent with paragraphs (2) and (3).

"(2) ELIGIBILITY LIMITATIONS DURING INITIAL DEMONSTRATION PERIOD.—During the initial 5 years of the demonstration program under this section, a State demonstration program shall not apply to any of the following individuals:

"(A) Individuals who are 65 years of age or older.

"(B) Individuals who are disabled, regardless of whether or not their eligibility for medical assistance under this title is based on such disability.

"(C) Individuals who are eligible for medical assistance under this title only because they are (or were within the previous 60 days) pregnant.

"(D) Individuals who have been eligible for medical assistance for a continuous period of less than 3 months.

"(3) ADDITIONAL LIMITATIONS.—A State demonstration program shall not apply to any individual within a category of individuals described in section 1936(a)(2)(B).

"(4) LIMITATIONS.—

"(A) STATE OPTION.—This subsection shall not be construed as preventing a State from further limiting eligibility.

"(B) ON ENROLLEES IN MEDICAID MANAGED CARE ORGANIZATIONS.—Insofar as the State provides for eligibility of individuals who are enrolled in medicaid managed care organizations, such individuals may participate in the State demonstration program only if the State provides assur-

ances satisfactory to the Secretary that the following conditions are met with respect to any such organization:

"(i) In no case may the number of such individuals enrolled in the organization who participate in the program exceed 5 percent of the total number of individuals enrolled in such organization.

"(ii) The proportion of enrollees in the organization who so participate is not significantly disproportionate to the proportion of such enrollees in other such organizations who participate.

"(iii) The State has provided for an appropriate adjustment in the per capita payments to the organization to account for such participation, taking into account differences in the likely use of health services between enrollees who so participate and enrollees who do not so participate.

"(5) VOLUNTARY PARTICIPATION.—An eligible individual shall be enrolled in a State demonstration program only if the individual voluntarily enrolls. Except in such hardship cases as the Secretary shall specify, such an enrollment shall be effective for a period of 12 months, but may be extended for additional periods of 12 months each with the consent of the individual.

"(c) ALTERNATIVE BENEFITS.—

"(1) IN GENERAL.—The alternative benefits provided under this section shall consist, consistent with this subsection, of at least—

"(A) coverage for medical expenses in a year for items and services for which benefits are otherwise provided under this title after an annual deductible described in paragraph (2) has been met; and

"(B) contribution into a health opportunity account.

Nothing in subparagraph (A) shall be construed as preventing a State from providing for coverage of preventive care (referred to in subsection (a)(3)) within the alternative benefits without regard to the annual deductible.

"(2) ANNUAL DEDUCTIBLE.—The amount of the annual deductible described in paragraph (1)(A) shall be at least 100 percent, but no more than 110 percent, of the annualized amount of contributions to the health opportunity account under subsection (d)(2)(A)(i), determined without regard to any limitation described in subsection (d)(2)(C)(i)(II).

"(3) ACCESS TO NEGOTIATED PROVIDER PAYMENT RATES.—

"(A) FEE-FOR-SERVICE ENROLLEES.—In the case of an individual who is participating in a State demonstration program and who is not enrolled with a medicaid managed care organization, the State shall provide that the individual may obtain demonstration program medicaid services from—

"(i) any participating provider under this title at the same payment rates that would be applicable to such services if the deductible described in paragraph (1)(A) was not applicable; or

"(ii) any provider at payment rates that do not exceed 125 percent of the payment rate that would be

applicable to such services furnished by a participating provider under this title if the deductible described in paragraph (1)(A) was not applicable.

"(B) TREATMENT UNDER MEDICAID MANAGED CARE PLANS.—In the case of an individual who is participating in a State demonstration program and is enrolled with a medicaid managed care organization, the State shall enter into an arrangement with the organization under which the individual may obtain demonstration program medicaid services from any provider under such organization at payment rates that do not exceed the payment rate that would be applicable to such services if the deductible described in paragraph (1)(A) was not applicable.

"(C) COMPUTATION.—The payment rates described in subparagraphs (A) and (B) shall be computed without regard to any cost sharing that would be otherwise applicable under sections 1916 and 1916A.

"(D) DEFINITIONS.—For purposes of this paragraph:

"(i) The term 'demonstration program medicaid services' means, with respect to an individual participating in a State demonstration program, services for which the individual would be provided medical assistance under this title but for the application of the deductible described in paragraph (1)(A).

"(ii) The term 'participating provider' means—

"(I) with respect to an individual described in subparagraph (A), a health care provider that has entered into a participation agreement with the State for the provision of services to individuals entitled to benefits under the State plan; or

"(II) with respect to an individual described in subparagraph (B) who is enrolled in a medicaid managed care organization, a health care provider that has entered into an arrangement for the provision of services to enrollees of the organization under this title.

"(4) NO EFFECT ON SUBSEQUENT BENEFITS.—Except as provided under paragraphs (1) and (2), alternative benefits for an eligible individual shall consist of the benefits otherwise provided to the individual, including cost sharing relating to such benefits.

"(5) OVERRIDING COST SHARING AND COMPARABILITY REQUIREMENTS FOR ALTERNATIVE BENEFITS.—The provisions of this title relating to cost sharing for benefits (including sections 1916 and 1916A) shall not apply with respect to benefits to which the annual deductible under paragraph (1)(A) applies. The provisions of section 1902(a)(10)(B) (relating to comparability) shall not apply with respect to the provision of alternative benefits (as described in this subsection).

"(6) TREATMENT AS MEDICAL ASSISTANCE.—Subject to subparagraphs (D) and (E) of subsection (d)(2), payments for alternative benefits under this section (including contributions into a health opportunity account) shall be treated as medical assistance for purposes of section 1903(a).

"(7) USE OF TIERED DEDUCTIBLE AND COST SHARING.—

"(A) IN GENERAL.—A State—

"(i) may vary the amount of the annual deductible applied under paragraph (1)(A) based on the income of the family involved so long as it does not favor families with higher income over those with lower income; and

"(ii) may vary the amount of the maximum out-of-pocket cost sharing (as defined in subparagraph (B)) based on the income of the family involved so long as it does not favor families with higher income over those with lower income.

"(B) MAXIMUM OUT-OF-POCKET COST SHARING.—For purposes of subparagraph (A)(ii), the term 'maximum out-of-pocket cost sharing' means, for an individual or family, the amount by which the annual deductible level applied under paragraph (1)(A) to the individual or family exceeds the balance in the health opportunity account for the individual or family.

"(8) CONTRIBUTIONS BY EMPLOYERS.—Nothing in this section shall be construed as preventing an employer from providing health benefits coverage consisting of the coverage described in paragraph (1)(A) to individuals who are provided alternative benefits under this section.

"(d) HEALTH OPPORTUNITY ACCOUNT.—

"(1) IN GENERAL.—For purposes of this section, the term 'health opportunity account' means an account that meets the requirements of this subsection.

"(2) CONTRIBUTIONS.—

"(A) IN GENERAL.—No contribution may be made into a health opportunity account except—

"(i) contributions by the State under this title; and

"(ii) contributions by other persons and entities, such as charitable organizations.

"(B) STATE CONTRIBUTION.—A State shall specify the contribution amount that shall be deposited under subparagraph (A)(i) into a health opportunity account.

"(C) LIMITATION ON ANNUAL STATE CONTRIBUTION PROVIDED AND PERMITTING IMPOSITION OF MAXIMUM ACCOUNT BALANCE.—

"(i) IN GENERAL.—A State—

"(I) may impose limitations on the maximum contributions that may be deposited under subparagraph (A)(i) into a health opportunity account in a year;

"(II) may limit contributions into such an account once the balance in the account reaches a level specified by the State; and

"(III) subject to clauses (ii) and (iii) and subparagraph (D)(i), may not provide contributions described in subparagraph (A)(i) to a health opportunity account on behalf of an individual or family to the extent the amount of such contributions (including both State and Federal shares)

exceeds, on an annual basis, $2,500 for each individual (or family member) who is an adult and $1,000 for each individual (or family member) who is a child.

"(ii) INDEXING OF DOLLAR LIMITATIONS.—For each year after 2006, the dollar amounts specified in clause (i)(III) shall be annually increased by the Secretary by a percentage that reflects the annual percentage increase in the medical care component of the consumer price index for all urban consumers.

"(iii) BUDGET NEUTRAL ADJUSTMENT.—A State may provide for dollar limitations in excess of those specified in clause (i)(III) (as increased under clause (ii)) for specified individuals if the State provides assurances satisfactory to the Secretary that contributions otherwise made to other individuals will be reduced in a manner so as to provide for aggregate contributions that do not exceed the aggregate contributions that would otherwise be permitted under this subparagraph.

"(D) LIMITATIONS ON FEDERAL MATCHING.—

"(i) STATE CONTRIBUTION.—A State may contribute under subparagraph (A)(i) amounts to a health opportunity account in excess of the limitations provided under subparagraph (C)(i)(III), but no Federal financial participation shall be provided under section 1903(a) with respect to contributions in excess of such limitations.

"(ii) NO FFP FOR PRIVATE CONTRIBUTIONS.—No Federal financial participation shall be provided under section 1903(a) with respect to any contributions described in subparagraph (A)(ii) to a health opportunity account.

"(E) APPLICATION OF DIFFERENT MATCHING RATES.—The Secretary shall provide a method under which, for expenditures made from a health opportunity account for medical care for which the Federal matching rate under section 1903(a) exceeds the Federal medical assistance percentage, a State may obtain payment under such section at such higher matching rate for such expenditures.

"(3) USE.—

"(A) GENERAL USES.—

"(i) IN GENERAL.—Subject to the succeeding provisions of this paragraph, amounts in a health opportunity account may be used for payment of such health care expenditures as the State specifies.

"(ii) GENERAL LIMITATION.—In no case shall such account be used for payment for health care expenditures that are not payment of medical care (as defined by section 213(d) of the Internal Revenue Code of 1986).

"(iii) STATE RESTRICTIONS.—In applying clause (i), a State may restrict payment for—

"(I) providers of items and services to providers that are licensed or otherwise authorized under State law to provide the item or service and may deny payment for such a provider on the basis that the provider has been found, whether with respect to this title or any other health benefit program, to have failed to meet quality standards or to have committed one or more acts of fraud or abuse; and

"(II) items and services insofar as the State finds they are not medically appropriate or necessary.

"(iv) ELECTRONIC WITHDRAWALS.—The State demonstration program shall provide for a method whereby withdrawals may be made from the account for such purposes using an electronic system and shall not permit withdrawals from the account in cash.

"(B) MAINTENANCE OF HEALTH OPPORTUNITY ACCOUNT AFTER BECOMING INELIGIBLE FOR PUBLIC BENEFIT.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, if an account holder of a health opportunity account becomes ineligible for benefits under this title because of an increase in income or assets—

"(I) no additional contribution shall be made into the account under paragraph (2)(A)(i);

"(II) subject to clause (iii), the balance in the account shall be reduced by 25 percent; and

"(III) subject to the succeeding provisions of this subparagraph, the account shall remain available to the account holder for withdrawals under the same terms and conditions as if the account holder remained eligible for such benefits.

"(ii) SPECIAL RULES.—Withdrawals under this subparagraph from an account—

"(I) shall be available for the purchase of health insurance coverage; and

"(II) may, subject to clause (iv), be made available (at the option of the State) for such additional expenditures (such as job training and tuition expenses) specified by the State (and approved by the Secretary) as the State may specify.

"(iii) EXCEPTION FROM 25 PERCENT SAVINGS TO GOVERNMENT FOR PRIVATE CONTRIBUTIONS.—Clause (i)(II) shall not apply to the portion of the account that is attributable to contributions described in paragraph (2)(A)(ii). For purposes of accounting for such contributions, withdrawals from a health opportunity account shall first be attributed to contributions described in paragraph (2)(A)(i).

"(iv) CONDITION FOR NON-HEALTH WITHDRAWALS.—No withdrawal may be made from an account under clause (ii)(II) unless the accountholder has participated in the program under this section for at least 1 year.

"(v) NO REQUIREMENT FOR CONTINUATION OF COVERAGE.—An account holder of a health opportunity account, after becoming ineligible for medical assistance under this title, is not required to purchase high-deductible or other insurance as a condition of maintaining or using the account.

"(4) ADMINISTRATION.—A State may coordinate administration of health opportunity accounts through the use of a third party administrator and reasonable expenditures for the use of such administrator shall be reimbursable to the State in the same manner as other administrative expenditures under section 1903(a)(7).

"(5) TREATMENT.—Amounts in, or contributed to, a health opportunity account shall not be counted as income or assets for purposes of determining eligibility for benefits under this title.

"(6) UNAUTHORIZED WITHDRAWALS.—A State may establish procedures—

"(A) to penalize or remove an individual from the health opportunity account based on nonqualified withdrawals by the individual from such an account; and

"(B) to recoup costs that derive from such nonqualified withdrawals.".

CHAPTER 5—OTHER PROVISIONS

SEC. 3141. INCREASE IN MEDICAID PAYMENTS TO INSULAR AREAS.

Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended—

(1) in paragraph (2), by inserting "and subject to paragraph (3)" after "subsection (f)"; and

(2) by adding at the end the following new paragraph:

"(3) FISCAL YEARS 2006 AND 2007 FOR CERTAIN INSULAR AREAS.—The amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for fiscal year 2006 and fiscal year 2007 shall be increased by the following amounts:

"(A) For Puerto Rico, $12,000,000 for fiscal year 2006 and $12,000,000 for fiscal year 2007.

"(B) For the Virgin Islands, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

"(C) For Guam, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

"(D) For the Northern Mariana Islands, $1,000,000 for fiscal year 2006 and $2,000,000 for fiscal year 2007.

"(E) For American Samoa, $2,000,000 for fiscal year 2006 and $4,000,000 for fiscal year 2007.

Such amounts shall not be taken into account in applying paragraph (2) for fiscal year 2007 but shall be taken into account in applying such paragraph for fiscal year 2008 and subsequent fiscal years.".

SEC. 3142. MANAGED CARE ORGANIZATION PROVIDER TAX REFORM.

(a) IN GENERAL.—Section 1903(w)(7)(A)(viii) of the Social Security Act (42 U.S.C. 1396b(w)(7)(A)(viii)) is amended to read as follows:

"(viii) Services of managed care organizations (including health maintenance organizations, preferred provider organizations, and such other similar organizations as the Secretary may specify by regulation).".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendment made by subsection (a) shall be effective as of the date of the enactment of this Act.

(2) GRANDFATHER.—

(A) IN GENERAL.—Subject to subparagraph (B), in the case of a State that has had approved as of the date of the enactment of this Act a provider tax on services described in section 1903(w)(7)(A)(viii) of the Social Security Act, as amended by subsection (a), such amendment shall be effective as of October 1, 2008.

(B) TRANSITION RULE FOR FISCAL YEAR 2009.—In the case of a State described in subparagraph (A), the amount of any reduction in payment under subsection (a)(1) of section 1903 of the Social Security Act (42 U.S.C. 1396b) that would otherwise be required under subsection (w) of such section for calendar quarters in fiscal year 2009 because of the amendment made by section (a) shall be reduced by one-half.

SEC. 3143. MEDICAID TRANSFORMATION GRANTS.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b), as amended by section 3123, is amended by adding at the end the following new subsection:

"(y) MEDICAID TRANSFORMATION PAYMENTS.—

"(1) IN GENERAL.—In addition to the payments provided under subsection (a), subject to paragraph (4), the Secretary shall provide for payments to States for the adoption of innovative methods to improve the effectiveness and efficiency in providing medical assistance under this title.

"(2) PERMISSIBLE USES OF FUNDS.—The following are examples of innovative methods for which funds provided under this subsection may be used:

"(A) Methods for reducing patient error rates through the implementation and use of electronic health records, electronic clinical decision support tools, or e-prescribing programs.

"(B) Methods for improving rates of collection from estates of amounts owed under this title.

"(C) Methods for reducing waste, fraud, and abuse under the program under this title, such as reducing improper payment rates as measured by annual payment error rate measurement (PERM) project rates.

"(D) Implementation of a medication risk management program as part of a drug use review program under section 1927(g).

"(3) APPLICATION; TERMS AND CONDITIONS.—

"(A) IN GENERAL.—No payments shall be made to a State under this subsection unless the State applies to the Secretary for such payments in a form, manner, and time specified by the Secretary.

"(B) TERMS AND CONDITIONS.—Such payments are made under such terms and conditions consistent with this subsection as the Secretary prescribes.

"(C) ANNUAL REPORT.—Payment to a State under this subsection is conditioned on the State submitting to the Secretary an annual report on the programs supported by such payment. Such report shall include information on—

"(A) the specific uses of such payment;

"(B) an assessment of quality improvements and clinical outcomes under such programs; and

"(C) estimates of cost savings resulting from such programs.

"(4) FUNDING.—

"(A) LIMITATION ON FUNDS.—The total amount of payments under this subsection shall be equal to, and shall not exceed—

"(i) $50,000,000 for fiscal year 2007; and

"(ii) $50,000,000 for fiscal year 2008.

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

"(B) ALLOCATION OF FUNDS.—The Secretary shall specify a method for allocating the funds made available under this subsection among States. Such method shall provide preference for States that design programs that target health providers that treat significant numbers of medicaid beneficiaries.

"(C) FORM AND MANNER OF PAYMENT.—Payment to a State under this subsection shall be made in the same manner as other payments under section 1903(a). There is no requirement for State matching funds to receive payments under this subsection.

"(5) MEDICATION RISK MANAGEMENT PROGRAM.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'medication risk management program' means a program for targeted beneficiaries that ensures that covered outpatient drugs are appropriately used to optimize therapeutic outcomes through improved medication use and to reduce the risk of adverse events.

"(B) ELEMENTS.—Such program may include the following elements:

"(i) The use of established principles and standards for drug utilization review and best practices to analyze prescription drug claims of targeted beneficiaries and identify outlier physicians.

"(ii) On an ongoing basis provide outlier physicians—

"(I) a comprehensive pharmacy claims history for each targeted beneficiary under their care;

"(II) information regarding the frequency and cost of relapses and hospitalizations of targeted beneficiaries under the physician's care; and

"(III) applicable best practice guidelines and empirical references.

"(iii) Monitor outlier physician's prescribing, such as failure to refill, dosage strengths, and provide incentives and information to encourage the adoption of best clinical practices.

"(C) TARGETED BENEFICIARIES.—For purposes of this paragraph, the term 'targeted beneficiaries' means medicaid eligible beneficiaries who are identified as having high prescription drug costs and medical costs, such as individuals with behavioral disorders or multiple chronic diseases who are taking multiple medications.".

SEC. 3144. ENHANCING THIRD PARTY IDENTIFICATION AND PAYMENT.

(a) CLARIFICATION OF THIRD PARTIES LEGALLY RESPONSIBLE FOR PAYMENT OF A CLAIM FOR A HEALTH CARE ITEM OR SERVICE.—Section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i)—

(A) by inserting ", including self-insured plans" after "health insurers"; and

(B) by striking "and health maintenance organizations" and inserting "health maintenance organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service"; and

(2) in subparagraph (G)—

(A) by inserting "a self-insured plan," after "1974,"; and

(B) by striking "and a health maintenance organization" and inserting "a health maintenance organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service".

(b) REQUIREMENT FOR THIRD PARTIES TO PROVIDE THE STATE WITH COVERAGE ELIGIBILITY AND CLAIMS DATA.—Section 1902(a)(25) of such Act (42 U.S.C. 1396a(a)(25)) is amended—

(1) in subparagraph (G), by striking "and" at the end;

(2) in subparagraph (H), by adding "and" after the semicolon at the end; and

(3) by inserting after subparagraph (H), the following:

"(I) that the State shall provide assurances satisfactory to the Secretary that the State has in effect laws requiring health insurers, including self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, health maintenance organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, as a condition of doing business in the State, to—

"(i) provide eligibility and claims payment data with respect to an individual who is eligible for, or is pro-

vided, medical assistance under the State plan, upon the request of the State;

"(ii) accept the subrogation of the State to any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State plan;

"(iii) respond to any inquiry by the State regarding a claim for payment for any health care item or service submitted not later than 3 years after the date of the provision of such health care item or service; and

"(iv) agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim;".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section take effect on January 1, 2006.

(2) DELAYED EFFECTIVE DATE.—In the case of a State plan under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such Act solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

SEC. 3145. IMPROVED ENFORCEMENT OF DOCUMENTATION REQUIREMENTS.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (i), as amended by section 104 of Public Law 109–91—

(A) by striking the period at the end of paragraph (21) and inserting "; or"; and

(B) by inserting after paragraph (21) the following new paragraph:

"(22) with respect to amounts expended for medical assistance for an individual who declares under section 1137(d)(1)(A) to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this title, unless the requirement of subsection (z) is met."; and

(2) by adding at the end, as amended by sections 3123 and 3143, the following new subsection:

"(z)(1) For purposes of subsection (i)(22), the requirement of this subsection is, with respect to an individual declaring to be a citizen or national of the United States, that, subject to paragraph (2), there is presented satisfactory documentary evidence of citizenship or nationality (as defined in paragraph (3)) of the individual.

"(2) The requirement of paragraph (1) shall not apply to an alien who is eligible for medical assistance under this title—

"(A) and is entitled to or enrolled for benefits under any part of title XVIII;

"(B) on the basis of receiving supplemental security income benefits under title XVI; or

"(C) on such other basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality had been previously presented.

"(3)(A) For purposes of this subsection, the term 'satisfactory documentary evidence of citizenship or nationality' means—

"(i) any document described in subparagraph (B); or

"(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

"(B) The following are documents described in this subparagraph:

"(i) A United State passport.

"(ii) Form N–550 or N–570 (Certificate of Naturalization).

"(iii) Form N–560 or N–561 (Certificate of United States Citizenship).

"(iv) Such other document as the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity.

"(C) The following are documents described in this subparagraph:

"(i) A certificate of birth in the United States.

"(ii) Form FS–545 or Form DS–1350 (Certification of Birth Abroad).

"(iii) Form I–97 (United States Citizen Identification Card).

"(iv) Form FS–240 (Report of Birth Abroad of a Citizen of the United States).

"(v) Such other document (not described in subparagraph (B)(iv)) as the Secretary may specify that provides proof of United States citizenship or nationality.

"(D) The following are documents described in this subparagraph:

"(i) Any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act.

"(ii) Any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.

"(E) A reference in this paragraph to a form includes a reference to any successor form.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to determinations of initial eligibility for medical assistance made on or after July 1, 2006, and to redeterminations of eligibility made on or after such date in the case of individuals for whom the requirement of section 1903(z) of the Social Security Act, as added by such amendments, was not previously met.

SEC. 3146. REFORMS OF TARGETED CASE MANAGEMENT.

(a) IN GENERAL.—Section 1915(g) of the Social Security Act (42 U.S.C. 1396n(g)) is amended by striking paragraph (2) and inserting the following:

"(2) For purposes of this subsection:

"(A)(i) The term 'case management services' means services which will assist individuals eligible under the plan in gaining

access to needed medical, social, educational, and other services.

"(ii) Such term includes the following:

"(I) Assessment of an eligible individual to determine service needs, including activities that focus on needs identification, to determine the need for any medical, educational, social, or other services. Such assessment activities include the following:

"(aa) Taking client history.

"(bb) Identifying the needs of the individual, and completing related documentation.

"(cc) Gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible individual.

"(II) Development of a specific care plan based on the information collected through an assessment, that specifies the goals and actions to address the medical, social, educational, and other services needed by the eligible individual, including activities such as ensuring the active participation of the eligible individual and working with the individual (or the individual's authorized health care decision maker) and others to develop such goals and identify a course of action to respond to the assessed needs of the eligible individual.

"(III) Referral and related activities to help an individual obtain needed services, including activities that help link eligible individuals with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the individual.

"(IV) Monitoring and follow-up activities, including activities and contacts that are necessary to ensure the care plan is effectively implemented and adequately addressing the needs of the eligible individual, and which may be with the individual, family members, providers, or other entities and conducted as frequently as necessary to help determine such matters as—

"(aa) whether services are being furnished in accordance with an individual's care plan;

"(bb) whether the services in the care plan are adequate; and

"(cc) whether there are changes in the needs or status of the eligible individual, and if so, making necessary adjustments in the care plan and service arrangements with providers.

"(iii) Such term does not include the direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred, including, with respect to the direct delivery of foster care services, services such as (but not limited to) the following:

"(I) Research gathering and completion of documentation required by the foster care program.

"(II) Assessing adoption placements.

"(III) Recruiting or interviewing potential foster care parents.

"(IV) Serving legal papers.

"(V) Home investigations.

"(VI) Providing transportation.

"(VII) Administering foster care subsidies.

"(VIII) Making placement arrangements.

"(B) The term 'targeted case management services' means case management services that are furnished without regard to the requirements of section 1902(a)(1) and section 1902(a)(10)(B) to specific classes of individuals or to individuals who reside in specified areas.

"(3) With respect to contacts with individuals who are not eligible for medical assistance under the State plan or, in the case of targeted case management services, individuals who are eligible for such assistance but are not part of the target population specified in the State plan, such contacts—

"(A) are considered an allowable case management activity, when the purpose of the contact is directly related to the management of the eligible individual's care; and

"(B) are not considered an allowable case management activity if such contacts relate directly to the identification and management of the noneligible or nontargeted individual's needs and care.

"(4)(A) In accordance with section 1902(a)(25), Federal financial participation only is available under this title for case management services or targeted case management services if there are no other third parties liable to pay for such services, including as reimbursement under a medical, social, educational, or other program.

"(B) A State shall allocate the costs of any part of such services which are reimbursable under another federally funded program in accordance with OMB Circular A–87 (or any related or successor guidance or regulations regarding allocation of costs among federally funded programs) under an approved cost allocation program.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2006.

SEC. 3147. EMERGENCY SERVICES FURNISHED BY NON-CONTRACT PROVIDERS FOR MEDICAID MANAGED CARE ENROLLEES.

(a) IN GENERAL.—Section 1932(b)(2) of the Social Security Act (42 U.S.C. 1396u–2(b)(2)) is amended by adding at the end the following new subparagraph:

"(D) EMERGENCY SERVICES FURNISHED BY NON-CONTRACT PROVIDERS.—Any provider of emergency services that does not have in effect a contract with a medicaid managed care entity that establishes payment amounts for services furnished to a beneficiary enrolled in the entity's medicaid managed care plan must accept as payment in full the amounts (less any payments for indirect costs of medical education and direct costs of graduate medical education) that it could collect if the beneficiary received medical assistance under this title other than through enrollment in such an entity.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2007.

SEC. 3148. ADJUSTMENT IN COMPUTATION OF MEDICAID FMAP TO DISREGARD AN EXTRAORDINARY EMPLOYER PENSION CONTRIBUTION.

(a) IN GENERAL.—Only for purposes of computing the Federal medical assistance percentage under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) for a State for a fiscal year (beginning with fiscal year 2006), any significantly disproportionate employer pension contribution described in subsection (b) shall be disregarded in computing the per capita income of such State, but shall not be disregarded in computing the per capita income for the continental United States (and Alaska) and Hawaii.

(b) SIGNIFICANTLY DISPROPORTIONATE EMPLOYER PENSION CONTRIBUTION.—For purposes of subsection (a), a significantly disproportionate employer pension contribution described in this subsection with respect to a State for a fiscal year is an employer contribution towards pensions that is allocated to such State for a period if the aggregate amount so allocated exceeds 50 percent of the total increase in personal income in that State for the period involved.

Subtitle B—Katrina Health Care Relief

SEC. 3201. TARGETED MEDICAID RELIEF FOR STATES AFFECTED BY HURRICANE KATRINA.

(a) 100 PERCENT FEDERAL MATCHING PAYMENTS FOR MEDICAL ASSISTANCE PROVIDED IN KATRINA IMPACTED AREAS.—

(1) IN GENERAL.—Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), for items and services furnished during the period that begins on August 28, 2005, and ends on May 15, 2006, the Federal matching rate for providing medical assistance for such items and services under a State Medicaid plan to any individual residing in a Katrina impacted parish or county (as defined in subsection (c)(1)) or to a Katrina Survivor (as defined in subsection (b)), and for costs directly attributable to all administrative activities that relate to the provision of such medical assistance, shall be 100 percent.

(2) APPLICATION TO CHILD HEALTH ASSISTANCE.—Notwithstanding section 2105(b) of the Social Security Act (42 U.S.C. 1397ee(b)), for items and services furnished during the period described in paragraph (1), the Federal matching rate for providing child health assistance for such items and services under a State child health plan under title XXI of such Act in a Katrina impacted parish or county or to a Katrina Survivor, and for costs directly attributable to all administrative activities that relate to the provision of such child health assistance, shall be 100 percent.

(b) KATRINA SURVIVOR.—For purposes of subsection (a), the term "Katrina Survivor" means an individual who, on any day during the week preceding August 28, 2005, had a primary residence in a major disaster parish or county (as defined in subsection (c)).

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

(1) KATRINA IMPACTED PARISH OR COUNTY.—The term "Katrina impacted parish or county" means any parish in the State of Louisiana, any county in the State of Mississippi, and any major disaster parish or county in the State of Alabama.

(2) MAJOR DISASTER PARISH OR COUNTY.—A major disaster parish or county is a parish of the State of Louisiana or a county of the State of Mississippi or Alabama for which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) as a result of Hurricane Katrina and which the President has determined, as of September 14, 2005, warrants individual assistance from the Federal Government under such Act.

SEC. 3202. STATE HIGH RISK HEALTH INSURANCE POOL FUNDING.

There are hereby authorized and appropriated $90,000,000 for fiscal year 2006 for grants under subsection (b)(1) of section 2745 of the Public Health Service Act (42 U.S.C. 300gg-45). The amount so appropriated shall be treated as if it had been appropriated under subsection (c)(2) of such section.

SEC. 3203. RECOMPUTATION OF HPSA, MUA, AND MUP DESIGNATIONS WITHIN HURRICANE KATRINA AFFECTED AREAS.

(a) IN GENERAL.—For purposes of the Public Health Service Act (42 U.S.C. 201 et seq.), the Secretary of Health and Human Services shall conduct a review of all Hurricane Katrina disaster areas and, as appropriate taking into account the lack of availability of health care providers and services due to Hurricane Katrina—

(1) shall designate such areas as health professional shortage areas or medically underserved areas; and

(2) shall designate one of more populations of each such area as a medically underserved population.

(b) HURRICANE KATRINA DISASTER AREA DEFINED.—For purposes of this section, the term "Hurricane Katrina disaster area" means an area for which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) as a result of Hurricane Katrina and which the President has determined, before September 14, 2005, warrants individual and public assistance from the Federal Government under such Act.

SEC. 3204. WAIVER OF CERTAIN REQUIREMENTS APPLICABLE TO THE PROVISION OF HEALTH CARE IN AREAS IMPACTED BY HURRICANE KATRINA.

(a) ELIGIBLE AREA.—

(1) DEFINITION.—In this section, the term "eligible area" means an area identified by the Secretary of Health and Human Services pursuant to paragraph (2).

(2) IDENTIFICATION.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall identify areas that—

(A) have been directly impacted by Hurricane Katrina; or

(B) are located in a State which has absorbed a significant number of Hurricane Katrina evacuees.

(b) HEALTH CENTERS.—For the purpose of determining whether an entity located in an eligible area qualifies as a health center under section 330 of the Public Health Service Act (42 U.S.C. 254b):

(1) BOARD COMPOSITION.—

(A) WAIVER.—The Secretary of Health and Human Services shall waive any requirement that a majority of the governing board of the entity be consumers of the entity's health care services.

(B) RULE OF CONSTRUCTION.—This paragraph shall not be construed as requiring the Secretary of Health and Human Services to waive a requirement that the governing board of the entity include representation of the consumers of the entity's health care services.

(2) MEDICALLY UNDERSERVED POPULATION.—

(A) DETERMINATION.—At the request of the entity, the Secretary of Health and Human Services shall determine whether, taking into consideration any change in population associated with Hurricane Katrina, the entity serves a medically underserved population (as that term is defined in section 330(b)(3) of the Public Health Service Act (42 U.S.C. 254b(b)(3))).

(B) DEADLINE.—The Secretary of Health and Human Services shall make a determination under subparagraph (A) not later than 60 days after the date on which the Secretary receives the request for the determination.

(C) RESTRICTION.—The Secretary of Health and Human Services shall not make any determination under this paragraph on whether a population has ceased to qualify as a medically underserved population under section 330 of the Public Health Service Act (42 U.S.C. 254b).

(3) REQUIRED PRIMARY HEALTH SERVICES.—The Secretary of Health and Human Services shall waive any requirement for the entity to provide primary health services described in clause (iii), (iv), or (v) of section 330(b)(1) of the Public Health Service Act (42 U.S.C. 254b(b)(1)).

(c) NATIONAL HEALTH SERVICE CORPS.—Notwithstanding the provisions of subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.) requiring that members of the National Health Service Corps be assigned to health professional shortage areas, the Secretary of Health and Human Services may assign members of the National Health Service Corps to any eligible area.

(d) TERMINATION OF AUTHORITY.—The authority vested by this section in the Secretary of Health and Human Services and the Secretary of Homeland Security shall terminate on the date that is 2 years after enactment of this Act. The Secretary of Health and Human Services may not grant any waiver under subsection (b)(1) or (b)(3) and may not make any assignment of personnel under subsection (c), and the Secretary of Homeland Security may not allow any agreement under subsection (d), for a period extending beyond such date.

SEC. 3205. FMAP HOLD HARMLESS FOR KATRINA IMPACT.

Notwithstanding any other provision of law, for purposes of titles XIX and XXI of the Social Security Act, the Secretary of Health and Human Services in computing the Federal medical assistance percentage under section 1905(b) of such (42 U.S.C. 1396d(b)) for any year after 2006 for a State that the Secretary determines has a significant number of evacuees who were evacuated to, and live in, the State as a result of Hurricane Katrina as of October 1, 2005, the Secretary shall disregard such evacuees (and income attributable to such evacuees).

Subtitle C—Katrina and Rita Energy Relief

SEC. 3301. HURRICANES KATRINA AND RITA ENERGY RELIEF.

(a) FINDINGS.—The Congress finds the following:

(1) Hurricanes Katrina and Rita severely disrupted crude oil and natural gas production in the Gulf of Mexico. The Energy Information Administration estimates that as a result of these two hurricanes, the amount of shut in crude oil production nearly doubled to almost 1,600,000 barrels per day, and the amount of natural gas production shut in also doubled to about 8,000,000,000 cubic feet per day. The hurricanes also initially shut down most of the crude oil refinery capacity in the Gulf of Mexico region. These disruptions led to significantly higher prices for crude oil, refined oil products, and natural gas.

(2) These production and supply disruptions are expected to lead to significantly higher heating costs for consumers this winter. The Energy Information Administration projects an increase in residential natural gas heating expenditures of 32 percent to 61 percent over last winter, with the Midwest seeing the largest increase. Winter heating oil expenditures are projected to increase by 30 percent to 41 percent over last winter, again with the Midwest seeing the largest increase. Propane expenditures for home heating are projected to increase 20 percent to 36 percent over last winter, with the Midwest seeing the largest projected increase. Expenditures for home heating using electricity are expected to increase by 2 percent to 9 percent over last winter, with the South seeing the largest increase. Overall, average home heating expenditures this winter are projected to increase about 33 percent, assuming a normal winter. These significant increases in home heating costs this winter will particularly harm low-income consumers. The Low-Income Home Energy Assistance Program is designed to assist these low income consumers in this situation. Accordingly, Congress seeks a one-time only supplement to the Low-Income Home Energy Assistance Program fund to assist low income consumers with the additional home heating expenditures that they will face this winter as a result of Hurricanes Katrina and Rita.

(b) RELIEF.—In addition to amounts otherwise made available, there shall be directly available to the Secretary of Health and Human Services for a 1-time only obligation and expenditure $1,000,000,000 for fiscal year 2006 for allocation under section

2604(a) through (d) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(a) through (d)), for the sole purpose of providing assistance to offset the anticipated higher energy costs caused by Hurricane Katrina and Hurricane Rita.

(c) SUNSET.—The provisions of this section shall terminate, be null and void, and have no force and effect whatsoever after September 30, 2006. No monies provided for under this section shall be available after such date.

Subtitle D—Digital Television Transition

SEC. 3401. SHORT TITLE.

This subtitle may be cited as the "Digital Television Transition Act of 2005".

SEC. 3402. FINDINGS.

The Congress finds the following:

(1) A loophole in current law is stalling the digital television (DTV) transition and preventing the return of spectrum for critical public safety and wireless broadband uses.

(A) In 1996, to facilitate the DTV transition, Congress gave each full-power television broadcaster an extra channel of spectrum to broadcast in digital format while continuing to broadcast in analog format on its original channel. Each broadcaster was supposed to eventually return either the original or additional channel and broadcast exclusively in digital format on the remaining channel.

(B) In 1997, Congress earmarked for public safety use some of the spectrum the broadcasters are supposed to return. Congress designated the rest of the spectrum to be auctioned for advanced commercial applications, such as wireless broadband services. Congress set December 31, 2006, as the deadline for broadcasters to return the spectrum for public safety and wireless use.

(C) A loophole, however, allows broadcasters in a market to delay the return of the spectrum until more than 85 percent of television households in that market have at least one television with access to digital broadcast channels using a digital television receiver, a digital-to-analog converter box, or cable or satellite service. Experts forecast it will take many more years to meet the 85-percent test nationwide.

(2) Eliminating the 85-percent test and setting a "hard deadline" will close the loophole, making possible the nationwide clearing necessary to complete the DTV transition and free the spectrum for public safety use.

(A) Some police officers, firefighters, and rescue personnel already have equipment to communicate over the spectrum the broadcasters are supposed to return, and are just awaiting the turnover. Many more public safety officials cannot purchase equipment or begin planning without a date certain for the availability of the spectrum.

(B) Five years to the day before September 11, 2001, an advisory committee report to the Federal Communications

Commission (FCC) noted that public safety officials desperately needed more spectrum to better communicate with each other in times of emergency. The 9/11 Commission has specifically recognized the importance of clearing for public safety use the spectrum at issue here, especially following the terrorist attacks on the Pentagon and the World Trade Center. The spectrum is also important for communications during natural disasters.

(3) The certainty of a nationwide hard deadline will enable consumers, industry, and government to take the necessary steps to make the transition as smooth as possible.

(A) Under existing law, once a market meets the 85-percent penetration test, the remaining 15 percent of households in the market would lose access to broadcast programming unless they obtain a digital television receiver, a digital-to-analog converter box, or cable or satellite service.

(B) Determining when the 85-percent test in current law has been met in a particular market would be extremely difficult for the FCC to accomplish. Moreover, because no one can predict precisely when any market will meet the 85-percent test, and because different markets will meet the test at different times, consumers, industry, and government cannot adequately plan on a either a local or nationwide basis.

(C) With a hard deadline, government, industry, and consumer groups can develop concrete plans for consumer education. Manufacturers can build large quantities of low-cost digital-to-analog converter boxes for consumers who wish to continue using their analog televisions. Clearing the spectrum on a unified, nationwide basis will also enable the government to maximize the revenue from the auction. Some of that revenue can be used to help make the converter boxes available.

(D) The deadline will have little impact on most television households. The vast majority of households already subscribe to cable or satellite services. Allowing cable and satellite operators to convert digital broadcasts into an analog-viewable format will enable their subscribers that wish to continue using analog televisions to do so.

(4) Setting a hard deadline will bring consumers and the economy the benefits of the DTV transition faster.

(A) DTV offers sharper and wider pictures, and CD-quality sound. Even consumers with analog televisions connected to a converter box or cable or satellite service will receive better service than they did before the transition.

(B) Once the transition is complete, broadcasters can redirect the resources they currently expend running both analog and digital stations and focus on programming that capitalizes on the advanced features of digital transmissions. Manufacturers can also increase the production of televisions and other consumer electronics equipment that takes advantage of these features, which will also drive down prices.

(C) The cleared spectrum can be used to bring cutting-edge wireless services to public safety officials and consumers. This spectrum travels greater distances at lower costs, and more easily penetrates buildings and foliage. Consequently, it is ideal to bring mobile broadband services not only to urban areas, but to rural areas as well, which currently have very few cost-effective broadband options.

(D) The increase in DTV programming, services, and equipment, and the provision of products and services that use the cleared spectrum, will improve America's global competitiveness and result in significant investment and innovation, boosting our economy and fostering new jobs.

SEC. 3403. ANALOG SPECTRUM RECOVERY: HARD DEADLINE.

(a) AMENDMENTS.—Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) is amended—

(1) in subparagraph (A), by striking "December 31, 2006" and inserting "December 31, 2008";

(2) by striking subparagraph (B);

(3) in subparagraph (C)(i)(I), by striking "or (B)";

(4) in subparagraph (D), by striking "subparagraph (C)(i)" and inserting "subparagraph (B)(i)"; and

(5) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) IMPLEMENTATION.—

(1) DTV ALLOTMENT TABLE OF IN-CORE CHANNELS FOR FULL-POWER STATIONS.—The Federal Communications Commission shall—

(A) release by December 31, 2006, a report and order in MB Docket No. 03–15 assigning all full-power broadcast television stations authorized in the digital television service a channel between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive);

(B) release by July 31, 2007, any reconsideration of such report and order; and

(C) not adopt any further changes between July 31, 2007, and January 1, 2009, to the channels assigned to full-power broadcast television stations for the provision of digital television service unless doing so is necessary for reasons of public safety or necessary to prevent a delay in the end of broadcasting by full-power stations in the analog television service.

(2) STATUS REPORTS.—Beginning with a report on January 31, 2006, and ending with a report on July 31, 2007, the Commission shall submit reports to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate every six months on the status of international coordination with Canada and Mexico of the digital television service table of allotments.

(3) TERMINATIONS OF ANALOG LICENSES AND BROADCASTING.—The Federal Communications Commission shall take such actions as are necessary to terminate all licenses for

full-power television stations in the analog television service and to require the cessation of broadcasting by full-power stations in the analog television service by January 1, 2009.

(4) ADDITIONAL UNLICENSED SPECTRUM FOR WIRELESS BROADBAND.—The Commission shall, within one year after the date of enactment of this Act, issue a final order in the matter of Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186).

(c) TECHNICAL AMENDMENT.—Paragraph (15) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), as added by section 203(b) of the Commercial Spectrum Enhancement Act (P.L. 108–494; 118 Stat. 3993), is redesignated as paragraph (16) of such section.

SEC. 3404. AUCTION OF RECOVERED SPECTRUM.

(a) DEADLINE FOR AUCTION.—Section 309(j)(15)(C) of the Communications Act of 1934 (47 U.S.C. 309(j)(15)(C)) is amended by adding at the end the following new clauses:

"(v) ADDITIONAL DEADLINES FOR RECOVERED ANALOG SPECTRUM.—Notwithstanding subparagraph (B), the Commission shall conduct the auction of the licenses for recovered analog spectrum by commencing the bidding not later than January 7, 2008, and shall deposit the proceeds of such auction in accordance with paragraph (8)(E)(i) not later than June 30, 2008.

"(vi) RECOVERED ANALOG SPECTRUM.—For purposes of clause (v), the term 'recovered analog spectrum' means the spectrum between channels 52 and 69, inclusive (between frequencies 698 and 806 megahertz, inclusive) reclaimed from analog television service broadcasting under paragraph (14), other than—

"(I) the spectrum required by section 337 to be made available for public safety services; and

"(II) the spectrum auctioned prior to the date of enactment of the Digital Television Transition Act of 2005.".

(b) EXTENSION OF AUCTION AUTHORITY.—Paragraph (11) of section 309(j) of such Act is repealed.

(c) STUDY OF AUCTION AUTHORITY.—

(1) INQUIRY AND STUDY REQUIRED.—Within 120 days after the date of enactment of this Act, the Federal Communications Commission shall initiate an ongoing inquiry and study—

(A) to evaluate the participation of women, minorities, and small businesses in the auction process, including the percentage of winning bidders that are women, minorities, and small businesses; and

(B) to assess the efforts made by the Commission to ensure that women, minorities, and small businesses are able to successfully participate in the auction process.

(2) REPORT.—The Commission shall submit a report to the Congress on the results of the inquiry and study required by paragraph (1) at least biennially beginning not later than one year after the date of enactment of this Act.

SEC. 3405. DIGITAL TELEVISION CONVERSION FUND.

(a) RESERVATION OF AUCTION PROCEEDS TO ASSIST CONVERSION.—Section 309(j)(8) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)) is amended—

(1) in subparagraph (A), by striking "subparagraph (B) or subparagraph (D)" and inserting "subparagraphs (B), (D), and (E)";

(2) in subparagraph (C)(i), by inserting before the semicolon at the end the following: ", except as otherwise provided in subparagraph (E)(i)"; and

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

"(E) TRANSFER OF REVENUES FOR DIGITAL TELEVISION CONVERSION.—

"(i) PROCEEDS FOR DTV CONVERSION FUND.—Notwithstanding subparagraph (A), of the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to recovered analog spectrum—

"(I) $990,000,000 shall be deposited in a separate fund in the Treasury to be known as the 'Digital Television Conversion Fund', and be available exclusively to carry out section 159 of the National Telecommunications and Information Administration Organization Act;

"(II) $500,000,000 shall be deposited in a separate fund in the Treasury to be known as the 'Public Safety Interoperable Communications Fund', and be available exclusively to carry out section 160 of such Act;

"(III) $30,000,000 shall be deposited in a separate fund in the Treasury to be known as the 'NYC 9/11 Digital Transition Fund', and be available exclusively to carry out section 161 of such Act;

"(IV) $3,000,000 shall be deposited in a separate fund in the Treasury to be known as the 'Low-Power Digital-to-Analog Conversion Fund', and be available exclusively to carry out section 162 of such Act; and

"(V) the remainder of such proceeds shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

"(ii) RECOVERED ANALOG SPECTRUM.—For purposes of clause (i), the term 'recovered analog spectrum' has the meaning provided in paragraph (15)(C)(vi).".

(b) CONVERTER BOX PROGRAM.—Part C of the National Telecommunications and Information Administration Organization Act is amended by adding at the end the following new section:

"SEC. 159. DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM.

"(a) CREATION OF PROGRAM.—The Assistant Secretary—

"(1) shall use the funds available under subsection (d) of this section to implement and administer a program through which households in the United States may obtain, upon request, up

to two coupons that can be applied toward the purchase of digital-to-analog converter boxes, subject to the restrictions in this section and the regulations created thereunder; and

"(2) may award one or more contracts (including a contract with another Federal agency) for the administration of some or all of the program.

"(b) PROGRAM SPECIFICATIONS.—

"(1) FORM OF COUPON REQUEST.—The regulations under this section shall prescribe the contents of the coupon request form and the information any household seeking a coupon shall provide on the form. The coupon request form shall be required to include instructions for its use and also describe, at a minimum, the requirements and limitations of the program, the ways in which the form and the information the household provides will be used, and to whom the form and the information will be disclosed.

"(2) DISTRIBUTION OF COUPON REQUEST FORMS.—

"(A) PAPER AND ELECTRONIC FORMS.—The Assistant Secretary shall provide for the distribution of paper coupon request forms at Government buildings, including post offices. The Assistant Secretary shall provide for the availability to households of electronic coupon request forms, and may permit such forms to be submitted electronically.

"(B) ADDITIONAL DISTRIBUTION.—If the Assistant Secretary determines that doing so would make the program more successful and easier for consumers to participate in, paper and electronic coupon request forms shall also be distributed by such private entities as the Assistant Secretary shall specify (such as retailers, manufacturers, broadcasters, religious organizations, and consumer groups) and shall be distributed in the manner specified by the Assistant Secretary.

"(3) LIMITATIONS.—

"(A) TWO-PER-HOUSEHOLD MAXIMUM.—A household may obtain coupons only by making a request as required by the regulations under this section. Any request must be made between January 1, 2008, and January 31, 2009, inclusive. The Assistant Secretary shall ensure that each requesting household receives no more than two coupons.

"(B) NO COMBINATIONS OF COUPONS.—Two coupons may not be used in combination toward the purchase of a single digital-to-analog converter box.

"(C) DURATION.—All coupons shall expire 3 months after issuance.

"(4) DISTRIBUTION OF COUPONS.—

"(A) Coupons shall be distributed to requesting households by mail and each coupon shall be issued in the name of a member of the requesting household, and shall include a unique identification number as well as any other measures the Assistant Secretary deems necessary to minimize fraud, counterfeiting, duplication, and other unauthorized use.

"(B) Included on or provided with each coupon shall be, at a minimum, instructions for the coupon's use and a description of the coupon's limitations.

"(C) The Assistant Secretary shall expend not more than $160,000,000 on administrative expenses and shall ensure that the sum of all administrative expenses for the program and the total maximum value of all the coupons redeemed, and issued but not expired, does not exceed $990,000,000.

"(D) The Assistant Secretary may expend up to $5,000,000 of the administrative expenses on the public outreach program required by section 330(d)(4) of the Communications Act of 1934 (47 U.S.C. 330(d)(4)). Such funds may be used for grants to the Association of Public Television Stations, in partnership with noncommercial educational television broadcast stations (as defined section 397(6) of the Communications Act of 1934 (47 U.S.C. 397(6))) to carry out such public outreach.

"(5) QUALIFYING PURCHASES.—

"(A) QUALIFYING BOX.—The regulations shall specify methods for determining and identifying the converter boxes that meet the definition in subsection (g).

"(B) COUPON VALUE.—The value of each coupon shall be $40.

"(6) REDEMPTION OF COUPONS.—No coupon shall be redeemed except upon submission of reasonable proof that the individual redeeming the coupon is the individual named on the coupon, and such additional information as is required by the regulations under this section. In the case of retail distribution of digital-to-analog converter boxes over the Internet or by telephone, submission of a valid credit card number issued in the name of the household member, the unique identification number on the coupon, the address of the household, and such other information as is required by the regulations under this section shall be reasonable proof of identity, except that the redemption of coupons over the Internet or by telephone shall be prohibited if the Assistant Secretary determines that such redemption would be unreasonably susceptible to fraud or other abuse.

"(7) RETAILER CERTIFICATION.—

"(A) Any retailer desiring to qualify for coupon reimbursement under this section shall, in accordance with the regulations under this section, be required to undergo a certification process to qualify for participation in the program.

"(B) As part of the certification process, retailers shall be informed of the program's details and their rights and obligations, including their obligations to honor all valid coupons that are tendered in the authorized manner, and to keep a reasonable number of eligible converter boxes in stock.

"(8) COUPON REIMBURSEMENT AND RETAILER AUDITING.—

"(A) REIMBURSEMENT.—The regulations under this section shall establish the process by which retailers may

seek and obtain reimbursement for the coupons, and shall include the option for retailers to seek and obtain reimbursement electronically.

"(B) AUDITS.—Such regulations shall establish procedures for the auditing of retailer reimbursements.

"(9) APPEALS.—The regulations under this section shall establish an appeals process for the review and resolution of complaints—

"(A) by a household alleging that—

"(i) the household was improperly denied a coupon;

"(ii) a valid coupon properly tendered was not honored; or

"(iii) the household was otherwise harmed by another violation of this section or such regulations; or

"(B) by a retailer of digital-to-analog converter boxes alleging that the retailer was improperly denied reimbursement for a valid coupon properly tendered and accepted under this section or such regulations.

All such complaints shall be resolved within 30 days after receipt of the complaint.

"(10) ENFORCEMENT.—The regulations under this section shall provide for the termination of eligibility to participate in the program for retailers or households that engage in fraud, misrepresentation, or other misconduct in connection with the program, or that otherwise violate this section or such regulations.

"(11) PROGRESS REPORT.—Beginning with a report on March 31, 2008, and ending with a report on June 30, 2009, the Assistant Secretary shall submit reports to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, every three months summarizing the progress of coupon distribution and redemption, including how many coupons are being distributed and redeemed, and how quickly.

"(c) PRIVACY.—The program under this section shall ensure that personally identifiable information collected in connection with the program under this section is not used or shared for any other purpose than as described in this section, except as otherwise required or authorized by law. For purposes of this subsection, the term 'personally identifiable information' shall have the same meaning as provided in section 338(i)(2).

"(d) AVAILABILITY OF FUNDS.—

"(1) IN GENERAL.—From the Digital Television Conversion Fund established by section 309(j)(8)(E)(i)(I) of the Communications Act of 1934, there shall be available to carry out this section such sums as may be necessary for fiscal years 2008 and 2009. Any sums that remain unexpended in the Fund at the end of fiscal year 2009 shall revert to and be deposited in the general fund of the Treasury.

"(2) CREDIT.—The Assistant Secretary may borrow from the Treasury such sums as may be necessary not to exceed $990,000,000 to implement and administer the program in accordance with this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited

into the Digital Television Conversion Fund under section 309(j)(8)(E) of such Act.

"(e) ENERGY STANDARDS REQUIRED.—

"(1) STANDARD.—The maximum energy consumption for the passive standby mode of a digital-to-analog converter box shall be no more than 9 watts.

"(2) ENFORCEMENT.—The Secretary of Energy shall enforce the requirements of paragraph (1). Any converter box that the Secretary of Energy determines is not in compliance with the requirements of paragraph (1) shall not be eligible for purchase with assistance made available under this section.

"(3) PREEMPTION.—No State or any political subdivision thereof may establish or enforce any law, rule, regulation, or other provision having the force of law that regulates the energy output, usage, or consumption standards for a digital-to-analog converter box.

"(f) IMPLEMENTATION.—The Secretary of Commerce shall promulgate, within 9 months after the date of enactment of the Digital Television Transition Act of 2005, such regulations as are necessary to carry out this section.

"(g) DEFINITION.—For purposes of this section:

"(1) DIGITAL-TO-ANALOG CONVERTER BOX.—The term 'digital-to-analog converter box' means a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service.

"(2) HOUSEHOLD.—The term 'household' means the residents at a residential street or rural route address, and shall not include a post office box.

"(3) STANDBY PASSIVE MODE.—The term 'standby passive mode' means a low power state the digital-to-analog converter device enters while connected to a power source which fulfills not the main function but can be switched into another mode by means of an internal or external signal.".

SEC. 3406. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS FUND.

Part C of the National Telecommunications and Information Administration Organization Act is amended by adding after section 159 (as added by section 3405(b) of this Act) the following new section:

"SEC. 160. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS FUND.

"(a) PROGRAM AUTHORIZED.—From the funds available under subsection (f), the Assistant Secretary shall carry out a grant program to assist public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, reallocated public safety spectrum for radio communications.

"(b) TERMS AND CONDITIONS OF GRANTS.—In order to obtain a grant under this section, a public safety agency shall—

"(1) submit an application to the Assistant Secretary at such time, in such form, and containing or accompanied by such in-

formation and assurances as the Assistant Secretary shall require;

"(2) agree that, if awarded a grant, the public safety agency will submit annual reports to the Assistant Secretary for the duration of the grant award period with respect to—

"(A) the expenditure of grant funds; and

"(B) progress toward acquiring and deploying interoperable communications systems funded by the grant;

"(3) agree to provide, from non-Federal sources, not less than 20 percent of the costs of acquiring and deploying the interoperable communications systems acquired and deployed with funds provided under this section; and

"(4) agree to remit to the Assistant Secretary any grant funds that remain unexpended at the end of the 3-year period of the grant.

"(c) DURATION OF GRANT; RECOVERY OF UNUSED FUNDS.—Grants under this section shall be awarded in the form of a single grant for a period of not more that 3 years. At the end of 3 years, any grant funds that remain unexpended shall be remitted by the grantee to the Assistant Secretary, and, subject to subsection (f)(2), may be awarded to other eligible grant recipients. At the end of fiscal year 2010, any such reawarded grant funds that remain unexpended shall be remitted by the grantee to the Assistant Secretary and may not be reawarded to other grantees.

"(d) OVERSIGHT OF EXPENDITURES.—The Assistant Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce, not later than 6 months after the first award of a grant under this section and every 6 months thereafter until October 1, 2010, a report—

"(1) identifying, on a State-by-State basis, using the information submitted under subsection (b)(2), the results of the program, including an identification, on a State-by-State basis, of—

"(A) the public safety agencies awarded a grant;

"(B) the amount of the grant;

"(C) the specified use for the grant; and

"(D) how each such grant was spent; and

"(2) stating the cumulative total of the amount of grants awarded, and the balance, if any, remaining in the Public Safety Interoperable Communications Fund; and

"(3) in the final such report, stating the amount in the Fund that reverted to the general fund of the Treasury.

"(e) REGULATIONS.—The Secretary is authorized to prescribe such regulations as are necessary to carry out this section.

"(f) AVAILABILITY OF FUNDS.—

"(1) AVAILABILITY.—From the Public Safety Interoperable Communications Fund established by section 309(j)(8)(E)(i)(II) of the Communications Act of 1934, there shall be available to carry out this section such sums as may be necessary for fiscal years 2008, 2009, and 2010.

"(2) REVERSION.—Any sums that remain unexpended in the Fund at the end of fiscal year 2010 shall revert to and be deposited in the general fund of the Treasury.

"(g) DEFINITIONS.—For purposes of this section:

"(1) PUBLIC SAFETY AGENCY.—The term 'public safety agency' means any State or local government entity, or nongovernmental organization authorized by such entity, whose sole or principal purpose is to protect the safety of life, health, or property.

"(2) INTEROPERABLE COMMUNICATIONS SYSTEMS.—The term 'interoperable communications systems' means communications systems which enable public safety agencies to share information amongst local, State, and Federal public safety agencies in the same area via voice or data signals.

"(3) REALLOCATED PUBLIC SAFETY SPECTRUM.—The term 'reallocated public safety spectrum' means the bands of spectrum located at 764 -776 megahertz and 794–806 megahertz, inclusive.".

SEC. 3407. NYC 9/11 DIGITAL TRANSITION FUND.

Part C of the National Telecommunications and Information Administration Organization Act is amended by adding after section 160 (as added by section 3406 of this Act) the following new section:

"SEC. 161. NYC 9/11 DIGITAL TRANSITION FUND.

"(a) FUNDS AVAILABLE.—From the NYC 9/11 Digital Transition Fund established by section 309(j)(8)(E)(i)(III) of the Communications Act of 1934, there shall be available to carry out this section such sums as may be necessary for fiscal years 2006 through 2008. Any sums that remain unexpended in the Fund at the end of fiscal year 2008 shall revert to and be deposited in the general fund of the Treasury. The Assistant Secretary may borrow from the Treasury such sums as may be necessary not to exceed $30,000,000 to implement and administer the program in accordance with this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the NYC 9/11 Digital Transition Fund under section 309(j)(8)(E) of such Act.

"(b) USE OF FUNDS.—The sums available under subsection (a) shall be made available by the Assistant Secretary by grant to be used to reimburse the Metropolitan Television Alliance for costs incurred in the design and deployment of a temporary digital television broadcast system to ensure that, until a permanent facility atop the Freedom Tower is constructed, the members of the Metropolitan Television Alliance can provide the New York City area with an adequate digital television signal as determined by the Federal Communications Commission.

"(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter or otherwise affect the Federal Communications Commission's authority with respect to licensing and interference regulation.

"(d) DEFINITIONS.—For purposes of this section:

"(1) The term 'Metropolitan Television Alliance' means the organization formed by New York City television broadcast station licensees to locate new shared facilities as a result of the attacks on September 11, 2001 and the loss of use of shared facilities that housed broadcast equipment.

"(2) The term 'New York City area' means the five counties comprising New York City and counties of northern New Jersey in immediate proximity to New York City (Bergen, Essex, Union and Hudson Counties) .".

SEC. 3408. LOW-POWER TELEVISION TRANSITION PROVISIONS.

(a) REMOVAL AND RELOCATION.—Section 337(e) of the Communications Act of 1934 (47 U.S.C. 337(e)) is amended—

(1) in paragraph (1), by striking "person who" and inserting "full-power television station licensee that";

(2) in paragraph (2), by striking "746 megahertz" and inserting "698 megahertz"; and

(3) by adding at the end the following new paragraph:

"(3) CONTINUATION OF LOW-POWER BROADCASTING.—Subject to section 336(f) of the Communications Act (47 U.S.C. 336(f)), a low-power television station, television translator station, or television booster station (as defined by Commission regulations) may operate above 698 megahertz on a secondary basis in accordance with Commission rules, including rules governing completion of the digital television service transition for low-power broadcasters.".

(b) EXEMPTION FROM DEADLINE.—Section 309(j)(14)(A) of such Act (47 U.S.C. 309(j)(14)(A)) is amended by by inserting "full-power" before "television broadcast license".

(c) ADVANCED TELEVISION SERVICES.—Section 336(f)(4) of such Act (47 U.S.C. 336(f)(4)) is amended by inserting "or other low-power station" after "television translator station" in the first sentence.

(d) LOW-POWER TELEVISION DIGITAL-TO-ANALOG CONVERSION.—Part C of the National Telecommunications and Information Administration Organization Act is amended by adding after section 161 (as added by section 3407 of this Act) the following new section:

"SEC. 162. LOW-POWER TELEVISION DIGITAL-TO-ANALOG CONVERSION.

"(a) CREATION OF PROGRAM.—The Assistant Secretary shall use the funds available under subsection (d) from the Low-Power Digital-to-Analog Conversion Fund to implement and administer a program through which each eligible low-power television station may receive compensation toward the cost of the purchase of a digital-to-analog conversion device that enables it to convert the incoming digital signal of its corresponding full-power television station to analog format for transmission on the low-power television station's analog channel. An eligible low-power television station may receive such compensation only if it submits a request for such compensation on or before December 31, 2008.

"(b) ELIGIBLE STATIONS.—For purposes of this section, an eligible low-power television station shall be a low-power television broadcast station, Class A television station, television translator station, or television booster station—

"(1) that is itself broadcasting exclusively in analog format; and

"(2) that has not purchased a digital-to-analog conversion device prior to enactment of this section.

"(c) QUALIFYING DEVICES AND AMOUNTS.—The Assistant Secretary—

"(1) may determine the types of digital-to-analog conversion devices for which an eligible low-power broadcast television station may receive compensation under this section; and

"(2) shall determine the maximum amount of compensation such a low-power television broadcast station may receive based on the average cost of such digital-to-analog conversion devices during the time period such low-power broadcast television station purchased the digital-to-analog conversion device, but in no case shall such compensation exceed $400.

"(d) FUNDS AVAILABLE.—From the Low-Power Digital-to-Analog Conversion Fund established by section 309(j)(8)(E)(i)(IV) of the Communications Act of 1934, there shall be available to carry out this section such sums as may be necessary for fiscal years 2008 and 2009. Any sums that remain unexpended in such Fund at the end of fiscal year 2009 shall revert to and be deposited in the general fund of the Treasury.".

(e) REPORT AND ORDER REQUIRED.—The Federal Communications Commission shall, not later than December 31, 2008, issue a report and order specifying the methods and schedule by which the Commission will complete the digital television service transition for low-power broadcasters.

SEC. 3409. CONSUMER EDUCATION REGARDING ANALOG TELEVISIONS.

(a) COMMISSION AUTHORITY.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end the following new subsection:

"(z) Require the consumer education measures specified in section 330(d) in the case of apparatus designed to receive television signals that—

"(1) are shipped in interstate commerce or manufactured in the United States;

"(2) have an integrated display screen or are sold in a bundle with a display screen; and

"(3) are not capable of receiving broadcast signals in the digital television service.".

(b) CONSUMER EDUCATION REQUIREMENTS.—Section 330 of the Communications Act of 1934 (47 U.S.C. 330) is amended—

(1) in subsection (d), by striking "sections 303(s), 303(u), and 303(x)" and inserting "subsections (s), (u), (x), and (z) of section 303";

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following new subsection:

"(d) CONSUMER EDUCATION REGARDING ANALOG TELEVISION RECEIVERS.—

"(1) REQUIREMENTS FOR MANUFACTURERS.—Any manufacturer of any apparatus described in section 303(z) shall—

"(A) place in a conspicuous place on any such apparatus that such manufacturer ships in interstate commerce or manufactures in the United States after 180 days after the date of enactment of the Digital Television Transition Act

of 2005, a label containing, in clear and conspicuous print, the warning language required by paragraph (3); and

"(B) also include after 180 days after the date of enactment of the Digital Television Transition Act of 2005, such warning language on the outside of the retail packaging of such apparatus, in a conspicuous place and in clear and conspicuous print, in a manner that cannot be removed.

"(2) REQUIREMENTS FOR RETAIL DISTRIBUTORS.—Any retail distributor shall place conspicuously in the vicinity of each apparatus described in section 303(z) that such distributor displays for sale or rent after 45 days after the date of enactment of the Digital Television Transition Act of 2005, a sign containing, in clear and conspicuous print, the warning language required by paragraph (3). In the case of a retail distributor vending such apparatus via direct mail, catalog, or electronic means, such as displays on the Internet, the warning language required by such paragraph shall be prominently displayed, in clear and conspicuous print, in the vicinity of any language describing the product.

"(3) WARNING LANGUAGE.—The warning language required by this paragraph shall read as follows: 'This television has only an analog broadcast tuner. After December 31, 2008, television broadcasters will broadcast only in digital format. You will then need to connect this television to a digital-to-analog converter box or cable or satellite service if you wish to receive broadcast programming. The device, if any, that a cable or satellite subscriber will need to connect to an analog television will depend on the cable or satellite service provider. The television should continue to work as before, however, with devices such as VCRs, digital video recorders, DVD players, and video game systems. For more information, call the Federal Communications Commission at 1–888–225–5322 (TTY: 1–888–835–5322) or visit the Commission's website at: www.fcc.gov.'.

"(4) COMMISSION AND NTIA OUTREACH.—Beginning within one month after the date of enactment of the Digital Television Transition Act of 2005, the Commission and the National Telecommunications and Information Administration shall engage, either jointly or separately, in a public outreach program, including the distribution of materials on their web sites and in Government buildings, such as post offices, to educate consumers regarding the digital television transition. The Commission and the National Telecommunications and Information Administration may seek public comment in crafting their public outreach program, and may seek the assistance of private entities, such as broadcasters, manufacturers, retailers, cable and satellite operators, and consumer groups in administering the public outreach program. The program shall educate consumers about—

"(A) the deadline for termination of analog television broadcasting;

"(B) the options consumers have after such termination to continue to receive broadcast programming; and

"(C) the converter box program under section 159 of the National Telecommunications and Information Administration Organization Act.

"(5) ADDITIONAL DISCLOSURES.—

"(A) ANNOUNCEMENTS AND NOTICES REQUIRED.—From January 1, 2008, through December 31, 2008—

"(i) each television broadcaster shall air, at a minimum, two 60-second public service announcements per day, one during the 8 to 9 a.m. hour and one during the 8 to 9 p.m. hour; and

"(ii) each multichannel video program distributor (as such term is defined in section 602 of this Act) shall include a notice in any periodic bill.

"(B) CONTENTS OF ANNOUNCEMENTS AND NOTICES.—The announcements and notices required by subparagraphs (A)(i) and (A)(ii), respectively, shall state, at a minimum, that: 'After December 31, 2008, television broadcasters will broadcast only in digital format. You will then no longer be able to receive broadcast programming on analog-only televisions unless those televisions are connected to a digital-to-analog converter box or a cable or satellite service. The device, if any, that a cable or satellite subscriber will need to connect to an analog television will depend on the cable or satellite service provider. Analog-only televisions should continue to work as before, however, with devices such as VCRs, digital video recorders, DVD players, and video game systems. You may be eligible for up to two coupons toward the purchase of up to two converter-boxes. For more information, call the Federal Communications Commission at 1–888–225–5322 (TTY: 1–888–835–5322) or visit the Commission's website at: www.fcc.gov.'.

"(6) REPORT REQUIRED.—Beginning January 31, 2006, and ending July 31, 2008, the Commission and the National Telecommunications and Information Administration, either jointly or separately, shall submit reports every six months to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the Commission's and such Administration's consumer education efforts, as well as the consumer education efforts of broadcasters, cable and satellite operators, consumer electronics manufacturers, retailers, and consumer groups. The Commission and such Administration may solicit public comment in preparing their reports.".

(c) PRESERVING AND EXPEDITING TUNER MANDATES.—The Federal Communications Commission—

(1) shall, within 30 days after the date of enactment of this Act revise the digital television reception capability implementation schedule under section 15.117(i) of its regulations (47 CFR 15.117(i)) to require, in the case of television reception devices that have, or are sold in a bundle with, display screens sized 13 to 24 inches, inclusive, that 100 percent of all such units must include digital television tuners effective March 1, 2007; and

(2) shall not make any other changes that extend or otherwise delay the digital television reception capability implementation schedule for television reception devices that have, or are sold in a bundle with, display screens.

SEC. 3410. ADDITIONAL PROVISIONS.

(a) DIGITAL-TO-ANALOG CONVERSION.—Section 614(b) of the Communications Act of 1934 (47 U.S.C. 534(b)) is amended by adding at the end the following new paragraphs:

"(11) CARRIAGE OF DIGITAL FORMATS.—

"(A) PRIMARY VIDEO STREAM.—With respect to any television station that is transmitting broadcast programming exclusively in the digital television service in a local market, a cable operator of a cable system in that market shall carry the station's primary video stream and program-related material in the digital format transmitted by that station, without material degradation, if the licensee for that station—

"(i) relies on this section or section 615 to obtain carriage of the primary video stream and program-related material on that cable system in that market; and

"(ii) permits the cable system to carry without compensation any other programming broadcast by that station that is carried on that system.

"(B) MULTIPLE FORMATS PERMITTED.—A cable operator of a cable system may offer the primary video stream and program-related material of a local television station described in subparagraph (A) in any analog or digital format or formats, whether or not doing so requires conversion from the format transmitted by the local television station, so long as—

"(i) the cable operator offers the primary video stream and program-related material in the converted analog or digital format or formats without material degradation; and

"(ii) also offers the primary video stream and program-related material in the manner or manners required by this paragraph.

"(C) TRANSITIONAL CONVERSIONS.—Notwithstanding the requirement in subparagraph (A) to carry the primary video stream and program-related material in the digital format transmitted by the local television station, but subject to the prohibition on material degradation, until January 1, 2014—

"(i) a cable operator—

"(I) shall offer the primary video stream and program-related material in the format or formats necessary for such stream and material to be viewable on analog and digital televisions; and

"(II) may convert the primary video stream and program-related material to standard-definition digital format in lieu of offering it in the digital format transmitted by the local television station;

"(ii) notwithstanding clause (i), a cable operator of a cable system with an activated capacity of 550 megahertz or less—

"(I) shall offer the primary video stream and program-related material of the local television station described in subparagraph (A), converted to an analog format; and

"(II) may, but shall not be required to, offer the primary video stream and program-related material in any digital format or formats.

"(D) LOCATION AND METHOD OF CONVERSION.—

"(i) A cable operator of a cable system may perform any conversion permitted or required by this paragraph at any location, from the cable head-end to the customer premises, inclusive.

"(ii) Notwithstanding any other provision of this Act other than the prohibition on material degradation, a cable operator may use switched digital video technology to accomplish any conversion or transmission permitted or required by this paragraph.

"(E) CONVERSIONS NOT TREATED AS DEGRADATION.—Any conversion permitted or required by this paragraph shall not, by itself, be treated as a material degradation.

"(F) CARRIAGE OF PROGRAM-RELATED MATERIAL.—The obligation to carry program-related material under this paragraph is effective only to the extent technically feasible.

"(G) DEFINITION OF STANDARD-DEFINITION FORMAT.—For purposes of this paragraph, a stream shall be in standard definition digital format if such stream meets the criteria for such format as specified in the standard recognized by the Commission in section 73.682 of its rules (47 CFR 73.682) or a successor regulation.".

(b) TIERING.—Clause (iii) of section 623(b)(7)(A) of such Act (47 U.S.C. 543(b)(7)(A)(iii)) is amended to read as follows:

"(iii) Both of the following signals:

"(I) the primary video stream and program-related material of any television broadcast station that is provided by the cable operator to any subscriber in an analog format, and

"(II) the primary video stream and program-related material—

"(aa) of any television broadcast station that is transmitting exclusively in digital format, and

"(bb) that is provided by the cable operator to any subscriber in a digital format,

but excluding a signal that is secondarily transmitted by a satellite carrier beyond the local service area of such station.".

(c) COMPARABLE TREATMENT OF SATELLITE CARRIERS.—Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is amended—

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

"(*l*) SPECIFIC CARRIAGE OBLIGATIONS AFTER DIGITAL TRANSITION.—

"(1) CARRIAGE OF DIGITAL FORMATS.—With respect to any television station that requests carriage under this section and that is transmitting broadcast programming exclusively in the digital television service in a local market in the contiguous United States (hereafter in this paragraph referred to as an eligible requesting station), a satellite carrier carrying the digital signal of any other local television station in that local market shall carry the eligible requesting station's primary video stream and program-related material, without material degradation, if the licensee for that eligible requesting station—

"(A) relies on this section to obtain carriage of the primary video stream and program-related material by that satellite carrier in that market; and

"(B) permits the satellite carrier to carry without compensation any other programming broadcast by that local station that is carried on that system.

"(2) FORMATTING OF PRIMARY VIDEO STREAM.—A satellite carrier must offer the primary video stream and program-related material of an eligible requesting station in the digital format transmitted by the station if the satellite carrier carries the primary video stream of any other local television station in that local market in the same digital format.

"(3) MULTIPLE FORMATS PERMITTED.—A satellite carrier may offer the primary video stream and program-related material of an eligible requesting station in any analog or digital format or formats, whether or not doing so requires conversion from the format transmitted by that eligible requesting station, so long as—

"(A) the satellite carrier offers the primary video stream and program-related material in the converted analog or digital format or formats without material degradation; and

"(B) also offers the primary video stream and program-related material in the manner or manners required by this subsection.

"(4) TRANSITIONAL CONVERSIONS.—Notwithstanding any requirement in paragraphs (1) and (2) to carry the primary video stream and program-related material in the digital format transmitted by the local television station, but subject to the prohibition on material degradation, until January 1, 2014, a satellite carrier—

"(A) shall offer the primary video stream and program-related material of any local television broadcast station required to be carried under paragraph (1) in the format necessary for such stream to be viewable on analog and digital televisions; and

"(B) may convert the primary video stream and program-related material to standard-definition format in lieu of offering it in the digital format transmitted by the local television station.

"(5) LOCATION AND METHOD OF CONVERSION.—A satellite carrier may perform any conversion permitted or required by this

subsection at any location, from the local receive facility to the customer premises, inclusive.

"(6) CONVERSIONS NOT TREATED AS DEGRADATION.—Any conversion permitted or required by this subsection shall not, by itself, be treated as a material degradation.

"(7) CARRIAGE OF PROGRAM-RELATED MATERIAL.—The obligation to carry program-related material under this subsection is effective only to the extent technically feasible.

"(8) DEFINITION OF STANDARD-DEFINITION FORMAT.—For purposes of this subsection, a stream shall be in standard definition digital format if such stream meets the criteria for such format as specified in the standard recognized by the Commission in section 73.682 of its rules (47 CFR 73.682) or a successor regulation.";

(2) in subsection (b)(1), by striking "subsection (a)" and inserting "subsection (a) or (*l*)";

(3) in subsection (c)(1), by striking "subsection (a)(1)" and inserting "subsections (a)(1) and (*l*)"; and

(4) in subsection (c)(2), by striking "subsection (a)" and inserting "subsections (a) and (*l*)".

(d) DEADLINE.—The Federal Communications Commission shall revise its regulations to implement the amendments made by this section within one year after the date of enactment of this Act.

SEC. 3411. DEPLOYMENT OF BROADBAND WIRELESS TECHNOLOGIES.

Not later than 45 days after the effective date of this Act, the Commission shall initiate a rulemaking to assess the necessity of rechannelizing the spectrum located between 767–773 megahertz and 797–803 megahertz to accommodate broadband applications. Such rulemaking shall be completed within 180 days.

SEC. 3412. SENSE OF CONGRESS.

(a) FINDINGS.—The Congress finds the following:

(1) The wireless communications industry in the United States is becoming increasingly concentrated: there are currently no ownership limitations on wireless companies, and the five largest wireless carriers in the United States control nearly 90 percent of United States wireless subscribership.

(2) Over 90 percent of households receive their broadband services through either cable or digital subscriber line (DSL) service, and most cable and DSL providers are heavily concentrated within their geographic markets.

(3) Under the Omnibus Budget and Reconciliation Act of 1993, Congress tasked the Federal Communications Commission to promote economic opportunity by disseminating wireless communications licenses among a wide variety of applicants, including small businesses and rural telephone companies.

(4) Upcoming auctions for the returned analog broadcast spectrum in the 700 megahertz band that will be cleared following the transition from analog to digital broadcast television and Advanced Wireless Services (AWS) in the 1710–1755 megahertz and 2110–2155 megahertz bands will likely be the last reallocation opportunities for commercial wireless com-

munications services and wireless broadband services in the foreseeable future.

(5) In the near term, wireless broadband presents the most promising opportunity to provide a third option (other than cable modem or DSL service) for broadband Internet access for most consumers, and the spectrum in the 700 megahertz band is considered "beachfront" property by telecommunications carriers because wireless signals at this frequency range pass easily through buildings, trees, and other interference.

(6) The 700 megahertz band offers a historic opportunity to provide the equivalent of a "third wire" into the home – an alternative to telephone or cable broadband access that will create new competition and incentives for new entrants, innovation, and broader service offerings.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Federal Communications Commission should disseminate wireless communications licenses consistent with the findings in subsection (a) and do so utilizing its existing authority under section 309(j) of the Communications Act of 1934, which requires the Commission to promote the following objectives:

(1) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(2) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses and rural telephone companies;

(3) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and

(4) efficient and intensive use of the electromagnetic spectrum.

SEC. 3413. BAND PLAN REVISION REQUIRED.

(a) PROCEEDING REQUIRED.—The Federal Communications Commission shall commence a proceeding no later than June 1, 2006, to reevaluate the band plan for the auction of the unauctioned portions of the lower 700 megahertz band (currently designated as Blocks A, B, and E).

(b) RECONFIGURATION REQUIRED.—The Federal Communications Commission shall reconfigure the band plan to license spectrum for Block B of such portion according to Cellular Market Areas (i.e., Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs")) to facilitate the offering of competitive wireless services by regional and smaller wireless carriers.

TITLE IV—COMMITTEE ON FINANCIAL SERVICES

SECTION 4000. TABLE OF CONTENTS.

The table of contents for this title is as follows:

Sec. 4000. Table of contents.

Subtitle A—Deposit Insurance Reform

Sec. 4001. Short title.
Sec. 4002. Merging the BIF and SAIF.
Sec. 4003. Increase in deposit insurance coverage.
Sec. 4004. Setting assessments and repeal of special rules relating to minimum assessments and free deposit insurance.
Sec. 4005. Replacement of fixed designated reserve ratio with reserve range.
Sec. 4006. Requirements applicable to the risk-based assessment system.
Sec. 4007. Refunds, dividends, and credits from Deposit Insurance Fund.
Sec. 4008. Deposit Insurance Fund restoration plans.
Sec. 4009. Regulations required.
Sec. 4010. Studies of FDIC structure and expenses and certain activities and further possible changes to deposit insurance system.
Sec. 4011. Bi-annual FDIC survey and report on increasing the deposit base by encouraging use of depository institutions by the unbanked.
Sec. 4012. Technical and conforming amendments to the Federal Deposit Insurance Act relating to the merger of the BIF and SAIF.
Sec. 4013. Other technical and conforming amendments relating to the merger of the BIF and SAIF.

Subtitle B—FHA Asset Disposition

Sec. 4101. Short title.
Sec. 4102. Definitions.
Sec. 4103. Appropriated funds requirement for below market sales.
Sec. 4104. Up-front grants.

Subtitle A—Deposit Insurance Reform

SEC. 4001. SHORT TITLE.

This subtitle may be cited as the "Federal Deposit Insurance Reform Act of 2005".

SEC. 4002. MERGING THE BIF AND SAIF.

(a) IN GENERAL.—

(1) MERGER.—The Bank Insurance Fund and the Savings Association Insurance Fund shall be merged into the Deposit Insurance Fund.

(2) DISPOSITION OF ASSETS AND LIABILITIES.—All assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund shall be transferred to the Deposit Insurance Fund.

(3) NO SEPARATE EXISTENCE.—The separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund shall cease on the effective date of the merger thereof under this section.

(b) REPEAL OF OUTDATED MERGER PROVISION.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is repealed.

(c) EFFECTIVE DATE.—This section shall take effect on the first day of the first calendar quarter that begins after the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 4003. INCREASE IN DEPOSIT INSURANCE COVERAGE.

(a) IN GENERAL.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended—

(1) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3)."; and

(2) by adding at the end the following new subparagraphs:

"(E) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.—For purposes of this Act, the term 'standard maximum deposit insurance amount' means—

"(i) until the effective date of final regulations prescribed pursuant to section 4009(a)(2) of the Federal Deposit Insurance Reform Act of 2005, $100,000; and

"(ii) on and after such effective date, $130,000, adjusted as provided under subparagraph (F).

"(F) INFLATION ADJUSTMENT.—

"(i) IN GENERAL.—By April 1 of 2007, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 207(k) of the Federal Credit Union Act) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

"(I) $130,000; and

"(II) the ratio of the value of the Personal Consumption Expenditures Chain-Type Index (or any successor index thereto), published by the Department of Commerce, as of December 31 of the year preceding the year in which the adjustment is calculated under this clause, to the value of such index as of the date this subparagraph takes effect.

"(ii) ROUNDING.—If the amount determined under clause (ii) for any period is not a multiple of $10,000, the amount so determined shall be rounded to the nearest $10,000.

"(iii) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

"(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the

amount of coverage under paragraph (3)(A) and section 207(k)(3) of the Federal Credit Union Act, as so calculated; and

"(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

"(iv) 6-MONTH IMPLEMENTATION PERIOD.—Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.".

(b) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—Section 11(a)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(D)) is amended to read as follows:

"(D) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—

"(i) PASS-THROUGH INSURANCE.—The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

"(ii) PROHIBITION ON ACCEPTANCE OF BENEFIT PLAN DEPOSITS.—An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

"(iii) DEFINITIONS.—For purposes of this subparagraph, the following definitions shall apply:

"(I) CAPITAL STANDARDS.—The terms 'well capitalized' and 'adequately capitalized' have the same meanings as in section 38.

"(II) EMPLOYEE BENEFIT PLAN.—The term 'employee benefit plan' has the same meaning as in paragraph (8)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

"(III) PASS-THROUGH DEPOSIT INSURANCE.—The term 'pass-through deposit insurance' means, with respect to an employee benefit plan, deposit insurance coverage provided on a pro rata basis to the participants in the plan, in accordance with the interest of each participant.".

(c) DOUBLING OF DEPOSIT INSURANCE FOR CERTAIN RETIREMENT ACCOUNTS.—Section 11(a)(3)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(3)(A)) is amended by striking "$100,000" and inserting "2 times the standard maximum deposit insurance amount (as determined under paragraph (1))".

(d) INCREASED INSURANCE COVERAGE FOR MUNICIPAL DEPOSITS.—Section 11(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(2)) is amended—

(1) in subparagraph (A)—

(A) by moving the margins of clauses (i) through (v) 4 ems to the right;

(B) by striking, in the matter following clause (v), "such depositor shall" and all that follows through the period; and

(C) by striking the semicolon at the end of clause (v) and inserting a period;

(2) by striking "(2)(A) Notwithstanding" and all that follows through "a depositor who is—" and inserting the following:

"(2) MUNICIPAL DEPOSITORS.—

"(A) IN GENERAL.—Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available to any 1 depositor—

"(i) a municipal depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed to be a depositor separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in subparagraph (E); and

"(ii) except as provided in subparagraph (B), the deposits of a municipal depositor shall be insured in an amount equal to the standard maximum deposit insurance amount (as determined under paragraph (1)).

"(B) IN-STATE MUNICIPAL DEPOSITORS.—In the case of the deposits of an in-State municipal depositor described in clause (ii), (iii), (iv), or (v) of subparagraph (E) at an insured depository institution, such deposits shall be insured in an amount not to exceed the lesser of—

"(i) $2,000,000; or

"(ii) the sum of the standard maximum deposit insurance amount and 80 percent of the amount of any deposits in excess of the standard maximum deposit insurance amount.

"(C) MUNICIPAL DEPOSIT PARITY.—No State may deny to insured depository institutions within its jurisdiction the authority to accept deposits insured under this paragraph, or prohibit the making of such deposits in such institutions by any in-State municipal depositor.

"(D) IN-STATE MUNICIPAL DEPOSITOR DEFINED.—For purposes of this paragraph, the term 'in-State municipal depositor' means a municipal depositor that is located in the same State as the office or branch of the insured depository institution at which the deposits of that depositor are held.

"(E) MUNICIPAL DEPOSITOR.—In this paragraph, the term 'municipal depositor' means a depositor that is—";

(3) by striking "(B) The" and inserting the following:

"(F) AUTHORITY TO LIMIT DEPOSITS.—The"; and

(4) by striking "depositor referred to in subparagraph (A) of this paragraph" each place such term appears and inserting "municipal depositor".

(e) TECHNICAL AND CONFORMING AMENDMENT RELATING TO INSURANCE OF TRUST FUNDS.—Paragraphs (1) and (3) of section 7(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(i)) are each amended by striking "$100,000" and inserting "the standard max-

imum deposit insurance amount (as determined under section 11(a)(1))".

(f) OTHER TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 11(m)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(m)(6)) is amended by striking "$100,000" and inserting "an amount equal to the standard maximum deposit insurance amount".

(2) Subsection (a) of section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)) is amended to read as follows:

"(a) INSURANCE LOGO.—

"(1) INSURED DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—Each insured depository institution shall display at each place of business maintained by that institution a sign or signs relating to the insurance of the deposits of the institution, in accordance with regulations to be prescribed by the Corporation.

"(B) STATEMENT TO BE INCLUDED.—Each sign required under subparagraph (A) shall include a statement that insured deposits are backed by the full faith and credit of the United States Government.

"(2) REGULATIONS.—The Corporation shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

"(3) PENALTIES.—For each day that an insured depository institution continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.".

(3) Section 43(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(d)) is amended by striking "$100,000" and inserting "an amount equal to the standard maximum deposit insurance amount".

(4) Section 6 of the International Banking Act of 1978 (12 U.S.C. 3104) is amended—

(A) by striking "$100,000" each place such term appears and inserting "an amount equal to the standard maximum deposit insurance amount"; and

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

"(e) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.—For purposes of this section, the term 'standard maximum deposit insurance amount' means the amount of the maximum amount of deposit insurance as determined under section 11(a)(1) of the Federal Deposit Insurance Act.".

(g) CONFORMING CHANGE TO CREDIT UNION SHARE INSURANCE FUND.—

(1) IN GENERAL.—Section 207(k) of the Federal Credit Union Act (12 U.S.C. 1787(k)) is amended—

(A) by striking "(k)(1)" and all that follows through the end of paragraph (1) and inserting the following:

"(k) INSURED AMOUNTS PAYABLE.—

"(1) NET INSURED AMOUNT.—

"(A) IN GENERAL.—Subject to the provisions of paragraph (2), the net amount of share insurance payable to any

member at an insured credit union shall not exceed the total amount of the shares or deposits in the name of the member (after deducting offsets), less any part thereof which is in excess of the standard maximum share insurance amount, as determined in accordance with this paragraph and paragraphs (5) and (6), and consistently with actions taken by the Federal Deposit Insurance Corporation under section 11(a) of the Federal Deposit Insurance Act.

"(B) AGGREGATION.—Determination of the net amount of share insurance under subparagraph (A), shall be in accordance with such regulations as the Board may prescribe, and, in determining the amount payable to any member, there shall be added together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others.

"(C) AUTHORITY TO DEFINE THE EXTENT OF COVERAGE.—The Board may define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.";

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in clauses (i) through (v), by moving the margins 4 ems to the right;

(II) in the matter following clause (v), by striking "his account" and all that follows through the period; and

(III) by striking the semicolon at the end of clause (v) and inserting a period;

(ii) by striking "(2)(A) Notwithstanding" and all that follows through "a depositor or member who is—" and inserting the following:

"(2) MUNICIPAL DEPOSITORS OR MEMBERS.—

"(A) IN GENERAL.—Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of insurance available to any 1 depositor or member, deposits or shares of a municipal depositor or member shall be insured in an amount equal to the standard maximum share insurance amount (as determined under paragraph (5)), except as provided in subparagraph (B).

"(B) IN-STATE MUNICIPAL DEPOSITORS.—In the case of the deposits of an in-State municipal depositor described in clause (ii), (iii), (iv), or (v) of subparagraph (E) at an insured credit union, such deposits shall be insured in an amount equal to the lesser of—

"(i) $2,000,000; or

"(ii) the sum of the standard maximum deposit insurance amount and 80 percent of the amount of any deposits in excess of the standard maximum deposit insurance amount.

"(C) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as authorizing an insured credit union to accept the deposits of a municipal depositor in an amount greater than such credit union is authorized to accept under any other provision of Federal or State law.

"(D) IN-STATE MUNICIPAL DEPOSITOR DEFINED.—For purposes of this paragraph, the term 'in-State municipal depositor' means a municipal depositor that is located in the same State as the office or branch of the insured credit union at which the deposits of that depositor are held.

"(E) MUNICIPAL DEPOSITOR.—In this paragraph, the term 'municipal depositor' means a depositor that is—";

(iii) by striking "(B) The" and inserting the following:

"(F) AUTHORITY TO LIMIT DEPOSITS.—The"; and

(iv) by striking "depositor or member referred to in subparagraph (A)" and inserting "municipal depositor or member"; and

(C) by adding at the end the following new paragraphs:

"(4) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—

"(A) PASS-THROUGH INSURANCE.—The Administration shall provide pass-through share insurance for the deposits or shares of any employee benefit plan.

"(B) PROHIBITION ON ACCEPTANCE OF DEPOSITS.—An insured credit union that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

"(C) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

"(i) CAPITAL STANDARDS.—The terms 'well capitalized' and 'adequately capitalized' have the same meanings as in section 216(c).

"(ii) EMPLOYEE BENEFIT PLAN.—The term 'employee benefit plan'—

"(I) has the meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974;

"(II) includes any plan described in section 401(d) of the Internal Revenue Code of 1986; and

"(III) includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

"(iii) PASS-THROUGH SHARE INSURANCE.—The term 'pass-through share insurance' means, with respect to an employee benefit plan, insurance coverage provided on a pro rata basis to the participants in the plan, in accordance with the interest of each participant.

"(D) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as authorizing an insured credit union to accept the deposits of an employee benefit plan in an amount greater than such credit union is authorized to accept under any other provision of Federal or State law.

"(5) STANDARD MAXIMUM SHARE INSURANCE AMOUNT DEFINED.—For purposes of this Act, the term 'standard maximum share insurance amount' means—

"(A) until the effective date of final regulations prescribed pursuant to section 4009(a)(2) of the Federal Deposit Insurance Reform Act of 2005, $100,000; and

"(B) on and after such effective date, $130,000, adjusted as provided under section 11(a)(1)(F) of the Federal Deposit Insurance Act.".

(2) DOUBLING OF SHARE INSURANCE FOR CERTAIN RETIREMENT ACCOUNTS.—Section 207(k)(3) of the Federal Credit Union Act (12 U.S.C. 1787(k)(3)) is amended by striking "$100,000" and inserting "2 times the standard maximum share insurance amount (as determined under paragraph (1))".

(h) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date the final regulations required under section 4009(a)(2) take effect.

SEC. 4004. SETTING ASSESSMENTS AND REPEAL OF SPECIAL RULES RELATING TO MINIMUM ASSESSMENTS AND FREE DEPOSIT INSURANCE.

(a) SETTING ASSESSMENTS.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(1) by striking subparagraphs (A) and (B) and inserting the following new subparagraphs:

"(A) IN GENERAL.—The Board of Directors shall set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph (D).

"(B) FACTORS TO BE CONSIDERED.—In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

"(i) The estimated operating expenses of the Deposit Insurance Fund.

"(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

"(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

"(iv) the risk factors and other factors taken into account pursuant to paragraph (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

"(v) Any other factors the Board of Directors may determine to be appropriate."; and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) BASE RATE FOR ASSESSMENTS.—

"(i) IN GENERAL.—In setting assessment rates pursuant to subparagraph (A), the Board of Directors shall establish a base rate of not more than 1 basis point (exclusive of any credit or dividend) for those insured depository institutions in the lowest-risk category under the risk-based assessment system established pursuant to paragraph (1). No insured depository in-

stitution shall be barred from the lowest-risk category solely because of size.

"(ii) SUSPENSION.—Clause (i) shall not apply during any period in which the reserve ratio of the Deposit Insurance Fund is less than the amount which is equal to 1.15 percent of the aggregate estimated insured deposits.".

(b) ASSESSMENT RECORDKEEPING PERIOD SHORTENED.—Paragraph (5) of section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended to read as follows:

"(5) DEPOSITORY INSTITUTION REQUIRED TO MAINTAIN ASSESSMENT-RELATED RECORDS.—Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of—

"(A) the end of the 3-year period beginning on the due date of the assessment; or

"(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.".

(c) INCREASE IN FEES FOR LATE ASSESSMENT PAYMENTS.—Subsection (h) of section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828(h)) is amended to read as follows:

"(h) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—

"(1) IN GENERAL.—Subject to paragraph (3), any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount not more than 1 percent of the amount of the assessment due for each day that such violation continues.

"(2) EXCEPTION IN CASE OF DISPUTE.—Paragraph (1) shall not apply if—

"(A) the failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

"(B) the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

"(3) SPECIAL RULE FOR SMALL ASSESSMENT AMOUNTS.—If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (1) shall not exceed $100 for each day that such violation continues.

"(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (1) upon a finding that good cause prevented the timely payment of an assessment.".

(d) ASSESSMENTS FOR LIFELINE ACCOUNTS.—

(1) IN GENERAL.—Section 232 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1834) is amended by striking subsection (c).

(2) CLARIFICATION OF RATE APPLICABLE TO DEPOSITS ATTRIBUTABLE TO LIFELINE ACCOUNTS.—Section 7(b)(2)(H) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(H)) is amended by striking "at a rate determined in accordance with such Act" and inserting "at ½ the assessment rate otherwise applicable for such insured depository institution".

(3) REGULATIONS.—Section 232(a)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1834(a)(1)) is amended by striking "Board of Governors of the Federal Reserve System, and the".

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(3)) is amended by striking the 3d sentence and inserting the following: "Such reports of condition shall be the basis for the certified statements to be filed pursuant to subsection (c).".

(2) Subparagraphs (B)(ii) and (C) of section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) are each amended by striking "semiannual" where such term appears in each such subparagraph.

(3) Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(A) by striking subparagraphs (E), (F), and (G);

(B) in subparagraph (C), by striking "semiannual"; and

(C) by redesignating subparagraph (H) (as amended by subsection (e)(2) of this section) as subparagraph (E).

(4) Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by striking paragraph (4) and redesignating paragraphs (5) (as amended by subsection (b) of this section), (6), and (7) as paragraphs (4), (5), and (6) respectively.

(5) Section 7(c) of the Federal Deposit Insurance Act (12 U.S.C. 1817(c)) is amended—

(A) in paragraph (1)(A), by striking "semiannual";

(B) in paragraph (2)(A), by striking "semiannual"; and

(C) in paragraph (3), by striking "semiannual period" and inserting "initial assessment period".

(6) Section 8(p) of the Federal Deposit Insurance Act (12 U.S.C. 1818(p)) is amended by striking "semiannual".

(7) Section 8(q) of the Federal Deposit Insurance Act (12 U.S.C. 1818(q)) is amended by striking "semiannual period" and inserting "assessment period".

(8) Section 13(c)(4)(G)(ii)(II) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(ii)(II)) is amended by striking "semiannual period" and inserting "assessment period".

(9) Section 232(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1834(a)) is amended—

(A) in the matter preceding subparagraph (A) of paragraph (2), by striking "the Board and";

(B) in subparagraph (J) of paragraph (2), by striking "the Board" and inserting "the Corporation";

(C) by striking subparagraph (A) of paragraph (3) and inserting the following new subparagraph:

"(A) CORPORATION.—The term 'Corporation' means the Federal Deposit Insurance Corporation."; and

(D) in subparagraph (C) of paragraph (3), by striking "Board" and inserting "Corporation".

(f) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date that the final regulations required under section 4009(a)(5) take effect.

SEC. 4005. REPLACEMENT OF FIXED DESIGNATED RESERVE RATIO WITH RESERVE RANGE.

(a) IN GENERAL.—Section 7(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)) is amended to read as follows:

"(3) DESIGNATED RESERVE RATIO.—

"(A) ESTABLISHMENT.—

"(i) IN GENERAL.—The Board of Directors shall designate, by regulation after notice and opportunity for comment, the reserve ratio applicable with respect to the Deposit Insurance Fund.

"(ii) NOT LESS THAN ANNUAL REDETERMINATION.—A determination under clause (i) shall be made by the Board of Directors at least before the beginning of each calendar year, for such calendar year, and at such other times as the Board of Directors may determine to be appropriate.

"(B) RANGE.—The reserve ratio designated by the Board of Directors for any year—

"(i) may not exceed 1.4 percent of estimated insured deposits; and

"(ii) may not be less than 1.15 percent of estimated insured deposits.

"(C) FACTORS.—In designating a reserve ratio for any year, the Board of Directors shall—

"(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

"(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

"(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

"(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

"(D) PUBLICATION OF PROPOSED CHANGE IN RATIO.—In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published pro-

posal a thorough analysis of the data and projections on which the proposal is based.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3(y) of the Federal Deposit Insurance Act (12 U.S.C. 1813(y)) is amended—

(1) by striking "(y) The term" and inserting(y) Definitions Relating to Deposit Insurance Fund.—

"(1) DEPOSIT INSURANCE FUND.—The term"; and

(2) by inserting after paragraph (1) (as so designated by paragraph (1) of this subsection) the following new paragraph:

"(2) DESIGNATED RESERVE RATIO.—The term 'designated reserve ratio' means the reserve ratio designated by the Board of Directors in accordance with section 7(b)(3).".

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date that the final regulations required under section 4009(a)(1) take effect.

SEC. 4006. REQUIREMENTS APPLICABLE TO THE RISK-BASED ASSESSMENT SYSTEM.

Section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) is amended by adding at the end the following new subparagraphs:

"(E) INFORMATION CONCERNING RISK OF LOSS AND ECONOMIC CONDITIONS.—

"(i) SOURCES OF INFORMATION.—For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, such as reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from credit rating entities, and other private economic or business analysts.

"(ii) CONSULTATION WITH FEDERAL BANKING AGENCIES.—

"(I) IN GENERAL.—Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

"(II) TREATMENT ON AGGREGATE BASIS.—In the case of insured depository institutions that are well capitalized (as defined in section 38) and, in the most recent examination, were found to be well managed, the consultation under subclause

(I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

"(iii) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation.

"(F) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT.—In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.".

SEC. 4007. REFUNDS, DIVIDENDS, AND CREDITS FROM DEPOSIT INSURANCE FUND.

(a) IN GENERAL.—Subsection (e) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)) is amended to read as follows:

"(e) REFUNDS, DIVIDENDS, AND CREDITS.—

"(1) REFUNDS OF OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

"(A) refund the amount of the excess payment to the insured depository institution; or

"(B) credit such excess amount toward the payment of subsequent assessments until such credit is exhausted.

"(2) DIVIDENDS FROM EXCESS AMOUNTS IN DEPOSIT INSURANCE FUND.—

"(A) RESERVE RATIO IN EXCESS OF 1.4 PERCENT OF ESTIMATED INSURED DEPOSITS.—Whenever the reserve ratio of the Deposit Insurance Fund exceeds 1.4 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.4 percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

"(B) RESERVE RATIO EQUAL TO OR IN EXCESS OF 1.35 PERCENT OF ESTIMATED INSURED DEPOSITS AND NOT MORE THAN 1.4 PERCENT.—Whenever the reserve ratio of the Deposit Insurance Fund equals or exceeds 1.35 percent of estimated insured deposits and is not more than 1.4 percent of such deposits, the Corporation shall declare the amount in the Fund that is equal to 50 percent of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent of the estimated insured deposits as dividends to be paid to insured depository institutions.

"(C) BASIS FOR DISTRIBUTION OF DIVIDENDS.—

"(i) IN GENERAL.—Solely for the purposes of dividend distribution under this paragraph and credit distribution under paragraph (3)(B), the Corporation shall determine each insured depository institution's relative

contribution to the Deposit Insurance Fund (or any predecessor deposit insurance fund) for calculating such institution's share of any dividend or credit declared under this paragraph or paragraph (3)(B), taking into account the factors described in clause (ii).

"(ii) FACTORS FOR DISTRIBUTION.—In implementing this paragraph and paragraph (3)(B) in accordance with regulations, the Corporation shall take into account the following factors:

"(I) The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date.

"(II) The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the Deposit Insurance Fund (and any predecessor deposit insurance fund).

"(III) That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by such institution.

"(IV) Such other factors as the Corporation may determine to be appropriate.

"(D) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe by regulation, after notice and opportunity for comment, the method for the calculation, declaration, and payment of dividends under this paragraph.

"(3) CREDIT POOL.—

"(A) ONE-TIME CREDIT BASED ON TOTAL ASSESSMENT BASE AT YEAR-END 1996.—

"(i) IN GENERAL.—Before the end of the 270-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors shall, by regulation, provide for a credit to each eligible insured depository institution, based on the assessment base of the institution (including any predecessor institution) on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

"(ii) CREDIT LIMIT.—The aggregate amount of credits available under clause (i) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 12 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

"(iii) ELIGIBLE INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term 'eli-

gible insured depository institution' means any insured depository institution that—

"(I) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or

"(II) is a successor to any insured depository institution described in subclause (I).

"(iv) APPLICATION OF CREDITS.—

"(I) IN GENERAL.—The amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(E), to the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under clause (i).

"(II) REGULATIONS.—The regulations prescribed under clause (i) shall establish the qualifications and procedures governing the application of assessment credits pursuant to subclause (I).

"(v) LIMITATION ON AMOUNT OF CREDIT FOR CERTAIN DEPOSITORY INSTITUTIONS.—In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 38) at the beginning of an assessment period, the amount of any credit allowed under this paragraph against the assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

"(vi) PREDECESSOR DEFINED.—For purposes of this paragraph, the term 'predecessor', when used with respect to any insured depository institution, includes any other insured depository institution acquired by or merged with such insured depository institution.

"(B) ON-GOING CREDIT POOL.—

"(i) IN GENERAL.—In addition to the credit provided pursuant to subparagraph (A) and subject to the limitation contained in clause (v) of such subparagraph, the Corporation shall, by regulation, establish an ongoing system of credits to be applied against future assessments under subsection (b)(1) on the same basis as the dividends provided under paragraph (2)(C).

"(ii) LIMITATION ON CREDITS UNDER CERTAIN CIRCUMSTANCES.—No credits may be awarded by the Corporation under this subparagraph during any period in which—

"(I) the reserve ratio of the Deposit Insurance Fund is less than the designated reserve ratio of such Fund; or

"(II) the reserve ratio of the Fund is less than 1.25 percent of the amount of estimated insured deposits.

"(iii) CRITERIA FOR DETERMINATION.—In determining the amounts of any assessment credits under this subparagraph, the Board of Directors shall take into account the factors for designating the reserve ratio under subsection (b)(3) and the factors for setting assessments under subsection (b)(2)(B).

"(4) ADMINISTRATIVE REVIEW.—

"(A) IN GENERAL.—The regulations prescribed under paragraph (2)(D) and subparagraphs (A) and (B) of paragraph (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

"(B) ADMINISTRATIVE REVIEW.—Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.".

(b) DEFINITION OF RESERVE RATIO.—Section 3(y) of the Federal Deposit Insurance Act (12 U.S.C. 1813(y)) (as amended by section 4005(b) of this subtitle) is amended by adding at the end the following new paragraph:

"(3) RESERVE RATIO.—The term 'reserve ratio', when used with regard to the Deposit Insurance Fund other than in connection with a reference to the designated reserve ratio, means the ratio of the net worth of the Deposit Insurance Fund to the value of the aggregate estimated insured deposits.".

SEC. 4008. DEPOSIT INSURANCE FUND RESTORATION PLANS.

Section 7(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)) (as amended by section 4005(a) of this subtitle) is amended by adding at the end the following new subparagraph:

"(E) DIF RESTORATION PLANS.—

"(i) IN GENERAL.—Whenever—

"(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

"(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made,

the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

"(ii) REQUIREMENTS OF RESTORATION PLAN.—A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the min-

imum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 10-year period beginning upon the implementation of the plan.

"(iii) RESTRICTION ON ASSESSMENT CREDITS.—As part of any restoration plan under this subparagraph, the Corporation may elect to restrict the application of assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

"(iv) LIMITATION ON RESTRICTION.—Notwithstanding clause (iii), while any restoration plan under this subparagraph is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed on the institution for any assessment period in an amount equal to the lesser of—

"(I) the amount of the assessment; or

"(II) the amount equal to 3 basis points of the institution's assessment base.

"(v) TRANSPARENCY.—Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.".

SEC. 4009. REGULATIONS REQUIRED.

(a) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall prescribe final regulations, after notice and opportunity for comment—

(1) designating the reserve ratio for the Deposit Insurance Fund in accordance with section 7(b)(3) of the Federal Deposit Insurance Act (as amended by section 4005 of this subtitle);

(2) implementing increases in deposit insurance coverage in accordance with the amendments made by section 4003 of this subtitle;

(3) implementing the dividend requirement under section 7(e)(2) of the Federal Deposit Insurance Act (as amended by section 4007 of this subtitle);

(4) implementing the 1-time assessment credit to certain insured depository institutions in accordance with section 7(e)(3) of the Federal Deposit Insurance Act, as amended by section 4007 of this subtitle, including the qualifications and procedures under which the Corporation would apply assessment credits; and

(5) providing for assessments under section 7(b) of the Federal Deposit Insurance Act, as amended by this subtitle.

(b) RULE OF CONSTRUCTION.—No provision of this subtitle or any amendment made by this subtitle shall be construed as affecting the authority of the Corporation to set or collect deposit insurance assessments before the effective date of the final regulations prescribed under subsection (a).

SEC. 4010. STUDIES OF FDIC STRUCTURE AND EXPENSES AND CERTAIN ACTIVITIES AND FURTHER POSSIBLE CHANGES TO DEPOSIT INSURANCE SYSTEM.

(a) STUDY BY COMPTROLLER GENERAL.—

(1) STUDY REQUIRED.—The Comptroller General shall conduct a study of the following issues:

(A) The efficiency and effectiveness of the administration of the prompt corrective action program under section 38 of the Federal Deposit Insurance Act by the Federal banking agencies (as defined in section 3 of such Act), including the degree of effectiveness of such agencies in identifying troubled depository institutions and taking effective action with respect to such institutions, and the degree of accuracy of the risk assessments made by the Corporation.

(B) The appropriateness of the organizational structure of the Federal Deposit Insurance Corporation for the mission of the Corporation taking into account—

(i) the current size and complexity of the business of insured depository institutions (as such term is defined in section 3 of the Federal Deposit Insurance Act);

(ii) the extent to which the organizational structure contributes to or reduces operational inefficiencies that increase operational costs; and

(iii) the effectiveness of internal controls.

(2) REPORT TO THE CONGRESS.—The Comptroller General shall submit a report to the Congress before the end of the 1-year period beginning on the date of the enactment of this Act containing the findings and conclusions of the Comptroller General with respect to the study required under paragraph (1) together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

(b) STUDY OF FURTHER POSSIBLE CHANGES TO DEPOSIT INSURANCE SYSTEM.—

(1) STUDY REQUIRED.—The Board of Directors of the Federal Deposit Insurance Corporation and the National Credit Union Administration Board shall each conduct a study of the following:

(A) The feasibility of establishing a voluntary deposit insurance system for deposits in excess of the maximum amount of deposit insurance for any depositor and the potential benefits and the potential adverse consequences that may result from the establishment of any such system.

(B) The feasibility of privatizing all deposit insurance at insured depository institutions and insured credit unions.

(2) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation and the National Credit Union Administration Board shall each submit a report to the Congress on the study required under paragraph (1) containing the findings and conclusions of the reporting agency together with such recommendations for legislative or adminis-

trative changes as the agency may determine to be appropriate.

(c) STUDY REGARDING APPROPRIATE DEPOSIT BASE IN DESIGNATING RESERVE RATIO.—

(1) STUDY REQUIRED.—The Federal Deposit Insurance Corporation shall conduct a study of the feasibility of using actual domestic deposits rather than estimated insured deposits in calculating the reserve ratio of the Deposit Insurance Fund and designating a reserve ratio for such Fund.

(2) REPORT.—The Federal Deposit Insurance Corporation shall submit a report to the Congress before the end of the 1-year period beginning on the date of the enactment of this Act containing the findings and conclusions of the Corporation with respect to the study required under paragraph (1) together with such recommendations for legislative or administrative action as the Board of Directors of the Corporation may determine to be appropriate.

(d) STUDY OF RESERVE METHODOLOGY AND ACCOUNTING FOR LOSS.—

(1) STUDY REQUIRED.—The Federal Deposit Insurance Corporation shall conduct a study of the reserve methodology and loss accounting used by the Corporation during the period beginning on January 1, 1992, and ending December 31, 2004, with respect to insured depository institutions in a troubled condition (as defined in the regulations prescribed pursuant to section 32(f) of the Federal Deposit Insurance Act). The Corporation shall obtain comments on the design of the study from the Comptroller General.

(2) FACTORS TO BE INCLUDED.—In conducting the study pursuant to paragraph (1), the Federal Deposit Insurance Corporation shall—

(A) consider the overall effectiveness and accuracy of the methodology used by the Corporation for establishing and maintaining reserves and estimating and accounting for losses at insured depository institutions, during the period described in such paragraph;

(B) consider the appropriateness and reliability of information and criteria used by the Corporation in determining—

(i) whether an insured depository institution was in a troubled condition; and

(ii) the amount of any loss anticipated at such institution;

(C) analyze the actual historical loss experience over the period described in paragraph (1) and the causes of the exceptionally high rate of losses experienced by the Corporation in the final 3 years of that period; and

(D) rate the efforts of the Corporation to reduce losses in such 3-year period to minimally acceptable levels and to historical levels.

(3) REPORT REQUIRED.—The Board of Directors of the Federal Deposit Insurance Corporation shall submit a report to the Congress before the end of the 6-month period beginning on the date of the enactment of this Act, containing the findings

and conclusions of the Corporation with respect to the study required under paragraph (1), together with such recommendations for legislative or administrative action as the Board of Directors may determine to be appropriate. Before submitting the report to Congress, the Board of Directors shall provide a draft of the report to the Comptroller General for comment.

SEC. 4011. BI-ANNUAL FDIC SURVEY AND REPORT ON INCREASING THE DEPOSIT BASE BY ENCOURAGING USE OF DEPOSITORY INSTITUTIONS BY THE UNBANKED.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 49. BI-ANNUAL FDIC SURVEY AND REPORT ON ENCOURAGING USE OF DEPOSITORY INSTITUTIONS BY THE UNBANKED.

"(a) SURVEY REQUIRED.—

"(1) IN GENERAL.—The Corporation shall conduct a bi-annual survey on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the 'unbanked') into the conventional finance system.

"(2) FACTORS AND QUESTIONS TO CONSIDER.—In conducting the survey, the Corporation shall take the following factors and questions into account:

"(A) To what extent do insured depository institutions promote financial education and financial literacy outreach?

"(B) Which financial education efforts appear to be the most effective in bringing 'unbanked' individuals and families into the conventional finance system?

"(C) What efforts are insured institutions making at converting 'unbanked' money order, wire transfer, and international remittance customers into conventional account holders?

"(D) What cultural, language and identification issues as well as transaction costs appear to most prevent 'unbanked' individuals from establishing conventional accounts?

"(E) What is a fair estimate of the size and worth of the 'unbanked' market in the United States?

"(b) REPORTS.—The Chairperson of the Board of Directors shall submit a bi-annual report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the Corporation's findings and conclusions with respect to the survey conducted pursuant to subsection (a), together with such recommendations for legislative or administrative action as the Chairperson may determine to be appropriate.".

SEC. 4012. TECHNICAL AND CONFORMING AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT RELATING TO THE MERGER OF THE BIF AND SAIF.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 3 (12 U.S.C. 1813)—

(A) by striking subparagraph (B) of subsection (a)(1) and inserting the following new subparagraph:

"(B) includes any former savings association."; and

(B) by striking paragraph (1) of subsection (y) (as so designated by section 4005(b) of this subtitle) and inserting the following new paragraph:

"(1) DEPOSIT INSURANCE FUND.—The term 'Deposit Insurance Fund' means the Deposit Insurance Fund established under section 11(a)(4).";

(2) in section 5(b)(5) (12 U.S.C. 1815(b)(5)), by striking "the Bank Insurance Fund or the Savings Association Insurance Fund," and inserting "the Deposit Insurance Fund,";

(3) in section 5(c)(4), by striking "deposit insurance fund" and inserting "Deposit Insurance Fund";

(4) in section 5(d) (12 U.S.C. 1815(d)), by striking paragraphs (2) and (3) (and any funds resulting from the application of such paragraph (2) prior to its repeal shall be deposited into the general fund of the Deposit Insurance Fund);

(5) in section 5(d)(1) (12 U.S.C. 1815(d)(1))—

(A) in subparagraph (A), by striking "reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund as required by section 7" and inserting "the reserve ratio of the Deposit Insurance Fund";

(B) by striking subparagraph (B) and inserting the following:

"(2) FEE CREDITED TO THE DEPOSIT INSURANCE FUND.—The fee paid by the depository institution under paragraph (1) shall be credited to the Deposit Insurance Fund.";

(C) by striking "(1) **uninsured institutions**.—"; and

(D) by redesignating subparagraphs (A) and (C) as paragraphs (1) and (3), respectively, and moving the left margins 2 ems to the left;

(6) in section 5(e) (12 U.S.C. 1815(e))—

(A) in paragraph (5)(A), by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(B) by striking paragraph (6); and

(C) by redesignating paragraphs (7), (8), and (9) as paragraphs (6), (7), and (8), respectively;

(7) in section 6(5) (12 U.S.C. 1816(5)), by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(8) in section 7(b) (12 U.S.C. 1817(b))—

(A) in paragraph (1)(C), by striking "deposit insurance fund" each place that term appears and inserting "Deposit Insurance Fund";

(B) in paragraph (1)(D), by striking "each deposit insurance fund" and inserting "the Deposit Insurance Fund"; and

(C) in paragraph (5) (as so redesignated by section 4004(e)(4) of this subtitle)—

(i) by striking "any such assessment" and inserting "any such assessment is necessary";

(ii) by striking subparagraph (B);

(iii) in subparagraph (A)—

(I) by striking "(A) is necessary—";

(II) by striking "Bank Insurance Fund members" and inserting "insured depository institutions"; and

(III) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively, and moving the margins 2 ems to the left; and

(iv) in subparagraph (C) (as so redesignated)—

(I) by inserting "that" before "the Corporation"; and

(II) by striking "; and" and inserting a period;

(9) in section 7(j)(7)(F) (12 U.S.C. 1817(j)(7)(F)), by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(10) in section 8(t)(2)(C) (12 U.S.C. 1818(t)(2)(C)), by striking "deposit insurance fund" and inserting "Deposit Insurance Fund";

(11) in section 11 (12 U.S.C. 1821)—

(A) by striking "deposit insurance fund" each place that term appears and inserting "Deposit Insurance Fund";

(B) by striking paragraph (4) of subsection (a) and inserting the following new paragraph:

"(4) DEPOSIT INSURANCE FUND.—

"(A) ESTABLISHMENT.—There is established the Deposit Insurance Fund, which the Corporation shall—

"(i) maintain and administer;

"(ii) use to carry out its insurance purposes, in the manner provided by this subsection; and

"(iii) invest in accordance with section 13(a).

"(B) USES.—The Deposit Insurance Fund shall be available to the Corporation for use with respect to insured depository institutions the deposits of which are insured by the Deposit Insurance Fund.

"(C) LIMITATION ON USE.—Notwithstanding any provision of law other than section 13(c)(4)(G), the Deposit Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of—

"(i) any insured depository institution for which the Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation;

"(ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation; or

"(iii) any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquir-

ing (as defined in section 13(f)(8)(B)) another insured depository institution.

"(D) DEPOSITS.—All amounts assessed against insured depository institutions by the Corporation shall be deposited into the Deposit Insurance Fund.";

(C) by striking paragraphs (5), (6), and (7) of subsection (a); and

(D) by redesignating paragraph (8) of subsection (a) as paragraph (5);

(12) in section 11(f)(1) (12 U.S.C. 1821(f)(1)), by striking ", except that—" and all that follows through the end of the paragraph and inserting a period;

(13) in section 11(i)(3) (12 U.S.C. 1821(i)(3))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (B); and

(C) in subparagraph (B) (as so redesignated), by striking "subparagraphs (A) and (B)" and inserting "subparagraph (A)";

(14) in section 11(p)(2)(B) (12 U.S.C. 1821(p)(2)(B)), by striking "institution, any" and inserting "institution, the";

(15) in section 11A(a) (12 U.S.C. 1821a(a))—

(A) in paragraph (2), by striking "**liabilities**.—" and all that follows through "Except" and inserting "**liabilities**.—Except";

(B) by striking paragraph (2)(B); and

(C) in paragraph (3), by striking "the Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "the Deposit Insurance Fund";

(16) in section 11A(b) (12 U.S.C. 1821a(b)), by striking paragraph (4);

(17) in section 11A(f) (12 U.S.C. 1821a(f)), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(18) in section 12(f)(4)(E)(iv) (12 U.S.C. 1822(f)(4)(E)(iv)), by striking "Federal deposit insurance funds" and inserting "the Deposit Insurance Fund (or any predecessor deposit insurance fund)";

(19) in section 13 (12 U.S.C. 1823)—

(A) by striking "deposit insurance fund" each place that term appears and inserting "Deposit Insurance Fund";

(B) in subsection (a)(1), by striking "Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "Deposit Insurance Fund";

(C) in subsection (c)(4)(E)—

(i) in the subparagraph heading, by striking "funds" and inserting "fund"; and

(ii) in clause (i), by striking "any insurance fund" and inserting "the Deposit Insurance Fund";

(D) in subsection (c)(4)(G)(ii)—

(i) by striking "appropriate insurance fund" and inserting "Deposit Insurance Fund";

(ii) by striking "the members of the insurance fund (of which such institution is a member)" and inserting "insured depository institutions";

(iii) by striking "each member's" and inserting "each insured depository institution's"; and

(iv) by striking "the member's" each place that term appears and inserting "the institution's";

(E) in subsection (c), by striking paragraph (11);

(F) in subsection (h), by striking "Bank Insurance Fund" and inserting "Deposit Insurance Fund";

(G) in subsection (k)(4)(B)(i), by striking "Savings Association Insurance Fund member" and inserting "savings association"; and

(H) in subsection (k)(5)(A), by striking "Savings Association Insurance Fund members" and inserting "savings associations";

(20) in section 14(a) (12 U.S.C. 1824(a)), in the 5th sentence—

(A) by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund"; and

(B) by striking "each such fund" and inserting "the Deposit Insurance Fund";

(21) in section 14(b) (12 U.S.C. 1824(b)), by striking "Bank Insurance Fund or Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(22) in section 14(c) (12 U.S.C. 1824(c)), by striking paragraph (3);

(23) in section 14(d) (12 U.S.C. 1824(d))—

(A) by striking "Bank Insurance Fund member" each place that term appears and inserting "insured depository institution";

(B) by striking "Bank Insurance Fund members" each place that term appears and inserting "insured depository institutions";

(C) by striking "Bank Insurance Fund" each place that term appears (other than in connection with a reference to a term amended by subparagraph (A) or (B) of this paragraph) and inserting "Deposit Insurance Fund";

(D) by striking the subsection heading and inserting the following:

"(d) BORROWING FOR THE DEPOSIT INSURANCE FUND FROM INSURED DEPOSITORY INSTITUTIONS.—";

(E) in paragraph (3), in the paragraph heading, by striking "BIF" and inserting "THE DEPOSIT INSURANCE FUND"; and

(F) in paragraph (5), in the paragraph heading, by striking "BIF MEMBERS" and inserting "INSURED DEPOSITORY INSTITUTIONS";

(24) in section 14 (12 U.S.C. 1824), by adding at the end the following new subsection:

"(e) BORROWING FOR THE DEPOSIT INSURANCE FUND FROM FEDERAL HOME LOAN BANKS.—

"(1) IN GENERAL.—The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal Housing Finance Board, such funds as the Corporation considers necessary for the use of the Deposit Insurance Fund.

"(2) TERMS AND CONDITIONS.—Any loan from any Federal home loan bank under paragraph (1) to the Deposit Insurance Fund shall—

"(A) bear a rate of interest of not less than the current marginal cost of funds to that bank, taking into account the maturities involved;

"(B) be adequately secured, as determined by the Federal Housing Finance Board;

"(C) be a direct liability of the Deposit Insurance Fund; and

"(D) be subject to the limitations of section 15(c).";

(25) in section 15(c)(5) (12 U.S.C. 1825(c)(5))—

(A) by striking "the Bank Insurance Fund or Savings Association Insurance Fund, respectively" each place that term appears and inserting "the Deposit Insurance Fund"; and

(B) in subparagraph (B), by striking "the Bank Insurance Fund or the Savings Association Insurance Fund, respectively" and inserting "the Deposit Insurance Fund";

(26) in section 17(a) (12 U.S.C. 1827(a))—

(A) in the subsection heading, by striking "BIF, SAIF," and inserting "THE DEPOSIT INSURANCE FUND"; and

(B) in paragraph (1)—

(i) by striking "the Bank Insurance Fund, the Savings Association Insurance Fund," each place that term appears and inserting "the Deposit Insurance Fund"; and

(ii) in subparagraph (D), by striking "each insurance fund" and inserting "the Deposit Insurance Fund";

(27) in section 17(d) (12 U.S.C. 1827(d)), by striking ", the Bank Insurance Fund, the Savings Association Insurance Fund," each place that term appears and inserting "the Deposit Insurance Fund";

(28) in section 18(m)(3) (12 U.S.C. 1828(m)(3))—

(A) by striking "Savings Association Insurance Fund" in the 1st sentence of subparagraph (A) and inserting "Deposit Insurance Fund";

(B) by striking "Savings Association Insurance Fund member" in the last sentence of subparagraph (A) and inserting "savings association"; and

(C) by striking "Savings Association Insurance Fund or the Bank Insurance Fund" in subparagraph (C) and inserting "Deposit Insurance Fund";

(29) in section 18(o) (12 U.S.C. 1828(o)), by striking "deposit insurance funds" and "deposit insurance fund" each place those terms appear and inserting "Deposit Insurance Fund";

(30) in section 18(p) (12 U.S.C. 1828(p)), by striking "deposit insurance funds" and inserting "Deposit Insurance Fund";

(31) in section 24 (12 U.S.C. 1831a)—

(A) in subsections (a)(1) and (d)(1)(A), by striking "appropriate deposit insurance fund" each place that term appears and inserting "Deposit Insurance Fund";

(B) in subsection (e)(2)(A), by striking "risk to" and all that follows through the period and inserting "risk to the Deposit Insurance Fund."; and

(C) in subsections (e)(2)(B)(ii) and (f)(6)(B), by striking "the insurance fund of which such bank is a member" each place that term appears and inserting "the Deposit Insurance Fund";

(32) in section 28 (12 U.S.C. 1831e), by striking "affected deposit insurance fund" each place that term appears and inserting "Deposit Insurance Fund";

(33) by striking section 31 (12 U.S.C. 1831h);

(34) in section 36(i)(3) (12 U.S.C. 1831m(i)(3)), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund";

(35) in section 37(a)(1)(C) (12 U.S.C. 1831n(a)(1)(C)), by striking "insurance funds" and inserting "Deposit Insurance Fund";

(36) in section 38 (12 U.S.C. 1831o), by striking "the deposit insurance fund" each place that term appears and inserting "the Deposit Insurance Fund";

(37) in section 38(a) (12 U.S.C. 1831o(a)), in the subsection heading, by striking "FUNDS" and inserting "FUND";

(38) in section 38(k) (12 U.S.C. 1831o(k))—

(A) in paragraph (1), by striking "a deposit insurance fund" and inserting "the Deposit Insurance Fund";

(B) in paragraph (2), by striking "A deposit insurance fund" and inserting "The Deposit Insurance Fund"; and

(C) in paragraphs (2)(A) and (3)(B), by striking "the deposit insurance fund's outlays" each place that term appears and inserting "the outlays of the Deposit Insurance Fund"; and

(39) in section 38(o) (12 U.S.C. 1831o(o))—

(A) by striking "**associations**.—" and all that follows through "Subsections (e)(2)" and inserting "**associations**.—Subsections (e)(2)";

(B) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively, and moving the margins 2 ems to the left; and

(C) in paragraph (1) (as so redesignated), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and moving the margins 2 ems to the left.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the first day of the first calendar quarter that begins after the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 4013. OTHER TECHNICAL AND CONFORMING AMENDMENTS RELATING TO THE MERGER OF THE BIF AND SAIF.

(a) SECTION 5136 OF THE REVISED STATUTES.—The paragraph designated the "Eleventh" of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended in the 5th sentence,

by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund".

(b) INVESTMENTS PROMOTING PUBLIC WELFARE; LIMITATIONS ON AGGREGATE INVESTMENTS.—The 23d undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 338a) is amended in the 4th sentence, by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund".

(c) ADVANCES TO CRITICALLY UNDERCAPITALIZED DEPOSITORY INSTITUTIONS.—Section 10B(b)(3)(A)(ii) of the Federal Reserve Act (12 U.S.C. 347b(b)(3)(A)(ii)) is amended by striking "any deposit insurance fund in" and inserting "the Deposit Insurance Fund of".

(d) AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended—

(1) by striking "Bank Insurance Fund" and inserting "Deposit Insurance Fund"; and

(2) by striking "Federal Deposit Insurance Corporation, Savings Association Insurance Fund (51–4066–0–3–373);".

(e) AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended—

(1) in section 11(k) (12 U.S.C. 1431(k))—

(A) in the subsection heading, by striking "SAIF" and inserting "THE DEPOSIT INSURANCE FUND"; and

(B) by striking "Savings Association Insurance Fund" each place such term appears and inserting "Deposit Insurance Fund";

(2) in section 21 (12 U.S.C. 1441)—

(A) in subsection (f)(2), by striking ", except that" and all that follows through the end of the paragraph and inserting a period; and

(B) in subsection (k), by striking paragraph (4);

(3) in section 21A(b)(4)(B) (12 U.S.C. 1441a(b)(4)(B)), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund";

(4) in section 21A(b)(6)(B) (12 U.S.C. 1441a(b)(6)(B))—

(A) in the subparagraph heading, by striking "SAIF-INSURED BANKS" and inserting "CHARTER CONVERSIONS"; and

(B) by striking "Savings Association Insurance Fund member" and inserting "savings association";

(5) in section 21A(b)(10)(A)(iv)(II) (12 U.S.C. 1441a(b)(10)(A)(iv)(II)), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(6) in section 21A(n)(6)(E)(iv) (12 U.S.C. 1441(n)(6)(E)(iv)), by striking "Federal deposit insurance funds" and inserting "the Deposit Insurance Fund";

(7) in section 21B(e) (12 U.S.C. 1441b(e))—

(A) in paragraph (5), by inserting "as of the date of funding" after "Savings Association Insurance Fund members" each place that term appears; and

(B) by striking paragraphs (7) and (8); and

(8) in section 21B(k) (12 U.S.C. 1441b(k))—

(A) by inserting before the colon ", the following definitions shall apply";

(B) by striking paragraph (8); and

(C) by redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively.

(f) AMENDMENTS TO THE HOME OWNERS' LOAN ACT.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended—

(1) in section 5 (12 U.S.C. 1464)—

(A) in subsection (c)(5)(A), by striking "that is a member of the Bank Insurance Fund";

(B) in subsection (c)(6), by striking "As used in this subsection—" and inserting "For purposes of this subsection, the following definitions shall apply:";

(C) in subsection (o)(1), by striking "that is a Bank Insurance Fund member";

(D) in subsection (o)(2)(A), by striking "a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member" and inserting "insured by the Deposit Insurance Fund";

(E) in subsection (t)(5)(D)(iii)(II), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund";

(F) in subsection (t)(7)(C)(i)(I), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund"; and

(G) in subsection (v)(2)(A)(i), by striking "the Savings Association Insurance Fund" and inserting "or the Deposit Insurance Fund"; and

(2) in section 10 (12 U.S.C. 1467a)—

(A) in subsection (c)(6)(D), by striking "this title" and inserting "this Act";

(B) in subsection (e)(1)(B), by striking "Savings Association Insurance Fund or Bank Insurance Fund" and inserting "Deposit Insurance Fund";

(C) in subsection (e)(2), by striking "Savings Association Insurance Fund or the Bank Insurance Fund" and inserting "Deposit Insurance Fund";

(D) in subsection (e)(4)(B), by striking "subsection (1)" and inserting "subsection (l)";

(E) in subsection (g)(3)(A), by striking "(5) of this section" and inserting "(5) of this subsection";

(F) in subsection (i), by redesignating paragraph (5) as paragraph (4);

(G) in subsection (m)(3), by striking subparagraph (E) and by redesignating subparagraphs (F), (G), and (H) as subparagraphs (E), (F), and (G), respectively;

(H) in subsection (m)(7)(A), by striking "during period" and inserting "during the period"; and

(I) in subsection (o)(3)(D), by striking "sections 5(s) and (t) of this Act" and inserting "subsections (s) and (t) of section 5".

(g) AMENDMENTS TO THE NATIONAL HOUSING ACT.—The National Housing Act (12 U.S.C. 1701 et seq.) is amended—

(1) in section 317(b)(1)(B) (12 U.S.C. 1723i(b)(1)(B)), by striking "Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations" and inserting "Deposit Insurance Fund"; and

(2) in section 536(b)(1)(B)(ii) (12 U.S.C. 1735f–14(b)(1)(B)(ii)), by striking "Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations" and inserting "Deposit Insurance Fund".

(h) AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.—The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note) is amended—

(1) in section 951(b)(3)(B) (12 U.S.C. 1833a(b)(3)(B)), by inserting "and after the merger of such funds, the Deposit Insurance Fund," after "the Savings Association Insurance Fund,"; and

(2) in section 1112(c)(1)(B) (12 U.S.C. 3341(c)(1)(B)), by striking "Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "Deposit Insurance Fund".

(i) AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) in section 2(j)(2) (12 U.S.C. 1841(j)(2)), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund"; and

(2) in section 3(d)(1)(D)(iii) (12 U.S.C. 1842(d)(1)(D)(iii)), by striking "appropriate deposit insurance fund" and inserting "Deposit Insurance Fund".

(j) AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.—Section 114 of the Gramm-Leach-Bliley Act (12 U.S.C. 1828a) is amended by striking "any Federal deposit insurance fund" in subsection (a)(1)(B), paragraphs (2)(B) and (4)(B) of subsection (b), and subsection (c)(1)(B), each place that term appears and inserting "the Deposit Insurance Fund".

(k) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the first day of the first calendar quarter that begins after the end of the 90-day period beginning on the date of the enactment of this Act.

Subtitle B—FHA Asset Disposition

SEC. 4101. SHORT TITLE.

This subtitle may be cited as the "FHA Asset Disposition Act of 2005".

SEC. 4102. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) The term "affordability requirements" means any requirements or restrictions imposed by the Secretary, at the time of sale, on a multifamily real property or a multifamily loan, such as use restrictions, rent restrictions, and rehabilitation requirements.

(2) The term "discount sale" means the sale of a multifamily real property in a transaction, such as a negotiated sale, in which the sale price is lower than the property market value and is set outside of a competitive bidding process that has no affordability requirements.

(3) The term "discount loan sale" means the sale of a multifamily loan in a transaction, such as a negotiated sale, in which the sale price is lower than the loan market value and is set outside of a competitive bidding process that has no affordability requirements.

(4) The term "loan market value" means the value of a multifamily loan, without taking into account any affordability requirements.

(5) The term "multifamily real property" means any rental or cooperative housing project of 5 or more units owned by the Secretary that prior to acquisition by the Secretary was security for a loan or loans insured under title II of the National Housing Act.

(6) The term "multifamily loan" means a loan held by the Secretary and secured by a multifamily rental or cooperative housing project of 5 or more units that was formerly insured under title II of the National Housing Act.

(7) The term "property market value" means the value of a multifamily real property for its current use, without taking into account any affordability requirements.

(8) The term "Secretary" means the Secretary of Housing and Urban Development.

SEC. 4103. APPROPRIATED FUNDS REQUIREMENT FOR BELOW MARKET SALES.

(a) DISCOUNT SALES.—Notwithstanding any other provision of law, except for affordability requirements for the elderly and disabled required by statute, disposition by the Secretary of a multifamily real property during fiscal years 2006 through 2010 through a discount sale under sections 207(l) or 246 of the National Housing Act (12 U.S.C. 1713(l), 1715z-11), section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11), or 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), shall be subject to the availability of appropriations to the extent that the property value exceeds the sale proceeds. If the multifamily real property is sold, during such fiscal years, for an amount equal to or greater than the property market value then the transaction is not subject to the availability of appropriations.

(b) DISCOUNT LOAN SALES.—Notwithstanding any other provision of law and in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), a discount loan sale during fiscal years 2006 through 2010 under section 207(k) of the National Housing Act (12 U.S.C. 1713(k)), section 203(k) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(k)), or section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z-11a(a)), shall be subject to the availability of appropriations to the extent that the loan value exceeds

the sale proceeds. If the multifamily loan is sold, during such fiscal years, for an amount equal to or greater than the loan market value then the transaction is not subject to the availability of appropriations.

(c) APPLICABILITY.—This section shall not apply to any transaction that formally commences within one year prior to the enactment of this section.

SEC. 4104. UP-FRONT GRANTS.

(a) 1997 Act.—Section 204(a) of the Departments of Veterans Affairs and Housing And Urban Development, and Independent Agencies Appropriations Act, 1997 (12 U.S.C. 1715z-11a(a))) is amended by adding at the end the following new sentence: "A grant provided under this subsection during fiscal years 2006 through 2010 shall be available only to the extent that appropriations are made in advance for such purposes and shall not be derived from the General Insurance Fund.".

(b) 1978 Act.—Section 203(f)(4) of the Housing and Community Development Amendments of 1978 (12 USC 1701z-11(f)(4)) is amended by adding at the end the following new sentence: "This paragraph shall be effective during fiscal years 2006 through 2010 only to the extent that such budget authority is made available for use under this paragraph in advance in appropriation Acts.".

(c) APPLICABILITY.—The amendments made by this section shall not apply to any transaction that formally commences within one year prior to the enactment of this section.

TITLE V—COMMITTEE ON JUDICIARY

SEC. 5001. TABLE OF CONTENTS.

TITLE V—COMMITTEE ON JUDICIARY

Sec. 5001. Table of contents.

Subtitle A—Visa Fees

Sec. 5101. Fees with respect to immigration services for intracompany transferees.

Subtitle B—Circuit and District Judgeships

Sec. 5201. Short title.
Sec. 5202. Circuit judges for the circuit courts of appeals.
Sec. 5203. District judges for the district courts.
Sec. 5204. Establishment of Article III court in the Virgin Islands.
Sec. 5205. Effective date.

Subtitle C—Bankruptcy Judgeships

Sec. 5301. Short title.
Sec. 5302. Authorization for additional bankruptcy judgeships.
Sec. 5303. Temporary bankruptcy judgeships.
Sec. 5304. Conversion of existing temporary bankruptcy judgeships.
Sec. 5305. General provisions.
Sec. 5306. Effective date.

Subtitle D—Ninth Circuit Reorganization

Sec. 5401. Short title.
Sec. 5402. Definitions.
Sec. 5403. Number and composition of circuits.
Sec. 5404. Number of circuit judges.
Sec. 5405. Places of circuit court.
Sec. 5406. Assignment of circuit judges.

Sec. 5407. Election of assignment by senior judges.
Sec. 5408. Seniority of judges.
Sec. 5409. Application to cases.
Sec. 5410. Temporary assignment of circuit judges among circuits.
Sec. 5411. Temporary assignment of district judges among circuits.
Sec. 5412. Administration.
Sec. 5413. Effective date.

Subtitle E—Authorization of Appropriations

Sec. 5501. Authorization of appropriations.

Subtitle A—Visa Fees

SEC. 5101. FEES WITH RESPECT TO IMMIGRATION SERVICES FOR INTRACOMPANY TRANSFEREES.

Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

"(15)(A) The Secretary of State shall impose a fee on an employer when an alien files an application abroad for a visa authorizing initial admission to the United States as a nonimmigrant described in section 101(a)(15)(L) in order to be employed by the employer, if the alien is covered under a blanket petition described in paragraph (2)(A).

"(B) The Secretary of Homeland Security shall impose a fee on an employer filing a petition under paragraph (1) initially to grant an alien nonimmigrant status described in section 101(a)(15)(L) or to extend for the first time the stay of an alien having such status.

"(C) The amount of the fee imposed under subparagraph (A) or (B) shall be $1,500.

"(D) The fees imposed under subparagraphs (A) and (B) shall only apply to principal aliens and not to spouses or children who are accompanying or following to join such principal aliens.

"(E) Fees collected under this paragraph shall be deposited as offsetting receipts in the Treasury, and shall not be available for expenditure until appropriated.

"(F)(i) An employer may not require an alien who is the beneficiary of the visa or petition for which a fee is imposed under this paragraph to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee.

"(ii) Section 274A(g)(2) shall apply to a violation of clause (i) in the same manner as it applies to a violation of section 274A(g)(1).".

Subtitle B—Circuit and District Judgeships

SEC. 5201. SHORT TITLE.

This subtitle may be cited as the "Federal Judgeship Act of 2005".

SEC. 5202. CIRCUIT JUDGES FOR THE CIRCUIT COURTS OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional circuit judge for the first circuit court of appeals;

(2) 2 additional circuit judges for the second circuit court of appeals;

(3) 1 additional circuit judge for the sixth circuit court of appeals; and

(4) 5 additional circuit judges for the ninth circuit court of appeals, whose official duty station shall be in California.

(b) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional circuit judge for the eighth circuit court of appeals; and

(B) 2 additional circuit judges for the ninth circuit court of appeals, whose official duty station shall be in California.

(2) VACANCIES.—

(A) EIGHTH CIRCUIT.—The first vacancy in the office of circuit judge in the eighth circuit court of appeals, occurring 10 years or more after the confirmation date of the judge named to fill the circuit judgeship created in that circuit by paragraph (1)(A) shall not be filled.

(B) NINTH CIRCUIT.—The first 2 vacancies in the office of circuit judge in the ninth circuit court of appeals, occurring 10 years or more after judges are first confirmed to fill both temporary circuit judgeships created by paragraph (1)(B) shall not be filled.

(c) TABLE OF JUDGESHIPS.—In order that the table contained in section 44 of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized under subsection (a) of this section, such table is amended to read as follows:

"Circuits	**Number of Judges**
District of Columbia	12
First	7
Second	15
Third	14
Fourth	15
Fifth	17
Sixth	17
Seventh	11
Eighth	11
Ninth	33
Tenth	12
Eleventh	12
Federal	12.".

SEC. 5203. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the northern district of Alabama;

(2) 4 additional district judges for the district of Arizona;

(3) 3 additional district judges for the northern district of California;

(4) 4 additional district judges for the eastern district of California;

(5) 4 additional district judges for the central district of California;

(6) 1 additional district judge for the southern district of California;

(7) 1 additional district judge for the district of Colorado;

(8) 4 additional district judges for the middle district of Florida;

(9) 3 additional district judges for the southern district of Florida;

(10) 1 additional district judge for the district of Idaho;

(11) 1 additional district judge for the northern district of Illinois;

(12) 1 additional district judge for the southern district of Indiana;

(13) 1 additional district judge for the western district of Missouri;

(14) 1 additional district judge for the district of Nebraska;

(15) 1 additional district judge for the district of Nevada;

(16) 1 additional district judge for the district of New Mexico;

(17) 3 additional district judges for the eastern district of New York;

(18) 1 additional district judge for the western district of New York;

(19) 1 additional district judge for the district of Oregon;

(20) 1 additional district judge for the district of South Carolina;

(21) 3 additional district judges for the southern district of Texas;

(22) 2 additional district judges for the eastern district of Virginia; and

(23) 1 additional district judge for the western district of Washington.

(b) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional district judge for the middle district of Alabama;

(B) 1 additional district judge for the district of Arizona;

(C) 1 additional district judge for the northern district of California;

(D) 1 additional district judge for the district of Colorado;

(E) 1 additional district judge for the middle district of Florida;

(F) 1 additional district judge for the northern district of Iowa;

(G) 1 additional district judge for the district of Minnesota;

(H) 1 additional district judge for the district of New Jersey;

(I) 1 additional district judge for the district of New Mexico;

(J) 1 additional district judge for the southern district of Ohio;

(K) 1 additional district judge for the district of Oregon; and

(L) 1 additional district judge for the district of Utah.

(2) VACANCIES NOT FILLED.—The first vacancy in the office of district judge in each of the judicial districts named in paragraph (1) occurring 10 years or more after the confirmation date of the judge named to fill the district judgeship created in that district by paragraph (1) shall not be filled.

(c) EXISTING JUDGESHIPS.—

(1) PERMANENT JUDGESHIPS.—The existing judgeships for the district of Hawaii, the district of Kansas, and the eastern district of Missouri authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note) shall, as of the effective date of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(2) EXTENSION OF TEMPORARY JUDGESHIP.—Section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note) is amended in the fifth sentence (relating to the northern district of Ohio) by striking "15 years" and inserting "20 years".

(d) TABLE OF JUDGESHIPS.—In order that the table contained in section 133(a) of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized under subsections (a) and (c) of this section, such table is amended to read as follows:

"Districts	**Judges**
"Alabama:	
"Northern	8
"Middle	3
"Southern	3
"Alaska	3
"Arizona	16
"Arkansas:	
"Eastern	5
"Western	3
"California:	
"Northern	17
"Eastern	10
"Central	31
"Southern	14
"Colorado	8
"Connecticut	8
"Delaware	4
"District of Columbia	15
"Florida:	
"Northern	4
"Middle	19
"Southern	20
"Georgia:	
"Northern	11
"Middle	4
"Southern	3
"Hawaii	4
"Idaho	3
"Illinois:	
"Northern	23
"Central	4
"Southern	4

"Indiana:	
"Northern	5
"Southern	6
"Iowa:	
"Northern	2
"Southern	3
"Kansas	6
"Kentucky:	
"Eastern	5
"Western	4
"Eastern and Western	1
"Louisiana:	
"Eastern	12
"Middle	3
"Western	7
"Maine	3
"Maryland	10
"Massachusetts	13
"Michigan:	
"Eastern	15
"Western	4
"Minnesota	7
"Mississippi:	
"Northern	3
"Southern	6
"Missouri:	
"Eastern	7
"Western	6
"Eastern and Western	2
"Montana	3
"Nebraska	4
"Nevada	8
"New Hampshire	3
"New Jersey	17
"New Mexico	7
"New York:	
"Northern	5
"Southern	28
"Eastern	18
"Western	5
"North Carolina:	
"Eastern	4
"Middle	4
"Western	4
"North Dakota	2
"Ohio:	
"Northern	11
"Southern	8
"Oklahoma:	
"Northern	3
"Eastern	1
"Western	6
"Northern, Eastern, and Western	1
"Oregon	7
"Pennsylvania:	
"Eastern	22
"Middle	6
"Western	10
"Puerto Rico	7
"Rhode Island	3
"South Carolina	11
"South Dakota	3
"Tennessee:	
"Eastern	5
"Middle	4
"Western	5
"Texas:	
"Northern	12

"Southern	22
"Eastern	7
"Western	13
"Utah	5
"Vermont	2
"Virginia:	
"Eastern	13
"Western	4
"Washington:	
"Eastern	4
"Western	8
"West Virginia:	
"Northern	3
"Southern	5
"Wisconsin:	
"Eastern	5
"Western	2
"Wyoming	3"

SEC. 5204. ESTABLISHMENT OF ARTICLE III COURT IN THE VIRGIN ISLANDS.

(a) ESTABLISHMENT OF JUDICIAL DISTRICT.—

(1) VIRGIN ISLANDS.—Chapter 5 of title 28, United States Code, is amended by inserting after section 126 the following new section:

"§ 126A. Virgin Islands

"The Virgin Islands constitutes 1 judicial district comprising 2 divisions.

"(1) The Saint Croix Division comprises the Island of Saint Croix and adjacent islands and cays.

"Court for the Saint Croix Division shall be held at Christiansted.

"(2) The Saint Thomas and Saint John Division comprises the Islands of Saint Thomas and Saint John and adjacent islands and cays.

"Court for the Saint Thomas and Saint John Division shall be held at Charlotte-Amalie.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents for chapter 5 of title 28, United States Code, is amended by inserting after the item relating to section 126 the following:

"126A. Virgin Islands.".

(b) NUMBER OF JUDGES.—The table contained in section 133(a) of title 28, United States Code, is amended by inserting after the item relating to Vermont the following:

"Virgin Islands ..... 2".

(c) BANKRUPTCY JUDGES.—The table contained in section 152(a)(2) of title 28, United States Code, is amended by inserting after the item relating to Vermont the following:

"Virgin Islands ..... 0".

(d) JUDICIAL CONFERENCES OF CIRCUITS.—Section 333 of title 28, United States Code, is amended in the third sentence of the first undesignated paragraph—

(1) by striking ", the District Court of the Virgin Islands,"; and

(2) by striking "to the conferences of their respective circuits" and inserting "to the conference of the ninth circuit".

(e) JUDGES IN TERRITORIES AND POSSESSIONS.—Section 373 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands"; and

(2) in subsection (e), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands".

(f) ANNUITIES FOR SURVIVORS OF CERTAIN JUDICIAL OFFICIALS OF THE UNITED STATES.—Section 376(a) of title 28, United States Code, is amended—

(1) in paragraph (1)(B), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands"; and

(2) in paragraph (2)(B), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands".

(g) AUTHORITY OF ATTORNEY GENERAL.—Section 526(a)(2) of title 28, United States Code, is amended by striking "and of the district court of the Virgin Islands".

(h) COURTS DEFINED.—Section 610 of title 28, United States Code, is amended—

(1) by striking "the United States District Court for the District of the Canal Zone,"; and

(2) by striking "the District Court of the Virgin Islands,".

(i) UNITED STATES MAGISTRATE JUDGES.—Section 631(a) of title 28, United States Code, is amended—

(1) in the first sentence, by striking "the Virgin Islands, Guam," and inserting "Guam"; and

(2) in the second sentence, by striking "the Virgin Islands, Guam," and inserting "Guam".

(j) COURT REPORTERS.—Section 753(a) of title 28, United States Code, is amended by striking ", the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands" and inserting "and the District Court of Guam".

(k) FINAL DECISIONS OF DISTRICT COURTS.—Section 1291 of title 28, United States Code, is amended by striking ", the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands," and inserting "and the District Court of Guam,".

(l) INTERLOCUTORY DECISIONS.—Section 1292 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ", the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands," and inserting "and the District Court of Guam,"; and

(2) in subsection (d)(4)(A), by striking "the District Court of the Virgin Islands,".

(m) JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 1295(a) of title 28, United States Code, is amended in paragraphs (1) and (2)—

(1) by striking "the United States District Court for the District of the Canal Zone,"; and

(2) by striking "the District Court of the Virgin Islands,".

(n) UNITED STATES AS DEFENDANT.—Section 1346(b)(1) of title 28, United States Code, is amended by striking ", together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands,".

(o) ADEQUATE REPRESENTATION OF DEFENDANTS.—Section 3006A(j) of title 18, United States Code, is amended by striking "the District Court of the Virgin Islands,".

(p) SAVINGS PROVISIONS.—

(1) TENURE OF INCUMBENT JUDGES.—A judge of the District Court of the Virgin Islands in office on the effective date of this section shall continue in office until the expiration of the term for which the judge was appointed, or until the judge dies, resigns, or is removed from office, whichever occurs first. When a vacancy occurs on the court on or after the effective date of this section, the President, in accordance with section 133(a) of title 28, United States Code, shall appoint, by and with the advice and consent of the Senate, a district judge for the District of the Virgin Islands.

(2) RETIREMENT RIGHTS AND BENEFITS.—The amendments made by this section shall not affect the rights under sections 373 and 376 of title 28, United States Code, of any judge of the District Court of the Virgin Islands who retires on or before the effective date of this section or who continues in office after that date under paragraph (1) of this subsection. Service as a judge of the District Court of the Virgin Islands appointed under section 24 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614) shall be included in calculating service under sections 371 and 372 of title 28, United States Code, and shall not be counted for purposes of section 373 of that title, if the judge is reappointed, after the effective date of this section, under section 133(a) of title 28, United States Code, as district judge for the District of the Virgin Islands.

(q) AMENDMENTS TO REVISED ORGANIC ACT OF THE VIRGIN ISLANDS.—

(1) REPEALS.—Sections 24, 25, 26, and 27 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614, 1615, 1616 and 1617) are repealed.

(2) RIGHTS AND PROHIBITIONS.—Section 3 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1561) is amended in the 23d undesignated paragraph—

(A) by inserting "article III;" after "section 9, clauses 2 and 3;" and

(B) by striking "That all offenses against the laws of the United States" and all that follows through "section 22(b) of this Act or" and inserting "That all offenses against the laws of the Virgin Islands which are prosecuted".

(3) JURISDICTION.—Section 21 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1611) is amended to read as follows:

"SEC. 21. JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.

"(a) JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.—The judicial power of the Virgin Islands shall be vested in such trial and appellate courts as may have been or may hereafter be established by local law. The local courts of the Virgin Islands shall have jurisdiction over all causes of action in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.

"(b) PRACTICE AND PROCEDURE.—The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.".

(4) INCOME TAX MATTERS.—Section 22 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1612) is amended to read as follows:

"SEC. 22. JURISDICTION OVER INCOME TAX MATTERS.

"The United States District Court for the District of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1986 shall constitute an offense against the Government of the Virgin Islands and may be prosecuted in the name of the Government of the Virgin Islands by the appropriate officers thereof in the United States District Court for the District of the Virgin Islands without the request or consent of the United States attorney for the Virgin Islands.".

(5) APPELLATE JURISDICTION.—Section 23A of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1613a) is amended—

(A) by striking "District Court of the Virgin Islands" each place it appears and inserting "United States District Court for the District of the Virgin Islands"; and

(B) in subsection (b), by striking "pursuant to section 24(a) of this Act: *Provided,* That no more than one of them may be a judge of a court established by local law." and inserting "pursuant to chapter 13 of title 28, United States Code, or a recalled senior judge of the former District Court of the Virgin Islands. The chief judge of the United States Court of Appeals for the Third Circuit may assign to the appellate division a judge of a court of record of the Virgin Islands, except that no more than 1 of the judges sitting in the appellate division at any session may be a judge of a court established by local law.".

(r) ADDITIONAL REFERENCES.—Any reference in any provision of law to the "District Court of the Virgin Islands" shall, on and after the effective date of this section, be deemed to be a reference to the United States District Court for the District of the Virgin Islands.

(s) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act. Any complaint or proceeding pending in the District Court of the Virgin Islands on the effective date of this section may be pursued to final determination in the United States District Court for the District of the Virgin Islands, the United States Court of Appeals for the Third Circuit, the United States Court of Appeals for the Federal Circuit, and the Supreme Court of the United States.

SEC. 5205. EFFECTIVE DATE.

Except as provided in section 5204(s), this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

Subtitle C—Bankruptcy Judgeships

SEC. 5301. SHORT TITLE.

This subtitle may be cited as the "Enhanced Bankruptcy Judgeship Act of 2005".

SEC. 5302. AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.

The following judgeships shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) 1 additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(2) 1 additional bankruptcy judgeship for the eastern district of California.

(3) 2 additional bankruptcy judgeships for the middle district of Florida.

(4) 2 additional bankruptcy judgeships for the northern district of Georgia.

(5) 1 additional bankruptcy judgeship for the southern district of Georgia.

(6) 1 additional bankruptcy judgeship for the eastern district of Kentucky.

(7) 1 additional bankruptcy judgeship for the district of Maryland.

(8) 3 additional bankruptcy judgeships for the eastern district of Michigan.

(9) 1 additional bankruptcy judgeship for the southern district of New York.

(10) 1 additional bankruptcy judgeship for the western district of Pennsylvania.

(11) 1 additional bankruptcy judgeship for the western district of Tennessee.

(12) 1 additional bankruptcy judgeship for the eastern district of Texas.

(13) 1 additional bankruptcy judgeship for the district of Utah.

SEC. 5303. TEMPORARY BANKRUPTCY JUDGESHIPS.

(a) AUTHORIZATION FOR ADDITIONAL TEMPORARY BANKRUPTCY JUDGESHIPS.—The following judgeships shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) 1 additional bankruptcy judgeship for the northern district of Florida.

(2) 2 additional bankruptcy judgeships for the middle district of Florida.

(3) 1 additional bankruptcy judgeship for the northern district of Indiana.

(4) 1 additional bankruptcy judgeship for the northern district of Mississippi.

(5) 1 additional bankruptcy judgeship for the district of Nevada.

(6) 1 additional bankruptcy judgeship for the western district of North Carolina.

(7) 1 additional bankruptcy judgeship for the southern district of Ohio.

(b) VACANCIES.—

(1) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in paragraph (2), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a)—

(A) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under subsection (a) to such office, and

(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,

shall not be filled.

(2) MIDDLE DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the middle district of Florida—

(A) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under subsection (a)(2), and

(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,

shall not be filled.

(c) ELIGIBILITY FOR SUBSEQUENT APPOINTMENTS.—A judge holding office in any of the districts enumerated in subsection (a) shall, at the expiration of the term of the judge (other than by reason of paragraph (1)(B) or (2)(B) of subsection (b)), be eligible for reappointment as a bankruptcy judge in that district.————

SEC. 5304. CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.

(a) JUDGESHIPS AUTHORIZED BY PUBLIC LAW 102–361.—The following temporary bankruptcy judgeships authorized by the following paragraphs of section 3(a) of Public Law 102–361, as amended by section 307 of Public Law 104–317 (28 U.S.C. 152

note), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code:

(1) The temporary bankruptcy judgeship for the district of Delaware authorized by paragraph (3).

(2) The temporary bankruptcy judgeship for the southern district of Illinois authorized by paragraph (4).

(3) The temporary bankruptcy judgeship for the district of Puerto Rico authorized by paragraph (7).

(b) JUDGESHIPS AUTHORIZED BY PUBLIC LAW 109–8.—The following temporary bankruptcy judgeships authorized by the following subparagraphs of section 1223(b)(1) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109–8), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code:

(1) The 4 temporary bankruptcy judgeships for the district of Delaware authorized by subparagraph (C).

(2) The temporary bankruptcy judgeship for the southern district of Georgia authorized by subparagraph (E).

(3) One of the 3 temporary bankruptcy judgeships for the district of Maryland authorized by subparagraph (F).

(4) The temporary bankruptcy judgeship for the eastern district of Michigan authorized by subparagraph (G).

(5) The temporary bankruptcy judgeship for the district of New Jersey authorized by subparagraph (I).

(6) The temporary bankruptcy judgeship for the northern district of New York authorized by subparagraph (K).

(7) The temporary bankruptcy judgeship for the southern district of New York authorized by subparagraph (L).

(8) The temporary bankruptcy judgeship for the eastern district of North Carolina authorized by subparagraph (M).

(9) The temporary bankruptcy judgeship for the eastern district of Pennsylvania authorized by subparagraph (N).

(10) The temporary bankruptcy judgeship for the district of South Carolina authorized by subparagraph (S).

(11) The temporary bankruptcy judgeship for the western district of Tennessee authorized by subparagraph (Q).

SEC. 5305. GENERAL PROVISIONS.

(a) TABLE OF JUDGESHIPS.—In order that the table contained in section 152(a)(2) of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of bankruptcy judgeships authorized under sections 5302 and 5304, such table is amended to read as follows:

"Districts	**Judges**
"Alabama:	
"Northern	5
"Middle	2
"Southern	2
"Alaska	2
"Arizona	7
"Arkansas:	
"Eastern and Western	4
"California:	
"Northern	9
"Eastern	7
"Central	21
"Southern	4

"Colorado	5
"Connecticut	3
"Delaware	6
"District of Columbia	1
"Florida:	
"Northern	1
"Middle	10
"Southern	5
"Georgia:	
"Northern	10
"Middle	3
"Southern	4
"Hawaii	1
"Idaho	2
"Illinois:	
"Northern	10
"Central	3
"Southern	2
"Indiana:	
"Northern	3
"Southern	4
"Iowa:	
"Northern	2
"Southern	2
"Kansas	4
"Kentucky:	
"Eastern	3
"Western	3
"Louisiana:	
"Eastern	2
"Middle	1
"Western	3
"Maine	2
"Maryland	6
"Massachusetts	5
"Michigan:	
"Eastern	8
"Western	3
"Minnesota	4
"Mississippi:	
"Northern	1
"Southern	2
"Missouri:	
"Eastern	3
"Western	3
"Montana	1
"Nebraska	2
"Nevada	3
"New Hampshire	1
"New Jersey	9
"New Mexico	2
"New York:	
"Northern	3
"Southern	11
"Eastern	6
"Western	3
"North Carolina:	
"Eastern	3
"Middle	2
"Western	2
"North Dakota	1
"Ohio:	
"Northern	8
"Southern	7
"Oklahoma:	
"Northern	2
"Eastern	1
"Western	3

"Oregon	5
"Pennsylvania:	
"Eastern	6
"Middle	2
"Western	5
"Puerto Rico	3
"Rhode Island	1
"South Carolina	3
"South Dakota	2
"Tennessee:	
"Eastern	3
"Middle	3
"Western	6
"Texas:	
"Northern	6
"Eastern	3
"Southern	6
"Western	4
"Utah	4
"Vermont	1
"Virgin Islands	0
"Virginia:	
"Eastern	5
"Western	3
"Washington:	
"Eastern	2
"Western	5
"West Virginia:	
"Northern	1
"Southern	1
"Wisconsin:	
"Eastern	4
"Western	2
"Wyoming	1"

(b) SENSE OF CONGRESS.—It is the sense of the Congress that bankruptcy judges in the eastern district of California should conduct bankruptcy proceedings on a daily basis in Bakersfield, California.

SEC 5306 EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

Subtitle D—Ninth Circuit Reorganization

SEC. 5401. SHORT TITLE.

This subtitle may be cited as the "Judicial Administration and Improvements Act of 2005".

SEC. 5402. DEFINITIONS.

In this subtitle:

(1) FORMER NINTH CIRCUIT.—The term "former ninth circuit" means the ninth judicial circuit of the United States as in existence on the day before the effective date of this subtitle.

(2) NEW NINTH CIRCUIT.—The term "new ninth circuit" means the ninth judicial circuit of the United States established by the amendment made by section 5403(2)(A).

(3) TWELFTH CIRCUIT.—The term "twelfth circuit" means the twelfth judicial circuit of the United States established by the amendment made by section 5403(2)(B).

SEC. 5403. NUMBER AND COMPOSITION OF CIRCUITS.

Section 41 of title 28, United States Code, is amended—

(1) in the matter preceding the table, by striking "thirteen" and inserting "fourteen"; and

(2) in the table—

(A) by striking the item relating to the ninth circuit and inserting the following:

"Ninth	California, Guam, Hawaii, Northern Mariana Islands.";

and

(B) by inserting after the item relating to the eleventh circuit the following:

"Twelfth	Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.".

SEC. 5404. NUMBER OF CIRCUIT JUDGES.

The table contained in section 44(a) of title 28, United States Code, as amended by section 5202(c) of this Act, is further amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

"Ninth	19";

and

(2) by inserting after the item relating to the eleventh circuit the following:

"Twelfth	14".

SEC. 5405. PLACES OF CIRCUIT COURT.

The table contained in section 48(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

"Ninth	Honolulu, Pasadena, San Francisco.";

and

(2) by inserting after the item relating to the eleventh circuit the following:

"Twelfth	Las Vegas, Missoula, Phoenix, Portland, Seattle.".

SEC. 5406. ASSIGNMENT OF CIRCUIT JUDGES.

Each circuit judge of the former ninth circuit who is in regular active service and whose official duty station on the day before the effective date of this subtitle—

(1) is in California, Guam, Hawaii, or the Northern Mariana Islands shall be a circuit judge of the new ninth circuit as of such effective date; and

(2) is in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington shall be a circuit judge of the twelfth circuit as of such effective date.

SEC. 5407. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.

Each judge who is a senior circuit judge of the former ninth circuit on the day before the effective date of this subtitle may elect to be assigned to the new ninth circuit or the twelfth circuit as of such effective date and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 5408. SENIORITY OF JUDGES.

The seniority of each judge—

(1) who is assigned under section 5406, or

(2) who elects to be assigned under section 5407,

shall run from the date of commission of such judge as a judge of the former ninth circuit.

SEC. 5409. APPLICATION TO CASES.

The following apply to any case in which, on the day before the effective date of this subtitle, an appeal or other proceeding has been filed with the former ninth circuit:

(1) Except as provided in paragraph (3), if the matter has been submitted for decision, further proceedings with respect to the matter shall be had in the same manner and with the same effect as if this subtitle had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which the matter would have been submitted had this subtitle been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings with respect to the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) If a petition for rehearing en banc is pending on or after the effective date of this subtitle, the petition shall be considered by the court of appeals to which it would have been submitted had this subtitle been in full force and effect at the time that the appeal or other proceeding was filed with the court of appeals.

SEC. 5410. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES AMONG CIRCUITS.

Section 291 of title 28, United States Code, is amended by adding at the end the following:

"(c) The chief judge of the Ninth Circuit may, in the public interest and upon request by the chief judge of the Twelfth Circuit, designate and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit.

"(d) The chief judge of the Twelfth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit.".

SEC. 5411. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES AMONG CIRCUITS.

Section 292 of title 28, United States Code, is amended by adding at the end the following:

"(f) The chief judge of the United States Court of Appeals for the Ninth Circuit may, in the public interest—

"(1) upon request by the chief judge of the Twelfth Circuit, designate and assign 1 or more district judges within the Ninth Circuit to sit upon the Court of Appeals of the Twelfth Circuit, or a division thereof, whenever the business of that court so requires; and

"(2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit.

"(g) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest—

"(1) upon request by the chief judge of the Ninth Circuit, designate and assign 1 or more district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit, or a division thereof, whenever the business of that court so requires; and

"(2) designate and assign temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit.

"(h) Any designations or assignments under subsection (f) or (g) shall be in conformity with the rules or orders of the court of appeals of, or the district within, as applicable, the circuit to which the judge is designated or assigned.".

SEC. 5412. ADMINISTRATION.

The court of appeals for the ninth circuit as constituted on the day before the effective date of this subtitle may take such administrative action as may be required to carry out this subtitle and the amendments made by this subtitle. Such court shall cease to exist for administrative purposes 2 years after the date of the enactment of this Act.

SEC. 5413. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect no later than December 31, 2006.

Subtitle E—Authorization of Appropriations

SEC. 5501. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 2006 through 2009 such sums as are necessary to carry out subtitles B, C, and D of this title, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this title. Funds appropriated pursuant to this section in any fiscal year shall remain available until expended.

TITLE VI—COMMITTEE ON RESOURCES

Subtitle A—Arctic Coastal Plain Domestic Energy

Sec. 6101. Short title.
Sec. 6102. Definitions.
Sec. 6103. Leasing program for lands within the coastal plain.
Sec. 6104. Lease sales.
Sec. 6105. Grant of leases by the Secretary.
Sec. 6106. Lease terms and conditions.
Sec. 6107. Coastal Plain environmental protection.
Sec. 6108. Expedited judicial review.
Sec. 6109. Federal and State distribution of revenues.
Sec. 6110. Rights-of-way across the Coastal Plain.

Sec. 6111. Conveyance.
Sec. 6112. Local government impact aid and community service assistance.

Subtitle B—Miscellaneous Amendments Relating to Mining

Sec. 6201. Fees for recordation and location of mining claims.
Sec. 6202. Patents for mining or mill site claims.
Sec. 6203. Mineral examinations for mining on certain lands.
Sec. 6204. Mineral development lands available for purchase.
Sec. 6205. National mining and minerals policy to encourage and promote the productive second use of lands.
Sec. 6206. Regulations.
Sec. 6207. Protection of national parks and wilderness areas.

Subtitle C—Disposal of Public Lands

CHAPTER 1—DISPOSAL OF CERTAIN PUBLIC LANDS IN NEVADA

Sec. 6301. Short title.
Sec. 6302. Definitions.
Sec. 6303. Land conveyance.
Sec. 6304. Disposition of proceeds.

CHAPTER 2—DISPOSAL OF CERTAIN PUBLIC LANDS IN IDAHO

Sec. 6311. Short title.
Sec. 6312. Definitions.
Sec. 6313. Land conveyance.
Sec. 6314. Disposition of proceeds.

Subtitle D—Oil shale

Sec. 6401. Oil shale and tar sands amendments.

Subtitle E—Ocean Energy Resources

Sec. 6501. Short title.
Sec. 6502. Policy.
Sec. 6503. Definitions under the Outer Continental Shelf Lands Act.
Sec. 6504. Determination of adjacent zones and planning areas.
Sec. 6505. Administration of leasing.
Sec. 6506. Grant of leases by Secretary.
Sec. 6507. Disposition of receipts.
Sec. 6508. Review of outer Continental Shelf exploration plans.
Sec. 6509. Reservation of lands and rights.
Sec. 6510. Outer Continental Shelf leasing program.
Sec. 6511. Coordination with Adjacent States.
Sec. 6512. Environmental studies.
Sec. 6513. Review of outer Continental Shelf development and production plans.
Sec. 6514. Federal Energy Natural Resources Enhancement Fund Act of 2005.
Sec. 6515. Termination of effect of laws prohibiting the spending of appropriated funds for certain purposes.
Sec. 6516. Outer Continental Shelf incompatible use.
Sec. 6517. Repurchase of certain leases.
Sec. 6518. Offsite environmental mitigation.
Sec. 6519. Amendments to the Mineral Leasing Act.
Sec. 6520. Minerals Management Service.
Sec. 6521. Authority to use decommissioned offshore oil and gas platforms and other facilities for mariculture, artificial reef, scientific research, or other uses.
Sec. 6522. Repeal of requirement to conduct comprehensive inventory of OCS oil and natural gas resources.
Sec. 6523. Mining and petroleum schools.
Sec. 6524. Onshore and offshore mineral lease fees.
Sec. 6525. Atlantic and Pacific OCS Region headquarters.
Sec. 6526. National Geologic Data and Mapping Fund Act of 2005.
Sec. 6527. Leases for areas located within 100 miles of California or Florida.

Subtitle F—Sale and Conveyance of Federal Land

Sec. 6601. Collection of receipts from the sale of Federal lands.

Subtitle A—Arctic Coastal Plain Domestic Energy

SEC. 6101. SHORT TITLE.

This subtitle may be cited as the "Arctic Coastal Plain Domestic Energy Security Act of 2005".

SEC. 6102. DEFINITIONS.

In this subtitle:

(1) COASTAL PLAIN.—The term "Coastal Plain" means that area identified as such in the map entitled "Arctic National Wildlife Refuge", dated October 21, 2005, comprising approximately 1,549,000 acres, and as described in appendix I to part 37 of title 50, Code of Federal Regulations.

(2) SECRETARY.—The term "Secretary", except as otherwise provided, means the Secretary of the Interior or the Secretary's designee.

SEC. 6103. LEASING PROGRAM FOR LANDS WITHIN THE COASTAL PLAIN.

(a) IN GENERAL.—The Secretary shall take such actions as are necessary—

(1) to establish and implement, in accordance with this Act and acting through the Director of the Bureau of Land Management in consultation with the Director of the United States Fish and Wildlife Service, a competitive oil and gas leasing program under the Mineral Leasing Act (30 U.S.C. 181 et seq.) that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain; and

(2) to administer the provisions of this subtitle through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, subsistence resources, and the environment, and including, in furtherance of this goal, by requiring the application of the best commercially available technology for oil and gas exploration, development, and production to all exploration, development, and production operations under this subtitle in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.

(b) REPEAL.—Section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) is repealed.

(c) COMPLIANCE WITH REQUIREMENTS UNDER CERTAIN OTHER LAWS.—

(1) COMPATIBILITY.—For purposes of the National Wildlife Refuge System Administration Act of 1966, the oil and gas leasing program and activities authorized by this section in the Coastal Plain are deemed to be compatible with the purposes for which the Arctic National Wildlife Refuge was established, and that no further findings or decisions are required to implement this determination.

(2) ADEQUACY OF THE DEPARTMENT OF THE INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT.—The "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142) and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is deemed to satisfy the requirements under the National Environmental Policy Act of 1969 that apply with respect to prelease activities, including actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of a leasing program authorized by this subtitle before the conduct of the first lease sale.

(3) COMPLIANCE WITH NEPA FOR OTHER ACTIONS.—Before conducting the first lease sale under this subtitle, the Secretary shall prepare an environmental impact statement under the National Environmental Policy Act of 1969 with respect to the actions authorized by this subtitle that are not referred to in paragraph (2). Notwithstanding any other law, the Secretary is not required to identify nonleasing alternative courses of action or to analyze the environmental effects of such courses of action. The Secretary shall only identify a preferred action for such leasing and a single leasing alternative, and analyze the environmental effects and potential mitigation measures for those two alternatives. The identification of the preferred action and related analysis for the first lease sale under this subtitle shall be completed within 18 months after the date of enactment of this Act. The Secretary shall only consider public comments that specifically address the Secretary's preferred action and that are filed within 20 days after publication of an environmental analysis. Notwithstanding any other law, compliance with this paragraph is deemed to satisfy all requirements for the analysis and consideration of the environmental effects of proposed leasing under this subtitle.

(d) RELATIONSHIP TO STATE AND LOCAL AUTHORITY.—Nothing in this subtitle shall be considered to expand or limit State and local regulatory authority.

(e) SPECIAL AREAS.—

(1) IN GENERAL.—The Secretary, after consultation with the State of Alaska, the city of Kaktovik, and the North Slope Borough, may designate up to a total of 45,000 acres of the Coastal Plain as a Special Area if the Secretary determines that the Special Area is of such unique character and interest so as to require special management and regulatory protection. The Secretary shall designate as such a Special Area the Sadlerochit Spring area, comprising approximately 4,000 acres as depicted on the map referred to in section 6102(1).

(2) MANAGEMENT.—Each such Special Area shall be managed so as to protect and preserve the area's unique and diverse character including its fish, wildlife, and subsistence resource values.

(3) EXCLUSION FROM LEASING OR SURFACE OCCUPANCY.—The Secretary may exclude any Special Area from leasing. If the Secretary leases a Special Area, or any part thereof, for pur-

poses of oil and gas exploration, development, production, and related activities, there shall be no surface occupancy of the lands comprising the Special Area.

(4) DIRECTIONAL DRILLING.—Notwithstanding the other provisions of this subsection, the Secretary may lease all or a portion of a Special Area under terms that permit the use of horizontal drilling technology from sites on leases located outside the area.

(f) LIMITATION ON CLOSED AREAS.—The Secretary's sole authority to close lands within the Coastal Plain to oil and gas leasing and to exploration, development, and production is that set forth in this subtitle.

(g) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall prescribe such regulations as may be necessary to carry out this subtitle, including rules and regulations relating to protection of the fish and wildlife, their habitat, subsistence resources, and environment of the Coastal Plain, by no later than 15 months after the date of enactment of this Act.

(2) REVISION OF REGULATIONS.—The Secretary shall periodically review and, if appropriate, revise the rules and regulations issued under subsection (a) to reflect any significant biological, environmental, or engineering data that come to the Secretary's attention.

SEC. 6104. LEASE SALES.

(a) IN GENERAL.—Lands may be leased pursuant to this subtitle to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act (30 U.S.C. 181 et seq.).

(b) PROCEDURES.—The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of sealed nominations for any area in the Coastal Plain for inclusion in, or exclusion (as provided in subsection (c)) from, a lease sale;

(2) the holding of lease sales after such nomination process; and

(3) public notice of and comment on designation of areas to be included in, or excluded from, a lease sale.

(c) LEASE SALE BIDS.—Bidding for leases under this subtitle shall be by sealed competitive cash bonus bids.

(d) ACREAGE MINIMUM IN FIRST SALE.—In the first lease sale under this subtitle, the Secretary shall offer for lease those tracts the Secretary considers to have the greatest potential for the discovery of hydrocarbons, taking into consideration nominations received pursuant to subsection (b)(1), but in no case less than 200,000 acres.

(e) TIMING OF LEASE SALES.—The Secretary shall—

(1) conduct the first lease sale under this subtitle within 22 months after the date of the enactment of this Act; and

(2) conduct additional sales so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

SEC. 6105. GRANT OF LEASES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary may grant to the highest responsible qualified bidder in a lease sale conducted pursuant to section 6104 any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary.

(b) SUBSEQUENT TRANSFERS.—No lease issued under this subtitle may be sold, exchanged, assigned, sublet, or otherwise transferred except with the approval of the Secretary. Prior to any such approval the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

SEC. 6106. LEASE TERMS AND CONDITIONS.

(a) IN GENERAL.—An oil or gas lease issued pursuant to this subtitle shall—

(1) provide for the payment of a royalty of not less than 12½ percent in amount or value of the production removed or sold from the lease, as determined by the Secretary under the regulations applicable to other Federal oil and gas leases;

(2) provide that the Secretary may close, on a seasonal basis, portions of the Coastal Plain to exploratory drilling activities as necessary to protect caribou calving areas and other species of fish and wildlife;

(3) require that the lessee of lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands that are adversely affected in connection with exploration, development, production, or transportation activities conducted under the lease and within the Coastal Plain by the lessee or by any of the subcontractors or agents of the lessee;

(4) provide that the lessee may not delegate or convey, by contract or otherwise, the reclamation responsibility and liability to another person without the express written approval of the Secretary;

(5) provide that the standard of reclamation for lands required to be reclaimed under this subtitle shall be, as nearly as practicable, a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production activities, or upon application by the lessee, to a higher or better use as approved by the Secretary;

(6) contain terms and conditions relating to protection of fish and wildlife, their habitat, and the environment as required pursuant to section 6103(a)(2);

(7) provide that the lessee, its agents, and its contractors use best efforts to provide a fair share, as determined by the level of obligation previously agreed to in the 1974 agreement implementing section 29 of the Federal Agreement and Grant of Right of Way for the Operation of the Trans-Alaska Pipeline, of employment and contracting for Alaska Natives and Alaska Native Corporations from throughout the State;

(8) prohibit the export of oil produced under the lease; and

(9) contain such other provisions as the Secretary determines necessary to ensure compliance with the provisions of this subtitle and the regulations issued under this subtitle.

(b) PROJECT LABOR AGREEMENTS.—The Secretary, as a term and condition of each lease under this subtitle and in recognizing the Government's proprietary interest in labor stability and in the ability of construction labor and management to meet the particular needs and conditions of projects to be developed under the leases issued pursuant to this subtitle and the special concerns of the parties to such leases, shall require that the lessee and its agents and contractors negotiate to obtain a project labor agreement for the employment of laborers and mechanics on production, maintenance, and construction under the lease.

SEC. 6107. COASTAL PLAIN ENVIRONMENTAL PROTECTION.

(a) NO SIGNIFICANT ADVERSE EFFECT STANDARD TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.—The Secretary shall, consistent with the requirements of section 6103, administer the provisions of this subtitle through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that—

(1) ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, and the environment;

(2) require the application of the best commercially available technology for oil and gas exploration, development, and production on all new exploration, development, and production operations; and

(3) ensure that the maximum amount of surface acreage covered by production and support facilities, including airstrips and any areas covered by gravel berms or piers for support of pipelines, does not exceed 2,000 acres on the Coastal Plain.

(b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—The Secretary shall also require, with respect to any proposed drilling and related activities, that—

(1) a site-specific analysis be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment;

(2) a plan be implemented to avoid, minimize, and mitigate (in that order and to the extent practicable) any significant adverse effect identified under paragraph (1); and

(3) the development of the plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

(c) REGULATIONS TO PROTECT COASTAL PLAIN FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS, AND THE ENVIRONMENT.—Before implementing the leasing program authorized by this subtitle, the Secretary shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken on the Coastal Plain under this subtitle are conducted in a manner consistent with the purposes and environmental requirements of this subtitle.

(d) COMPLIANCE WITH FEDERAL AND STATE ENVIRONMENTAL LAWS AND OTHER REQUIREMENTS.—The proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program under this subtitle shall require compliance with

all applicable provisions of Federal and State environmental law and shall also require the following:

(1) Standards at least as effective as the safety and environmental mitigation measures set forth in items 1 through 29 at pages 167 through 169 of the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain.

(2) Seasonal limitations on exploration, development, and related activities, where necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning, and migration.

(3) That exploration activities, except for surface geological studies, be limited to the period between approximately November 1 and May 1 each year and that exploration activities shall be supported, if necessary, by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods, except that such exploration activities may occur at other times, if the Secretary finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain.

(4) Design safety and construction standards for all pipelines and any access and service roads, that—

(A) minimize, to the maximum extent possible, adverse effects upon the passage of migratory species such as caribou; and

(B) minimize adverse effects upon the flow of surface water by requiring the use of culverts, bridges, and other structural devices.

(5) Prohibitions on general public access and use on all pipeline access and service roads.

(6) Stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this subtitle, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures, and equipment upon completion of oil and gas production operations, except that the Secretary may exempt from the requirements of this paragraph those facilities, structures, or equipment that the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and that are donated to the United States for that purpose.

(7) Appropriate prohibitions or restrictions on access by all modes of transportation.

(8) Appropriate prohibitions or restrictions on sand and gravel extraction.

(9) Consolidation of facility siting.

(10) Appropriate prohibitions or restrictions on use of explosives.

(11) Avoidance, to the extent practicable, of springs, streams, and river system; the protection of natural surface drainage patterns, wetlands, and riparian habitats; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling.

(12) Avoidance or reduction of air traffic-related disturbance to fish and wildlife.

(13) Treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling muds and cuttings, and domestic wastewater, including an annual waste management report, a hazardous materials tracking system, and a prohibition on chlorinated solvents, in accordance with applicable Federal and State environmental law.

(14) Fuel storage and oil spill contingency planning.

(15) Research, monitoring, and reporting requirements.

(16) Field crew environmental briefings.

(17) Avoidance of significant adverse effects upon subsistence hunting, fishing, and trapping by subsistence users.

(18) Compliance with applicable air and water quality standards.

(19) Appropriate seasonal and safety zone designations around well sites, within which subsistence hunting and trapping shall be limited.

(20) Reasonable stipulations for protection of cultural and archeological resources.

(21) All other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary.

(e) CONSIDERATIONS.—In preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this section, the Secretary shall consider the following:

(1) The stipulations and conditions that govern the National Petroleum Reserve-Alaska leasing program, as set forth in the 1999 Northeast National Petroleum Reserve-Alaska Final Integrated Activity Plan/Environmental Impact Statement.

(2) The environmental protection standards that governed the initial Coastal Plain seismic exploration program under parts 37.31 to 37.33 of title 50, Code of Federal Regulations.

(3) The land use stipulations for exploratory drilling on the KIC–ASRC private lands that are set forth in Appendix 2 of the August 9, 1983, agreement between Arctic Slope Regional Corporation and the United States.

(f) FACILITY CONSOLIDATION PLANNING.—

(1) IN GENERAL.—The Secretary shall, after providing for public notice and comment, prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources.

(2) OBJECTIVES.—The plan shall have the following objectives:

(A) Avoiding unnecessary duplication of facilities and activities.

(B) Encouraging consolidation of common facilities and activities.

(C) Locating or confining facilities and activities to areas that will minimize impact on fish and wildlife, their habitat, and the environment.

(D) Utilizing existing facilities wherever practicable.

(E) Enhancing compatibility between wildlife values and development activities.

(g) ACCESS TO PUBLIC LANDS.—The Secretary shall—

(1) manage public lands in the Coastal Plain subject to subsections (a) and (b) of section 811 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121); and

(2) ensure that local residents shall have reasonable access to public lands in the Coastal Plain for traditional uses.

SEC. 6108. EXPEDITED JUDICIAL REVIEW.

(a) FILING OF COMPLAINT.—

(1) DEADLINE.—Subject to paragraph (2), any complaint seeking judicial review of any provision of this subtitle or any action of the Secretary under this subtitle shall be filed in any appropriate district court of the United States—

(A) except as provided in subparagraph (B), within the 90-day period beginning on the date of the action being challenged; or

(B) in the case of a complaint based solely on grounds arising after such period, within 90 days after the complainant knew or reasonably should have known of the grounds for the complaint.

(2) VENUE.—Any complaint seeking judicial review of an action of the Secretary under this subtitle may be filed only in the United States Court of Appeals for the District of Columbia.

(3) LIMITATION ON SCOPE OF CERTAIN REVIEW.—Judicial review of a Secretarial decision to conduct a lease sale under this subtitle, including the environmental analysis thereof, shall be limited to whether the Secretary has complied with the terms of this subtitle and shall be based upon the administrative record of that decision. The Secretary's identification of a preferred course of action to enable leasing to proceed and the Secretary's analysis of environmental effects under this subtitle shall be presumed to be correct unless shown otherwise by clear and convincing evidence to the contrary.

(b) LIMITATION ON OTHER REVIEW.—Actions of the Secretary with respect to which review could have been obtained under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

SEC. 6109. FEDERAL AND STATE DISTRIBUTION OF REVENUES.

(a) IN GENERAL.—Notwithstanding any other provision of law, of the amount of adjusted bonus, rental, and royalty revenues from oil and gas leasing and operations authorized under this subtitle—

(1) 50 percent shall be paid to the State of Alaska; and

(2) except as provided in section 6112(d) the balance shall be deposited into the Treasury as miscellaneous receipts.

(b) PAYMENTS TO ALASKA.—Payments to the State of Alaska under this section shall be made semiannually.

SEC. 6110. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.

(a) EXEMPTION.—Title XI of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3161 et seq.) shall not apply to the issuance by the Secretary under section 28 of the Mineral Leasing Act (30 U.S.C. 185) of rights-of-way and easements across the Coastal Plain for the transportation of oil and gas.

(b) TERMS AND CONDITIONS.—The Secretary shall include in any right-of-way or easement referred to in subsection (a) such terms and conditions as may be necessary to ensure that transportation of oil and gas does not result in a significant adverse effect on the fish and wildlife, subsistence resources, their habitat, and the environment of the Coastal Plain, including requirements that facilities be sited or designed so as to avoid unnecessary duplication of roads and pipelines.

(c) REGULATIONS.—The Secretary shall include in regulations under section 6103(g) provisions granting rights-of-way and easements described in subsection (a) of this section.

SEC. 6111. CONVEYANCE.

In order to maximize Federal revenues by removing clouds on title to lands and clarifying land ownership patterns within the Coastal Plain, the Secretary, notwithstanding the provisions of section 1302(h)(2) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192(h)(2)), shall convey—

(1) to the Kaktovik Inupiat Corporation the surface estate of the lands described in paragraph 1 of Public Land Order 6959, to the extent necessary to fulfill the Corporation's entitlement under section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611) in accordance with the terms and conditions of the Agreement between the Department of the Interior, the United States Fish and Wildlife Service, the Bureau of Land Management, and the Kaktovik Inupiat Corporation effective January 22, 1993; and

(2) to the Arctic Slope Regional Corporation the remaining subsurface estate to which it is entitled pursuant to the August 9, 1983, agreement between the Arctic Slope Regional Corporation and the United States of America.

SEC. 6112. LOCAL GOVERNMENT IMPACT AID AND COMMUNITY SERVICE ASSISTANCE.

(a) FINANCIAL ASSISTANCE AUTHORIZED.—

(1) IN GENERAL.—The Secretary may use amounts available from the Coastal Plain Local Government Impact Aid Assistance Fund established by subsection (d) to provide timely financial assistance to entities that are eligible under paragraph (2) and that are directly impacted by the exploration for or production of oil and gas on the Coastal Plain under this subtitle.

(2) ELIGIBLE ENTITIES.—The North Slope Borough, Kaktovik, and other boroughs, municipal subdivisions, villages, and any other community organized under Alaska State law shall be eligible for financial assistance under this section.

(b) USE OF ASSISTANCE.—Financial assistance under this section may be used only for—

(1) planning for mitigation of the potential effects of oil and gas exploration and development on environmental, social, cultural, recreational and subsistence values;

(2) implementing mitigation plans and maintaining mitigation projects;

(3) developing, carrying out, and maintaining projects and programs that provide new or expanded public facilities and services to address needs and problems associated with such

effects, including firefighting, police, water, waste treatment, medivac, and medical services; and

(4) establishment of a coordination office, by the North Slope Borough, in the City of Kaktovik, which shall—

(A) coordinate with and advise developers on local conditions, impact, and history of the areas utilized for development; and

(B) provide to the Committee on Resources of the House of Representatives and the Committee on Energy and Resources of the Senate an annual report on the status of coordination between developers and the communities affected by development.

(c) APPLICATION.—

(1) IN GENERAL.—Any community that is eligible for assistance under this section may submit an application for such assistance to the Secretary, in such form and under such procedures as the Secretary may prescribe by regulation.

(2) NORTH SLOPE BOROUGH COMMUNITIES.—A community located in the North Slope Borough may apply for assistance under this section either directly to the Secretary or through the North Slope Borough.

(3) APPLICATION ASSISTANCE.—The Secretary shall work closely with and assist the North Slope Borough and other communities eligible for assistance under this section in developing and submitting applications for assistance under this section.

(d) ESTABLISHMENT OF FUND.—

(1) IN GENERAL.—There is established in the Treasury the Coastal Plain Local Government Impact Aid Assistance Fund.

(2) USE.—Amounts in the fund may be used only for providing financial assistance under this section.

(3) DEPOSITS.—Subject to paragraph (4), there shall be deposited into the fund amounts received by the United States as revenues derived from rents, bonuses, and royalties under leases and lease sales authorized under this subtitle.

(4) LIMITATION ON DEPOSITS.—The total amount in the fund may not exceed $11,000,000.

(5) INVESTMENT OF BALANCES.—The Secretary of the Treasury shall invest amounts in the fund in interest bearing government securities.

(e) AUTHORIZATION OF APPROPRIATIONS.—To provide financial assistance under this section there is authorized to be appropriated to the Secretary from the Coastal Plain Local Government Impact Aid Assistance Fund $5,000,000 for each fiscal year.

Subtitle B—Miscellaneous Amendments Relating to Mining

SEC. 6201. FEES FOR RECORDATION AND LOCATION OF MINING CLAIMS.

(a) DIMENSIONS OF MINING CLAIMS.—Section 2320 of the Revised Statutes (30 U.S.C. 23) is amended by striking the second and third sentences and inserting the following: "A mining claim lo-

cated after May 10, 1872, whether located by one or more persons, and including a claim located before exposure of the vein or lode, may equal, but shall not exceed, 1,500 feet in length along the vein or lode, and shall extend no more than 300 feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, render such limitation necessary.".

(b) RIGHTS SECURED BY CLAIM MAINTENANCE FEES.—Section 2322 of the Revised Statutes (30 U.S.C. 26) is amended by inserting "(a) RIGHTS OF LOCATORS, GENERALLY.—" before the first sentence, and by adding at the end the following:

"(b) RIGHTS SECURED BY MAINTENANCE FEES.—Prior to issuance of a patent, timely payment of the claim maintenance fee secures the rights of the holder of a mining claim, mill site, or tunnel site, both prior to and after discovery of valuable mineral deposits, to use and occupy public lands under the provisions of the general mining law of the United States (as that term is defined in section 2324 of the Revised Statutes) for mineral prospecting, exploration, development, mining, milling, and processing of minerals, reclamation of the claimed lands, and uses reasonably incident thereto. Except for the location fee and the maintenance fees in section 2324 of the Revised Statutes (30 U.S.C. 28), and the patent prices in sections 2325, 2326, 2333, and 2337 of the Revised Statutes (30 U.S.C. 29, 30, 37, and 42), no other fees or fair market value assessments shall be applied to prospecting, exploration, development, mining, processing, or reclamation, and uses reasonably incident thereto.".

(c) PATENT REQUIREMENTS.—Section 2325 of the Revised Statutes (30 U.S.C. 29) is amended—

(1) in the second sentence by striking ", or at any time" and inserting "shall include a processing fee of $2,500 for the first claim or site, and $50 for each additional claim contained therein, and at any time"; and

(2) in the fourth sentence by inserting "and if the applicant has complied with the law of discovery" after "publication".

(d) MINING DISTRICT REGULATIONS BY MINERS.—Section 2324 of the Revised Statutes (30 U.S.C. 28) is amended to read as follows:

"SEC. 2324. (a) AUTHORITY TO MAKE REGULATIONS.—The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements:

"(1) The location must be distinctly marked on the ground so that its boundaries can be readily traced.

"(2) All records of mining claims made after May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim.

"(b) RECORDATION OF MINING CLAIMS AND ABANDONMENT.—The locator of an unpatented lode or placer mining claim, mill site, or tunnel site located after October 21, 1976, pursuant to the general mining law of the United States shall, within 90 days after the

date of location of such claim, file in the office designated by the Secretary of the Interior a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The failure to file such instruments as required by this subsection is deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site by the owner. Such recordation by itself shall not render valid any claim that would not be otherwise valid under applicable law.

"(c) LOCATION FEE.—Notwithstanding any other provision of law, for every mining claim, mill site, or tunnel site located after the date of the enactment of this subsection pursuant to the general mining law of the United States, the locator shall, at the time the location notice is recorded pursuant to subsection (b), pay a location fee of $100 per claim. This fee shall be in addition to the first year's claim maintenance fee required by subsection (d). Payment of the location fee required by this subsection and the maintenance fee required by subsection (d) secures to the locator the right to use and occupy the public lands for purposes of the general mining law of the United States.

"(d) SCHEDULE OF CLAIM MAINTENANCE FEES.—(1) The holder of each unpatented mining claim, mill site, or tunnel site located pursuant to the general mining law of the United States on or after the date of the enactment of this subsection shall pay to the Secretary of the Interior, on or before September 1 of each year, a claim maintenance fee per claim. Except as provided in paragraph (2), such claim maintenance fee shall be paid in the following amounts:

"(A) $35 per claim for each of the first through fifth maintenance years, beginning with the year the claim was recorded.

"(B) $70 per claim for each of the sixth through tenth maintenance years.

"(C) $125 per claim for each of the eleventh through fifteenth maintenance years.

"(D) $150 per claim for the sixteenth maintenance year and each year thereafter.

"(2) Notwithstanding any other provision of law, for each unpatented mining claim located after the date of enactment of this subsection pursuant to the general mining law of the United States from which minerals are produced, and in lieu of the fee otherwise required by paragraph (1), the holder shall pay to the Secretary of the Interior an annual maintenance fee of $200 per claim.

"(3) The holder of each unpatented mining claim, mill site, or tunnel site located pursuant to the general mining law of the United States before the date of enactment of this subsection shall pay to the Secretary of the Interior for such claim—

"(A) except as provided in subparagraph (B), the claim maintenance fee that applied before such date of enactment; or

"(B) the claim maintenance fee that applies under paragraph (1) or (2), based on the number of years since the original location of the claim, if before the date the payment is due the claim holder—

"(i) notifies the Secretary; and

"(ii) pays to the Secretary a transfer fee of $100.

"(e) ADJUSTMENT OF CLAIM MAINTENANCE FEES.—Claim maintenance fees under subsection (d) shall not be subject to adjustment.

"(f) WORK REQUIREMENT.—(1) The holder of each unpatented mining claim, mill site, or tunnel site located pursuant to the general mining law of the United States after the date of enactment of this subsection, and any holder of a claim that has transferred such claim to the claim maintenance fee schedule under subsection (d), shall conduct physical evaluation and development of the claim or of any contiguous block of claims of which the claim is a part. Exploration and mining activities conducted pursuant to a notice, approved plan of operations, or, in the case of split estate lands, a comparable State or county notice or approval, demonstrates compliance with this section.

"(2) If physical evaluation of the claim is not carried out in accordance with paragraph (1) before the end of the fifth, tenth, or fifteenth maintenance year (beginning with the maintenance year in which the claim is filed), respectively, the claim holder shall be required to pay in the next maintenance year the location fee described in subsection (c), in addition to the annual claim maintenance fee required to be paid for the next maintenance year.

"(g) WAIVER OF CLAIM MAINTENANCE FEE ADJUSTMENTS AND WORK REQUIREMENT.—If a delay in meeting the work requirements under subsection (f) is the result of pending administrative proceedings, rights-of-way disputes, or litigation concerning issuance or validity of any permit or authorization required under Federal, State, or local law for physical evaluation and development of the claim—

"(1) any increase in the claim maintenance fee that would otherwise apply under subsection (d) and the work requirements under subsection (f) shall be suspended for the claim; and

"(2) claim maintenance fees required to be paid each year for the claim shall be the same as the fee that applied for the year in which the delay first occurred, and no additional location fee will be owed.

"(h) TIME OF PAYMENT.—The claim maintenance fee required under subsection (d) for any maintenance year shall be paid before the commencement of the maintenance year, except that, for the maintenance year in which the location is made the locator shall pay the claim maintenance fee and the location fee imposed under subsection (c) at the time the location notice is recorded with the Bureau of Land Management. The Director of the Bureau of Land Management, after consultation with the Governor of Alaska and by not later than 1 year after the date of enactment of this subsection, may establish a claim maintenance fee filing date for Alaska claim holders that is not later than 60 days after September 1.

"(i) SMALL MINER CLAIM MAINTENANCE FEE.—(1) In the case of a claim for which the holder certifies in writing to the Secretary that, on the date the payment of any claim maintenance fee under this section was due, the claim holder and all related parties held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands—

"(A) the claim maintenance fee shall be $25 per claim per year for the life of the claim or site held by the claim holder; and

"(B) subsection (f) shall not apply.

"(2) In this subsection:

"(A) With respect to any claim holder, the term 'related party' means—

"(i) the spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152), as in effect on the date of the enactment of this paragraph of the claim holder; and

"(ii) a person who controls, is controlled by, or is under common control with the claim holder.

"(B) The terms 'control', 'controls', and 'controlled' include actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

"(j) FAILURE TO PAY.—(1) Failure to pay a claim maintenance fee or a location fee for an unpatented mining claim as required by this section shall subject an unpatented mining claim, mill site, or tunnel site to forfeiture by the claim holder as provided in this subsection.

"(2) The Secretary of the Interior shall provide the claim holder with notice of the failure and the opportunity to cure within 45 calendar days after the claim holder's receipt of the notice.

"(3) The claim holder must, within such 45-day period, pay twice the amount of maintenance fee that would otherwise have been required to be timely paid. The Secretary of the Interior shall specify the amount that must be paid in the notice under paragraph (2).

"(4) Failure by the claim holder to make a timely and proper payment in the amount specified in the notice by the Secretary of the Interior, within 45 days after the claim holder's receipt of the notice, shall constitute a forfeiture of the mining claim, mill site, or tunnel site by the claim holder by operation of law.

"(k) FAILURE OF CO-OWNER TO CONTRIBUTE.—Upon the failure of any one of several co-owners of a claim to contribute the co-owner's proportion of any claim maintenance fee required by this section, the co-owners who have paid the claim maintenance fee, at the expiration of the year in which any unpaid amount was due, may give such delinquent co-owner personal notice in writing or notice by publication in the newspaper of record for the county in which the land that is subject to the claim or mill site is located, at least once a week for 90 days. If at the expiration of such 90-day period such delinquent co-owner fails or refuses to contribute the co-owner's proportion of the claim maintenance fee required by this section, the co-owner's interest in the claim shall become the property of the other co-owners who have paid the claim maintenance fee. The co-owners who have assumed the interest in the claims shall notify the Secretary of the Interior within 30 days of the assumption.

"(l) OIL SHALE CLAIMS SUBJECT TO CLAIM MAINTENANCE FEES UNDER ENERGY POLICY ACT OF 1992.— This section shall not apply

to any oil shale claim for which a fee is required to be paid under section 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242).

"(m) GENERAL MINING LAW OF THE UNITED STATES DEFINED; RULE OF CONSTRUCTION.—(1) In this section the term 'general mining law of the United States' means the provisions of law codified in chapters 2, 12, 12A, 15, and 16 of title 30, United States Code, and in sections 161 and 162 of such title.

"(2) Subsections (b) and (c) shall be construed in accordance with judicial decisions under section 314 of the Federal Land Policy and Management Act of 1976, as in effect before the enactment of those subsections.".

(e) CONFORMING AMENDMENTS.—

(1) The Federal Land Policy and Management Act of 1976 is amended—

(A) by striking section 314 (43 U.S.C. 1744);

(B) in the table of contents preceding title I by striking the item relating to section 314; and

(C) in section 302(a) by striking "section 314, section 603," and inserting "section 603".

(2) Section 22 of the Alaska Native Claims Settlement Act is amended by striking "and section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744)".

(3) Section 31(f) of the Mineral Leasing Act (30 U.S.C. 188(f)) is amended by striking "section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744)" and inserting "subsections (b) and (c) of section 2320 of the Revised Statutes (30 U.S.C. 23)".

(4) Section 2511(e) of the Energy Policy Act of 1992 (30 U.S.C. 242(e)) is amended by striking the last sentence.

SEC. 6202. PATENTS FOR MINING OR MILL SITE CLAIMS.

(a) REPEAL OF LIMITATION ON USE OF FUNDS FOR APPLICATIONS FOR PATENT.—Section 408(a) of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Public Law 109–54) is repealed.

(b) PAYMENT AMOUNTS.—The Revised Statutes are amended—

(1) in section 2325 (30 U.S.C. 29) by striking "five dollars per acre" and inserting "$1,000 per acre or fair market value, whichever is greater";

(2) in section 2326 (30 U.S.C. 30) by striking "five dollars per acre" and inserting "$1,000 per acre or fair market value, whichever is greater;";

(3) in section 2333 (30 U.S.C. 37)—

(A) by striking "five dollars per acre" and inserting "$1,000 per acre or fair market value, whichever is greater;"; and

(B) by striking "two dollars and fifty cents per acre" and inserting "$1,000 per acre or fair market value, whichever is greater";

(4) in section 2337 (30 U.S.C. 42)—

(A) in subsection (a) by striking "made at the same rate" and all that follows through the end of that sentence and inserting "at the rate of $1,000 per acre or fair market value, whichever is greater."; and

(B) in subsection (b) by striking "made at the rate" and all that follows through the end of that sentence and inserting "at the rate of $1,000 per acre or fair market value, whichever is greater."; and

(5) in section 2325 (30 U.S.C. 29) by adding at the end the following: "For purposes of this section and sections 2326, 2333, and 2337 of the Revised Statutes, fair market value for the patenting of mining claims or mill sites shall be determined by appraisals prepared by an appraiser certified or qualified under applicable professional criteria or State law, in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, submitted by the applicant for a patent to the Secretary of the Interior upon application for patent, that is completed within 120 days prior to submission of the application for patent.".

(c) MINERAL DEVELOPMENT WORK REQUIREMENTS.—Section 2325 of the Revised Statutes (30 U.S.C. 29) is amended—

(1) by striking "five hundred dollars' " and inserting "$7,500"; and

(2) by striking "labor has been expended" and inserting "mineral development work has been performed".

(d) PATENT APPLICANTS IN LIMBO.—If the holder of an unpatented mining claim or mill site submitted an application for a mineral patent and paid the patent service charges required by regulation at the time the application was submitted, and the Secretary of the Interior did not complete all actions to process the application before April 26, 1996, the holder of such claim may, at the holder's election, have such application processed under rules that applied before the date of the enactment of this Act.

(e) ALTERNATIVE VALUABLE MINERAL DEPOSIT CRITERIA.—Section 2325 of the Revised Statutes is further amended by inserting "(a) MANNER FOR OBTAINING PATENT, GENERALLY.—" before the first sentence, and by adding at the end the following:

"(b) ALTERNATIVE VALUABLE MINERAL DEPOSIT CRITERIA.—

"(1) CLAIMS SUBJECT TO ONGOING ACTIVITIES.—The holder of an unpatented mining claim or mill site who is conducting mining activities that meet the definition of a mine under section 3(h) of the Federal Mine Safety and Health Act of 1972 (30 U.S.C. 802(h)) and whose activities with respect to that claim or site are described in section 4 of such Act (30 U.S.C. 803) may receive a patent for any unpatented mining claims on which mining activities are occurring or any mill sites, within the boundaries of an approved plan of operations or a comparable State or county approval. Upon confirmation by the Secretary that minerals being mined are locatable in accordance with Federal law and that actual sales of minerals have taken place, all Federal lands within those boundaries are eligible for patent upon compliance with this section and sections 2327 and 2329 of the Revised Statutes (30 U.S.C. 34, 35).

"(2) DISCLOSED CLAIMS AND MILL SITES.—The holder of an unpatented mining claim or mill site whose proven and probable reserves are publicly disclosed in compliance with the Securities Act of 1933 (15 U.S.C. 77a) or the Securities Exchange

Act of 1934 (15 U.S.C. 78a) may receive a patent for any such unpatented mining claim containing such reserves or for any mill site within the boundaries of a plan of operations or a comparable State or county approval for such reserves. All Federal lands within those boundaries are eligible for patent upon compliance with this section and sections 2327 and 2329 of the Revised Statutes (30 U.S.C. 34, 35).

"(c) MINERAL EXAMINATIONS.—

"(1) IN GENERAL.—In order to process patent applications in a timely and responsible manner, upon the request of a patent applicant, the Secretary of the Interior shall allow the applicant to fund a qualified third-party examiner from a list maintained by the Bureau of Land Management to conduct a mineral examination of the mining claims or mill sites contained in a patent application as set forth in this section and sections 2333 and 2337 of the Revised Statutes (30 U.S.C. 37, 42). The Bureau of Land Management shall have the sole responsibility to maintain the list of qualified third-party examiners.

"(2) TRAINING.—The Director of the Bureau of Land Management shall provide training in the conduct of mineral examinations to qualified individuals. The Director may charge fees to cover the costs of the training.

"(3) QUALIFIED THIRD-PARTY EXAMINER DEFINED.—In this subsection the term 'qualified third-party examiner' means a person who is a registered geologist or registered professional mining engineer licensed to practice within the State in which the claims are located.

"(d) DISPOSITION OF PROCEEDS.—The gross proceeds of conveyances of land under this section and sections 2319, 2330, 2332, 2333, and 2337 of the Revised Statutes (30 U.S.C. 22, 36, 37, 38, 42) shall be used as follows:

"(1) 10 percent shall be deposited into the Federal Energy and Mineral Resource Professional Development Fund.

"(2) 20 percent shall be available to the Secretary of the Army for use, through the Corps of Engineers, for the Restoration of Abandoned Mine Sites Program and section 560 of the Water Resources Development Act of 1999.

"(3) 70 percent shall be deposited into the General Fund of the Treasury.

"(e) ISSUING PATENTS.—If no adverse claim has been filed with the register and the receiver of the proper land office at the expiration of the 60-day period beginning on the date of publication of the notice that an application for mineral patent has been filed under section 2325, 2333 and 2337 of the Revised Statutes (30 U.S.C. 29, 37, 42), the Secretary shall issue the patent not later than 24 months after the date on which the application for patent was filed.

"(f) SMALL MINER PATENT ADJUDICATION AND MINERAL DEVELOPMENT WORK REQUIREMENTS.—The holder of 10 claims or less who applies for a mineral patent under this section or a direct purchase under section 2319 of the Revised Statutes (30 U.S.C. 22) shall pay one-fifth of the processing fees and perform one-fifth of the mineral development work required under this section and section 2319 (30 U.S.C. 22).".

SEC. 6203. MINERAL EXAMINATIONS FOR MINING ON CERTAIN LANDS.

Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) is amended by adding at the end the following:

"(e) The Secretary shall not require a mineral examination report, otherwise required to be prepared under regulations promulgated pursuant to this Act, to approve a plan of operations under such regulations for mining claims and mill sites located on withdrawn lands if such mining claims, mill sites, and blocks of such mining claims and mill sites are contiguous to patented or unpatented mining claims or mill sites where mineral development activities, including mining, have been conducted as authorized by law or regulation.".

SEC. 6204. MINERAL DEVELOPMENT LANDS AVAILABLE FOR PURCHASE.

Section 2319 of the Revised Statutes (30 U.S.C. 22) is amended—

(1) by inserting "(a) LANDS OPEN TO PURCHASE BY CITIZENS.—" before the first sentence; and

(2) by adding at the end the following:

"(b) AVAILABILITY FOR PURCHASE.—Notwithstanding any other provision of law and in compliance with subsection (c), the Secretary of the Interior shall make mineral deposits and the lands that contain them, including lands in which the valuable mineral deposit has been depleted, available for purchase to facilitate sustainable economic development. This subsection shall not apply with respect to any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, or National Trails System, or to any National Conservation Area, any National Recreation Area, any National Monument, or any unit of the National Wilderness Preservation System.

"(c) APPLICATION.—The holder of mining claims, mill sites, and blocks of such mining claims and mill sites contiguous to patented or unpatented mining claims or mill sites where mineral development activities, including mining, have been conducted as authorized by law or regulation and on which mineral development work has been performed may apply to purchase Federal lands that are subject to the claims. The filing of the proper application shall include such processing fees as are required by section 2325 of the Revised Statutes (30 U.S.C. 29). The applicant or applicants, or their predecessors must present evidence of mineral development work performed on the Federal lands identified and submitted for purchase. Mineral development work upon aggregation must average not less than $7,500 per mining claim or mill site within the Federal lands identified and applied for.

"(d) LAND SURVEYS.—For the purpose of this section, and notwithstanding section 2334 of the Revised Statutes (30 U.S.C. 39), land surveys of the Federal lands applied for shall be paid for by the applicant and shall be completed either by a land surveyor registered in the State where the land is situated, or by such a surveyor also designated by the Bureau of Land Management as a mineral surveyor, if such mineral surveyors are available, willing, and able to complete such surveys without delay at a cost comparable to the charges of ordinary registered land surveyors.

"(e) DEADLINE FOR CONVEYANCE; PRICE.—Notwithstanding any other provision of law, and not later than one year after the date of the approval of any survey required under subsection (d), the Secretary of the Interior shall convey to the applicant, in return for a payment of $1,000 per acre or fair market value, whichever is greater, all right, title, and interest in and to the Federal land, subject to valid existing rights and the terms and conditions of the Act of August 30, 1890 (26 Stat. 391). For purposes of this subsection, fair market value for mineral development lands available for purchase shall be determined by appraisals prepared by an appraiser certified or qualified under applicable professional criteria or State law, in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, submitted by the applicant to the Secretary of the Interior upon application for purchase, that is completed within 120 days prior to submission of the application. Fair market value for the interest in the land owned by the United States shall be exclusive of, and without regard to, the mineral deposits in the land or the use of such land for mineral activities.

"(f) ENVIRONMENTAL LIABILITY.—Notwithstanding any other Federal, State or local law, the United States shall not be responsible for—

"(1) investigating or disclosing the condition of any property to be conveyed under this section; and

"(2) environmental remediation, waste management, or environmental compliance activities arising from its ownership, occupancy, or management of land and interests therein conveyed under this section with respect to conditions existing at or on the land at the time of the conveyance.

"(g) MINERAL DEVELOPMENT WORK DEFINED.—In this section the term 'mineral development work' means geologic, geochemical or geophysical surveys; road building; exploration drilling, trenching, and exploratory sampling by any other means; construction of underground workings for the purpose of conducting exploration; mine development work; mineral production from underground or surface mines; environmental baseline studies; construction of environmental protection and monitoring systems; environmental reclamation; construction of power and water distribution facilities; engineering, metallurgical, geotechnical, and economic feasibility studies; land surveys; and any other work reasonably incident to mineral development.".

SEC. 6205. NATIONAL MINING AND MINERALS POLICY TO ENCOURAGE AND PROMOTE THE PRODUCTIVE SECOND USE OF LANDS.

Section 101 of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) is amended—

(1) in the first sentence—

(A) in clause (2) by inserting "including through remining where appropriate" after "needs,";

(B) in clause (3) by striking "and" after the comma at the end; and

(C) by striking the period at the end and inserting the following: ", and (5) facilitate the productive second use of lands used for mining and energy production.";

(2) in the second sentence by striking "oil shale and uranium" and inserting "oil shale, and uranium, whether located onshore or offshore"; and

(3) in the third sentence—

(A) by striking "the Secretary of the Interior" and inserting "the head of each Federal department and of each independent agency"; and

(B) by striking "his".

SEC. 6206. REGULATIONS.

The Secretary of the Interior shall issue final regulations implementing this subtitle by not later than 180 days after the date of the enactment of this Act.

SEC. 6207. PROTECTION OF NATIONAL PARKS AND WILDERNESS AREAS.

Subject to valid existing rights, nothing in sections 6202, 6203, 6204, 6205, and 6206 of this subtitle shall be construed as affecting any lands within the boundary of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, or National Trails System, or any National Conservation Area, any National Recreation Area, any National Monument, or any unit of the National Wilderness Preservation System as of the date of the enactment of this Act.

Subtitle C—Disposal of Public Lands

CHAPTER 1—DISPOSAL OF CERTAIN PUBLIC LANDS IN NEVADA

SEC. 6301. SHORT TITLE.

This chapter may be cited as the "Northern Nevada Sustainable Development in Mining Act".

SEC. 6302. DEFINITIONS.

In this chapter:

(1) CLAIMANT.—The term "Claimant" means Coeur Rochester, Inc.

(2) COUNTY.—The term "County" means Pershing County, Nevada.

(3) GENERAL MINING LAW.—The term "general mining law" means the provisions of law codified in chapters 2, 12, 12A, 15, and 16 of title 30, United States Code, and in sections 161 and 162 of such title.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 6303. LAND CONVEYANCE.

(a) CONVEYANCE OF LAND.—Notwithstanding any other provision of law, and not later than 90 days after the date of the enactment of this Act, the Secretary shall convey to the Claimant, in return for a payment of $500 per acre, all right, title, and interest, subject to the terms and conditions of subsection (c), in the approximately 7,000 acres of Federal lands subject to Claimant's mining claims maintained under the general mining law and depicted on the

Rochester Sustainable Development Project map on file with the Committee on Resources of the House of Representatives.

(b) EXEMPTION FROM REVIEW, ETC.—Any conveyance of land under this chapter is not subject to review, consultation, or approval under any other Federal law.

(c) TERMS AND CONDITIONS OF CONVEYANCE.—

(1) NO IMPACT ON LEGAL OBLIGATIONS.—Conveyance of the lands pursuant to subsection (a) shall not affect Claimant's legal obligations to comply with applicable Federal mine closure or mine land reclamation laws, or with any other applicable Federal or State requirement relating to closure of the Rochester Mine and use of the land comprising such mine, including any requirement to prepare any environmental impact statement under the National Environmental Policy Act of 1969. Federal reclamation and closure obligations shall not be construed to require removal of infrastructure identified by Claimant as being usable by a post-mining land use.

(2) TITLE TO MATERIALS AND MINERALS.—Notwithstanding any other provision of law, Claimant shall own and have title to all spent ore, waste rock and tailings, and other materials located on lands conveyed pursuant to subsection (a).

(3) VALID EXISTING RIGHTS.—All lands conveyed pursuant to subsection (a) shall be subject to valid existing rights existing as of the date of transfer of title, and Claimant shall succeed to the rights and obligations of the United States with respect to any mining claim, mill site claim, lease, right-of-way, permit, or other valid existing right to which the property is subject.

(4) ENVIRONMENTAL LIABILITY.—Notwithstanding any other Federal, State or local law, the United States shall not be responsible for—

(A) investigating or disclosing the condition of any property to be conveyed under this chapter; and

(B) environmental remediation, waste management, or environmental compliance activities arising from its ownership, occupancy, or management of land and interests therein conveyed under this chapter with respect to conditions existing at or on the land at the time of the conveyance.

SEC. 6304. DISPOSITION OF PROCEEDS.

The gross proceeds of conveyances of land under this chapter shall be used as follows:

(1) Such sums as are necessary shall be used to cover 100 percent of the administrative costs, not to exceed $20,000, incurred by the Nevada State Office and the Winnemucca Field Office of the Bureau of Land Management in conducting the conveyance under this chapter.

(2) $500,000 shall be paid directly to the State of Nevada for use in the State's abandoned mined land program.

(3) $100,000 shall be paid directly to Pershing County, Nevada.

(4) Proceeds remaining after the payments pursuant to paragraphs (1) through (3) shall be deposited in the general fund of the Treasury.

CHAPTER 2—DISPOSAL OF CERTAIN PUBLIC LANDS IN IDAHO

SEC. 6311. SHORT TITLE.

This chapter may be cited as the "Central Idaho Sustainable Development in Mining Act".

SEC. 6312. DEFINITIONS.

In this chapter:

(1) CLAIMANT.—The term "Claimant" means TDS LLC, an affiliated company of L&W Stone Corporation.

(2) COUNTY.—The term "County" means Custer County, Idaho.

(3) GENERAL MINING LAW.—The term "general mining law" means the provisions of law codified in chapters 2, 12A, 15, and 16 of title 30, United States Code, and in sections 161 and 162 of such title.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 6313. LAND CONVEYANCE.

(a) CONVEYANCE OF LAND.—Notwithstanding any other provision of law, and not later than 90 days after the date of the enactment of this Act, the Secretary shall convey to the Claimant, in return for a payment of $1,000 per acre, all right, title, and interest, subject to the terms and conditions of subsection (c), in the approximately 519.7 acres of Federal lands subject to Claimant's mining claims maintained under the general mining law and depicted as "proposed land exchange alignment" on the Central Idaho Sustainable Development Project map on file with the Committee on Resources of the House of Representatives.

(b) EXEMPTION FROM REVIEW, ETC.—Any conveyance of land under this chapter is not subject to review, consultation, or approval under any other Federal law.

(c) TERMS AND CONDITIONS OF CONVEYANCE.—

(1) TRANSFER OF FEE TITLE IN FEDERAL LANDS.—Notwithstanding any other provision of law, full fee title in approximately 519.7 acres of Federal lands described in subsection (a) shall be transferred to Claimant as depicted as "proposed land exchange alignment" on the Central Idaho Sustainable Development Project map.

(2) VALID EXISTING RIGHTS.—All lands conveyed pursuant to subsection (a) shall be subject to valid existing rights existing as of the date of transfer of title, and Claimant shall succeed to the rights and obligations of the United States with respect to any mining claim, mill site claim, lease, right-of-way, permit, or other valid existing right to which the property is subject.

(3) ENVIRONMENTAL LIABILITY.—Notwithstanding any other Federal, State, or local law, the United States shall not be responsible for—

(A) investigating or disclosing the condition of any property to be conveyed under this chapter; and

(B) environmental remediation, waste management, or environmental compliance activities arising from its ownership, occupancy, or management of land and interests

therein conveyed under this chapter with respect to conditions existing at or on the land at the time of the conveyance.

SEC. 6314. DISPOSITION OF PROCEEDS.

Within one year of the completion of the conveyance under this chapter, the gross proceeds of the conveyance shall be used as follows:

(1) Such sums as are necessary shall be used to cover 100 percent of the administrative costs, not to exceed $15,000, incurred by the Idaho State Office and the Challis Field Office of the Bureau of Land Management in conducting conveyances under this chapter.

(2) $200,000 shall be paid directly to the State of Idaho for use in the State Parks program.

(3) $200,000 shall be paid directly to Custer County, Idaho.

(4) Proceeds remaining after the payments pursuant to paragraphs (1) through (3) shall be deposited in the general fund of the Treasury.

Subtitle D—Oil Shale

SEC. 6401. OIL SHALE AND TAR SANDS AMENDMENTS.

(a) COMMERCIAL LEASING OF OIL SHALE AND TAR SANDS.—Section 369(e) of the Energy Policy Act of 2005 (Public Law 109–58) is amended to read as follows:

"(e) COMMENCEMENT OF COMMERCIAL LEASING OF OIL SHALE AND TAR SAND.—Not later than 365 days after publication of the final regulation required by subsection (d), the Secretary shall hold the first oil shale and tar sands lease sales under the regulation, offering for lease a minimum of 35 percent of the Federal lands that are geologically prospective for oil shale and tar sands within Colorado, Utah, and Wyoming. The environmental impact statement developed in support of the commercial leasing program for oil shale and tar sands as required by subsection (c) is deemed to provide adequate environmental analysis for all oil shale and tar sands lease sales conducted within the first 10 years after promulgation of the regulation, and such sales shall not be subject to further environmental analysis.".

(b) REPEAL OF REQUIREMENT TO ESTABLISH PAYMENTS.—Section 369(o) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 728; 42 U.S.C. 15927) is repealed.

(c) TREATMENT OF REVENUES.—Section 21 of the Mineral Leasing Act (30 U.S.C. 241) is amended by adding at the end the following:

"(e) REVENUES.—

"(1) IN GENERAL.—Notwithstanding the provisions of section 35, all revenues received from and under an oil shale or tar sands lease shall be disposed of as provided in this subsection.

"(2) ROYALTY RATES FOR COMMERCIAL LEASES.—

"(A) INITIAL PRODUCTION.—For the first 10 years after initial production under each oil shale or tar sands lease issued under the commercial leasing program established under subsection (d), the Secretary shall set the royalty rate at not less than 1 percent nor more than 3 percent of

the gross value of production. However, the initial production period royalty rate set by the Secretary shall not apply to production occurring more than 15 years after the date of issuance of the lease.

"(B) SUBSEQUENT PERIODS.—After the periods of time specified in subparagraph (A), the Secretary shall set the royalty rate on each oil shale or tar sands lease issued under the commercial leasing program established under subsection (d) at not less than 6 percent nor more than 9 percent of the gross value of production.

"(C) REDUCTION.—The Secretary shall reduce any royalty otherwise required to be paid under subparagraphs (A) and (B) under any oil shale or tar sands lease on a sliding scale based upon market price, with a 10 percent reduction if the monthly average price of NYMEX West Texas Intermediate crude oil at Cushing, Oklahoma, (WTI) drops below $50 (in 2005 dollars) for the month in which the production is sold, and an 80 percent reduction if the monthly average price of WTI drops below $30 (in 2005 dollars) for the month in which the production is sold.

"(3) DISPOSITION OF REVENUES.—

"(A) DEPOSIT.—The Secretary shall deposit into a separate account in the Treasury all revenues derived from any oil shale or tar sands lease.

"(B) ALLOCATIONS TO STATES AND LOCAL POLITICAL SUBDIVISIONS.—The Secretary shall allocate 50 percent of the revenues deposited into the account established under subparagraph (A) to the State within the boundaries of which the leased lands are located, with a portion of that to be paid directly by the Secretary to the State's local political subdivisions as provided in this paragraph.

"(C) TRANSMISSION OF ALLOCATIONS.—

"(i) IN GENERAL.—Not later than the last business day of the month after the month in which the revenues were received, the Secretary shall transmit—

"(I) to each State two-thirds of such State's allocations under subparagraph (B), and in accordance with clauses (ii) and (iii) to certain county-equivalent and municipal political subdivisions of such State a total of one-third of such State's allocations under subparagraph (B), together with all accrued interest thereon; and

"(II) the remaining balance of such revenues deposited into the account that are not allocated under subparagraph (B), together with interest thereon, shall be transmitted to the miscellaneous receipts account of the Treasury, except that until a lease has been in production for 10 years 80 percent of such remaining balance derived from a lease shall be paid in accordance with subclause (I).

"(ii) ALLOCATIONS TO CERTAIN COUNTY-EQUIVALENT POLITICAL SUBDIVISIONS.—The Secretary shall under clause (i)(I) make equitable allocations of the revenues

to county-equivalent political subdivisions that the Secretary determines are closely associated with the leasing and production of oil shale and tar sands, under a formula that the Secretary shall determine by regulation.

"(iii) ALLOCATIONS TO MUNICIPAL POLITICAL SUBDIVISIONS.—The initial allocation to each county-equivalent political subdivision under clause (ii) shall be further allocated to the county-equivalent political subdivision and any municipal political subdivisions located partially or wholly within the boundaries of the county-equivalent political subdivision on an equitable basis under a formula that the Secretary shall determine by regulation.

"(D) INVESTMENT OF DEPOSITS.—The deposits in the Treasury account established under this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account and yielding the highest reasonably available interest rates as determined by the Secretary of the Treasury.

"(E) USE OF FUNDS.—A recipient of funds under this subsection may use the funds for any lawful purpose as determined by State law. Funds allocated under this subsection to States and local political subdivisions may be used as matching funds for other Federal programs without limitation. Funds allocated to local political subdivisions under this subsection may not be used in calculation of payments to such local political subdivisions under programs for payments in lieu of taxes or other similar programs.

"(F) NO ACCOUNTING REQUIRED.—No recipient of funds under this subsection shall be required to account to the Federal Government for the expenditure of such funds, except as otherwise may be required by law.

"(4) DEFINITIONS.—In this subsection:

"(A) COUNTY-EQUIVALENT POLITICAL SUBDIVISION.—The term 'county-equivalent political subdivision' means a political jurisdiction immediately below the level of State government, including a county, parish, borough in Alaska, independent municipality not part of a county, parish, or borough in Alaska, or other equivalent subdivision of a State.

"(B) MUNICIPAL POLITICAL SUBDIVISION.—The term 'municipal political subdivision' means a municipality located within and part of a county, parish, borough in Alaska, or other equivalent subdivision of a State.".

Subtitle E—Ocean Energy Resources

SEC. 6501. SHORT TITLE.

This subtitle may be cited as the "Ocean State Options Act of 2005".

SEC. 6502. POLICY.

It is the policy of the United States that—

(1) Adjacent States are required by the circumstances to commit significant resources in support of exploration, development, and production activities for mineral resources on the outer Continental Shelf, and it is fair and proper for a portion of the receipts from such activities to be shared with Adjacent States and their local coastal governments;

(2) the existing laws governing the leasing and production of the mineral resources of the outer Continental Shelf have reduced the production of mineral resources, have preempted Adjacent States from being sufficiently involved in the decisions regarding the allowance of mineral resource development, and have been harmful to the national interest;

(3) the national interest is served by granting the Adjacent States more options related to whether or not mineral leasing should occur in the outer Continental Shelf within their Adjacent Zones;

(4) it is not reasonably foreseeable that exploration of a leased tract located more than 25 miles seaward of the coastline, development and production of a natural gas discovery located more than 25 miles seaward of the coastline, or development and production of an oil discovery located more than 50 miles seaward of the coastline will adversely affect resources near the coastline;

(5) transportation of oil from a leased tract might reasonably be foreseen, under limited circumstances, to have the potential to adversely affect such resources if the oil is within 50 miles of the coastline, but such potential to adversely affect such resources is likely no greater, and probably less, than the potential impacts from tanker transportation because tanker spills usually involve large releases of oil over a brief period of time; and

(6) among other bodies of inland waters, the Great Lakes, Long Island Sound, Delaware Bay, Chesapeake Bay, Albemarle Sound, San Francisco Bay, and Puget Sound are not part of the outer Continental Shelf, and are not subject to leasing by the Federal Government for the exploration, development, and production of any mineral resources that might lie beneath them.

SEC. 6503. DEFINITIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT.

Section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331) is amended—

(1) by amending paragraph (f) to read as follows:

"(f) The term 'affected State' means the Adjacent State.";

(2) by striking the semicolon at the end of each of paragraphs (a) through (o) and inserting a period;

(3) by striking "; and" at the end of paragraph (p) and inserting a period;

(4) by adding at the end the following:

"(r) The term 'Adjacent State' means, with respect to any program, plan, lease sale, leased tract or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any

State the laws of which are declared, pursuant to section 4(a)(2), to be the law of the United States for the portion of the outer Continental Shelf on which such program, plan, lease sale, leased tract or activity appertains or is, or is proposed to be, conducted. For purposes of this paragraph, the term 'State' includes Puerto Rico and the other Territories of the United States.

"(s) The term 'Adjacent Zone' means, with respect to any program, plan, lease sale, leased tract, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, the portion of the outer Continental Shelf for which the laws of a particular Adjacent State are declared, pursuant to section 4(a)(2), to be the law of the United States.

"(t) The term 'miles' means statute miles.

"(u) The term 'coastline' has the same meaning as the term 'coast line' as defined in section 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

"(v) The term 'Neighboring State' means a coastal state having a common boundary at the coastline with the Adjacent State; and".

(5) in paragraph (a), by inserting after "control" the following: "or lying within the United States exclusive economic zone adjacent to the Territories of the United States".

SEC. 6504. DETERMINATION OF ADJACENT ZONES AND PLANNING AREAS.

Section 4(a)(2)(A) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(2)(A)) is amended in the first sentence by striking ", and the President" and all that follows through the end of the sentence and inserting the following: ". The lines extending seaward and defining each State's Adjacent Zone, and each OCS Planning Area, are as indicated on the maps for each outer Continental Shelf region entitled 'Alaska OCS Region State Adjacent Zone and OCS Planning Areas', 'Pacific OCS Region State Adjacent Zones and OCS Planning Areas', 'Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas', and 'Atlantic OCS Region State Adjacent Zones and OCS Planning Areas', all of which are dated September 2005 and on file in the Office of the Director, Minerals Management Service.".

SEC. 6505. ADMINISTRATION OF LEASING.

Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) is amended by adding at the end the following:

"(k) VOLUNTARY PARTIAL RELINQUISHMENT OF A LEASE.—Any lessee of a producing lease may relinquish to the Secretary any portion of a lease that the owner has no interest in producing and that the Secretary finds is geologically prospective. In return for any such relinquishment, the Secretary shall provide to the owner a royalty incentive in accordance with regulations promulgated by the Secretary to carry out this subsection. The Secretary shall publish final regulations implementing this subsection within 365 days after the date of the enactment of the Ocean State Options Act of 2005.

"(l) NATURAL GAS LEASE REGULATIONS.—Not later than October 1, 2006, the Secretary shall publish a final regulation that shall—

"(1) establish procedures for entering into natural gas leases;

"(2) ensure that natural gas leases are only available for tracts on the outer Continental Shelf that are wholly within 125 miles of the coastline within an area withdrawn from disposition by leasing on the day after the date of enactment of the Ocean State Options Act of 2005;

"(3) provide that natural gas leases shall contain the same rights and obligations established for oil and gas leases, except as otherwise provided in the Ocean State Options Act of 2005;

"(4) provide that, in reviewing the adequacy of bids for natural gas leases, the value of any crude oil estimated to be contained within any tract shall be excluded;

"(5) provide that any crude oil produced from a well and reinjected into the leased tract shall not be subject to payment of royalty, and that the Secretary shall consider, in setting the royalty rates for a natural gas lease, the additional cost to the lessee of not producing any crude oil; and

"(6) provide that any Federal law that applies to an oil and gas lease on the outer Continental Shelf shall apply to a natural gas lease unless otherwise clearly inapplicable.".

SEC. 6506. GRANT OF LEASES BY SECRETARY.

Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended—

(1) in subsection (a)(1) by inserting after the first sentence the following: "Further, the Secretary may grant natural gas leases in a manner similar to the granting of oil and gas leases and under the various bidding systems available for oil and gas leases.";

(2) by adding at the end of subsection (b) the following: "The Secretary may issue more than one lease for a given tract if each lease applies to a separate and distinct range of vertical depths, horizontal surface area, or a combination of the two. The Secretary may issue regulations that the Secretary determines are necessary to manage such leases consistent with the purposes of this Act.".

(3) in subsection (p)(2)(B)—

(A) by striking "27" and inserting "50"; and

(B) by striking "15" and inserting "200";

(4) by adding at the end the following:

"(q) NATURAL GAS LEASES.—

"(1) RIGHT TO PRODUCE NATURAL GAS.—A lessee of a natural gas lease shall have the right to produce the natural gas from a natural gas leased tract if the Secretary estimates that the discovered field has at least 40 percent of the economically recoverable Btu content of the field contained within natural gas and such natural gas is economical to produce.

"(2) RIGHT TO PRODUCE CRUDE OIL.—A lessee of a natural gas lease may produce crude oil from the lease unless the Governor and the legislature of the Adjacent State object to such production within 180 days after receipt of written notice from the lessee of intent to produce crude oil from the lease. If the leased tract is located within 50 miles of the nearest point on the coastline of a Neighboring State, the Governor and legislature of the Neighboring State shall also receive such notice and

have the right to object to such production within 180 days after receipt of such notice.

"(3) ESTIMATES OF BTU CONTENT.—The Secretary shall make estimates of the natural gas Btu content of discovered fields on a natural gas lease only after the completion of at least one exploration well, the data from which has been tied to the results of a three-dimensional seismic survey of the field. The Secretary may not require the lessee to further delineate any discovered field prior to making such estimates.

"(4) TRANSPORTATION OF CRUDE OIL.—If an Adjacent State or any applicable Neighboring State does not object to production of crude oil from a natural gas lease, the lessee shall be permitted to transport the crude oil from the leased tract through Adjacent State waters, and Neighboring State waters if applicable, to facilities onshore in the Adjacent State, and Neighboring State if applicable, unless the lessee agreed to other arrangements with the Adjacent State or Neighboring State, or both.

"(5) REPURCHASE OF CERTAIN NATURAL GAS LEASES.—Upon request of the lessee and certification by the Secretary of the Interior that a natural gas lease contains all or part of a commercial oil and gas discovery that is not allowed to be produced because it does not meet the standard set in paragraph (1), the Secretary of the Treasury shall repurchase the lease by issuance of a check or electronic payment from OCS Receipts to the lessee in full compensation for the repurchase. The Secretary shall recoup from the State and local governments any funds previously shared with them that were derived from the repurchased lease. Such recoupment shall only be from the State and local governments' shares of OCS receipts that are payable after the date of repurchase.

"(6) AMOUNT OF COMPENSATION.—Repurchase compensation for each lease repurchased under the authority of this section shall be in the amount of the lesser of the original bonus bid paid for the lease or, if the lessee is not the original lessee, the compensation paid by the current lessee to obtain its interest in the lease. In addition, the lessee shall be compensated for any expenses directly attributable to the lease that the lessee incurs after acquisition of its interest in the lease to be repurchased, including rentals, seismic acquisition costs, drilling costs, and other reasonable expenses on the lease, including expenses incurred in the repurchase process, to the extent that the lessee has not previously been compensated by the United States for such expenses. The lessee shall not be compensated for general overhead expenses or employee salaries.

"(7) PRIORITY RIGHT TO OBTAIN FUTURE OIL AND GAS LEASE.—The lessee, or a designee of the lessee, of a repurchased natural gas leased tract shall have the right to repurchase such tract as an oil and gas lease, on a noncompetitive basis, by repaying the amount received by the lessee if the tract is made available for lease under an oil and gas lease within 30 years after the repurchase.

"(8) DEFINITION OF NATURAL GAS.—For purposes of a natural gas lease, natural gas means natural gas and all substances

produced in association with gas, including, but not limited to, hydrocarbon liquids (other than crude oil) that are obtained by the condensation of hydrocarbon vapors and separate out in liquid form from the produced gas stream.

"(r) REMOVAL OF RESTRICTIONS ON JOINT BIDDING IN CERTAIN AREAS OF THE OUTER CONTINENTAL SHELF.—Restrictions on joint bidders shall no longer apply to tracts located in the Alaska OCS Region. Such restrictions shall not apply to tracts in other OCS regions determined to be 'frontier tracts' or otherwise 'high cost tracts' under final regulations that shall be published by the Secretary by not later than 365 days after the date of the enactment of the Ocean State Options Act of 2005.";

(5) by striking subsection (a)(3)(A) and redesignating the subsequent subparagraphs as subparagraphs (A) and (B), respectively;

(6) in subsection (a)(3)(A) (as so redesignated) by striking "In the Western" and all that follows through "the Secretary" the first place it appears and inserting "The Secretary"; and

(7) effective October 1, 2013, in subsection (g)—

(A) by striking all after "(g)", except paragraph (3);

(B) by striking the last sentence of paragraph (3); and

(C) by striking "(3)".

SEC. 6507. DISPOSITION OF RECEIPTS.

Section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338) is amended—

(1) by designating the existing text as subsection (a);

(2) in subsection (a) (as so designated) by inserting ", if not paid as otherwise provided in this title" after "receipts"; and

(3) by adding the following:

"(b) TREATMENT OF OCS RECEIPTS FROM TRACTS COMPLETELY WITHIN 125 MILES OF THE COASTLINE.—

"(1) DEPOSIT.—The Secretary shall deposit into a separate account in the Treasury the portion of OCS Receipts for each fiscal year that will be shared under paragraphs (2) and (3).

"(2) RECEIPTS SHARING BEGINNING OCTOBER 1, 2010.—

"(A) Beginning October 1, 2010, the Secretary shall share OCS Receipts derived from the following areas:

"(i) Lease tracts located on portions of the Gulf of Mexico OCS Region completely within 125 miles of any coastline that are available for leasing under the 2002–2007 5-Year Oil and Gas Leasing Program in effect prior to the date of the enactment of the Ocean State Options Act of 2005.

"(ii) Lease tracts in production prior to January 1, 2006, completely within 125 miles of any coastline located on portions of the OCS that were not available for leasing under the 2002–2007 5-Year OCS Oil and Gas Leasing Program in effect prior to the date of the enactment of the Ocean State Options Act of 2005.

"(iii) Lease tracts for which leases are issued prior to January 1, 2006, located in the Alaska OCS Region completely within 125 miles of the coastline.

"(B) The Secretary shall share the following percentages of OCS Receipts from the leases described in subparagraph (A) derived during the fiscal year indicated:

"(i) For fiscal year 2011, 4.5 percent.

"(ii) For fiscal year 2012, 5.0 percent.

"(iii) For fiscal year 2013, 5.5 percent.

"(iv) For fiscal year 2014, 6.0 percent.

"(v) For fiscal year 2015, 6.5 percent.

"(vi) For fiscal year 2016, 7.5 percent.

"(vii) For fiscal year 2017, 10.0 percent.

"(viii) For fiscal year 2018, 12.5 percent.

"(ix) For fiscal year 2019, 15.0 percent.

"(x) For fiscal year 2020, 17.5 percent.

"(xi) For fiscal year 2021, 20.0 percent.

"(xii) For fiscal year 2022, 22.5 percent.

"(xiii) For fiscal year 2023, 25.0 percent.

"(xiv) For fiscal year 2024, 27.5 percent.

"(xv) For fiscal year 2025, 30.0 percent.

"(xvi) For fiscal year 2026, 32.5 percent.

"(xvii) For fiscal year 2027, 35.0 percent.

"(xviii) For fiscal year 2028, 37.5 percent.

"(xix) For fiscal year 2029 and each subsequent fiscal year, 40.0 percent.

"(3) RECEIPTS SHARING BEGINNING JANUARY 1, 2006.—Beginning January 1, 2006, the Secretary shall share 40 percent of OCS Receipts derived on and after January 1, 2006, from all leases located completely within 125 miles of any coastline not included within the provisions of paragraph (2) or the receipts sharing provisions of section 8(g).

"(4) ALLOCATIONS.—The Secretary shall allocate the OCS Receipts deposited into the separate account established by paragraph (1) that are shared under paragraphs (2) and (3) as follows:

"(A) BONUS BIDS.—Deposits derived from bonus bids from a leased tract, including interest thereon, shall be allocated at the end of each fiscal year as follows:

"(i) 87.5 percent to the Adjacent State.

"(ii) 6.25 percent into the Treasury, which shall be allocated to the account established by section 6514 of the Ocean State Options Act of 2005.

"(iii) 5 percent into the account established by section 6523 of the Ocean State Options Act of 2005.

"(iv) 1.25 percent into the account established by section 6526 of the Ocean State Options Act of 2005.

"(B) ROYALTIES.—Deposits derived from royalties from a leased tract, including interest thereon, shall be allocated at the end of each fiscal year as follows:

"(i) 87.5 percent to the Adjacent State and any other producing State or States with a leased tract within its Adjacent Zone within 125 miles of its coastline that generated royalties during the fiscal year, if the other producing or States have a coastline point within 300 miles of any portion of the leased tract, in which case the amount allocated for the leased tract shall be—

"(I) one-third to the Adjacent State; and

"(II) two-thirds to each producing State, including the Adjacent State, inversely proportional to the distance between the nearest point on the coastline of the producing State and the geographic center of the leased tract.

"(ii) 6.25 percent into the Treasury, which shall be allocated to the account established by section 6514 of the Ocean State Options Act of 2005.

"(iii) 5 percent into the account established by section 6523 of the Ocean State Options Act of 2005.

"(iv) 1.25 percent into the account established by section 6526 of the Ocean State Options Act of 2005.

"(c) TREATMENT OF OCS RECEIPTS FROM TRACTS PARTIALLY OR COMPLETELY BEYOND 125 MILES OF THE COASTLINE.—

"(1) DEPOSIT.—The Secretary shall deposit into a separate account in the Treasury the portion of OCS Receipts for each fiscal year that will be shared under paragraphs (2) and (3).

"(2) RECEIPTS SHARING BEGINNING OCTOBER 1, 2010.—

"(A) Beginning October 1, 2010, the Secretary shall share OCS Receipts derived from the following areas:

"(i) Lease tracts located on portions of the Gulf of Mexico OCS Region partially or completely beyond 125 miles of any coastline that are available for leasing under the 2002–2007 5-Year Oil and Gas Leasing Program in effect prior to the date of enactment of the Ocean State Options Act of 2005.

"(ii) Lease tracts in production prior to January 1, 2006, partially or completely beyond 125 miles of any coastline located on portions of the OCS that were not available for leasing under the 2002–2007 5-Year OCS Oil and Gas Leasing Program in effect prior to the date of enactment of the Ocean State Options Act of 2005.

"(iii) Lease tracts for which leases are issued prior to January 1, 2006, located in the Alaska OCS Region partially or completely beyond 125 miles of the coastline.

"(B) The Secretary shall share the following percentages of OCS Receipts from the leases described in subparagraph (A) derived during the fiscal year indicated:

"(i) For fiscal year 2011, 4.5 percent.

"(ii) For fiscal year 2012, 5.0 percent.

"(iii) For fiscal year 2013, 5.5 percent.

"(iv) For fiscal year 2014, 6.0 percent.

"(v) For fiscal year 2015, 6.5 percent.

"(vi) For fiscal year 2016, 7.5 percent.

"(vii) For fiscal year 2017, 10.0 percent.

"(viii) For fiscal year 2018, 12.5 percent.

"(ix) For fiscal year 2019, 15.0 percent.

"(x) For fiscal year 2020, 17.5 percent.

"(xi) For fiscal year 2021, 20.0 percent.

"(xii) For fiscal year 2022, 22.5 percent.

"(xiii) For fiscal year 2023, 25.0 percent.

"(xiv) For fiscal year 2024, 27.5 percent.

"(xv) For fiscal year 2025, 30.0 percent.

"(xvi) For fiscal year 2026, 32.5 percent.

"(xvii) For fiscal year 2027, 35.0 percent.

"(xviii) For fiscal year 2028, 37.5 percent.

"(xix) For fiscal year 2029 and each subsequent fiscal year, 40.0 percent.

"(3) RECEIPTS SHARING BEGINNING JANUARY 1, 2006.—Beginning January 1, 2006, the Secretary shall share 40 percent of OCS Receipts derived on and after January 1, 2006, from all leases located partially or completely beyond 125 miles of any coastline not included within the provisions of paragraph (2).

"(4) ALLOCATIONS.—The Secretary shall allocate the OCS Receipts deposited into the separate account established by paragraph (1) that are shared under paragraphs (2) and (3) as follows:

"(A) BONUS BIDS.—Deposits derived from bonus bids from a leased tract, including interest thereon, shall be allocated at the end of each fiscal year as follows:

"(i) 87.5 percent to the Adjacent State.

"(ii) 6.25 percent into the Treasury, which shall be allocated to the account established by section 6514 of the Ocean State Options Act of 2005.

"(iii) 5 percent into the account established by section 6523 of the Ocean State Options Act of 2005.

"(iv) 1.25 percent into the account established by section 6526 of the Ocean State Options Act of 2005.

"(B) ROYALTIES.—Deposits derived from royalties from a leased tract, including interest thereon, shall be allocated at the end of each fiscal year as follows:

"(i) 87.5 percent to the Adjacent State and any other producing State or States with a leased tract within its Adjacent Zone partially or completely beyond 125 miles of its coastline that generated royalties during the fiscal year, if the other producing State or States have a coastline point within 300 miles of any portion of the leased tract, in which case the amount allocated for the leased tract shall be—

"(I) one-third to the Adjacent State; and

"(II) two-thirds to each producing State, including the Adjacent State, inversely proportional to the distance between the nearest point on the coastline of the producing State and the geographic center of the leased tract.

"(ii) 6.25 percent into the account established by section 6514 of the Ocean State Options Act of 2005.

"(iii) 5 percent into the account established by section 6523 of the Ocean State Options Act of 2005.

"(iv) 1.25 percent into the account established by section 6526 of the Ocean State Options Act of 2005.

"(d) SPECIAL RECEIPTS SHARING.—

"(1) DEPOSIT.—The Secretary shall deposit into a separate account in the Treasury the portion of OCS Receipts for each fiscal year that will be shared under paragraphs (2) and (3).

"(2) EXCESS NEW PROGRAM RECEIPTS.—

"(A) REQUIREMENT.—Beginning January 1, 2006, and continuing through September 30, 2015, if the total amount of OCS receipts in a fiscal year derived from leases included within the sharing provisions of subsections (b)(3) and (c)(3) exceeds the amount specified in subparagraph (B), the Secretary shall share 60 percent of the difference between such total amount and the amount specified in subparagraph (B).

"(B) TOTAL AMOUNT SPECIFIED.—The amount specified in this subparagraph is the following:

"(i) For fiscal year 2006, $0.

"(ii) For fiscal year 2007, $498,000,000.

"(iii) For fiscal year 2008, $260,000,000.

"(iv) For fiscal year 2009, $322,000,000.

"(v) For fiscal year 2010, $140,000,000.

"(vi) For fiscal year 2011, $93,000,000.

"(vii) For fiscal year 2012, $25,000,000.

"(viii) For fiscal year 2013, $540,000,000.

"(ix) For fiscal year 2014, $342,000,000.

"(x) For fiscal year 2015, $481,000,000.

"(3) EXTRA NEW PROGRAM AREA RECEIPTS.—Beginning October 1, 2015, and continuing thereafter through September 30, 2029, the Secretary shall share an additional 20 percent of OCS Receipts derived from leases included within the sharing provisions of subsections (b)(3) and (c)(3) that were not already shared under those provisions.

"(4) ALLOCATIONS.—The Secretary shall allocate the OCS Receipts deposited into the separate account established by paragraph (1) that are shared under the provisions of paragraphs (2) and (3) among all producing States, which shall be allocated to each producing State based on the ratio that—

"(A) OCS Receipts derived from all leased tracts on the Federal outer Continental Shelf that are completely within 300 miles of the coastline of the producing State for the fiscal year, bears to

"(B) OCS Receipts derived from all leased tracts on the Federal outer Continental Shelf that are completely within 300 miles of the coastlines of all producing States for the fiscal year.

"(e) TRANSMISSION OF ALLOCATIONS.—

"(1) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Secretary shall transmit—

"(A) to each State two-thirds of such State's allocations under subsections (b)(4)(A)(i), (b)(4)(B)(i), (c)(4)(A)(i), (c)(4)(B)(i), and (d)(4) for the immediate prior fiscal year;

"(B) to coastal county-equivalent and municipal political subdivisions of such State a total of one-third of such State's allocations under subsections (b)(4)(A)(i), (b)(4)(B)(i), (c)(4)(A)(i), (c)(4)(B)(i), and (d)(4), together with all accrued interest thereon; and

"(C) the remaining allocations under subsections (b)(4) and (c)(4), together with all accrued interest thereon.

"(2) ALLOCATIONS TO COASTAL COUNTY-EQUIVALENT POLITICAL SUBDIVISIONS.—The Secretary shall make an initial allocation of the OCS Receipts to be shared under paragraph (1)(B) as follows:

"(A) 25 percent shall be allocated based on the ratio of such coastal county-equivalent political subdivision's population to the coastal population of all coastal county-equivalent political subdivisions in the State.

"(B) 25 percent shall be allocated based on the ratio of such coastal county-equivalent political subdivision's coastline miles to the coastline miles of all coastal county-equivalent political subdivisions in the State as calculated by the Secretary. In such calculations, coastal county-equivalent political subdivisions without a coastline shall be considered to have 50 percent of the average coastline miles of the coastal county-equivalent political subdivisions that do have coastlines.

"(C) 25 percent shall be allocated to all coastal county-equivalent political subdivisions having a coastline point within 300 miles of the leased tract for which OCS Receipts are being shared based on a formula that allocates the funds based on such coastal county-equivalent political subdivision's relative distance from the leased tract.

"(D) 25 percent shall be allocated to all coastal county-equivalent political subdivisions having a coastline point within 300 miles of the leased tract for which OCS Receipts are being shared based on the relative level of outer Continental Shelf oil and gas activities in a coastal political subdivision compared to the level of outer Continental Shelf activities in all coastal political subdivisions in the State. The Secretary shall define the term 'outer Continental Shelf oil and gas activities' for purposes of this subparagraph to include, but not be limited to, construction of vessels, drillships, and platforms involved in exploration, production, and development on the outer Continental Shelf; support and supply bases, ports, and related activities; offices of geologists, geophysicists, engineers, and other professionals involved in support of exploration, production, and development of oil and gas on the outer Continental Shelf; pipelines and other means of transporting oil and gas production from the outer Continental Shelf; and processing and refining of oil and gas production from the outer Continental Shelf. For purposes of this subparagraph, if a coastal county-equivalent political subdivision does not have a coastline, its coastal point shall be the point on the coastline closest to it.

"(3) ALLOCATIONS TO COASTAL MUNICIPAL POLITICAL SUBDIVISIONS.—The initial allocation to each coastal county-equivalent political subdivision under paragraph (2) shall be further allocated to the coastal county-equivalent political subdivision and any coastal municipal political subdivisions located partially or wholly within the boundaries of the coastal county-equivalent political subdivision as follows:

"(A) One-third shall be allocated to the coastal county-equivalent political subdivision.

"(B) Two-thirds shall be allocated on a per capita basis to the municipal political subdivisions and the county-equivalent political subdivision, with the allocation to the latter based upon its population not included within the boundaries of a municipal political subdivision.

"(f) INVESTMENT OF DEPOSITS.—Amounts deposited under this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account in which they are deposited and yielding the highest reasonably available interest rates as determined by the Secretary of the Treasury.

"(g) USE OF FUNDS.—A recipient of funds under this section may use the funds for one or more of the following:

"(1) To reduce in-State college tuition at public institutions of higher learning and otherwise support public education, including career technical education.

"(2) To make transportation infrastructure improvements.

"(3) To reduce taxes.

"(4) To promote and provide for—

"(A) coastal or environmental restoration;

"(B) fish, wildlife, and marine life habitat enhancement;

"(C) waterways maintenance;

"(D) shore protection; and

"(E) marine and oceanographic education and research.

"(5) To improve infrastructure associated with energy production activities conducted on the outer Continental Shelf.

"(6) To fund energy demonstration projects and supporting infrastructure for energy projects.

"(7) For any other purpose as determined by State law.

"(h) NO ACCOUNTING REQUIRED.—No recipient of funds under this section shall be required to account to the Federal Government for the expenditure of such funds, except as otherwise may be required by law. Further, funds allocated under this section to States and political subdivisions may be used as matching funds for other Federal programs.

"(i) EFFECT OF FUTURE LAWS.—Enactment of any future Federal statute that has the effect, as determined by the Secretary, of restricting any Federal agency from spending appropriated funds, or otherwise preventing it from fulfilling its pre-existing responsibilities as of the date of enactment of the statute, unless such responsibilities have been reassigned to another Federal agency by the statute with no prevention of performance, to issue any permit or other approval impacting on the OCS oil and gas leasing program, or any lease issued thereunder, or to implement any provision of this Act shall automatically prohibit any sharing of OCS Receipts under this section directly with the States, and their coastal political subdivisions, for the duration of the restriction. The Secretary shall make the determination of the existence of such restricting effects within 30 days of a petition by any outer Continental Shelf lessee or producing State.

"(j) DEFINITIONS.—In this section:

"(1) COASTAL COUNTY-EQUIVALENT POLITICAL SUBDIVISION.—The term 'coastal county-equivalent political subdivision' means a political jurisdiction immediately below the level of State government, including a county, parish, borough in Alaska, independent municipality not part of a county, parish, or borough in Alaska, or other equivalent subdivision of a coastal State, that lies within the coastal zone.

"(2) COASTAL MUNICIPAL POLITICAL SUBDIVISION.—The term 'coastal municipal political subdivision' means a municipality located within and part of a county, parish, borough in Alaska, or other equivalent subdivision of a State, all or part of which coastal municipal political subdivision lies within the coastal zone.

"(3) COASTAL POPULATION.—The term 'coastal population' means the population of all coastal county-equivalent political subdivisions, as determined by the most recent official data of the Census Bureau.

"(4) COASTAL ZONE.—The term 'coastal zone' means that portion of a coastal State, including the entire territory of any coastal county-equivalent political subdivision at least a part of which lies, within 75 miles landward from the coastline.

"(5) BONUS BIDS.—The term 'bonus bids' means all funds received by the Secretary to issue an outer Continental Shelf minerals lease.

"(6) ROYALTIES.—The term 'royalties' means all funds received by the Secretary from production of oil or natural gas, or the sale of production taken in-kind, from an outer Continental Shelf minerals lease.

"(7) PRODUCING STATE.—The term 'producing State' means an Adjacent State having an Adjacent Zone containing leased tracts from which OCS Receipts were derived.

"(8) OCS RECEIPTS.—The term 'OCS Receipts' means bonus bids and royalties.".

SEC. 6508. REVIEW OF OUTER CONTINENTAL SHELF EXPLORATION PLANS.

Subsections (c) and (d) of section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) are amended to read as follows:

"(c) PLAN REVIEW; PLAN PROVISIONS.—

"(1) Except as otherwise provided in this Act, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan (hereinafter in this section referred to as a 'plan') to the Secretary for review which shall include all information and documentation required under paragraphs (2) and (3). The Secretary shall review the plan for completeness within 10 days of submission. If the Secretary finds that the plan is not complete, the Secretary shall notify the lessee with a detailed explanation and require such modifications of such plan as are necessary to achieve completeness. The Secretary shall have 10 days to review a modified plan for completeness. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and the lessee shall certify that such plan is consistent

with the terms of the lease and is consistent with all statutory and regulatory requirements in effect on the date of issuance of the lease. The Secretary shall have 30 days from the date the plan is deemed complete to conduct a review of the plan. If the Secretary finds the plan is not consistent with the lease and all such statutory and regulatory requirements, the Secretary shall notify the lessee with a detailed explanation of such modifications of such plan as are necessary to achieve compliance. The Secretary shall have 30 days to review any modified plan submitted by the lessee. The lessee shall not take any action under the exploration plan within the 30-day review period, or thereafter until the plan has been modified to achieve compliance as so notified.

"(2) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

"(A) a schedule of anticipated exploration activities to be undertaken;

"(B) a description of equipment to be used for such activities;

"(C) the general location of each well to be drilled; and

"(D) such other information deemed pertinent by the Secretary.

"(3) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

"(d) PLAN REVISIONS; CONDUCT OF EXPLORATION ACTIVITIES.—

"(1) If a significant revision of an exploration plan under this subsection is submitted to the Secretary, the process to be used for the review of such revision shall be the same as set forth in subsection (c) of this section.

"(2) All exploration activities pursuant to any lease shall be conducted in accordance with an exploration plan or a revised plan which has been submitted to and reviewed by the Secretary.".

SEC. 6509. RESERVATION OF LANDS AND RIGHTS.

Section 12 of the Outer Continental Shelf Lands Act (43 U.S.C. 1341) is amended—

(1) in subsection (a) by adding at the end the following: "The President may partially or completely revise or revoke any prior withdrawal made by the President under the authority of this section. The President may not revise or revoke a withdrawal that was initiated by a petition from a State and approved by the Secretary of the Interior under subsection (h). A withdrawal by the President may be for a term not to exceed 10 years. In considering a potential withdrawal under this subsection, to the maximum extent practicable the President shall accommodate competing interests and potential uses of the outer Continental Shelf.";

(2) by adding at the end the following:

"(g) OPTION TO PETITION FOR LEASING WITHIN CERTAIN AREAS OF THE OUTER CONTINENTAL SHELF.—

"(1) PROHIBITION AGAINST LEASING.—Except as otherwise provided in this subsection, prior to June 30, 2012, the Secretary shall not offer for leasing for oil and gas, or for natural gas, any area withdrawn from disposition by leasing in the Atlantic OCS Region or the Pacific OCS Region, or the Gulf of Mexico OCS Region Eastern Planning Area, as depicted on the map referred to within this paragraph, under the 'Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition', 34 Weekly Comp. Pres. Doc. 1111, dated June 12, 1998, or any area not withdrawn under that Memorandum that is included within the Gulf of Mexico OCS Region Eastern Planning Area as indicated on the map entitled 'Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas' or within the Florida Straits Planning Area as indicated on the map entitled 'Atlantic OCS Region State Adjacent Zones and OCS Planning Areas', both of which are dated September 2005 and on file in the Office of the Director, Minerals Management Service.

"(2) REVOCATION OF WITHDRAWAL.—The provisions of the 'Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition', 34 Weekly Comp. Pres. Doc. 1111, dated June 12, 1998, are hereby revoked and are no longer in effect regarding any areas included within the Gulf of Mexico OCS Region Central Planning Area as indicated on the map entitled 'Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas' dated September 2005 and on file in the Office of the Director, Minerals Management Service. The 2002–2007 5-Year Outer Continental Shelf Oil and Gas Leasing Program is hereby amended to include the areas added to the Gulf of Mexico OCS Region Central Planning Area by this Act to the extent that such areas were included within the original boundaries of proposed Lease Sale 181. The amendment to such leasing program includes two sales in such additional areas, one of which shall be held in January 2007 and one of which shall be held in June 2007. The Final Environmental Impact Statement prepared for this area for Lease Sale 181 shall be deemed sufficient for all purposes for each lease sale in which such area is offered for lease during the 2002–2007 5-Year Outer Continental Shelf Oil and Gas Leasing Program without need for supplementation. Any tract only partially added to the Gulf of Mexico OCS Region Central Planning Area by this Act shall be eligible for leasing of the part of such tract that is included within the Gulf of Mexico OCS Region Central Planning Area, and the remainder of such tract that lies outside of the Gulf of Mexico OCS Region Central Planning Area may be developed and produced by the lessee of such partial tract using extended reach or similar drilling from a location on a leased area.

"(3) PETITION FOR LEASING.—

"(A) IN GENERAL.—The Governor of the State, upon concurrence of its legislature, may submit to the Secretary a petition requesting that the Secretary make available any area that is within the State's Adjacent Zone, included

within the provisions of paragraph (1), and that (i) is greater than 25 miles from any point on the coastline of a Neighboring State for the conduct of offshore leasing, pre-leasing, and related activities with respect to natural gas leasing; or (ii) is greater than 50 miles from any point on the coastline of a Neighboring State for the conduct of offshore leasing, pre-leasing, and related activities with respect to oil and gas leasing. The Adjacent State may also petition for leasing any other area within its Adjacent Zone if leasing is allowed in the similar area of the Adjacent Zone of the applicable Neighboring State, or if not allowed, if the Neighboring State, acting through its Governor, expresses its concurrence with the petition. The Secretary shall only consider such a petition upon making a finding that leasing is allowed in the similar area of the Adjacent Zone of the applicable Neighboring State or upon receipt of the concurrence of the Neighboring State. The date of receipt by the Secretary of such concurrence by the Neighboring State shall constitute the date of receipt of the petition for that area for which the concurrence applies. A petition for leasing any part of the Alabama Adjacent Zone that is a part of the Gulf of Mexico Eastern Planning Area, as indicated on the map entitled 'Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas' which is dated September 2005 and on file in the Office of the Director, Minerals Management Service, shall require the concurrence of both Alabama and Florida.

"(B) LIMITATIONS ON LEASING.—In its petition, a State with an Adjacent Zone that contains leased tracts may condition oil and gas, or natural gas, new leasing for tracts within 25 miles of the coastline by—

"(i) requiring a net reduction in the number of production platforms;

"(ii) requiring a net increase in the average distance of production platforms from the coastline;

"(iii) limiting permanent surface occupancy on new leases to areas that are more than 10 miles from the coastline;

"(iv) limiting some tracts to being produced from shore or from platforms located on other tracts; or

"(v) other conditions that the Adjacent State may deem appropriate as long as the Secretary does not determine that production is made economically or technically impracticable or otherwise impossible.

"(C) ACTION BY SECRETARY.—Not later than 90 days after receipt of a petition under subparagraph (A), the Secretary shall approve the petition, unless the Secretary determines that leasing the area would probably cause serious harm or damage to the marine resources of the State's Adjacent Zone. Prior to approving the petition, the Secretary shall complete an environmental assessment that documents the anticipated environmental effects of leasing in the area included within the scope of the petition.

"(D) FAILURE TO ACT.—If the Secretary fails to approve or deny a petition in accordance with subparagraph (C) the petition shall be considered to be approved 90 days after receipt of the petition.

"(E) AMENDMENT OF THE 5-YEAR LEASING PROGRAM.—Notwithstanding section 18, within 180 days of the approval of a petition under subparagraph (C) or (D), the Secretary shall amend the current 5-Year Outer Continental Shelf Oil and Gas Leasing Program to include a lease sale or sales for the entire area covered by the approved petition, unless there are, from the date of approval, fewer than 12 months remaining in the current 5-Year Leasing Program in which case the Secretary shall include the areas covered by the approved petition within lease sales under the next 5-Year Leasing Program. For purposes of amending the 5-Year Program in accordance with this section, further consultations with States shall not be required. The environmental assessment performed under the provisions of the National Environmental Policy Act of 1969 to assess the effects of approving the petition shall be sufficient to amend the 5-Year Leasing Program.

"(h) OPTION TO PETITION FOR EXTENSION OF WITHDRAWAL FROM LEASING WITHIN CERTAIN AREAS OF THE OUTER CONTINENTAL SHELF.—

"(1) IN GENERAL.—The Governor of the State, upon the concurrence of its legislature, may submit to the Secretary petitions requesting that the Secretary extend for a period of time of up to 5 years for each petition the withdrawal from leasing for all or part of any area within the State's Adjacent Zone within 125 miles of the coastline that is subject to subsection (g)(1). A State may petition multiple times for any particular area but not more than once per calendar year for any particular area. A State must submit separate petitions, with separate votes by its legislature, for areas within 50 miles of the coastline, areas more than 50 miles but not exceeding 100 miles from the coastline, and areas exceeding 100 miles but not exceeding 125 miles from the coastline. A petition of a State may apply to either oil and gas leasing or natural gas leasing, or both, and may request some areas to be withdrawn from all leasing and some areas to be withdrawn only from one type of leasing. A petition for extending the withdrawal from leasing of any part of the Alabama Adjacent Zone that is a part of the Gulf of Mexico OCS Region Eastern Planning Area, as indicated on the map entitled 'Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas' which is dated September 2005 and on file in the Office of the Director, Minerals Management Service, may be made by either Alabama or Florida.

"(2) ACTION BY SECRETARY.—The Secretary shall perform an environmental assessment under the National Environmental Policy Act of 1969 to assess the effects of approving the petition under paragraph (1). Not later than 90 days after receipt of the petition, the Secretary shall approve the petition, unless the Secretary determines that extending the withdrawal from

leasing would probably cause serious harm or damage to the marine resources of the State's Adjacent Zone. The Secretary shall not approve a petition from a State that extends the remaining period of a withdrawal of an area from leasing for a total of more than 10 years. However, the Secretary may approve petitions to extend the withdrawal from leasing of any area ad infinitum, subject only to the limitations contained in this subsection.

"(3) FAILURE TO ACT.—If the Secretary fails to approve or deny a petition in accordance with paragraph (2) the petition shall be considered to be approved 90 days after receipt of the petition.".

SEC. 6510. OUTER CONTINENTAL SHELF LEASING PROGRAM.

Section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is amended—

(1) in subsection (a), by adding at the end of paragraph (3) the following: "The Secretary shall, in each 5-year program, include lease sales that when viewed as a whole propose to offer for oil and gas or natural gas leasing at least 75 percent of the available unleased acreage within each OCS Planning Area. Available unleased acreage is that portion of the outer Continental Shelf that is not under lease at the time of the proposed lease sale, and has not otherwise been made unavailable for leasing by law.";

(2) in subsection (c), by striking so much as precedes paragraph (3) and inserting the following:

"(c)(1) During the preparation of any proposed leasing program under this section, the Secretary shall consider and analyze leasing throughout the entire Outer Continental Shelf without regard to any other law affecting such leasing. During this preparation the Secretary shall invite and consider suggestions from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any coastal State. The Secretary may also invite or consider any suggestions from the executive of any local government in a coastal State that have been previously submitted to the Governor of such State, and from any other person. Further, the Secretary shall consult with the Secretary of Defense regarding military operational needs in the outer Continental Shelf. The Secretary shall work with the Secretary of Defense to resolve any conflicts that might arise regarding offering any area of the outer Continental Shelf for oil and gas or natural gas leasing. If the Secretaries are not able to resolve all such conflicts, any unresolved issues shall be elevated to the President for resolution.

"(2) After the consideration and analysis required by paragraph (1), including the consideration of the suggestions received from any interested Federal agency, the Federal Trade Commission, the Governor of any coastal State, any local government of a coastal State, and any other person, the Secretary shall publish in the Federal Register a proposed leasing program accompanied by a draft environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969. After the publishing of the proposed leasing program and during the comment period provided for on the draft environmental impact statement, the Secretary

shall submit a copy of the proposed program to the Governor of each affected State for review and comment. The Governor may solicit comments from those executives of local governments in the Governor's State that the Governor, in the discretion of the Governor, determines will be affected by the proposed program. If any comment by such Governor is received by the Secretary at least 15 days prior to submission to the Congress pursuant to paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating the Secretary's reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress."; and

(3) by adding at the end the following:

"(i) PROJECTION OF STATE AND LOCAL GOVERNMENT SHARES OF OCS RECEIPTS.—Concurrent with the publication of the scoping notice at the beginning of the development of each 5-year Outer Continental Shelf oil and gas leasing program, or as soon thereafter as possible, the Secretary shall provide to each coastal State, and coastal political subdivisions thereof, a best-efforts projection of the OCS Receipts that the Secretary expects will be shared with each coastal State, and its coastal political subdivisions, using the assumption that the unleased tracts within the State's Adjacent Zone are fully made available for leasing, including long-term projected OCS Receipts. In addition, the Secretary shall include a macroeconomic estimate of the impact of such leasing on the national economy and each State's economy, including investment, jobs, revenues, personal income, and other categories.".

SEC. 6511. COORDINATION WITH ADJACENT STATES.

Section 19 of the Outer Continental Shelf Lands Act (43 U.S.C. 1345) is amended—

(1) in subsection (a) in the first sentence by inserting ", for any tract located within the Adjacent State's Adjacent Zone," after "government"; and

(2) by adding the following:

"(f)(1) No Federal agency may permit or otherwise approve, without the concurrence of the Adjacent State, the construction of a crude oil or petroleum products (or both) pipeline within the part of the Adjacent State's Adjacent Zone that is not available by law for oil and gas or natural gas leasing, except that such a pipeline may be approved to pass through such Adjacent Zone if at least 50 percent of the production projected to be carried by the pipeline within its first 10 years of operation is from areas of the Adjacent States Adjacent Zone.

"(2) No State may prohibit the construction within its Adjacent Zone or its State waters of a natural gas pipeline that will transport natural gas produced from the outer Continental Shelf. However, an Adjacent State may prevent a proposed natural gas pipeline landing location if it proposes two alternate landing locations in the Adjacent State, acceptable to the Adjacent State, located within 50 miles on either side of the proposed landing location.".

SEC. 6512. ENVIRONMENTAL STUDIES.

Section 20(d) of the Outer Continental Shelf Lands Act (43 U.S.C. 1346) is amended—

(1) by inserting "(1)" after "(d)"; and

(2) by adding at the end the following:

"(2) For all programs, lease sales, leases, and actions under this Act, the following shall apply regarding the application of the National Environmental Policy Act of 1969:

"(A) Granting or directing lease suspensions and the conduct of all preliminary activities on outer Continental Shelf tracts, including seismic activities, are categorically excluded from the need to prepare either an environmental assessment or an environmental impact statement, and it shall not be required to document why no exceptions to the categorical exclusion apply for activities conducted under the authority of this Act.

"(B) The environmental impact statement developed in support of each 5-year oil and gas leasing program provides the environmental analysis for all lease sales to be conducted under the program and such sales shall not be subject to further environmental analysis.

"(C) Exploration plans shall not be subject to any requirement to prepare an environmental impact statement, and the Secretary may find that exploration plans are eligible for categorical exclusion due to the impacts already being considered within an environmental impact statement or due to mitigation measures included within the plan.

"(D) Within each OCS Planning Area, after the preparation of the first development and production plan environmental impact statement for a leased tract within the Area, future development and production plans for leased tracts within the Area shall only require the preparation of an environmental assessment unless the most recent development and production plan environmental impact statement within the Area was finalized more than 10 years prior to the date of the approval of the plan, in which case an environmental impact statement shall be required.".

SEC. 6513. REVIEW OF OUTER CONTINENTAL SHELF DEVELOPMENT AND PRODUCTION PLANS.

Section 25 of the Outer Continental Shelf Lands Act (43 U.S.C. 1351(a)) is amended to read as follows:

"SEC. 25. REVIEW OF OUTER CONTINENTAL SHELF DEVELOPMENT AND PRODUCTION PLANS.

"(a) DEVELOPMENT AND PRODUCTION PLANS; SUBMISSION TO SECRETARY; STATEMENT OF FACILITIES AND OPERATION; SUBMISSION TO GOVERNORS OF AFFECTED STATES AND LOCAL GOVERNMENTS.—

"(1) Prior to development and production pursuant to an oil and gas lease issued on or after September 18, 1978, for any area of the outer Continental Shelf, or issued or maintained prior to September 18, 1978, for any area of the outer Continental Shelf, with respect to which no oil or gas has been discovered in paying quantities prior to September 18, 1978, the lessee shall submit a development and production plan (hereinafter in this section referred to as a 'plan') to the Secretary for review.

"(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by the lessee (whether or not owned or operated by such lessee) that will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

"(3) Except for any privileged or proprietary information (as such term is defined in regulations issued by the Secretary), the Secretary, within 30 days after receipt of a plan and statement, shall—

"(A) submit such plan and statement to the Governor of any affected State, and upon request to the executive of any affected local government; and

"(B) make such plan and statement available to any appropriate interstate regional entity and the public.

"(b) DEVELOPMENT AND PRODUCTION ACTIVITIES IN ACCORDANCE WITH PLAN AS LEASE REQUIREMENT.—After enactment of the Ocean State Options Act of 2005, no oil and gas lease may be issued pursuant to this Act in any region of the outer Continental Shelf, unless such lease requires that development and production activities be carried out in accordance with a plan that complies with the requirements of this section. This section shall also apply to leases that do not have an approved development and production plan as of the date of enactment of the Ocean State Options Act of 2005.

"(c) SCOPE AND CONTENTS OF PLAN.—A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

"(1) the general work to be performed;

"(2) a description of all facilities and operations located on the outer Continental Shelf that are proposed by the lessee or known by the lessee (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

"(3) the environmental safeguards to be implemented on the outer Continental Shelf and how such safeguards are to be implemented;

"(4) all safety standards to be met and how such standards are to be met;

"(5) an expected rate of development and production and a time schedule for performance; and

"(6) such other relevant information as the Secretary may by regulation require.

"(d) COMPLETENESS REVIEW OF THE PLAN.—

"(1) Prior to commencing any activity under a development and production plan pursuant to any oil and gas lease issued or maintained under this Act, the lessee shall certify that the plan is consistent with the terms of the lease and that it is

consistent with all statutory and regulatory requirements in effect on the date of issuance of the lease. The plan shall include all required information and documentation required under subsection (c).

"(2) The Secretary shall review the plan for completeness within 30 days of submission. If the Secretary finds that the plan is not complete, the Secretary shall notify the lessee with a detailed explanation of such modifications of such plan as are necessary to achieve completeness. The Secretary shall have 30 days to review a modified plan for completeness.

"(e) REVIEW FOR CONSISTENCY OF THE PLAN.—

"(1) After a determination that a plan is complete, the Secretary shall have 120 days to conduct a review of the plan, to ensure that it is consistent with the terms of the lease, and that it is consistent with all such statutory and regulatory requirements applicable to the lease. If the Secretary finds that the plan is not consistent, the Secretary shall notify the lessee with a detailed explanation of such modifications of such plan as are necessary to achieve consistency.

"(2) The Secretary shall have 120 days to review a modified plan.

"(3) The lessee shall not conduct any activities under the plan during any 120-day review period, or thereafter until the plan has been modified to achieve compliance as so notified.

"(4) After review by the Secretary provided for by this section, a lessee may operate pursuant to the plan without further review or approval by the Secretary.

"(f) REVIEW OF REVISION OF THE APPROVED PLAN.—The lessee may submit to the Secretary any revision of a plan if the lessee determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee, or is otherwise not inconsistent with the provisions of this Act, to the extent such revision is consistent with protection of the human, marine, and coastal environments. The process to be used for the review of any such revision shall be the same as that set forth in subsections (d) and (e).

"(g) CANCELLATION OF LEASE ON FAILURE TO SUBMIT PLAN OR COMPLY WITH A PLAN.—Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with a plan, the lease may be canceled in accordance with section 5(c) and (d). Termination of a lease because of failure to comply with a plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

"(h) PRODUCTION AND TRANSPORTATION OF NATURAL GAS; SUBMISSION OF PLAN TO FEDERAL ENERGY REGULATORY COMMISSION; IMPACT STATEMENT.—If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Energy Regulatory Commission that portion of such plan that relates to the facilities for transportation of natural gas. The Secretary and the Federal Energy Regulatory Commission shall agree as to which of them shall pre-

pare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) applicable to such portion of such plan, or conduct studies as to the effect on the environment of implementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting such studies pursuant to such agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Energy Regulatory Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717f), may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary, in consultation with the Federal Energy Regulatory Commission, shall promulgate rules to implement this subsection, but the Federal Energy Regulatory Commission shall retain sole authority with respect to rules and procedures applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.".

SEC. 6514. FEDERAL ENERGY NATURAL RESOURCES ENHANCEMENT FUND ACT OF 2005.

(a) SHORT TITLE.—This section may be cited as the "Federal Energy Natural Resources Enhancement Fund Act of 2005".

(b) FINDINGS.—The Congress finds the following:

(1) Energy and minerals exploration, development, and production on Federal onshore and offshore lands, including bio-based fuel, natural gas, minerals, oil, geothermal, and power from wind, waves, currents, and thermal energy, involves significant outlays of funds by Federal and State wildlife, fish, and natural resource management agencies for environmental studies, planning, development, monitoring, and management of wildlife, fish, air, water, and other natural resources.

(2) State wildlife, fish, and natural resource management agencies are funded primarily through permit and license fees paid to the States by the general public to hunt and fish, and through Federal excise taxes on equipment used for these activities.

(3) Funds generated from consumptive and recreational uses of wildlife, fish, and other natural resources currently are inadequate to address the natural resources related to energy and minerals development on Federal onshore and offshore lands.

(4) Funds available to Federal agencies responsible for managing Federal onshore and offshore lands and Federal-trust wildlife and fish species and their habitats are inadequate to address the natural resources related to energy and minerals development on Federal onshore and offshore lands.

(5) Receipts derived from sales, bonus bids, and royalties under the mineral leasing laws of the United States are paid to the Treasury through the Minerals Management Service of the Department of the Interior.

(6) None of the receipts derived from sales, bonus bids, and royalties under the minerals leasing laws of the United States are paid to the Federal or State agencies to examine, monitor, and manage wildlife, fish, air, water, and other natural resources related to natural gas, oil, and mineral exploration and development.

(c) PURPOSES.—It is the purpose of this section to—

(1) establish a fund for the monitoring and management of wildlife and fish, and their habitats, and air, water, and other natural resources related to energy and minerals development on Federal onshore and offshore lands;

(2) make available receipts derived from sales, bonus bids, and royalties from onshore and offshore gas, mineral, oil, and any additional form of energy exploration and development under the laws of the United States for the purposes of such fund;

(3) distribute funds from such fund each fiscal year to the Secretary of the Interior and the States; and

(4) use the distributed funds to secure the necessary trained workforce or contractual services to conduct environmental studies, planning, development, monitoring, and post-development management of wildlife and fish and their habitats and air, water, and other natural resources that may be related to bio-based fuel, gas, mineral, oil, wind, or other energy exploration, development, transportation, transmission, and associated activities on Federal onshore and offshore lands, including, but not limited to—

(A) pertinent research, surveys, and environmental analyses conducted to identify any impacts on wildlife, fish, air, water, and other natural resources from energy and mineral exploration, development, production, and transportation or transmission;

(B) projects to maintain, improve, or enhance wildlife and fish populations and their habitats or air, water, or other natural resources, including activities under the Endangered Species Act of 1973;

(C) research, surveys, environmental analyses, and projects that assist in managing, including mitigating either onsite or offsite, or both, the impacts of energy and mineral activities on wildlife, fish, air, water, and other natural resources; and

(D) projects to teach young people to live off the land.

(d) DEFINITIONS.—In this section:

(1) ENHANCEMENT FUND.—The term "Enhancement Fund" means the Federal Energy Natural Resources Enhancement Fund established by subsection (e).

(2) STATE.—The term "State" means the State government agency primarily responsible for fish and wildlife trust resources within a State.

(e) ESTABLISHMENT AND USE OF FEDERAL ENERGY NATURAL RESOURCES ENHANCEMENT FUND.—

(1) ENHANCEMENT FUND.—There is established in the Treasury a separate account to be known as the "Federal Energy Natural Resources Enhancement Fund".

(2) FUNDING.—The Secretary of the Treasury shall deposit in the Enhancement Fund—

(A) such sums as are provided by sections 9(b)(4)(A)(ii), 9(b)(4)(B)(ii), 9(c)(4)(A)(ii), and 9(c)(4)(B)(ii) of the Outer Continental Shelf Lands Act, as amended by this Act;

(B)(i) during the period of October 1, 2006, through September 30, 2015, 0.5 percent of all sums paid into the Treasury under section 35 of the Mineral Leasing Act (30 U.S.C. 191), and

(ii) beginning October 1, 2015, and thereafter, 2.5 percent of all sums paid into the Treasury under section 35 of the Mineral Leasing Act (30 U.S.C. 191); and

(C)(i) during the period of October 1, 2006, through September 30, 2015, 0.5 percent of all sums paid into the Treasury from receipts derived from bonus bids and royalties from other mineral leasing on public lands, and

(ii) beginning October 1, 2015, and thereafter, 2.5 percent of all sums paid into the Treasury from receipts derived from bonus bids and royalties from other mineral leasing on public lands.

(3) INVESTMENTS.—The Secretary of the Treasury shall invest the amounts deposited under paragraph (2) and all accrued interest on the amounts deposited under paragraph (2) only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(4) PAYMENT TO SECRETARY OF THE INTERIOR.—

(A) IN GENERAL.—Beginning with fiscal year 2007, and in each fiscal year thereafter, one-third of amounts deposited into the Enhancement Fund, together with the interest thereon, shall be available, without fiscal year limitations, to the Secretary of the Interior for use for the purposes described in (c)(4).

(B) WITHDRAWALS AND TRANSFER OF FUNDS.—The Secretary of the Treasury shall withdraw such amounts from the Enhancement Fund as the Secretary of the Interior may request, subject to the limitation in (A), and transfer such amounts to the Secretary of the Interior to be used, at the discretion of the Secretary of the Interior, by the Minerals Management Service, the Bureau of Land Management, and the United States Fish and Wildlife Service for use for the purposes described in subsection (c)(4).

(5) PAYMENT TO STATES.—

(A) IN GENERAL.—Beginning with fiscal year 2007, and in each fiscal year thereafter, two-thirds of amounts deposited into the Enhancement Fund, together with the interest thereon, shall be available, without fiscal year limitations, to the States for use for the purposes described in (c)(4).

(B) WITHDRAWALS AND TRANSFER OF FUNDS.—Within the first 90 days of each fiscal year, the Secretary of the Treasury shall withdraw amounts from the Enhancement Fund and transfer such amounts to the States based on the proportion of all receipts that were collected the previous fis-

cal year from Federal leases within the boundaries of each State and each State's outer Continental Shelf Adjacent Zone as determined in accordance with section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), as amended by this Act.

(C) USE OF PAYMENTS BY STATE.—Each State shall use the payments made under subparagraph (B) only for carrying out projects and programs for the purposes described in (c)(4).

(D) ENCOURAGE USE OF PRIVATE FUNDS BY STATE.—Each State shall use the payments made under subparagraph (B) to leverage private funds for carrying out projects for the purposes described in (c)(4).

(f) LIMITATION ON USE.—Amounts available under this section may not be used for the purchase of any interest in land.

(g) REPORTS TO CONGRESS.—

(1) IN GENERAL.—Beginning in fiscal year 2008 and continuing for each fiscal year thereafter, the Secretary of the Interior and each State receiving funds from the Enhancement Fund shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(2) REQUIRED INFORMATION.—Reports submitted to the Congress by the Secretary of the Interior and States under this subsection shall include the following information regarding expenditures during the previous fiscal year:

(A) A summary of pertinent scientific research and surveys conducted to identify impacts on wildlife, fish, and other natural resources from energy and mineral developments.

(B) A summary of projects planned and completed to maintain, improve or enhance wildlife and fish populations and their habitats or other natural resources.

(C) A list of additional actions that assist, or would assist, in managing, including mitigating either onsite or offsite, or both, the impacts of energy and mineral development on wildlife, fish, and other natural resources.

(D) A summary of private (non-Federal) funds used to plan, conduct, and complete the plans and programs identified in paragraphs (2)(A) and (2)(B).

SEC. 6515. TERMINATION OF EFFECT OF LAWS PROHIBITING THE SPENDING OF APPROPRIATED FUNDS FOR CERTAIN PURPOSES.

All provisions of existing Federal law prohibiting the spending of appropriated funds to conduct oil and natural gas leasing and preleasing activities for any area of the outer Continental Shelf shall have no force or effect.

SEC. 6516. OUTER CONTINENTAL SHELF INCOMPATIBLE USE.

(a) IN GENERAL.—No Federal agency may permit construction or operation (or both) of any facility, or designate or maintain a restricted transportation corridor or operating area on the Federal outer Continental Shelf or in State waters, that will be incompatible with, as determined by the Secretary of the Interior, oil and gas or natural gas leasing and substantially full exploration and

production of tracts that are geologically prospective for oil or natural gas (or both), unless the facility, transportation corridor, or operating area, respectively, is to be located in an area of the outer Continental Shelf that is unavailable for oil and gas or natural gas leasing by operation of law.

(b) EXCEPTIONS.—The President may grant an exception to subsection (a) after a finding that such exception is required in the national interest.

SEC. 6517. REPURCHASE OF CERTAIN LEASES.

(a) AUTHORITY TO REPURCHASE AND CANCEL CERTAIN LEASES.—The Secretary of the Interior shall repurchase and cancel any Federal oil and gas, geothermal, coal, oil shale, tar sands, or other mineral lease, whether onshore or offshore, if the Secretary finds that such lease qualifies for repurchase and cancellation under the regulations authorized by this section.

(b) REGULATIONS.—Not later than 365 days after the date of the enactment of this Act, the Secretary shall publish a final regulation stating the conditions under which a lease referred to in subsection (a) would qualify for repurchase and cancellation, and the process to be followed regarding repurchase and cancellation. Such regulation shall include, but not be limited to, the following:

(1) The Secretary shall repurchase and cancel a lease after written request by the lessee upon a finding by the Secretary that—

(A) a request by the lessee for a required permit or other approval complied with applicable law, except the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), and terms of the lease and such permit or other approval was denied;

(B) a Federal agency failed to act on a request by the lessee for a required permit, other approval, or administrative appeal within a regulatory or statutory time-frame associated with the requested action, whether advisory or mandatory, or if none, within 180 days; or

(C) a Federal agency attached a condition of approval, without agreement by the lessee, to a required permit or other approval if such condition of approval was not mandated by Federal statute or regulation in effect on the date of lease issuance, or was not specifically allowed under the terms of the lease.

(2) A lessee shall not be required to exhaust administrative remedies regarding a permit request, administrative appeal, or other required request for approval for the purposes of this section.

(3) The Secretary shall make a final agency decision on a request by a lessee under this section within 180 days of request.

(4) Compensation to a lessee to repurchase and cancel a lease under this section shall be the amount that a lessee would receive in a restitution case for a material breach of contract.

(5) Compensation shall be in the form of a check or electronic transfer from the Department of the Treasury from funds deposited into miscellaneous receipts under the authority of the

same Act that authorized the issuance of the lease being repurchased.

(6) Failure of the Secretary to make a final agency decision on a request by a lessee under this section within 180 days of request shall result in a 10 percent increase in the compensation due to the lessee if the lease is ultimately repurchased.

(c) NO PREJUDICE.—This section shall not be interpreted to prejudice any other rights that the lessee would have in the absence of this section.

SEC. 6518. OFFSITE ENVIRONMENTAL MITIGATION.

Notwithstanding any other provision of law, any person conducting activities under the Mineral Leasing Act (30 U.S.C. 181 et seq.), the Geothermal Steam Act (30 U.S.C. 1001 et seq.), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.), the Weeks Act (16 U.S.C. 552 et seq.), the General Mining Act of 1872 (30 U.S.C. 22 et seq.), the Materials Act of 1947 (30 U.S.C. 601 et seq.), or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), may in satisfying any mitigation requirements associated with such activities propose mitigation measures on a site away from the area impacted and the Secretary of the Interior shall accept these proposed measures if the Secretary finds that they generally achieve the purposes for which mitigation measures appertained.

SEC. 6519. AMENDMENTS TO THE MINERAL LEASING ACT.

Section 17(g) of the Mineral Leasing Act (30 U.S.C. 226(g)) is amended to read as follows:

"(g) REGULATION OF SURFACE-DISTURBING ACTIVITIES.—

"(1) REGULATION OF SURFACE-DISTURBING ACTIVITIES.—The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation of surface resources.

"(2) SUBMISSION OF EXPLORATION PLAN; COMPLETION REVIEW; COMPLIANCE REVIEW.—

"(A) Prior to beginning oil and gas exploration activities, a lessee shall submit an exploration plan to the Secretary of the Interior for review.

"(B) The Secretary shall review the plan for completeness within 10 days of submission.

"(C) In the event the exploration plan is determined to be incomplete, the Secretary shall notify the lessee in writing and specify the items or information needed to complete the exploration plan.

"(D) The Secretary shall have 10 days to review any modified exploration plan submitted by the lessee.

"(E) To be deemed complete, an exploration plan shall include, in the degree of detail to be determined by the Secretary by rule or regulation—

"(i) a drilling plan containing a description of the drilling program;

"(ii) the surface and projected completion zone location;

"(iii) pertinent geologic data;

"(iv) expected hazards, and proposed mitigation measures to address such hazards;

"(v) a schedule of anticipated exploration activities to be undertaken;

"(vi) a description of equipment to be used for such activities;

"(vii) a certification from the lessee stating that the exploration plan complies with all lease, regulatory and statutory requirements in effect on the date of the issuance of the lease;

"(viii) evidence that the lessee has secured an adequate bond, surety, or other financial arrangement prior to commencement of any surface disturbing activity;

"(ix) a plan that details the complete and timely reclamation of the lease tract; and

"(x) such other relevant information as the Secretary may by regulation require.

"(F) Upon a determination that the exploration plan is complete, the Secretary shall have 30 days from the date the plan is deemed complete to conduct a review of the plan.

"(G) If the Secretary finds the exploration plan is not consistent with all statutory and regulatory requirements in effect on the date of issuance of the lease, the Secretary shall notify the lessee with a detailed explanation of such modifications of the exploration plan as are necessary to achieve compliance.

"(H) The lessee shall not take any action under the exploration plan within a 30 day review period, or thereafter until the plan has been modified to achieve compliance as so notified.

"(I) After review by the Secretary provided by this subsection, a lessee may operate pursuant to the plan without further review or approval by the Secretary.

"(3) PLAN REVISIONS; CONDUCT OF EXPLORATION ACTIVITIES.—

"(A) If a significant revision of an exploration plan under this subsection is submitted to the Secretary, the process to be used for the review of such revision shall be the same as set forth in paragraph (1) of this subsection.

"(B) All exploration activities pursuant to any lease shall be conducted in accordance with an exploration plan that has been submitted to and reviewed by the Secretary or a revision of such plan.

"(4) SUBMISSION OF DEVELOPMENT AND PRODUCTION PLAN; COMPLETENESS REVIEW; COMPLIANCE REVIEW.—

"(A) Prior to beginning oil and gas development and production activities, a lessee shall submit a development and exploration plan to the Secretary of the Interior. Upon submission, such plans shall be subject to a review for completeness.

"(B) The Secretary shall review the plan for completeness within 30 days of submission.

"(C) In the event a development and production plan is determined to be incomplete, the Secretary shall notify the lessee in writing and specify the items or information needed to complete the plan.

"(D) The Secretary shall have 30 days to review for completeness any modified development and production plan submitted by the lessee.

"(E) To be deemed complete, a development and production plan shall include, in the degree of detail to be determined by the Secretary by rule or regulation—

"(i) a drilling plan containing a description of the drilling program;

"(ii) the surface and projected completion zone location;

"(iii) pertinent geologic data;

"(iv) expected hazards, and proposed mitigation measures to address such hazards;

"(v) a statement describing all facilities and operations proposed by the lessee and known by the lessee (whether or not owned or operated by such lessee) that shall be constructed or utilized in the development and production of oil or gas from the leases areas, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations;

"(vi) the general work to be performed;

"(vii) the environmental safeguards to be implemented in connection with the development and production and how such safeguards are to be implemented;

"(viii) all safety standards to be met and how such standards are to be met;

"(ix) an expected rate of development and production and a time schedule for performance;

"(x) a certification from the lessee stating that the development and production plan complies with all lease, regulatory, and statutory requirements in effect on the date of issuance of the lease;

"(xi) evidence that the lessee has secured an adequate bond, surety, or other financial arrangement prior to commencement of any surface disturbing activity;

"(xii) a plan that details the complete and timely reclamation of the lease tract; and

"(xiii) such other relevant information as the Secretary may by regulation require.

"(F) Upon a determination that the development and production plan is complete, the Secretary shall have 120 days from the date the plan is deemed complete to conduct a review of the plan.

"(G) If the Secretary finds the development and production plan is not consistent with all statutory and regulatory requirements in effect on the date of issuance of the lease, the Secretary shall notify the lessee with a detailed

explanation of such modifications of the development and production plan as are necessary to achieve compliance.

"(H) The lessee shall not take any action under the development and production plan within a 120 day review period, or thereafter until the plan has been modified to achieve compliance as so notified.

"(5) PLAN REVISIONS; CONDUCT OF DEVELOPMENT AND PRODUCTION ACTIVITIES.—

"(A) If a significant revision of a development and production plan under this subsection is submitted to the Secretary, the process to be used for the review of such revision shall be the same as set forth in paragraph (4) of this subsection.

"(B) All development and production activities pursuant to any lease shall be conducted in accordance with an exploration plan that has been submitted to and reviewed by the Secretary or a revision of such plan.

"(6) CANCELLATION OF LEASE ON FAILURE TO SUBMIT PLAN OR COMPLY WITH APPROVED PLAN.—Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with a plan, the lease may be canceled in accordance with section 31. Termination of a lease because of failure to comply with a plan, including required modifications or revisions, shall not entitle a lessee to any compensation.".

SEC. 6520. MINERALS MANAGEMENT SERVICE.

The bureau known as the "Minerals Management Service" in the Department of the Interior shall be known as the "National Ocean Energy and Royalty Service". The Director of such shall be assisted by only one deputy director, who shall be a non-career employee within the Senior Executive Service.

SEC. 6521. AUTHORITY TO USE DECOMMISSIONED OFFSHORE OIL AND GAS PLATFORMS AND OTHER FACILITIES FOR MARICULTURE, ARTIFICIAL REEF, SCIENTIFIC RESEARCH, OR OTHER USES.

(a) SHORT TITLE.—This section may be cited as the "Rigs to Reefs Act of 2005".

(b) IN GENERAL.—The Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.) is amended by inserting after section 9 the following:

"SEC. 10. USE OF DECOMMISSIONED OFFSHORE OIL AND GAS PLATFORMS AND OTHER FACILITIES FOR MARICULTURE, ARTIFICIAL REEF, SCIENTIFIC RESEARCH, OR OTHER USES.

"(a) IN GENERAL.—The Secretary shall issue regulations under which the Secretary may authorize use of an offshore oil and gas platform or other facility that is decommissioned from service for oil and gas purposes for culture of marine organisms, an artificial reef, scientific research, or any other use authorized under section 8(p).

"(b) TRANSFER REQUIREMENTS.—The Secretary shall not allow the transfer of a decommissioned offshore oil and gas platform or other facility to another person unless the Secretary is satisfied that the transferee is sufficiently bonded, endowed, or otherwise fi-

nancially able to fulfill its obligations, including but not limited to—

"(1) ongoing maintenance of the platform or other facility;

"(2) any liability obligations that might arise;

"(3) removal of the platform or other facility if determined necessary by the Secretary; and

"(4) any other requirements and obligations that the Secretary may deem appropriate by regulation.

"(c) PLUGGING AND ABANDONMENT.—The Secretary shall ensure that obligations of a lessee regarding the plugging and abandonment of wells are unaffected by implementation of this section.

"(d) POTENTIAL TO PETITION TO OPT-OUT OF REGULATIONS.—An Adjacent State acting through a resolution of its legislature, with concurrence of its Governor, may petition to opt-out of the application of regulations promulgated under this section to platforms and other facilities located in the area of its Adjacent Zone within 25 miles of the coastline. The Secretary is authorized to except such area from the application of such regulations, and shall approve such petition, unless the Secretary finds that approving the petition would probably cause serious harm or damage to the marine resources of the State's Adjacent Zone. Prior to acting on the petition, the Secretary shall complete an environmental assessment that documents the anticipated environmental effects of approving the petition.

"(e) LIMITATION ON LIABILITY.—A person that had used an offshore oil and gas platform or other facility for oil and gas purposes and that no longer has any ownership or control of the platform or other facility shall not be liable under Federal law for any costs or damages arising from such platform or other facility after the date the platform or other facility is used for any purpose under subsection (a), unless such costs or damages arise from—

"(1) use of the platform or other facility by the person for development or production of oil or gas; or

"(2) another act or omission of the person.

"(f) OTHER LEASING AND USE NOT AFFECTED.—This section, and the use of any offshore oil and gas platform or other facility for any purpose under subsection (a), shall not affect—

"(1) the authority of the Secretary to lease any area under this Act; or

"(2) any activity otherwise authorized under this Act.".

(c) DEADLINE FOR REGULATIONS.—The Secretary of the Interior shall issue regulations under subsection (b) by not later than 180 days after the date of the enactment of this Act.

(d) STUDY AND REPORT ON EFFECTS OF REMOVAL OF PLATFORMS.—Not later than one year after the date of enactment of this Act, the Secretary of the Interior, in consultation with other Federal agencies as the Secretary deems advisable, shall study and report to the Congress regarding how the removal of offshore oil and gas platforms and other facilities from the outer Continental Shelf would affect existing fish stocks and coral populations.

SEC. 6522. REPEAL OF REQUIREMENT TO CONDUCT COMPREHENSIVE INVENTORY OF OCS OIL AND NATURAL GAS RESOURCES.

The Energy Policy Act of 2005 (Public Law 109–58) is amended—

(1) by repealing section 357 (119 Stat. 720; 42 U.S.C. 15912); and

(2) in the table of contents in section 1(b), by striking the item relating to such section 357.

SEC. 6523. MINING AND PETROLEUM SCHOOLS.

(a) FEDERAL ENERGY AND MINERAL RESOURCES PROFESSIONAL DEVELOPMENT FUND.—

(1) PROFESSIONAL DEVELOPMENT FUND.—There is established in the Treasury a separate account to be known as the "Federal Energy And Mineral Resources Professional Development Fund" (in this section referred to as the "Professional Development Fund").

(2) FUNDING.—The Secretary of the Treasury shall deposit in the Professional Development Fund—

(A) such sums as are provided by sections 9(b)(4)(A)(iii), 9(b)(4)(B)(iii), 9(c)(4)(A)(iii), and 9(c)(4)(B)(iii) of the Outer Continental Shelf Lands Act, as amended by this Act;

(B)(i) during the period of October 1, 2006, through September 30, 2015, 0.4 percent of all sums paid into the Treasury under section 35 of the Mineral Leasing Act (30 U.S.C. 191), and

(ii) beginning October 1, 2015, and thereafter, 2.0 percent of all sums paid into the Treasury under section 35 of the Mineral Leasing Act (30 U.S.C. 191);

(C)(i) during the period of October 1, 2006, through September 30, 2015, 0.4 percent of all sums paid into the Treasury from receipts derived from bonus bids and royalties from other mineral leasing on public lands, and

(ii) beginning October 1, 2015, and thereafter, 2.0 percent of all sums paid into the Treasury from receipts derived from bonus bids and royalties from other mineral leasing on public lands;

(D) donations received under paragraph (4);

(E) amounts referred to in section 2325(d)(1) of the Revised Statutes, as amended by this Act; and

(F) funds received under section 10 of the Energy and Mineral Schools Reinvestment Act, as amended by this Act.

(3) INVESTMENTS.—The Secretary of the Treasury shall invest the amounts deposited under paragraph (2) and all accrued interest on the amounts deposited under paragraph (2) only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(4) DONATIONS.—The Secretary of the Interior may solicit and accept donations of funds for deposit into the Professional Development Fund.

(5) AVAILABILITY TO SECRETARY OF THE INTERIOR.—

(A) IN GENERAL.—Beginning with fiscal year 2007, and in each fiscal year thereafter, the amounts deposited into the Professional Development Fund, together with the interest thereon, shall be available, without fiscal year limitations, to the Secretary of the Interior for use to carry out the Energy and Mineral Schools Reinvestment Act.

(B) WITHDRAWALS AND TRANSFER OF FUNDS.—The Secretary of the Treasury shall withdraw such amounts from the Professional Development Fund as the Secretary of the Interior may request and transfer such amounts to the Secretary of the Interior to be used, at the discretion of the Secretary to carry out the Energy and Mineral Schools Reinvestment Act.

(b) MAINTENANCE AND RESTORATION OF EXISTING AND HISTORIC PETROLEUM AND MINING ENGINEERING PROGRAMS.—Public Law 98–409 (30 U.S.C. 1221 et seq.) is amended to read as follows:

"SEC. 1. SHORT TITLE.

"This Act may be cited as the 'Energy and Mineral Schools Reinvestment Act'.

"SEC. 2. POLICY.

"It is the policy of the United States to maintain the human capital needed to preserve and foster the economic, energy, and mineral resources security of the United States. The petroleum and mining engineering programs and the applied geology and geophysics programs at State chartered schools, universities, and institutions that produce human capital are national assets and should be assisted with Federal funds to ensure their continued health and existence.

"SEC. 3. MAINTAINING AND RESTORING HISTORIC AND EXISTING PETROLEUM AND MINING ENGINEERING EDUCATION PROGRAMS.

"(a) Using the funds in the Federal Energy And Mineral Resources Professional Development Fund, the Secretary of the Interior (in this Act referred to as the 'Secretary') shall provide funds to each historic and existing State-chartered recognized petroleum or mining school to assist such schools, universities, and institutions in maintaining programs in petroleum, mining, and mineral engineering education and research. All funds shall be directed only to these programs and shall be subject to the conditions of this section. Such funds shall not be less than 35 percent of the annual outlay of funds under this Act.

"(b) In this Act the term 'historic and existing State-chartered recognized petroleum or mining school' means a school, university, or educational institution with the presence of an engineering program meeting the specific program criteria, established by the member societies of ABET, Inc., for petroleum, mining, or mineral engineering and that is accredited on the date of enactment of the Ocean State Options Act of 2005 by ABET, Inc.

"(c) It shall be the duty of each school, university, or institution receiving funds under this section to provide for the training of undergraduate and graduate petroleum, mining, and mineral engineers through research, investigations, demonstrations, and experiments. All such work shall be carried out in a manner that will enhance undergraduate education.

"(d) Each school, university, or institution receiving funds under this Act shall maintain the program for which the funds are provided for 10 years after the date of the first receipt of such funds take steps agreed to by the Secretary, to increase the number of

undergraduate students enrolled in and completing the programs of study in petroleum, mining, and mineral engineering.

"(e) The research, investigation, demonstration, experiment, and training authorized by this section may include development and production of conventional and non-conventional fuel resources, the production of metallic and non-metallic mineral resources, and the production of stone, sand, and gravel. In all cases the work carried out with funds made available under this Act shall include a significant opportunity for participation by undergraduate students.

"(f) Research funded by this Act related to energy and mineral resource development and production may include studies of petroleum, mining, and mineral extraction and immediately related beneficiation technology; mineral economics, reclamation technology and practices for active operations, and the development of re-mining systems and technologies to facilitate reclamation that fosters the ultimate recovery of resources at abandoned petroleum, mining, and aggregate production sites.

"(g) Grants for basic science and engineering studies and research shall not require additional participation by funding partners. Grants for studies to demonstrate the proof of concept for science and engineering or the demonstration of feasibility and implementation shall include participation by industry and may include funding from other Federal agencies.

"(h)(1) No funds made available under this section shall be applied to the acquisition by purchase or lease of any land or interests therein, or the rental, purchase, construction, preservation, or repair of any building.

"(2) Funding made available under this section may be used with the express approval of the Secretary for proposals that will provide for maintaining or upgrading of existing laboratories and laboratory equipment. Funding for such maintenance shall not be used for university overhead expenses.

"(3) Funding made available under this Act may be used for maintaining and upgrading university-owned mines and oil and gas drilling rigs used for undergraduate and graduate training and mine safety training for the industry. All requests for funding such mines and oil and gas drilling rigs must demonstrate that they have been owned by the university for 5 years prior to the date of enactment of the Ocean State Options Act of 2005 and have been actively used for instructional purposes during that time.

"(4) Any funding made available under this section for research, investigation, demonstration, experiment, or training shall not be used for university overhead charges in excess of 10 percent of the amount authorized by the Secretary.

"SEC. 4. FORMER PETROLEUM AND MINING ENGINEERING PROGRAMS.

"A school, university, or educational institution that formerly met the requirements of section 3(b) of this Act immediately before the date of the enactment of the Offshore State Options Act of 2004 shall be eligible for funding under this Act only if it—

"(1) establishes a petroleum, mining, or mineral engineering program that meets the specific program criteria and is accredited as such by ABET, Inc.;

"(2) agrees to the conditions of subsections (c), (d), and (e) of section 3 and the Secretary, as advised by the Committee established by section 11, determines that the program will strengthen and increase the number of nationally available, well-qualified faculty members in petroleum, mining, and mineral engineering; and

"(3) agrees to maintain the accredited program for 10 years after the date of the first receipt of funds under this Act.

"SEC. 5. FUNDING OF CONSORTIA OF HISTORIC AND EXISTING SCHOOLS.

"(a) Where appropriate, the Secretary may make funds available to consortia of schools, universities, or institutions that include the historic and existing petroleum and mining schools to meet the necessary expenses for purposes of—

"(1) specific energy and mineral research projects of broad application that could not otherwise be undertaken, including the expenses of planning and coordinating regional petroleum, mining, and mineral engineering projects by two or more schools; and

"(2) research into any aspects of petroleum, mining, or mineral engineering problems that are related to the mission of the Department of the Interior and that are considered by the Committee to be desirable.

"(b) Each application for funds under subsection (a) shall state, among other things, the nature of the project to be undertaken; the period during which it will be pursued; the qualifications of the personnel who will direct and conduct it; the estimated costs; the importance of the project to the Nation, region, or States concerned; its relation to other known research projects theretofore pursued or being pursued; the extent to which the proposed project will maximize the opportunity for the training of undergraduate petroleum, mining, and mineral engineers; and the extent of participation by nongovernmental sources in the project.

"(c) No funds shall be made available under this section except for a project approved by the Secretary. All funds shall be made available upon the basis of merit of the project, the need for the knowledge that it is expected to produce when completed, and the opportunity it provides for the undergraduate training of individuals as petroleum, mining, and mineral engineers.

"SEC. 6. SUPPORT FOR SCHOOLS WITH ENERGY AND MINERAL RESOURCE PROGRAMS IN PETROLEUM AND MINERAL EXPLORATION GEOLOGY, PETROLEUM GEOPHYSICS, OR MINING GEOPHYSICS.

"(a) Up to 20 percent of the annual outlay of funds under this Act may be granted to schools, universities, and institutions other than those described in sections 3, 4, and 5.

"(b) The Secretary, as advised by the Committee established by section 11, shall determine the eligibility of a college or university to receive funding under this Act using criteria that include—

"(1) the presence of a substantial program of undergraduate and graduate instruction and research in petroleum geology, mineral exploration geology, economic geology, mining geology, petroleum geophysics, mining geophysics, geological engineer-

ing, or geophysical engineering that has a demonstrated history of achievement;

"(2) evidence of institutional commitment for the purposes of this Act that includes a significant opportunity for participation by undergraduate students;

"(3) evidence that such school, university, or institution has or can obtain significant industrial cooperation in activities within the scope of this Act;

"(4) agreement by the school, university, or institution to maintain the programs for which the funding is sought for the 10-year period beginning on the date the school, university, or institution first receives such funds; and

"(5) requiring that such funding shall be for the purposes set forth in subsections (e), (f), and (g) of section 3 and subject to the conditions set forth in section 3(h).

"SEC. 7. DESIGNATION OF FUNDS FOR SCHOLARSHIPS AND FELLOWSHIPS.

"(a) The Committee shall recommend to the Secretary the designation and utilization of not more than 30 percent of the annual outlay of funds under this Act for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

"(b) In order to receive a scholarship or a graduate fellowship, an individual student must be a lawful permanent resident of the United States or a United States citizen and must agree in writing to complete a course of studies and receive a degree in petroleum, mining, or mineral engineering, petroleum geology, mining and economic geology, petroleum and mining geophysics, or mineral economics.

"(c) The regulations required by section 9 shall require that an individual, in order to retain a scholarship or graduate fellowship, must continue in one of the course of studies listed in subsection (b) of this section, must remain in good academic standing, as determined by the school, institution, or university and must allow for reinstatement of the scholarship or graduate fellowship by the Secretary, upon the recommendation of the school or institution. Such regulations may also provide for recovery of funds from an individual who fails to complete any of the courses of study listed in subsection (b) of this section after notice that such completion is a requirement of receipt funding under this Act.

"SEC. 8. FUNDING CRITERIA FOR INSTITUTIONS.

"(a) Funds available under this Act shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by the Secretary. Each school, university, or institution that receives funds under this Act shall—

"(1) establish its plan to provide for the training of individuals as petroleum or mineral engineers and scientists under a curriculum appropriate to the field of mineral resources and mineral engineering and related fields;

"(2) establish policies and procedures that assure that Federal funds made available under this Act for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds,

be made available for purposes of this Act, and in no case supplant such funds; and

"(3) have an officer appointed by its governing authority who shall receive and account for all funds paid under this Act and shall make an annual report to the Secretary on or before the first day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under this Act during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary.

"(b) If any of the funds received by the authorized receiving officer of any institute under this Act are found by the Secretary to have been improperly diminished, lost, or misapplied, such funds shall be recovered by the Secretary.

"(c) Schools, universities, and institutions receiving funds under this Act are authorized and encouraged to plan and conduct programs under this Act in cooperation with each other and with such other agencies, business enterprises and individuals.

"SEC. 9. DUTIES OF SECRETARY.

"(a) The Secretary, acting through the Assistant Secretary for Land and Minerals Management, shall administer this Act and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions not later than 1 year after the enactment of the Ocean State Options Act of 2005.

"(b) The Secretary shall furnish such advice and assistance as will best promote the purposes of this Act, shall participate in coordinating research initiated under this Act, shall indicate to schools, universities, and institutions receiving funds under this Act such lines of inquiry that seem most important, and shall encourage and assist in the establishment and maintenance of cooperation by and between such schools, universities, and institutions and between them and other research organizations, the Department of the Interior, and other Federal agencies.

"(c) On or before the first day of July of each year beginning after the date of enactment of this sentence, schools, universities, and institutions receiving funds under this Act shall certify compliance with this Act. An individual granted a scholarship or fellowship with funds provided under this Act, shall through their respective school, university, or institution, advise the Secretary upon completion of the course of studies and the awarding of the degree within 30 days after the award. As needed the Secretary shall ascertain whether the requirements of this Act have been met by schools, universities, and institutions and individuals.

"SEC. 10. COORDINATION.

"(a) Nothing in this Act shall be construed to impair or modify the legal relationship existing between any of the schools, universities, and institutions under whose direction an institute is established with funds provided under this Act and the government of the State in which it is located. Nothing in this Act shall in any way be construed to authorize Federal control or direction of education at any school, university, or institution.

"(b) The programs authorized by this Act are intended to enhance the Nation's petroleum, mining, and mineral engineering education programs and to enhance educational programs in petroleum and mining exploration and to increase the number of individuals enrolled in and completing these programs. To achieve this intent, the Secretary and the Committee established by section 11 shall receive the continuing advice and cooperation of all agencies of the Federal Government concerned with the identification, exploration, and development energy and mineral resources.

"(c) Nothing in this Act is intended to give or shall be construed as giving the Secretary any authority over mining and mineral resources research conducted by any agency of the Federal Government, or as repealing or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with regard to mining and mineral resources.

"(d) The schools, universities, and institutions receiving funding under this Act shall generally make publicly available the information and reports on projects completed, in progress, or planned with funds provided under this Act. This information shall be made available on an annual basis. All uses, products, processes, patents, and other developments resulting from any research, demonstration, or experiment funded in whole or in part under this Act shall be made available promptly to the general public, subject to exception or limitation, if any, as the Secretary may find necessary in the public interest or national security. Schools, universities, and institutions receiving patents for inventions funded in whole or in part under this Act shall be governed by the applicable Federal law, except that one percent of gross revenues derived from such patents shall be paid by the schools and the institutions to the Federal Energy and Mineral Resources Professional Development Fund established by section 6523(a) of the Ocean State Options Act of 2005.

"SEC. 11. COMMITTEE ON PETROLEUM, MINING, AND MINERAL ENGINEERING AND ENERGY AND MINERAL RESOURCE EDUCATION.

"(a) The Secretary shall appoint a Committee on Petroleum, Mining, and Mineral Engineering and Energy and Mineral Resource Education composed of—

"(1) the Assistant Secretary of the Interior responsible for land and minerals management, or a delegate of such Assistant Secretary, and not more than 16 other persons who are knowledgeable in the fields of mining and mineral resources research, including 2 university administrators one of whom shall be from historic and existing petroleum and mining schools; a community, technical, or tribal college administrator; a career technical education educator; 6 representatives equally distributed from the petroleum, mining, and aggregate industries; a working miner; a working oilfield worker; a representative of the Interstate Oil and Gas Compact Commission; a representative from the Interstate Mining Compact Commission; a representative from the Western Governors Association; a representative of the State geologists, and a representative of a State mining and reclamation agency. In making these 16

appointments, the Secretary shall consult with interested groups.

"(2) The Assistant Secretary for Land and Minerals Management, in the capacity of the Chairman of the Committee, may have present during meetings of the Committee representatives of Federal agencies with responsibility for energy and minerals resources management, energy and mineral resource investigations, energy and mineral commodity information, international trade in energy and mineral commodities, mining regulation and mine safety research, and research into the development, production, and utilization of energy and mineral commodities.

"(b) The Committee shall consult with, and make recommendations to, the Secretary on all matters relating to funding energy and mineral resources research and the awarding and allocation of funding made under this Act. The Secretary shall consult with, and consider recommendations of, such Committee in such matters.

"(c) Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing Committee business, paid at a rate fixed by the Secretary but not in excess of the daily equivalent of the maximum rate of pay for level IV of the Executive Schedule under section 5136 of title 5, United States Code, and shall be fully reimbursed for travel, subsistence, and related expenses.

"(d) The Committee shall be chaired by the Assistant Secretary of the Interior responsible for land and minerals management. There shall also be elected a Vice Chairman by the Committee from among the members referred to in this section. The Vice Chairman shall perform such duties as are determined to be appropriate by the committee, except that the Chairman of the Committee must personally preside at all meetings of the full Committee.

"(e) Following completion of the report required by section 385 of the Energy Policy Act of 2005, the Committee shall consider the recommendations of the report, ongoing efforts in the schools, universities, and institutions receiving funding under this Act, the Federal and State Governments, and the private sector, and shall formulate and recommend to the Secretary a national plan for a program utilizing the fiscal resources provided under this Act. The Committee shall submit such plan to the Secretary for approval. Upon approval, the plan shall guide the Secretary and the Committee in their actions under this Act.

"(f) Section 10 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

"SEC. 12. CAREER TECHNICAL EDUCATION.

"(a) Up to 15 percent of the annual outlay of funds under this Act may be granted to schools or institutions including, but not limited to, colleges, universities, community colleges, tribal colleges, and technical institutes other than those described in sections 3, 4, 5, and 6.

"(b) The Secretary, as advised by the Committee established under section 11, shall determine the eligibility of a school or insti-

tution to receive funding under this section using criteria that include—

"(1) the presence of a substantial program of training, including vocational education for individuals seeking to enter the oil and gas, coal mining, or mineral mining industries in a skilled technical trade offered by the schools or institutions referred to in subsection (a); or

"(2) the presence of a State-approved program of career technical education at a secondary school, offered cooperatively with a schools or institutions referred to in subsection (a) in one of the industrial sectors of—

"(A) agriculture, forestry, or fisheries;

"(B) utilities;

"(C) construction;

"(D) manufacturing; and

"(E) transportation and warehousing.

"(c) Schools or institutions receiving funds under this section must show evidence of an institutional commitment for the purposes career technical education and provide evidence that the school or institution can obtain industrial cooperation in activities within the scope of this Act.

"(d) Schools or institutions receiving funds under this section must agree to maintain the programs for which the funding is sought for a period of 10 years beginning on the date the school or institution receives such funds, unless the Secretary finds that a shorter period of time is appropriate for the local labor market or is required by State authorities.".

SEC. 6524. ONSHORE AND OFFSHORE MINERAL LEASE FEES.

Notwithstanding any other provision of law, the Department of the Interior is prohibited from charging fees applicable to actions on Federal onshore and offshore oil and gas, coal, geothermal, and other mineral leases, including transportation of any production from such leases, if such fees were not in existence on January 1, 2005. Fees in existence on that date may be increased by the amount of the increase in the Consumer Price Index since the last date that the fees were set, but such an increase shall only apply to a lease issued after the date of the increase.

SEC. 6525. ATLANTIC AND PACIFIC OCS REGION HEADQUARTERS.

Not later than January 1, 2008, the Secretary of the Interior shall establish the headquarters for the Atlantic OCS Region and the headquarters for the Pacific OCS Region within a State bordering the Atlantic OCS Region and a State bordering the Pacific OCS Region, respectively, from among the States bordering those Regions, that petitions by no later than July 1, 2007, for leasing covering at least 40 percent of the area of its Adjacent Zone within 100 miles of the coastline. Such headquarters shall be located within 25 miles of the coastline and shall be the permanent duty station for all Minerals Management Service personnel that on a daily basis spend on average 60 percent or more of their time in performance of duties in support of the activities of the respective Region, except that the Minerals Management Service may house regional inspection staff in other locations. The Atlantic OCS Region and

the Pacific OCS Region shall each be led by a Regional Director who shall be an employee within the Senior Executive Service.

SEC. 6526. NATIONAL GEOLOGIC DATA AND MAPPING FUND ACT OF 2005.

(a) SHORT TITLE.—This section may be cited as the "National Geologic Data and Mapping Fund Act of 2005".

(b) PURPOSES.—The purpose of this section is to—

(1) establish a fund to provide funding for geologic mapping and the preservation and use of geologic data;

(2) make available receipts derived from sales, bonus bids, and royalties from onshore and offshore gas, minerals, oil, and any additional form of energy exploration and development under the laws of the United States for the purposes of the such fund;

(3) distribute funds from such fund each fiscal year to the Secretary of the Interior and the States; and

(4) use the distributed funds to secure the necessary trained workforce, contractual services, and other support, including maintenance and capital investments, to conduct geologic mapping and preserve and make geologic data available for use.

(c) DEFINITIONS.—In this section:

(1) GEOLOGIC FUND.—The term "Geologic Fund" means the National Geologic Data and Mapping Fund established by subsection (d).

(2) STATE.—The term "State" means the State geological survey, the agency that acts as the State geological survey, or any other State government agency primarily responsible for geologic mapping or geologic data preservation (or both) within a State.

(d) ESTABLISHMENT AND USE OF NATIONAL GEOLOGIC DATA AND MAPPING FUND.—

(1) GEOLOGIC FUND.—There is established in the Treasury a separate account to be known as the "National Geologic Data and Mapping Fund".

(2) FUNDING.—The Secretary of the Treasury shall deposit in the Enhancement Fund—

(A) such sums as are provided by sections 9(b)(4)(A)(iv), 9(b)(4)(B)(iv), 9(c)(4)(A)(iv), and 9(c)(4)(B)(iv) of the Outer Continental Shelf Lands Act, as amended by this Act;

(B)(i) during the period of October 1, 2006, through September 30, 2015, 0.1 percent of all sums paid into the Treasury under section 35 of the Mineral Leasing Act (30 U.S.C. 191), and

(ii) beginning October 1, 2015, and thereafter, 0.5 percent of all sums paid into the Treasury under section 35 of the Mineral Leasing Act (30 U.S.C. 191); and

(C)(i) during the period of October 1, 2006, through September 30, 2015, 0.1 percent of all sums paid into the Treasury from receipts derived from bonus bids and royalties from other mineral leasing on public lands, and

(ii) beginning October 1, 2015, and thereafter, 0.5 percent of all sums paid into the Treasury from receipts derived from bonus bids and royalties from other mineral leasing on public lands.

(3) INVESTMENTS.—The Secretary of the Treasury shall invest the amounts deposited under paragraph (2) and all accrued interest on the amounts deposited under paragraph (2) only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(4) AVAILABILITY TO SECRETARY OF THE INTERIOR.—

(A) IN GENERAL.—Beginning with fiscal year 2007, and in each fiscal year thereafter, one-third of amounts deposited into the Geologic Fund, together with the interest thereon, shall be available, without fiscal year limitations, to the Secretary of the Interior for use for the purposes described in subsection (b)(4).

(B) WITHDRAWALS AND TRANSFER OF FUNDS.—The Secretary of the Treasury shall withdraw such amounts from the Geologic Fund as the Secretary of the Interior may request, subject to the limitation in subparagraph (A), and transfer such amounts to the Secretary of the Interior to be used, at the discretion of the Secretary of the Interior, by the Minerals Management Service, the Bureau of Land Management, and the United States Geological Survey for the purposes described in subsection (b)(4). No funds distributed from the Geologic Fund may be used to purchase an interest in land.

(5) PAYMENT TO STATES.—

(A) IN GENERAL.—Beginning with fiscal year 2007, and in each fiscal year thereafter, two-thirds of amounts deposited into the Geologic Fund, together with the interest thereon, shall be available, without fiscal year limitations, to the States for use for the purposes described in subsection (b)(4).

(B) WITHDRAWALS AND TRANSFER OF FUNDS.—Within the first 90 days of each fiscal year, the Secretary of the Treasury shall withdraw amounts from the Geologic Fund and transfer such amounts to the States based on a formula devised by the Secretary of the Interior based on the relative geologic mapping and data preservation needs of the States.

(C) USE OF PAYMENTS BY STATES.—Each State shall use the payments made under subparagraph (B) only for carrying out projects and programs for the purposes described in subsection (b)(4). No funds distributed from the Geologic Fund may be used to purchase an interest in land.

(D) ENCOURAGEMENT OF USE OF PRIVATE FUNDS BY STATES.—Each State shall use the payments made under subparagraph (B) to leverage private funds for carrying out projects for the purposes described in subsection (b)(4).

(e) REPORT TO CONGRESS.—Beginning in fiscal year 2008 and continuing for each fiscal year thereafter, the Secretary of the Interior and each State receiving funds from the Geologic Fund shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives. Reports submitted to the Congress by

the Secretary of the Interior and the States shall include detailed information regarding expenditures during the previous fiscal year.

SEC. 6527. LEASES FOR AREAS LOCATED WITHIN 100 MILES OF CALIFORNIA OR FLORIDA.

(a) AUTHORIZATION TO CANCEL AND EXCHANGE CERTAIN EXISTING OIL AND GAS LEASES; PROHIBITION ON SUBMITTAL OF EXPLORATION PLANS FOR CERTAIN LEASES PRIOR TO JUNE 30, 2012.—

(1) AUTHORITY.—Effective 180 days after the date of enactment of this subtitle, the lessee of an existing oil and gas lease for an area located completely within 100 miles of the coastline within the California or Florida Adjacent Zones shall have the option, without compensation, of exchanging such lease for a new oil and gas lease having a primary term of 5 years. For the area subject to the new lease, the lessee may select any unleased tract at least part of which is located within the area between 100 and 125 miles from the coastline, and completely beyond 100 miles from the coastline, within the same Adjacent State's Adjacent Zone as the lease being exchanged.

(2) ADMINISTRATIVE PROCESS.—The Secretary of the Interior shall establish a reasonable administrative process through which a lessee may exercise its option to exchange an oil and gas lease for a new oil and gas lease as provided for in this section. Such exchanges, including the issuance of new leases, shall not be considered to be major Federal actions for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Further, such exchanges conducted in accordance with this section are deemed to be in compliance all provisions of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.). The Secretary shall issue a new lease in exchange for the lease being exchanged notwithstanding that the area that will be subject to the lease may be withdrawn from leasing under the Outer Continental Shelf Lands Act or otherwise unavailable for leasing under the provisions of any other law.

(3) OPERATING RESTRICTIONS.—A new lease issued in exchange for an existing lease under this section shall be subject to such national defense operating restrictions on the OCS tract covered by the new lease as may be applicable upon issuance.

(4) PRIORITY.—The Secretary shall give priority in the lease exchange process based on the amount of the original bonus bid paid for the issuance of each lease to be exchanged. The Secretary shall allow leases covering partial tracts to be exchanged for leases covering full tracts conditioned upon payment of additional bonus bids on a per-acre basis as determined by the average per acre of the original bonus bid per acre for the partial tract being exchanged.

(5) EXPLORATION PLANS.—Any exploration plan submitted to the Secretary of the Interior after the date of the enactment of this Act and before July 1, 2012, for an oil and gas lease for an area wholly within 100 miles of the coastline within the California Adjacent Zone or Florida Adjacent Zone shall not be treated as received by the Secretary until the earlier of July 1, 2012, or the date on which a petition by the Adjacent State

for oil and gas leasing covering the area within which is located the area subject to the oil and gas lease was approved.

(b) FURTHER LEASE CANCELLATION AND EXCHANGE PROVISIONS.—

(1) CANCELLATION OF LEASE.—As part of the lease exchange process under this section, the Secretary shall cancel a lease that is exchanged under this section.

(2) CONSENT OF LESSEES.—All lessees holding an interest in a lease must consent to cancellation of their leasehold interests in order for the lease to be cancelled and exchanged under this section.

(3) WAIVER OF RIGHTS.—As a prerequisite to the exchange of a lease under this section, the lessee must waive any rights to bring any litigation against the United States related to the transaction.

(4) PLUGGING AND ABANDONMENT.—The plugging and abandonment requirements for any wells located on any lease to be cancelled and exchanged under this section must be complied with by the lessees prior to the cancellation and exchange.

(c) AREA PARTIALLY WITHIN 100 MILES OF FLORIDA.—An existing oil and gas lease for an area located partially within 100 miles of the coastline within the Florida Adjacent Zone may only be developed and produced using wells drilled from well-head locations at least 100 miles from the coastline to any bottom-hole location on the area of the lease.

(d) EXISTING OIL AND GAS LEASE DEFINED.—In this section the term "existing oil and gas lease" means an oil and gas lease in effect on the date of the enactment of this Act.

Subtitle F—Sale and Conveyance of Federal Land

SEC. 6601. COLLECTION OF RECEIPTS FROM THE SALE OF FEDERAL LANDS.

(a) IN GENERAL.—Notwithstanding any other law, the Secretary shall make the lands described in subsection (b) available for immediate sale through a competitive sale process at fair market value. Requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the sale of lands under this section.

(b) LANDS DESCRIBED.—The lands referred to in subsection (a) are the following:

(1) Poplar Point (Transfer and Conveyance of Properties in the District of Columbia, Map Number 869/80460, Dated July 2005, p. 28 of 28).

(2) U.S. Reservations 44, 45, 46, 47, 48 and 49 (Map Number 869/80460, Dated July 2005, p. 13 of 28).

(3) U.S. Reservation 251 (Map Number 869/80460, Dated July 2005, p. 14 of 28).

(4) U.S. Reservation 8 (Map Number 869/80460, Dated July 2005, p. 15 of 28).

(5) U.S. Reservation 17A (Map Number 869/80460, Dated July 2005, p. 20 of 28).

(6) U.S. Reservation 484 (Map Number 869/80460, Dated July 2005, p. 21 of 28).

(7) U.S. Reservation 721, 722 and 723 (Map Number 869/80460, Dated July 2005, p. 25 of 28).

(8) Certain land adjacent to Robert F. Kennedy Stadium Parking Lot (Transfer and Conveyance of Properties in the District of Columbia, Map Number 869/80460, Dated July 2005, p. 26 of 28).

(9) United States Reservation 243, 244, 245, and 247 (Transfer and Conveyance of Properties in the District of Columbia, Map Number 869/80460, Dated July 2005, p. 22 of 28).

The Secretary may retain from sale proceeds and spend without further appropriation up to $1,000,000 each year to implement land sales under this subsection, including hiring contractors and appraisers

(c) POPLAR POINT.—

(1) RETENTION OF FUNDS.—The Secretary may retain $10,000,000 from funds received from the sale of land under subsection (b)(1) and spend such funds without further appropriations for the purposes of complying with subparagraph (2).

(2) CONTINUITY OF OPERATION.—Before the sale and development of land referred to in subparagraph (b)(1), the Secretary shall ensure that the existing facilities and related properties (including necessary easements and utilities related thereto) occupied or otherwise used by the National Park Service are either withheld from any sale and remain in operation at its current location or will be relocated to suitable replacement facilities along the Anacostia River in the District of Columbia using funds made available by subparagraph (c)(1).

(d) CONVEYANCE OF LANDS TO THE DISTRICT OF COLUMBIA.—

(1) IN GENERAL.—Notwithstanding any other law, the Secretary shall immediately convey all right, title, and interest of the United States in the lands described in this subsection to the District of Columbia upon enactment of this section. Requirements under the National Environmental Policy Act (42 U.S.C. 4321 et seq.) shall not apply to the conveyance of lands under this subsection.

(2) LANDS DESCRIBED.—The lands referred to in this subsection are as follows:

(A) United States Reservation 128, 129, 130, 298 and 299 (Transfer and Conveyance of Properties in the District of Columbia, Map Number 869/80460, Dated July 2005, p. 23 of 28).

(B) United States Reservation 174 (Map Number 869/80460, Dated July 2005, p. 27 of 28).

(C) United States Reservation 277A and 277C (Map Number 869/80460, Dated July 2005, p. 16 of 28).

(D) United States Reservation 343D and 343E (Map Number 869/80460, Dated July 2005, p. 24 or 28).

(E) United States Reservation 404 (Map Number 869/80460, Dated July 2005, p. 12 of 28).

(F) United States Reservation 451 (Map Number 869/80460, Dated July 2005, p. 11 of 28).

(G) United States Reservation 470 (Transfer and Conveyance of Properties in the District of Columbia, Map Number 869/80460, Dated July 2005, p. 17 of 28).

(e) TRANSFER OF ADMINISTRATIVE JURISDICTION OVER CERTAIN PROPERTIES.—

(1) IN GENERAL.—Upon the date of the enactment of this subsection, administrative jurisdiction over each of the following properties (owned by the United States and as depicted on listed maps) is hereby transferred from the District of Columbia to the United States for administration by the Secretary of the Interior through the Director of the National Park Service:

(A) An unimproved portion of Audubon Terrace Northwest, located east of Linnean Avenue Northwest, that is within U.S. Reservation 402 (Audubon Terrace, NW, Transfer and Conveyance of Properties in the District of Columbia, Map Number 869/80460, Dated July 2005, p. 2 of 28) .

(B) An unimproved portion of Barnaby Street Northwest, north of Aberfoyle Place Northwest, that abuts U.S. Reservation 545 (Barnaby Avenue, NW, Map Number 869/80460, Dated July 2005, p. 3 of 28).

(C) A portion of Canal Street Southwest, and a portion of V Street Southwest, each which abuts U.S. Reservation (Canal and V Streets, SW, Map Number 869/80460, Dated July 2005, p. 3 of 28).

(D) Unimproved streets and alleys at Fort Circle Park located within the boundaries of U.S. Reservation 497 (Fort Circle Park, Map Number 869/80460, Dated July 2005, p. 5 of 28)".

(E) An unimproved portion of Western Avenue Northwest, north of Oregon Avenue Northwest, that abuts U.S. Reservation 339 (Western Avenue, NW, Map Number 869/80460, Dated July 2005, p. 6 of 28).

(F) An unimproved portion of 17th Street Northwest, south of Shepard Street Northwest, that abuts U.S. Reservation 339 (17th Street, NW, Map Number 869/80460, Dated July 2005, p. 7 of 28).

(G) An unimproved portion of 30th Street Northwest, north of Broad Branch Road, Northwest, that is within the boundaries of U.S. Reservation 515 (30th Street, NW, Map Number 869/80460, Dated July 2005, p. 8 of 28).

(H) Land over I–395 at Washington Avenue, Southwest (Lands over I–395 at Washington Avenue, SW, Map Number 869/80460, Dated July 2005, p. 9 of 28).

(I) A portion of U.S. Reservation 357 at Whitehaven Parkway Northwest, previously transferred to the District of Columbia in conjunction with the former proposal for a residence for the Mayor of the District of Columbia (Portion of U.S. Reservation 357, Transfer and Conveyance of Properties in the District of Columbia, Map Number 869/80460, Dated July 2005, p. 10 of 28).

(2) USE OF CERTAIN PROPERTY FOR MEMORIAL.—In the case of the property for which administrative jurisdiction is transferred under paragraph (1)(H), the property shall be used as

the site for the establishment of a memorial to honor disabled veterans of the United States Armed Forces authorized to be established by the Disabled Veterans' LIFE Memorial Foundation by Public Law 106–348 (114 Stat. 1358; 40 U.S.C. 8903 note), except that the District of Columbia shall retain administrative jurisdiction over the subsurface area beneath the site for tunnels, walls, footings, and related facilities.

TITLE VII—COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SEC. 7001. EXTENSION OF VESSEL TONNAGE DUTIES.

(a) EXTENSION OF DUTIES.—Section 36 of the Act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes", approved August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121), is amended—

(1) by striking "9 cents per ton" and all that follows through "2002," the first place it appears and inserting "4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010,"; and

(2) by striking "27 cents per ton" and all that follows through "2002," and inserting "13.5 cents per ton, not to exceed 67.5 cents per ton per annum, for fiscal years 2006 through 2010,".

(b) CONFORMING AMENDMENT.—The Act entitled "An Act concerning tonnage duties on vessels entering otherwise than by sea", approved March 8, 1910 (36 Stat. 234; 46 U.S.C. App. 132), is amended by striking "9 cents per ton" and all that follows through "and 2 cents" and inserting "4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010, and 2 cents".

(c) OFFSETTING RECEIPTS.—Increased tonnage charges collected as a result of the amendments made by subsection (a) shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities related to marine safety, search and rescue, and aids to navigation.

TITLE VIII—COMMITTEE ON WAYS AND MEANS

SEC. 8001. SHORT TITLE.

This title may be cited as the "Work, Marriage, and Family Promotion Reconciliation Act of 2005".

SEC. 8002. TABLE OF CONTENTS.

The table of contents of this title is as follows:

Sec. 8001. Short title.
Sec. 8002. Table of contents.
Sec. 8003. References.
Sec. 8004. Findings.

Subtitle A—TANF

Sec. 8101. Purposes.

Sec. 8102. Family assistance grants.
Sec. 8103. Promotion of family formation and healthy marriage.
Sec. 8104. Supplemental grant for population increases in certain States.
Sec. 8105. Elimination of high performance bonus.
Sec. 8106. Contingency fund.
Sec. 8107. Use of funds.
Sec. 8108. Repeal of Federal loan for State welfare programs.
Sec. 8109. Universal engagement and family self-sufficiency plan requirements.
Sec. 8110. Work participation requirements.
Sec. 8111. Maintenance of effort.
Sec. 8112. Performance improvement.
Sec. 8113. Data collection and reporting.
Sec. 8114. Direct funding and administration by Indian tribes.
Sec. 8115. Research, evaluations, and national studies.
Sec. 8116. Study by the Census Bureau.
Sec. 8117. Definition of assistance.
Sec. 8118. Technical corrections.
Sec. 8119. Fatherhood program.
Sec. 8120. State option to make TANF programs mandatory partners with one-stop employment training centers.
Sec. 8121. Sense of the Congress.
Sec. 8122. Drug testing of applicants for and recipients of assistance.

Subtitle B—Child care

Sec. 8201. Entitlement funding.

Subtitle C—Child support

Sec. 8301. Federal matching funds for limited pass through of child support payments to families receiving TANF.
Sec. 8302. State option to pass through all child support payments to families that formerly received TANF.
Sec. 8303. Mandatory review and adjustment of child support orders for families receiving TANF.
Sec. 8304. Mandatory fee for successful child support collection for family that has never received TANF.
Sec. 8305. Report on undistributed child support payments.
Sec. 8306. Decrease in amount of child support arrearage triggering passport denial.
Sec. 8307. Use of tax refund intercept program to collect past-due child support on behalf of children who are not minors.
Sec. 8308. Garnishment of compensation paid to veterans for service-connected disabilities in order to enforce child support obligations.
Sec. 8309. Maintenance of technical assistance funding.
Sec. 8310. Maintenance of Federal Parent Locator Service funding.
Sec. 8311. Information comparisons with insurance data.
Sec. 8312. Tribal access to the Federal Parent Locator Service.
Sec. 8313. Reimbursement of Secretary's costs of information comparisons and disclosure for enforcement of obligations on Higher Education Act loans and grants.
Sec. 8314. Technical amendment relating to cooperative agreements between States and Indian tribes.
Sec. 8315. State option to use statewide automated data processing and information retrieval system for interstate cases.
Sec. 8316. Modification of rule requiring assignment of support rights as a condition of receiving TANF.
Sec. 8317. State option to discontinue certain support assignments.
Sec. 8318. Technical correction.
Sec. 8319. Reduction in rate of reimbursement of child support administrative expenses.
Sec. 8320. Incentive payments.

Subtitle D—Child welfare

Sec. 8401. Extension of authority to approve demonstration projects.
Sec. 8402. Elimination of limitation on number of waivers.
Sec. 8403. Elimination of limitation on number of States that may be granted waivers to conduct demonstration projects on same topic.

Sec. 8404. Elimination of limitation on number of waivers that may be granted to a single State for demonstration projects.
Sec. 8405. Streamlined process for consideration of amendments to and extensions of demonstration projects requiring waivers.
Sec. 8406. Availability of reports.
Sec. 8407. Clarification of eligibility for foster care maintenance payments and adoption assistance.
Sec. 8408. Clarification regarding Federal matching of certain administrative costs under the foster care maintenance payments program.
Sec. 8409. Technical correction.
Sec. 8410. Technical correction.

Subtitle E—Supplemental security income

Sec. 8501. Review of State agency blindness and disability determinations.
Sec. 8502. Payment of certain lump sum benefits in installments under the Supplemental Security Income program.

Subtitle F—State and local flexibility

Sec. 8601. Program coordination demonstration projects.

Subtitle G—Repeal of continued dumping and subsidy offset

Sec. 8701. Repeal of continued dumping and subsidy offset.

Subtitle H—Effective date

Sec. 8801. Effective date.

SEC. 8003. REFERENCES.

Except as otherwise expressly provided, wherever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Social Security Act.

SEC. 8004. FINDINGS.

The Congress makes the following findings:

(1) The Temporary Assistance for Needy Families (TANF) Program established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193) has succeeded in moving families from welfare to work and reducing child poverty.

(A) There has been a dramatic increase in the employment of current and former welfare recipients. The percentage of working recipients reached an all-time high in fiscal year 1999 and continued steady in fiscal years 2000 and 2001. In fiscal year 2003, 31.3 percent of adult recipients were counted as meeting the work participation requirements. All States but one met the overall participation rate standard in fiscal year 2003, as did the District of Columbia and Puerto Rico.

(B) Earnings for welfare recipients remaining on the rolls have also increased significantly, as have earnings for female-headed households. The increases have been particularly large for the bottom 2 income quintiles, that is, those women who are most likely to be former or present welfare recipients.

(C) Welfare dependency has plummeted. As of June 2004, 1,969,909 families and 4,727,291 individuals were receiving assistance. Accordingly, the number of families in the welfare caseload and the number of individuals re-

ceiving cash assistance declined 55 percent and 61 percent, respectively, since the enactment of TANF.

(D) The child poverty rate continued to decline between 1996 and 2003, falling 14 percent from 20.5 to 17.6 percent. Child poverty rates for African-American and Hispanic children have also fallen dramatically during the past 7 years.

(2) As a Nation, we have made substantial progress in reducing teen pregnancies and births, slowing increases in nonmarital childbearing, and improving child support collections and paternity establishment.

(A) The birth rate to teenagers declined 30 percent from its high in 1991 to 2002. The 2002 teenage birth rate of 43.0 per 1,000 women aged 15–19 is the lowest recorded birth rate for teenagers.

(B) During the period from 1991 through 2001, teenage birth rates fell in all States and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. Declines also have spanned age, racial, and ethnic groups. There has been success in lowering the birth rate for both younger and older teens. The birth rate for those 15–17 years of age has declined 40 percent since 1991, and the rate for those 18 and 19 has declined 23 percent. The rate for African American teens—until recently the highest—has declined the most—42 percent from 1991 through 2002.

(C) Since the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, child support collections within the child support enforcement system have grown every year, increasing from $12,000,000,000 in fiscal year 1996 to over $21,000,000,000 in fiscal year 2003. The number of paternities established or acknowledged in fiscal year 2003 (over 1,500,000) includes a more than 100 percent increase through in-hospital acknowledgement programs—862,043 in 2003 compared to 324,652 in 1996. Child support collections were made in nearly 8,000,000 cases in fiscal year 2003, significantly more than the almost 4,000,000 cases having a collection in 1996.

(3) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 gave States great flexibility in the use of Federal funds to develop innovative programs to help families leave welfare and begin employment and to encourage the formation of 2-parent families.

(A) Total Federal and State TANF expenditures in fiscal year 2003 were $26,300,000,000, up from $25,400,000,000 in fiscal year 2002 and $22,600,000,000 in fiscal year 1999. This increased spending is attributable to significant new investments in supportive services in the TANF program, such as child care and activities to support work.

(B) Since the welfare reform effort began there has been a dramatic increase in work participation (including employment, community service, and work experience) among welfare recipients, as well as an unprecedented reduction

in the caseload because recipients have left welfare for work.

(C) States are making policy choices and investment decisions best suited to the needs of their citizens.

(i) To expand aid to working families, almost all States disregard a portion of a family's earned income when determining benefit levels.

(ii) Most States increased the limits on countable assets above the former Aid to Families with Dependent Children (AFDC) program. Every State has increased the vehicle asset level above the prior AFDC limit for a family's primary automobile.

(iii) States are experimenting with programs to promote marriage and paternal involvement. Over half of the States have eliminated restrictions on 2-parent families. Many States use TANF, child support, or State funds to support community-based activities to help fathers become more involved in their children's lives or strengthen relationships between mothers and fathers.

(4) However, despite this success, there is still progress to be made. Policies that support and promote more work, strengthen families, and enhance State flexibility are necessary to continue to build on the success of welfare reform.

(A) Significant numbers of welfare recipients still are not engaged in employment-related activities. While all States have met the overall work participation rates required by law, in an average month, only 41 percent of all families with an adult participated in work activities that were countable toward the State's participation rate. In fiscal year 2003, four jurisdictions failed to meet the more rigorous 2-parent work requirements, and 25 jurisdictions (States and territories) are not subject to the 2-parent requirements, most because they moved their 2-parent cases to separate State programs where they are not subject to a penalty for failing the 2-parent rates.

(B) In 2002, 34 percent of all births in the U.S. were to unmarried women. And, with fewer teens entering marriage, the proportion of births to unmarried teens has increased dramatically (80 percent in 2002 versus 30 percent in 1970). The negative consequences of out-of-wedlock birth on the mother, the child, the family, and society are well documented. These include increased likelihood of welfare dependency, increased risks of low birth weight, poor cognitive development, child abuse and neglect, and teen parenthood, and decreased likelihood of having an intact marriage during adulthood.

(C) There has been a dramatic rise in cohabitation as marriages have declined. It is estimated that 40 percent of children are expected to live in a cohabiting-parent family at some point during their childhood. Children in single-parent households and cohabiting-parent households are at much higher risk of child abuse than children in intact married families.

(D) Children who live apart from their biological fathers, on average, are more likely to be poor, experience educational, health, emotional, and psychological problems, be victims of child abuse, engage in criminal behavior, and become involved with the juvenile justice system than their peers who live with their married, biological mother and father. A child living with a single mother is nearly 5 times as likely to be poor as a child living in a married-couple family. In 2003, in married-couple families, the child poverty rate was 8.6 percent, and in households headed by a single mother the poverty rate was 41.7 percent.

(5) Therefore, it is the sense of the Congress that increasing success in moving families from welfare to work, as well as in promoting healthy marriage and other means of improving child well-being, are very important Government interests and the policy contained in part A of title IV of the Social Security Act (as amended by this title) is intended to serve those ends.

Subtitle A—TANF

SEC. 8101. PURPOSES.

Section 401(a) (42 U.S.C. 601(a)) is amended—

(1) in the matter preceding paragraph (1), by striking "increase" and inserting "improve child well-being by increasing";

(2) in paragraph (1), by inserting "and services" after "assistance";

(3) in paragraph (2), by striking "parents on government benefits" and inserting "families on government benefits and reduce poverty"; and

(4) in paragraph (4), by striking "two-parent families" and inserting "healthy, 2-parent married families, and encourage responsible fatherhood".

SEC. 8102. FAMILY ASSISTANCE GRANTS.

(a) EXTENSION OF AUTHORITY.—Section 403(a)(1)(A) (42 U.S.C. 603(a)(1)(A)) is amended—

(1) by striking "1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003" and inserting "2006 through 2010"; and

(2) by inserting "payable to the State for the fiscal year" before the period.

(b) STATE FAMILY ASSISTANCE GRANT.—Section 403(a)(1)(C) (42 U.S.C. 603(a)(1)(C)) is amended by striking "fiscal year 2003" and inserting "each of fiscal years 2006 through 2010".

(c) MATCHING GRANTS FOR THE TERRITORIES.—Section 1108(b)(2) (42 U.S.C. 1308(b)(2)) is amended by striking "1997 through 2003" and inserting "2006 through 2010".

SEC. 8103. PROMOTION OF FAMILY FORMATION AND HEALTHY MARRIAGE.

(a) STATE PLANS.—Section 402(a)(1)(A) (42 U.S.C. 602(a)(1)(A)) is amended by adding at the end the following:

"(vii) Encourage equitable treatment of married, 2-parent families under the program referred to in clause (i).".

(b) HEALTHY MARRIAGE PROMOTION GRANTS; REPEAL OF BONUS FOR REDUCTION OF ILLEGITIMACY RATIO.—Section 403(a)(2) (42 U.S.C. 603(a)(2)) is amended to read as follows:

"(2) HEALTHY MARRIAGE PROMOTION GRANTS.—

"(A) AUTHORITY.—The Secretary shall award competitive grants to States, territories, and tribal organizations for not more than 50 percent of the cost of developing and implementing innovative programs to promote and support healthy, married, 2-parent families.

"(B) HEALTHY MARRIAGE PROMOTION ACTIVITIES.—Funds provided under subparagraph (A) shall be used to support any of the following programs or activities:

"(i) Public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health.

"(ii) Education in high schools on the value of marriage, relationship skills, and budgeting.

"(iii) Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers.

"(iv) Pre-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.

"(v) Marriage enhancement and marriage skills training programs for married couples.

"(vi) Divorce reduction programs that teach relationship skills.

"(vii) Marriage mentoring programs which use married couples as role models and mentors in at-risk communities.

"(viii) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

"(C) VOLUNTARY PARTICIPATION.—

"(i) IN GENERAL.—Participation in a program or activity described in any of clauses (iii) through (viii) of subparagraph (B) shall be voluntary.

"(ii) REQUIREMENTS FOR RECEIPT OF FUNDS.—The Secretary may not award a grant under this paragraph to an applicant for the grant, unless—

"(I) the application for the grant describes—

"(aa) how the programs or activities proposed in the application will address, as appropriate, issues of domestic violence; and

"(bb) what the applicant will do, to the extent relevant, to ensure that participation in the programs or activities is voluntary, and to inform potential participants that their participation is voluntary; and

"(II) the applicant agrees that, as a condition of receipt of the grant, the applicant will consult

with experts in domestic violence or relevant community domestic violence coalitions in developing the programs and activities funded with the grant.

"(D) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2006 through 2010 $100,000,000 for grants under this paragraph.".

(c) COUNTING OF SPENDING ON NON-ELIGIBLE FAMILIES TO PREVENT AND REDUCE INCIDENCE OF OUT-OF-WEDLOCK BIRTHS, ENCOURAGE FORMATION AND MAINTENANCE OF HEALTHY, 2-PARENT MARRIED FAMILIES, OR ENCOURAGE RESPONSIBLE FATHERHOOD.—Section 409(a)(7)(B)(i) (42 U.S.C. 609(a)(7)(B)(i)) is amended by adding at the end the following:

"(V) COUNTING OF SPENDING ON NON-ELIGIBLE FAMILIES TO PREVENT AND REDUCE INCIDENCE OF OUT-OF-WEDLOCK BIRTHS, ENCOURAGE FORMATION AND MAINTENANCE OF HEALTHY, 2-PARENT MARRIED FAMILIES, OR ENCOURAGE RESPONSIBLE FATHERHOOD.—The term 'qualified State expenditures' includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 401(a).".

SEC. 8104. SUPPLEMENTAL GRANT FOR POPULATION INCREASES IN CERTAIN STATES.

Section 403(a)(3) (42 U.S.C. 603(a)(3)) is amended—

(1) in subparagraph (E)—

(A) by striking "1998, 1999, 2000, and 2001" and inserting "2006 through 2009"; and

(B) by striking ", in a total amount not to exceed $800,000,000";

(2) in subparagraph (G), by striking "2001" and inserting "2009"; and

(3) by striking subparagraph (H) and inserting the following:

"(H) FURTHER PRESERVATION OF GRANT AMOUNTS.—A State that was a qualifying State under this paragraph for fiscal year 2004 or any prior fiscal year shall be entitled to receive from the Secretary for each of fiscal years 2006 through 2009 a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year for which the State was a qualifying State.".

SEC. 8105. ELIMINATION OF HIGH PERFORMANCE BONUS.

Section 403(a) (42 U.S.C. 603(a)) is amended by striking paragraph (4).

SEC. 8106. CONTINGENCY FUND.

(a) DEPOSITS INTO FUND.—Section 403(b)(2) (42 U.S.C. 603(b)(2)) is amended—

(1) by striking "1997, 1998, 1999, 2000, 2001, 2002, and 2003" and inserting "2006 through 2010"; and

(2) by striking all that follows "$2,000,000,000" and inserting a period.

(b) GRANTS.—Section 403(b)(3)(C)(ii) (42 U.S.C. 603(b)(3)(C)(ii)) is amended by striking "fiscal years 1997 through 2006" and inserting "fiscal years 2006 through 2010".

(c) DEFINITION OF NEEDY STATE.—Clauses (i) and (ii) of section 403(b)(5)(B) (42 U.S.C. 603(b)(5)(B)) are amended by inserting after "1996" the following: "and the Food Stamp Act of 1977 as in effect during the corresponding 3-month period in the fiscal year preceding such most recently concluded 3-month period".

(d) ANNUAL RECONCILIATION: FEDERAL MATCHING OF STATE EXPENDITURES ABOVE "MAINTENANCE OF EFFORT" LEVEL.—Section 403(b)(6) (42 U.S.C. 603(b)(6)) is amended—

(1) in subparagraph (A)(ii)—

(A) by adding "and" at the end of subclause (I);

(B) by striking "; and" at the end of subclause (II) and inserting a period; and

(C) by striking subclause (III);

(2) in subparagraph (B)(i)(II), by striking all that follows "section 409(a)(7)(B)(iii))" and inserting a period;

(3) by amending subparagraph (B)(ii)(I) to read as follows:

"(I) the qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for the fiscal year; plus"; and

(4) by striking subparagraph (C).

(e) CONSIDERATION OF CERTAIN CHILD CARE EXPENDITURES IN DETERMINING STATE COMPLIANCE WITH CONTINGENCY FUND MAINTENANCE OF EFFORT REQUIREMENT.—Section 409(a)(10) (42 U.S.C. 609(a)(10)) is amended—

(1) by striking "(other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part" and inserting a close parenthesis; and

(2) by striking "excluding any amount expended by the State for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994) for fiscal year 1994,".

(f) EFFECTIVE DATE.—The amendments made by subsections (c), (d), and (e) shall take effect on October 1, 2007.

SEC. 8107. USE OF FUNDS.

(a) GENERAL RULES.—Section 404(a)(2) (42 U.S.C. 604(a)(2)) is amended by striking "in any manner that" and inserting "for any purposes or activities for which".

(b) TREATMENT OF INTERSTATE IMMIGRANTS.—

(1) STATE PLAN PROVISION.—Section 402(a)(1)(B) (42 U.S.C. 602(a)(1)(B)) is amended by striking clause (i) and redesignating clauses (ii) through (iv) as clauses (i) through (iii), respectively.

(2) USE OF FUNDS.—Section 404 (42 U.S.C. 604) is amended by striking subsection (c).

(c) INCREASE IN AMOUNT TRANSFERABLE TO CHILD CARE.—Section 404(d)(1) (42 U.S.C. 604(d)(1)) is amended by striking "30" and inserting "50".

(d) INCREASE IN AMOUNT TRANSFERABLE TO TITLE XX PROGRAMS.—Section 404(d)(2)(B) (42 U.S.C. 604(d)(2)(B)) is amended to read as follows:

"(B) APPLICABLE PERCENT.—For purposes of subparagraph (A), the applicable percent is 10 percent for fiscal year 2006 and each succeeding fiscal year.".

(e) CLARIFICATION OF AUTHORITY OF STATES TO USE TANF FUNDS CARRIED OVER FROM PRIOR YEARS TO PROVIDE TANF BENEFITS AND SERVICES.—Section 404(e) (42 U.S.C. 604(e)) is amended to read as follows:

"(e) AUTHORITY TO CARRYOVER OR RESERVE CERTAIN AMOUNTS FOR BENEFITS OR SERVICES OR FOR FUTURE CONTINGENCIES.—

"(1) CARRYOVER.—A State or tribe may use a grant made to the State or tribe under this part for any fiscal year to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.

"(2) CONTINGENCY RESERVE.—A State or tribe may designate any portion of a grant made to the State or tribe under this part as a contingency reserve for future needs, and may use any amount so designated to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part. If a State or tribe so designates a portion of such a grant, the State shall, on an annual basis, include in its report under section 411(a) the amount so designated.".

SEC. 8108. REPEAL OF FEDERAL LOAN FOR STATE WELFARE PROGRAMS.

(a) REPEAL.—Effective as of October 1, 2006, section 406 (42 U.S.C. 606) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 409(a) (42 U.S.C. 609(a)) is amended by striking paragraph (6).

(2) Section 412 (42 U.S.C. 612) is amended by striking subsection (f) and redesignating subsections (g) through (i) as subsections (f) through (h), respectively.

(3) Section 1108(a)(2) (42 U.S.C. 1308(a)(2)) is amended by striking "406,".

SEC. 8109. UNIVERSAL ENGAGEMENT AND FAMILY SELF-SUFFICIENCY PLAN REQUIREMENTS.

(a) MODIFICATION OF STATE PLAN REQUIREMENTS.—Section 402(a)(1)(A) (42 U.S.C. 602(a)(1)(A)) is amended by striking clauses (ii) and (iii) and inserting the following:

"(ii) Require a parent or caretaker receiving assistance under the program to engage in work or alternative self-sufficiency activities (as defined by the State), consistent with section 407(e)(2).

"(iii) Require families receiving assistance under the program to engage in activities in accordance with family self-sufficiency plans developed pursuant to section 408(b).".

(b) ESTABLISHMENT OF FAMILY SELF-SUFFICIENCY PLANS.—

(1) IN GENERAL.—Section 408(b) (42 U.S.C. 608(b)) is amended to read as follows:

"(b) FAMILY SELF-SUFFICIENCY PLANS.—

"(1) IN GENERAL.—A State to which a grant is made under section 403 shall—

"(A) assess, in the manner deemed appropriate by the State, the skills, prior work experience, and employability of each work-eligible individual (as defined in section 407(b)(2)(C)) receiving assistance under the State program funded under this part;

"(B) establish for each family that includes such an individual, in consultation as the State deems appropriate with the individual, a self-sufficiency plan that specifies appropriate activities described in the State plan submitted pursuant to section 402, including direct work activities as appropriate designed to assist the family in achieving their maximum degree of self-sufficiency, and that provides for the ongoing participation of the individual in the activities;

"(C) require, at a minimum, each such individual to participate in activities in accordance with the self-sufficiency plan;

"(D) monitor the participation of each such individual in the activities specified in the self-sufficiency plan, and regularly review the progress of the family toward self-sufficiency;

"(E) upon such a review, revise the self-sufficiency plan and activities as the State deems appropriate.

"(2) TIMING.—The State shall comply with paragraph (1) with respect to a family—

"(A) in the case of a family that, as of October 1, 2005, is not receiving assistance from the State program funded under this part, not later than 60 days after the family first receives assistance on the basis of the most recent application for the assistance; or

"(B) in the case of a family that, as of such date, is receiving the assistance, not later than 12 months after the date of enactment of this subsection.

"(3) STATE DISCRETION.—A State shall have sole discretion, consistent with section 407, to define and design activities for families for purposes of this subsection, to develop methods for monitoring and reviewing progress pursuant to this subsection, and to make modifications to the plan as the State deems appropriate to assist the individual in increasing their degree of self-sufficiency.

"(4) RULE OF INTERPRETATION.—Nothing in this part shall preclude a State from—

"(A) requiring participation in work and any other activities the State deems appropriate for helping families achieve self-sufficiency and improving child well-being; or

"(B) using job search or other appropriate job readiness or work activities to assess the employability of individuals and to determine appropriate future engagement activities.".

(2) PENALTY FOR FAILURE TO ESTABLISH FAMILY SELF-SUFFICIENCY PLAN.—Section 409(a)(3) (42 U.S.C. 609(a)(3)) is amended—

(A) in the paragraph heading, by inserting "OR ESTABLISH FAMILY SELF-SUFFICIENCY PLAN" after "RATES"; and

(B) in subparagraph (A), by inserting "or 408(b)" after "407(a)".

SEC. 8110. WORK PARTICIPATION REQUIREMENTS.

(a) IN GENERAL.—Section 407 (42 U.S.C. 607) is amended by striking all that precedes subsection (b)(3) and inserting the following:

"SEC. 407. WORK PARTICIPATION REQUIREMENTS.

"(a) PARTICIPATION RATE REQUIREMENTS.—A State to which a grant is made under section 403 for a fiscal year shall achieve a minimum participation rate equal to not less than—

"(1) 50 percent for fiscal year 2006;

"(2) 55 percent for fiscal year 2007;

"(3) 60 percent for fiscal year 2008;

"(4) 65 percent for fiscal year 2009; and

"(5) 70 percent for fiscal year 2010 and each succeeding fiscal year.

"(b) CALCULATION OF PARTICIPATION RATES.—

"(1) AVERAGE MONTHLY RATE.—For purposes of subsection (a), the participation rate of a State for a fiscal year is the average of the participation rates of the State for each month in the fiscal year.

"(2) MONTHLY PARTICIPATION RATES; INCORPORATION OF 40-HOUR WORK WEEK STANDARD.—

"(A) IN GENERAL.—For purposes of paragraph (1), the participation rate of a State for a month is—

"(i) the total number of countable hours (as defined in subsection (c)) with respect to the counted families for the State for the month; divided by

"(ii) 160 multiplied by the number of counted families for the State for the month.

"(B) COUNTED FAMILIES DEFINED.—

"(i) IN GENERAL.—In subparagraph (A), the term 'counted family' means, with respect to a State and a month, a family that includes a work-eligible individual and that receives assistance in the month under the State program funded under this part, subject to clause (ii).

"(ii) STATE OPTION TO EXCLUDE CERTAIN FAMILIES.—At the option of a State, the term 'counted family' shall not include—

"(I) a family in the first month for which the family receives assistance from a State program funded under this part on the basis of the most recent application for such assistance;

"(II) on a case-by-case basis, a family in which the youngest child has not attained 12 months of age; or

"(III) a family that is subject to a sanction under this part or part D, but that has not been subject to such a sanction for more than 3 months (whether or not consecutive) in the preceding 12-month period.

"(iii) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN OR TRIBAL WORK PROGRAM.—At the option of a State, the term 'counted family' may include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412 or under a tribal work program to which funds are provided under this part.

"(C) WORK-ELIGIBLE INDIVIDUAL DEFINED.—In this section, the term 'work-eligible individual' means an individual—

"(i) who is married or a single head of household; and

"(ii) whose needs are (or, but for sanctions under this part or part D, would be) included in determining the amount of cash assistance to be provided to the family under the State program funded under this part.".

(b) RECALIBRATION OF CASELOAD REDUCTION CREDIT.—

(1) IN GENERAL.—Section 407(b)(3)(A)(ii) (42 U.S.C. 607(b)(3)(A)(ii)) is amended to read as follows:

"(ii) the average monthly number of families that received assistance under the State program funded under this part during the base year.".

(2) CONFORMING AMENDMENT.—Section 407(b)(3)(B) (42 U.S.C. 607(b)(3)(B)) is amended by striking "and eligibility criteria" and all that follows through the close parenthesis and inserting "and the eligibility criteria in effect during the then applicable base year".

(3) BASE YEAR DEFINED.—Section 407(b)(3) (42 U.S.C. 607(b)(3)) is amended by adding at the end the following:

"(C) BASE YEAR DEFINED.—In this paragraph, the term 'base year' means, with respect to a fiscal year—

"(i) if the fiscal year is fiscal year 2006, fiscal year 1996;

"(ii) if the fiscal year is fiscal year 2007, fiscal year 1998;

"(iii) if the fiscal year is fiscal year 2008, fiscal year 2001; or

"(iv) if the fiscal year is fiscal year 2009 or any succeeding fiscal year, the then 4th preceding fiscal year.".

(c) SUPERACHIEVER CREDIT.—Section 407(b) (42 U.S.C. 607(b)) is amended by striking paragraphs (4) and (5) and inserting the following:

"(4) SUPERACHIEVER CREDIT.—

"(A) IN GENERAL.—The participation rate, determined under paragraphs (1) and (2) of this subsection, of a superachiever State for a fiscal year shall be increased by the lesser of—

"(i) the amount (if any) of the superachiever credit applicable to the State; or

"(ii) the number of percentage points (if any) by which the minimum participation rate required by subsection (a) for the fiscal year exceeds 50 percent.

"(B) SUPERACHIEVER STATE.—For purposes of subparagraph (A), a State is a superachiever State if the State caseload for fiscal year 2001 has declined by at least 60 percent from the State caseload for fiscal year 1995.

"(C) AMOUNT OF CREDIT.—The superachiever credit applicable to a State is the number of percentage points (if any) by which the decline referred to in subparagraph (B) exceeds 60 percent.

"(D) DEFINITIONS.—In this paragraph:

"(i) STATE CASELOAD FOR FISCAL YEAR 2001.—The term 'State caseload for fiscal year 2001' means the average monthly number of families that received assistance during fiscal year 2001 under the State program funded under this part.

"(ii) STATE CASELOAD FOR FISCAL YEAR 1995.—The term 'State caseload for fiscal year 1995' means the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.".

(d) COUNTABLE HOURS.—Section 407 (42 U.S.C. 607) is amended by striking subsections (c) and (d) and inserting the following:

"(c) COUNTABLE HOURS.—

"(1) DEFINITION.—In subsection (b)(2), the term 'countable hours' means, with respect to a family for a month, the total number of hours in the month in which any member of the family who is a work-eligible individual is engaged in a direct work activity or other activities specified by the State (excluding an activity that does not address a purpose specified in section 401(a)), subject to the other provisions of this subsection.

"(2) LIMITATIONS.—Subject to such regulations as the Secretary may prescribe:

"(A) MINIMUM WEEKLY AVERAGE OF 24 HOURS OF DIRECT WORK ACTIVITIES REQUIRED.—If the work-eligible individuals in a family are engaged in a direct work activity for an average total of fewer than 24 hours per week in a month, then the number of countable hours with respect to the family for the month shall be zero.

"(B) MAXIMUM WEEKLY AVERAGE OF 16 HOURS OF OTHER ACTIVITIES.—An average of not more than 16 hours per week of activities specified by the State (subject to the exclusion described in paragraph (1)) may be considered countable hours in a month with respect to a family.

"(3) SPECIAL RULES.—For purposes of paragraph (1):

"(A) PARTICIPATION IN QUALIFIED ACTIVITIES.—

"(i) IN GENERAL.—If, with the approval of the State, the work-eligible individuals in a family are engaged in 1 or more qualified activities for an average total of at least 24 hours per week in a month, then all such engagement in the month shall be considered engagement in a direct work activity, subject to clause (iii).

"(ii) QUALIFIED ACTIVITY DEFINED.—The term 'qualified activity' means an activity specified by the State (subject to the exclusion described in paragraph (1)) that meets such standards and criteria as the State may specify, including—

"(I) substance abuse counseling or treatment;

"(II) rehabilitation treatment and services;

"(III) work-related education or training directed at enabling the family member to work;

"(IV) job search or job readiness assistance; and

"(V) any other activity that addresses a purpose specified in section 401(a).

"(iii) LIMITATION.—

"(I) IN GENERAL.—Except as provided in subclause (II), clause (i) shall not apply to a family for more than 3 months in any period of 24 consecutive months.

"(II) SPECIAL RULE APPLICABLE TO EDUCATION AND TRAINING.—A State may, on a case-by-case basis, apply clause (i) to a work-eligible individual so that participation by the individual in education or training, if needed to permit the individual to complete a certificate program or other work-related education or training directed at enabling the individual to fill a known job need in a local area, may be considered countable hours with respect to the family of the individual for not more than 4 months in any period of 24 consecutive months.

"(B) SCHOOL ATTENDANCE BY TEEN HEAD OF HOUSEHOLD.—The work-eligible members of a family shall be considered to be engaged in a direct work activity for an average of 40 hours per week in a month if the family includes an individual who is married, or is a single head of household, who has not attained 20 years of age, and the individual—

"(i) maintains satisfactory attendance at secondary school or the equivalent in the month; or

"(ii) participates in education directly related to employment for an average of at least 20 hours per week in the month.

"(d) DIRECT WORK ACTIVITY.—In this section, the term 'direct work activity' means—

"(1) unsubsidized employment;

"(2) subsidized private sector employment;

"(3) subsidized public sector employment;

"(4) on-the-job training;

"(5) supervised work experience; or

"(6) supervised community service.".

(e) PENALTIES AGAINST INDIVIDUALS.—Section 407(e)(1) (42 U.S.C. 607(e)(1)) is amended to read as follows:

"(1) REDUCTION OR TERMINATION OF ASSISTANCE.—

"(A) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under a

State program funded under this part fails to engage in activities required in accordance with this section, or other activities required by the State under the program, and the family does not otherwise engage in activities in accordance with the self-sufficiency plan established for the family pursuant to section 408(b), the State shall—

"(i) if the failure is partial or persists for not more than 1 month—

"(I) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the failure occurs; or

"(II) terminate all assistance to the family, subject to such good cause exceptions as the State may establish; or

"(ii) if the failure is total and persists for at least 2 consecutive months, terminate all cash payments to the family including qualified State expenditures (as defined in section 409(a)(7)(B)(i)) for at least 1 month and thereafter until the State determines that the individual has resumed full participation in the activities, subject to such good cause exceptions as the State may establish.

"(B) SPECIAL RULE.—

"(i) IN GENERAL.—In the event of a conflict between a requirement of clause (i)(II) or (ii) of subparagraph (A) and a requirement of a State constitution, or of a State statute that, before 1966, obligated local government to provide assistance to needy parents and children, the State constitutional or statutory requirement shall control.

"(ii) LIMITATION.—Clause (i) of this subparagraph shall not apply after the 1-year period that begins with the date of the enactment of this subparagraph.".

(f) CONFORMING AMENDMENTS.—

(1) Section 407(f) (42 U.S.C. 607(f)) is amended in each of paragraphs (1) and (2) by striking "work activity described in subsection (d)" and inserting "direct work activity".

(2) The heading of section 409(a)(14) (42 U.S.C. 609(a)(14)) is amended by inserting "OR REFUSING TO ENGAGE IN ACTIVITIES UNDER A FAMILY SELF-SUFFICIENCY PLAN" after "WORK".

SEC. 8111. MAINTENANCE OF EFFORT.

(a) IN GENERAL.—Section 409(a)(7) (42 U.S.C. 609(a)(7)) is amended—

(1) in subparagraph (A), by striking "fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, or 2007" and inserting "fiscal year 2006, 2007, 2008, 2009, 2010, or 2011"; and

(2) in subparagraph (B)(ii)—

(A) by inserting "preceding" before "fiscal year"; and

(B) by striking "for fiscal years 1997 through 2006,".

(b) STATE SPENDING ON PROMOTING HEALTHY MARRIAGE.—

(1) IN GENERAL.—Section 404 (42 U.S.C. 604) is amended by adding at the end the following:

"(l) MARRIAGE PROMOTION.—A State, territory, or tribal organization to which a grant is made under section 403(a)(2) may use a grant made to the State, territory, or tribe under any other provision of section 403 for marriage promotion activities, and the amount of any such grant so used shall be considered State funds for purposes of section 403(a)(2).".

(2) FEDERAL TANF FUNDS USED FOR MARRIAGE PROMOTION DISREGARDED FOR PURPOSES OF MAINTENANCE OF EFFORT REQUIREMENT.—Section 409(a)(7)(B)(i) (42 U.S.C. 609(a)(7)(B)(i)), as amended by section 8103(c) of this Act, is amended by adding at the end the following:

"(VI) EXCLUSION OF FEDERAL TANF FUNDS USED FOR MARRIAGE PROMOTION ACTIVITIES.—Such term does not include the amount of any grant made to the State under section 403 that is expended for a marriage promotion activity.".

SEC. 8112. PERFORMANCE IMPROVEMENT.

(a) STATE PLANS.—Section 402(a) (42 U.S.C. 602(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by redesignating clause (vi) and clause (vii) (as added by section 8103(a) of this Act) as clauses (vii) and (viii), respectively; and

(ii) by striking clause (v) and inserting the following:

"(v) The document shall—

"(I) describe how the State will pursue ending dependence of needy families on government benefits and reducing poverty by promoting job preparation and work;

"(II) describe how the State will encourage the formation and maintenance of healthy 2-parent married families, encourage responsible fatherhood, and prevent and reduce the incidence of out-of-wedlock pregnancies;

"(III) include specific, numerical, and measurable performance objectives for accomplishing subclauses (I) and (II); and

"(IV) describe the methodology that the State will use to measure State performance in relation to each such objective.

"(vi) Describe any strategies and programs the State may be undertaking to address—

"(I) employment retention and advancement for recipients of assistance under the program, including placement into high-demand jobs, and whether the jobs are identified using labor market information;

"(II) efforts to reduce teen pregnancy;

"(III) services for struggling and noncompliant families, and for clients with special problems; and

"(IV) program integration, including the extent to which employment and training services under

the program are provided through the One-Stop delivery system created under the Workforce Investment Act of 1998, and the extent to which former recipients of such assistance have access to additional core, intensive, or training services funded through such Act."; and

(B) in subparagraph (B), by striking clause (iii) (as so redesignated by section 8107(b)(1) of this Act) and inserting the following:

"(iii) The document shall describe strategies and programs the State is undertaking to engage religious organizations in the provision of services funded under this part and efforts related to section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

"(iv) The document shall describe strategies to improve program management and performance."; and

(2) in paragraph (4), by inserting "and tribal" after "that local".

(b) CONSULTATION WITH STATE REGARDING PLAN AND DESIGN OF TRIBAL PROGRAMS.—Section 412(b)(1) (42 U.S.C. 612(b)(1)) 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 adding at the end the following:

"(G) provides an assurance that the State in which the tribe is located has been consulted regarding the plan and its design.".

(c) PERFORMANCE MEASURES.—Section 413 (42 U.S.C. 613) is amended by adding at the end the following:

"(k) PERFORMANCE IMPROVEMENT.—The Secretary, in consultation with the States, shall develop uniform performance measures designed to assess the degree of effectiveness, and the degree of improvement, of State programs funded under this part in accomplishing the purposes of this part.".

(d) ANNUAL RANKING OF STATES.—Section 413(d)(1) (42 U.S.C. 613(d)(1)) is amended by striking "long-term private sector jobs" and inserting "private sector jobs, the success of the recipients in retaining employment, the ability of the recipients to increase their wages".

SEC. 8113. DATA COLLECTION AND REPORTING.

(a) CONTENTS OF REPORT.—Section 411(a)(1)(A) (42 U.S.C. 611(a)(1)(A)) is amended—

(1) in the matter preceding clause (i), by inserting "and on families receiving assistance under State programs funded with other qualified State expenditures (as defined in section 409(a)(7)(B))" before the colon;

(2) in clause (vii), by inserting "and minor parent" after "of each adult";

(3) in clause (viii), by striking "and educational level";

(4) in clause (ix), by striking ", and if the latter 2, the amount received";

(5) in clause (x)—

(A) by striking "each type of"; and

(B) by inserting before the period "and, if applicable, the reason for receipt of the assistance for a total of more than 60 months";

(6) in clause (xi), by striking the subclauses and inserting the following:

"(I) Subsidized private sector employment.

"(II) Unsubsidized employment.

"(III) Public sector employment, supervised work experience, or supervised community service.

"(IV) On-the-job training.

"(V) Job search and placement.

"(VI) Training.

"(VII) Education.

"(VIII) Other activities directed at the purposes of this part, as specified in the State plan submitted pursuant to section 402.";

(7) in clause (xii), by inserting "and progress toward universal engagement" after "participation rates";

(8) in clause (xiii), by striking "type and";

(9) in clause (xvi), by striking subclause (II) and redesignating subclauses (III) through (V) as subclauses (II) through (IV), respectively; and

(10) by adding at the end the following:

"(xviii) The date the family first received assistance from the State program on the basis of the most recent application for such assistance.

"(xix) Whether a self-sufficiency plan is established for the family in accordance with section 408(b).

"(xx) With respect to any child in the family, the marital status of the parents at the birth of the child, and if the parents were not then married, whether the paternity of the child has been established.".

(b) USE OF SAMPLES.—Section 411(a)(1)(B) (42 U.S.C. 611(a)(1)(B)) is amended—

(1) in clause (i)—

(A) by striking "a sample" and inserting "samples"; and

(B) by inserting before the period ", except that the Secretary may designate core data elements that must be reported on all families"; and

(2) in clause (ii), by striking "funded under this part" and inserting "described in subparagraph (A)".

(c) REPORT ON FAMILIES THAT BECOME INELIGIBLE TO RECEIVE ASSISTANCE.—Section 411(a) (42 U.S.C. 611(a)) is amended—

(1) by striking paragraph (5);

(2) by redesignating paragraph (6) as paragraph (5); and

(3) by inserting after paragraph (5) (as so redesignated) the following:

"(6) REPORT ON FAMILIES THAT BECOME INELIGIBLE TO RECEIVE ASSISTANCE.—The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter the number of families and total number of individuals that, during the month, became ineligible to receive assistance under the State program funded under this part (broken down by the

number of families that become so ineligible due to earnings, changes in family composition that result in increased earnings, sanctions, time limits, or other specified reasons).".

(d) REGULATIONS.—Section 411(a)(7) (42 U.S.C. 611(a)(7)) is amended—

(1) by inserting "and to collect the necessary data" before "with respect to which reports";

(2) by striking "subsection" and inserting "section"; and

(3) by striking "in defining the data elements" and all that follows and inserting ", the National Governors' Association, the American Public Human Services Association, the National Conference of State Legislatures, and others in defining the data elements.".

(e) ADDITIONAL REPORTS BY STATES.—Section 411 (42 U.S.C. 611) is amended—

(1) by redesignating subsection (b) as subsection (e); and

(2) by inserting after subsection (a) the following:

"(b) ANNUAL REPORTS ON PROGRAM CHARACTERISTICS.—Not later than 90 days after the end of fiscal year 2006 and each succeeding fiscal year, each eligible State shall submit to the Secretary a report on the characteristics of the State program funded under this part and other State programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)). The report shall include, with respect to each such program, the program name, a description of program activities, the program purpose, the program eligibility criteria, the sources of program funding, the number of program beneficiaries, sanction policies, and any program work requirements.

"(c) MONTHLY REPORTS ON CASELOAD.—Not later than 3 months after the end of a calendar month that begins 1 year or more after the enactment of this subsection, each eligible State shall submit to the Secretary a report on the number of families and total number of individuals receiving assistance in the calendar month under the State program funded under this part.

"(d) ANNUAL REPORT ON PERFORMANCE IMPROVEMENT.—Beginning with fiscal year 2007, not later than January 1 of each fiscal year, each eligible State shall submit to the Secretary a report on achievement and improvement during the preceding fiscal year under the numerical performance goals and measures under the State program funded under this part with respect to each of the matters described in section 402(a)(1)(A)(v).".

(f) ANNUAL REPORTS TO CONGRESS BY THE SECRETARY.—Section 411(e), as so redesignated by subsection (e) of this section, is amended—

(1) in the matter preceding paragraph (1), by striking "and each fiscal year thereafter" and inserting "and by July 1 of each fiscal year thereafter";

(2) in paragraph (2), by striking "families applying for assistance," and by striking the last comma; and

(3) in paragraph (3), by inserting "and other programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))" before the semicolon.

(g) INCREASED ANALYSIS OF STATE SINGLE AUDIT REPORTS.—Section 411 (42 U.S.C. 611) is amended by adding at the end the following:

"(f) INCREASED ANALYSIS OF STATE SINGLE AUDIT REPORTS.—

"(1) IN GENERAL.—Within 3 months after a State submits to the Secretary a report pursuant to section 7502(a)(1)(A) of title 31, United States Code, the Secretary shall analyze the report for the purpose of identifying the extent and nature of problems related to the oversight by the State of nongovernmental entities with respect to contracts entered into by such entities with the State program funded under this part, and determining what additional actions may be appropriate to help prevent and correct the problems.

"(2) INCLUSION OF PROGRAM OVERSIGHT SECTION IN ANNUAL REPORT TO THE CONGRESS.—The Secretary shall include in each report under subsection (e) a section on oversight of State programs funded under this part, including findings on the extent and nature of the problems referred to in paragraph (1), actions taken to resolve the problems, and to the extent the Secretary deems appropriate make recommendations on changes needed to resolve the problems.".

SEC. 8114. DIRECT FUNDING AND ADMINISTRATION BY INDIAN TRIBES.

(a) TRIBAL FAMILY ASSISTANCE GRANT.—Section 412(a)(1)(A) (42 U.S.C. 612(a)(1)(A)) is amended by striking "1997, 1998, 1999, 2000, 2001, 2002, and 2003" and inserting "2006 through 2010".

(b) GRANTS FOR INDIAN TRIBES THAT RECEIVED JOBS FUNDS.—Section 412(a)(2)(A) (42 U.S.C. 612(a)(2)(A)) is amended by striking "1997, 1998, 1999, 2000, 2001, 2002, and 2003" and inserting "2006 through 2010".

SEC. 8115. RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.

(a) SECRETARY'S FUND FOR RESEARCH, DEMONSTRATIONS, AND TECHNICAL ASSISTANCE.—Section 413 (42 U.S.C. 613), as amended by section 8112(c) of this Act, is further amended by adding at the end the following:

"(l) FUNDING FOR RESEARCH, DEMONSTRATIONS, AND TECHNICAL ASSISTANCE.—

"(1) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $102,000,000 for each of fiscal years 2006 through 2010, which shall be available to the Secretary for the purpose of conducting and supporting research and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under this part, which shall be expended primarily on activities described in section 403(a)(2)(B), and which shall be in addition to any other funds made available under this part. The Secretary may not provide an entity with funds made available under this paragraph unless the entity agrees that, as a condition of receipt of the funds for a program or activity described in any of clauses (iii) through (viii) of section

403(a)(2)(B), the entity will comply with subclauses (I) and (II) of section 403(a)(2)(C)(ii).

"(2) SET ASIDE FOR DEMONSTRATION PROJECTS FOR COORDINATION OF PROVISION OF CHILD WELFARE AND TANF SERVICES TO TRIBAL FAMILIES AT RISK OF CHILD ABUSE OR NEGLECT.—

"(A) IN GENERAL.—Of the amounts made available under paragraph (1) for a fiscal year, $2,000,000 shall be awarded on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

"(B) USE OF FUNDS.—A grant made to such a project shall be used—

"(i) to improve case management for families eligible for assistance from such a tribal program;

"(ii) for supportive services and assistance to tribal children in out-of-home placements and the tribal families caring for such children, including families who adopt such children; and

"(iii) for prevention services and assistance to tribal families at risk of child abuse and neglect.

"(C) REPORTS.—The Secretary may require a recipient of funds awarded under this paragraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this paragraph.".

(b) FUNDING OF STUDIES AND DEMONSTRATIONS.—Section 413(h)(1) (42 U.S.C. 613(h)(1)) is amended in the matter preceding subparagraph (A) by striking "1997 through 2002" and inserting "2006 through 2010".

(c) REPORT ON ENFORCEMENT OF CERTAIN AFFIDAVITS OF SUPPORT AND SPONSOR DEEMING.—Not later than March 31, 2006, the Secretary of Health and Human Services, in consultation with the Attorney General, shall submit to the Congress a report on the enforcement of affidavits of support and sponsor deeming as required by section 421, 422, and 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(d) REPORT ON COORDINATION.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services and the Secretary of Labor shall jointly submit a report to the Congress describing common or conflicting data elements, definitions, performance measures, and reporting requirements in the Workforce Investment Act of 1998 and part A of title IV of the Social Security Act, and, to the degree each Secretary deems appropriate, at the discretion of either Secretary, any other program administered by the respective Secretary, to allow greater coordination between the welfare and workforce development systems.

SEC. 8116. STUDY BY THE CENSUS BUREAU.

(a) IN GENERAL.—Section 414(a) (42 U.S.C. 614(a)) is amended to read as follows:

"(a) IN GENERAL.—The Bureau of the Census shall implement or enhance a longitudinal survey of program participation, developed in consultation with the Secretary and made available to interested parties, to allow for the assessment of the outcomes of continued welfare reform on the economic and child well-being of low-income families with children, including those who received assistance or services from a State program funded under this part, and, to the extent possible, shall provide State representative samples. The content of the survey should include such information as may be necessary to examine the issues of out-of-wedlock childbearing, marriage, welfare dependency and compliance with work requirements, the beginning and ending of spells of assistance, work, earnings and employment stability, and the well-being of children.".

(b) APPROPRIATION.—Section 414(b) (42 U.S.C. 614(b)) is amended—

(1) by striking "1996," and all that follows through "2003" and inserting "2006 through 2010"; and

(2) by adding at the end the following: "Funds appropriated under this subsection shall remain available through fiscal year 2010 to carry out subsection (a).".

SEC. 8117. DEFINITION OF ASSISTANCE.

(a) IN GENERAL.—Section 419 (42 U.S.C. 619) is amended by adding at the end the following:

"(6) ASSISTANCE.—

"(A) IN GENERAL.—The term 'assistance' means payment, by cash, voucher, or other means, to or for an individual or family for the purpose of meeting a subsistence need of the individual or family (including food, clothing, shelter, and related items, but not including costs of transportation or child care).

"(B) EXCEPTION.—The term 'assistance' does not include a payment described in subparagraph (A) to or for an individual or family on a short-term, nonrecurring basis (as defined by the State in accordance with regulations prescribed by the Secretary).".

(b) CONFORMING AMENDMENTS.—

(1) Section 404(a)(1) (42 U.S.C. 604(a)(1)) is amended by striking "assistance" and inserting "aid".

(2) Section 404(f) (42 U.S.C. 604(f)) is amended by striking "assistance" and inserting "benefits or services".

(3) Section 408(a)(5)(B)(i) (42 U.S.C. 608(a)(5)(B)(i)) is amended in the heading by striking "ASSISTANCE" and inserting "AID".

(4) Section 413(d)(2) (42 U.S.C. 613(d)(2)) is amended by striking "assistance" and inserting "aid".

SEC. 8118. TECHNICAL CORRECTIONS.

(a) Section 409(c)(2) (42 U.S.C. 609(c)(2)) is amended by inserting a comma after "appropriate".

(b) Section 411(a)(1)(A)(ii)(III) (42 U.S.C. 611(a)(1)(A)(ii)(III)) is amended by striking the last close parenthesis.

(c) Section 413(j)(2)(A) (42 U.S.C. 613(j)(2)(A)) is amended by striking "section" and inserting "sections".

(d)(1) Section 413 (42 U.S.C. 613) is amended by striking subsection (g) and redesignating subsections (h) through (j) and subsections (k) and (l) (as added by sections 8112(c) and 8115(a) of this Act, respectively) as subsections (g) through (k), respectively.

(2) Each of the following provisions is amended by striking "413(j)" and inserting "413(i)":

(A) Section 403(a)(5)(A)(ii)(III) (42 U.S.C. 603(a)(5)(A)(ii)(III)).

(B) Section 403(a)(5)(F) (42 U.S.C. 603(a)(5)(F)).

(C) Section 403(a)(5)(G)(ii) (42 U.S.C. 603(a)(5)(G)(ii)).

(D) Section 412(a)(3)(B)(iv) (42 U.S.C. 612(a)(3)(B)(iv)).

SEC. 8119. FATHERHOOD PROGRAM.

(a) SHORT TITLE.—This section may be cited as the "Promotion and Support of Responsible Fatherhood and Healthy Marriage Act of 2005".

(b) FATHERHOOD PROGRAM.—

(1) IN GENERAL.—Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193) is amended by adding at the end the following:

"SEC. 117. FATHERHOOD PROGRAM.

"(a) IN GENERAL.—Title IV (42 U.S.C. 601–679b) is amended by inserting after part B the following:

'PART C—FATHERHOOD PROGRAM

'SEC. 441. FINDINGS AND PURPOSES.

'(a) FINDINGS.—The Congress finds that there is substantial evidence strongly indicating the urgent need to promote and support involved, committed, and responsible fatherhood, and to encourage and support healthy marriages between parents raising children, including data demonstrating the following:

'(1) In approximately 84 percent of cases where a parent is absent, that parent is the father.

'(2) If current trends continue, half of all children born today will live apart from one of their parents, usually their father, at some point before they turn 18.

'(3) Where families (whether intact or with a parent absent) are living in poverty, a significant factor is the father's lack of job skills.

'(4) Committed and responsible fathering during infancy and early childhood contributes to the development of emotional security, curiosity, and math and verbal skills.

'(5) An estimated 19,400,000 children (27 percent) live apart from their biological father.

'(6) Forty percent of children under age 18 not living with their biological father had not seen their father even once in the last 12 months, according to national survey data.

'(b) PURPOSES.—The purposes of this part are:

'(1) To provide for projects and activities by public entities and by nonprofit community entities, including religious organizations, designed to test promising approaches to accomplishing the following objectives:

'(A) Promoting responsible, caring, and effective parenting through counseling, mentoring, and parenting education, dissemination of educational materials and information on parenting skills, encouragement of positive father involvement, including the positive involvement of nonresident fathers, and other methods.

'(B) Enhancing the abilities and commitment of unemployed or low-income fathers to provide material support for their families and to avoid or leave welfare programs by assisting them to take full advantage of education, job training, and job search programs, to improve work habits and work skills, to secure career advancement by activities such as outreach and information dissemination, coordination, as appropriate, with employment services and job training programs, including the One-Stop delivery system established under title I of the Workforce Investment Act of 1998, encouragement and support of timely payment of current child support and regular payment toward past due child support obligations in appropriate cases, and other methods.

'(C) Improving fathers' ability to effectively manage family business affairs by means such as education, counseling, and mentoring in matters including household management, budgeting, banking, and handling of financial transactions, time management, and home maintenance.

'(D) Encouraging and supporting healthy marriages and married fatherhood through such activities as premarital education, including the use of premarital inventories, marriage preparation programs, skills-based marriage education programs, marital therapy, couples counseling, divorce education and reduction programs, divorce mediation and counseling, relationship skills enhancement programs, including those designed to reduce child abuse and domestic violence, and dissemination of information about the benefits of marriage for both parents and children.

'(2) Through the projects and activities described in paragraph (1), to improve outcomes for children with respect to measures such as increased family income and economic security, improved school performance, better health, improved emotional and behavioral stability and social adjustment, and reduced risk of delinquency, crime, substance abuse, child abuse and neglect, teen sexual activity, and teen suicide.

'(3) To evaluate the effectiveness of various approaches and to disseminate findings concerning outcomes and other information in order to encourage and facilitate the replication of effective approaches to accomplishing these objectives.

'SEC. 442. DEFINITIONS.

'In this part, the terms "Indian tribe" and "tribal organization" have the meanings given them in subsections (e) and (l), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act.

'SEC. 443. COMPETITIVE GRANTS FOR SERVICE PROJECTS.

'(a) IN GENERAL.—The Secretary may make grants for fiscal years 2006 through 2010 to public and nonprofit community entities, including religious organizations, and to Indian tribes and tribal organizations, for demonstration service projects and activities designed to test the effectiveness of various approaches to accomplish the objectives specified in section 441(b)(1).

'(b) ELIGIBILITY CRITERIA FOR FULL SERVICE GRANTS.—In order to be eligible for a grant under this section, except as specified in subsection (c), an entity shall submit an application to the Secretary containing the following:

'(1) PROJECT DESCRIPTION.—A statement including—

'(A) a description of the project and how it will be carried out, including the geographical area to be covered and the number and characteristics of clients to be served, and how it will address each of the 4 objectives specified in section 441(b)(1); and

'(B) a description of the methods to be used by the entity or its contractor to assess the extent to which the project was successful in accomplishing its specific objectives and the general objectives specified in section 441(b)(1).

'(2) EXPERIENCE AND QUALIFICATIONS.—A demonstration of ability to carry out the project, by means such as demonstration of experience in successfully carrying out projects of similar design and scope, and such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

'(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

'(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

'(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs under parts A, B, and D of this title, including programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

'(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(7) SELF-INITIATED EVALUATION.—If the entity elects to contract for independent evaluation of the project (part or all of the cost of which may be paid for using grant funds), a commitment to submit to the Secretary a copy of the evaluation report within 30 days after completion of the report and not more than 1 year after completion of the project.

'(8) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including random assignment of clients to service recipient and control groups, if determined by the Secretary to be appropriate, and affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(c) ELIGIBILITY CRITERIA FOR LIMITED PURPOSE GRANTS.—In order to be eligible for a grant under this section in an amount under $25,000 per fiscal year, an entity shall submit an application to the Secretary containing the following:

'(1) PROJECT DESCRIPTION.—A description of the project and how it will be carried out, including the number and characteristics of clients to be served, the proposed duration of the project, and how it will address at least 1 of the 4 objectives specified in section 441(b)(1).

'(2) QUALIFICATIONS.—Such information as the Secretary may require as to the capacity of the entity to carry out the project, including any previous experience with similar activities.

'(3) COORDINATION WITH RELATED PROGRAMS.—As required by the Secretary in appropriate cases, an undertaking to coordinate and cooperate with State and local entities responsible for specific programs relating to the objectives of the project including, as appropriate, jobs programs and programs serving children and families.

'(4) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(5) COOPERATION WITH SECRETARY'S OVERSIGHT AND EVALUATION.—An agreement to cooperate with the Secretary's evaluation of projects assisted under this section, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(d) CONSIDERATIONS IN AWARDING GRANTS.—

'(1) DIVERSITY OF PROJECTS.—In awarding grants under this section, the Secretary shall seek to achieve a balance among entities of differing sizes, entities in differing geographic areas, entities in urban and in rural areas, and entities employing differing methods of achieving the purposes of this section, including working with the State agency responsible for the administration of part D to help fathers satisfy child support arrearage obligations.

'(2) PREFERENCE FOR PROJECTS SERVING LOW-INCOME FATHERS.—In awarding grants under this section, the Secretary may give preference to applications for projects in which a majority of the clients to be served are low-income fathers.

'(e) FEDERAL SHARE.—

'(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for a share of the cost of such project in such fiscal year equal to—

'(A) up to 80 percent (or up to 90 percent, if the entity demonstrates to the Secretary's satisfaction circumstances limiting the entity's ability to secure non-Federal resources) in the case of a project under subsection (b); and

'(B) up to 100 percent, in the case of a project under subsection (c).

'(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

'SEC. 444. MULTICITY, MULTISTATE DEMONSTRATION PROJECTS.

'(a) IN GENERAL.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for 2 multicity, multistate projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). One of the projects shall test the use of married couples to deliver program services.

'(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

'(1) EXPERIENCE WITH FATHERHOOD PROGRAMS.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

'(2) EXPERIENCE WITH MULTICITY, MULTISTATE PROGRAMS AND GOVERNMENT COORDINATION.—The organization must have experience in simultaneously conducting such programs in more than 1 major metropolitan area in more than 1 State and in coordinating such programs, where appropriate, with State and local government agencies and private, nonprofit agencies (including community-based and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

'(c) APPLICATION REQUIREMENTS.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

'(1) QUALIFICATIONS.—

'(A) ELIGIBLE ENTITY.—A demonstration that the entity meets the requirements of subsection (b).

'(B) OTHER.—Such other information as the Secretary may find necessary to demonstrate the entity's capacity to carry out the project, including the entity's ability to provide the non-Federal share of project resources.

'(2) PROJECT DESCRIPTION.—A description of and commitments concerning the project design, including the following:

'(A) IN GENERAL.—A detailed description of the proposed project design and how it will be carried out, which shall—

'(i) provide for the project to be conducted in at least 3 major metropolitan areas;

'(ii) state how it will address each of the 4 objectives specified in section 441(b)(1);

'(iii) demonstrate that there is a sufficient number of potential clients to allow for the random selection of individuals to participate in the project and for comparisons with appropriate control groups composed of individuals who have not participated in such projects; and

'(iv) demonstrate that the project is designed to direct a majority of project resources to activities serving low-income fathers (but the project need not make services available on a means-tested basis).

'(B) OVERSIGHT, EVALUATION, AND ADJUSTMENT COMPONENT.—An agreement that the entity—

'(i) in consultation with the evaluator selected pursuant to section 445, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups), and to provide for mid-course adjustments in project design indicated by interim evaluations;

'(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

'(iii) will cooperate fully with the Secretary's ongoing oversight and ongoing and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, staff, and clients.

'(3) ADDRESSING CHILD ABUSE AND NEGLECT AND DOMESTIC VIOLENCE.—A description of how the entity will assess for the presence of, and intervene to resolve, domestic violence and child abuse and neglect, including how the entity will coordinate with State and local child protective service and domestic violence programs.

'(4) ADDRESSING CONCERNS RELATING TO SUBSTANCE ABUSE AND SEXUAL ACTIVITY.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

'(5) COORDINATION WITH SPECIFIED PROGRAMS.—An undertaking to coordinate, as appropriate, with State and local entities responsible for the programs funded under parts A, B, and D of this title, programs under title I of the Workforce Investment Act of 1998 (including the One-Stop delivery system), and such other programs as the Secretary may require.

'(6) RECORDS, REPORTS, AND AUDITS.—An agreement to maintain such records, make such reports, and cooperate with such reviews or audits (in addition to those required under the preceding provisions of paragraph (2)) as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

'(d) FEDERAL SHARE.—

'(1) IN GENERAL.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

'(2) NON-FEDERAL SHARE.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

'SEC. 445. EVALUATION.

'(a) IN GENERAL.—The Secretary, directly or by contract or cooperative agreement, shall evaluate the effectiveness of service projects funded under sections 443 and 444 from the standpoint of the purposes specified in section 441(b)(1).

'(b) EVALUATION METHODOLOGY.—Evaluations under this section shall—

'(1) include, to the maximum extent feasible, random assignment of clients to service delivery and control groups and other appropriate comparisons of groups of individuals receiving and not receiving services;

'(2) describe and measure the effectiveness of the projects in achieving their specific project goals; and

'(3) describe and assess, as appropriate, the impact of such projects on marriage, parenting, domestic violence, child abuse and neglect, money management, employment and earnings, payment of child support, and child well-being, health, and education.

'(c) EVALUATION REPORTS.—The Secretary shall publish the following reports on the results of the evaluation:

'(1) An implementation evaluation report covering the first 24 months of the activities under this part to be completed by 36 months after initiation of such activities.

'(2) A final report on the evaluation to be completed by September 30, 2013.

'SEC. 446. PROJECTS OF NATIONAL SIGNIFICANCE.

'The Secretary is authorized, by grant, contract, or cooperative agreement, to carry out projects and activities of national significance relating to fatherhood promotion, including—

'(1) COLLECTION AND DISSEMINATION OF INFORMATION.—Assisting States, communities, and private entities, including religious organizations, in efforts to promote and support marriage and responsible fatherhood by collecting, evaluating, developing, and making available (through the Internet and by other means) to all interested parties information regarding approaches to accomplishing the objectives specified in section 441(b)(1).

'(2) MEDIA CAMPAIGN.—Developing, promoting, and distributing to interested States, local governments, public agencies,

and private nonprofit organizations, including charitable and religious organizations, a media campaign that promotes and encourages involved, committed, and responsible fatherhood and married fatherhood.

'(3) TECHNICAL ASSISTANCE.—Providing technical assistance, including consultation and training, to public and private entities, including community organizations and faith-based organizations, in the implementation of local fatherhood promotion programs.

'(4) RESEARCH.—Conducting research related to the purposes of this part.

'SEC. 447. NONDISCRIMINATION.

'The projects and activities assisted under this part shall be available on the same basis to all fathers and expectant fathers able to benefit from such projects and activities, including married and unmarried fathers and custodial and noncustodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers on the same basis as to fathers.

'SEC. 448. AUTHORIZATION OF APPROPRIATIONS; RESERVATION FOR CERTAIN PURPOSE.

'(a) AUTHORIZATION.—There are authorized to be appropriated $20,000,000 for each of fiscal years 2006 through 2010 to carry out the provisions of this part.

'(b) RESERVATION.—Of the amount appropriated under this section for each fiscal year, not more than 15 percent shall be available for the costs of the multicity, multicounty, multistate demonstration projects under section 444, evaluations under section 445, and projects of national significance under section 446.'.

"(b) INAPPLICABILITY OF EFFECTIVE DATE PROVISIONS.—Section 116 shall not apply to the amendment made by subsection (a) of this section.".

(2) CLERICAL AMENDMENT.—Section 2 of such Act is amended in the table of contents by inserting after the item relating to section 116 the following new item:

"Sec. 117. Fatherhood program.".

SEC. 8120. STATE OPTION TO MAKE TANF PROGRAMS MANDATORY PARTNERS WITH ONE-STOP EMPLOYMENT TRAINING CENTERS.

Section 408 of the Social Security Act (42 U.S.C. 608) is amended by adding at the end the following:

"(h) STATE OPTION TO MAKE TANF PROGRAMS MANDATORY PARTNERS WITH ONE-STOP EMPLOYMENT TRAINING CENTERS.—For purposes of section 121(b) of the Workforce Investment Act of 1998, a State program funded under part A of title IV of the Social Security Act shall be considered a program referred to in paragraph (1)(B) of such section, unless, after the date of the enactment of this subsection, the Governor of the State notifies the Secretaries of Health and Human Services and Labor in writing of the decision of the Governor not to make the State program a mandatory partner.".

SEC. 8121. SENSE OF THE CONGRESS.

It is the sense of the Congress that a State welfare-to-work program should include a mentoring program.

SEC. 8122. DRUG TESTING OF APPLICANTS FOR AND RECIPIENTS OF ASSISTANCE.

(a) REQUIREMENT.—Section 408(a) (42 U.S.C. 608(a)) is amended by adding at the end the following:

"(12) DRUG TESTING REQUIREMENTS.—A State to which a grant is made under section 403(a) for a fiscal year shall—

"(A) require an individual who has applied for, or is a recipient of, assistance from the State program funded under this part to undergo a physical test designed to detect the use by the individual of any controlled substance (as defined in section 102(6) of the Controlled Substances Act) if the State has reason to believe that the person has unlawfully used such a substance recently;

"(B) if a test administered pursuant to this paragraph indicates that an individual has so used such a substance recently, or if the State otherwise determines (on the basis of such indicators as the State may establish) that an individual is likely to have so used such a substance recently—

"(i) ensure that the self-sufficiency plan developed under section 408(b) with respect to the individual addresses the use of the substance;

"(ii) suspend the provision of cash assistance under the program to the family of the individual until a subsequent such test indicates that the individual has not been using the substance; and

"(iii) require, as a condition of providing any benefit under the program to the family of the individual, that the individual comply with the self-sufficiency plan, including the provisions of the plan that address the use of the substance, and undergo additional such tests every 30 or 60 days, as the State deems appropriate; and

"(C) terminate for 3 years the participation in the program of the family of any individual who tests positive for such use of such a substance in such number of consecutive tests administered pursuant to this paragraph (which shall be not less than 3 and not more than 6) as the State deems appropriate.".

(b) PENALTY FOR NONCOMPLIANCE.—Section 409(a) (42 U.S.C. 609(a)) is amended by adding at the end the following:

"(15) PENALTY FOR FAILURE TO COMPLY WITH DRUG TESTING REQUIREMENTS.—If the Secretary determines that a State has not complied with section 408(a)(12) during a fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not less than 5 percent and not more than 10 percent of the State family assistance grant, as the Secretary deems appropriate based on the frequency and severity of the noncompliance.".

Subtitle B—Child Care

SEC. 8201. ENTITLEMENT FUNDING.

Section 418(a)(3) (42 U.S.C. 618(a)(3)) 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 a semicolon; and

(3) by adding at the end the following:

"(G) $2,717,000,000 for fiscal year 2006;

"(H) $2,767,000,000 for fiscal year 2007;

"(I) $2,817,000,000 for fiscal year 2008;

"(J) $2,867,000,000 for fiscal year 2009; and

"(K) $2,917,000,000 for fiscal year 2010.".

Subtitle C—Child Support

SEC. 8301. FEDERAL MATCHING FUNDS FOR LIMITED PASS THROUGH OF CHILD SUPPORT PAYMENTS TO FAMILIES RECEIVING TANF.

(a) IN GENERAL.—Section 457(a) (42 U.S.C. 657(a)) is amended—

(1) in paragraph (1)(A), by inserting "subject to paragraph (7)" before the semicolon; and

(2) by adding at the end the following:

"(7) FEDERAL MATCHING FUNDS FOR LIMITED PASS THROUGH OF CHILD SUPPORT PAYMENTS TO FAMILIES RECEIVING TANF.—Notwithstanding paragraph (1), a State shall not be required to pay to the Federal Government the Federal share of an amount collected during a month on behalf of a family that is a recipient of assistance under the State program funded under part A, to the extent that—

"(A) the State distributes the amount to the family;

"(B) the total of the amounts so distributed to the family during the month—

"(i) exceeds the amount (if any) that, as of December 31, 2001, was required under State law to be distributed to a family under paragraph (1)(B); and

"(ii) does not exceed the greater of—

"(I) $100; or

"(II) $50 plus the amount described in clause (i); and

"(C) the amount is disregarded in determining the amount and type of assistance provided to the family under the State program funded under part A.".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to amounts distributed on or after October 1, 2008.

SEC. 8302. STATE OPTION TO PASS THROUGH ALL CHILD SUPPORT PAYMENTS TO FAMILIES THAT FORMERLY RECEIVED TANF.

(a) IN GENERAL.—Section 457(a) (42 U.S.C. 657(a)), as amended by section 8301(a) of this Act, is amended—

(1) in paragraph (2)(B), in the matter preceding clause (i), by inserting ", except as provided in paragraph (8)," after "shall"; and

(2) by adding at the end the following:

"(8) STATE OPTION TO PASS THROUGH ALL CHILD SUPPORT PAYMENTS TO FAMILIES THAT FORMERLY RECEIVED TANF.—In lieu of applying paragraph (2) to any family described in paragraph

(2), a State may distribute to the family any amount collected during a month on behalf of the family.".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to amounts distributed on or after October 1, 2008.

SEC. 8303. MANDATORY REVIEW AND ADJUSTMENT OF CHILD SUPPORT ORDERS FOR FAMILIES RECEIVING TANF.

(a) IN GENERAL.—Section 466(a)(10)(A)(i) (42 U.S.C. 666(a)(10)(A)(i)) is amended—

(1) by striking "parent, or," and inserting "parent or"; and

(2) by striking "upon the request of the State agency under the State plan or of either parent,".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2007.

SEC. 8304. MANDATORY FEE FOR SUCCESSFUL CHILD SUPPORT COLLECTION FOR FAMILY THAT HAS NEVER RECEIVED TANF.

(a) IN GENERAL.—Section 454(6)(B) (42 U.S.C. 654(6)(B)) is amended—

(1) by inserting "(i)" after "(B)";

(2) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(3) by adding "and" after the semicolon; and

(4) by adding after and below the end the following new clause:

"(ii) in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least $500 of support, the State shall impose an annual fee of $25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the 1st $500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and such fees shall be considered income to the program);".

(b) CONFORMING AMENDMENT.—Section 457(a)(3) (42 U.S.C. 657(a)(3)) is amended to read as follows:

"(3) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006.

SEC. 8305. REPORT ON UNDISTRIBUTED CHILD SUPPORT PAYMENTS.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the procedures that the States use generally to locate custodial parents for whom child support has been collected but not yet distributed. The report shall include an estimate of the total amount of undistributed child support and the average length of time it takes un-

distributed child support to be distributed. To the extent the Secretary deems appropriate, the Secretary shall include in the report recommendations as to whether additional procedures should be established at the State or Federal level to expedite the payment of undistributed child support.

SEC. 8306. DECREASE IN AMOUNT OF CHILD SUPPORT ARREARAGE TRIGGERING PASSPORT DENIAL.

(a) IN GENERAL.—Section 452(k)(1) (42 U.S.C. 652(k)(1)) is amended by striking "$5,000" and inserting "$2,500".

(b) CONFORMING AMENDMENT.—Section 454(31) (42 U.S.C. 654(31)) is amended by striking "$5,000" and inserting "$2,500".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006.

SEC. 8307. USE OF TAX REFUND INTERCEPT PROGRAM TO COLLECT PAST-DUE CHILD SUPPORT ON BEHALF OF CHILDREN WHO ARE NOT MINORS.

(a) IN GENERAL.—Section 464 (42 U.S.C. 664) is amended—

(1) in subsection (a)(2)(A), by striking "(as that term is defined for purposes of this paragraph under subsection (c))"; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking "(1) Except as provided in paragraph (2), as used in" and inserting "In"; and

(ii) by inserting "(whether or not a minor)" after "a child" each place it appears; and

(B) by striking paragraphs (2) and (3).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2007.

SEC. 8308. GARNISHMENT OF COMPENSATION PAID TO VETERANS FOR SERVICE-CONNECTED DISABILITIES IN ORDER TO ENFORCE CHILD SUPPORT OBLIGATIONS.

(a) IN GENERAL.—Section 459(h) (42 U.S.C. 659(h)) is amended—

(1) in paragraph (1)(A)(ii)(V), by striking all that follows "Armed Forces" and inserting a semicolon; and

(2) by adding at the end the following:

"(3) LIMITATIONS WITH RESPECT TO COMPENSATION PAID TO VETERANS FOR SERVICE-CONNECTED DISABILITIES.—Notwithstanding any other provision of this section:

"(A) Compensation described in paragraph (1)(A)(ii)(V) shall not be subject to withholding pursuant to this section—

"(i) for payment of alimony; or

"(ii) for payment of child support if the individual is fewer than 60 days in arrears in payment of the support.

"(B) Not more than 50 percent of any payment of compensation described in paragraph (1)(A)(ii)(V) may be withheld pursuant to this section.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2007.

SEC. 8309. MAINTENANCE OF TECHNICAL ASSISTANCE FUNDING.

Section 452(j) (42 U.S.C. 652(j)) is amended by inserting "or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater," before "which shall be available".

SEC. 8310. MAINTENANCE OF FEDERAL PARENT LOCATOR SERVICE FUNDING.

Section 453(o) (42 U.S.C. 653(o)) is amended—

(1) in the 1st sentence, by inserting "or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater," before "which shall be available"; and

(2) in the 2nd sentence, by striking "for each of fiscal years 1997 through 2001".

SEC. 8311. INFORMATION COMPARISONS WITH INSURANCE DATA.

(a) DUTIES OF THE SECRETARY.—Section 452 (42 U.S.C. 652) is amended by adding at the end the following:

"(m) COMPARISONS WITH INSURANCE INFORMATION.—

"(1) IN GENERAL.—The Secretary, through the Federal Parent Locator Service, may—

"(A) compare information concerning individuals owing past-due support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments, and

"(B) furnish information resulting from such a comparison to the State agencies responsible for collecting child support from such individuals.

"(2) LIABILITY.—An insurer (including any agent of an insurer) shall not be liable under any Federal or State law to any person for any disclosure provided for under this subsection, or for any other action taken in good faith in accordance with this subsection.".

(b) STATE REIMBURSEMENT OF FEDERAL COSTS.—Section 453(k)(3) (42 U.S.C. 653(k)(3)) is amended by inserting "or section 452(m)" after "this section".

SEC. 8312. TRIBAL ACCESS TO THE FEDERAL PARENT LOCATOR SERVICE.

Section 453(c)(1) (42 U.S.C. 653(c)(1)) is amended by inserting "or of any Indian tribe or tribal organization" after "any agent or attorney of any State".

SEC. 8313. REIMBURSEMENT OF SECRETARY'S COSTS OF INFORMATION COMPARISONS AND DISCLOSURE FOR ENFORCEMENT OF OBLIGATIONS ON HIGHER EDUCATION ACT LOANS AND GRANTS.

Section 453(j)(6)(F) (42 U.S.C. 653(j)(6)(F)) is amended by striking "additional".

SEC. 8314. TECHNICAL AMENDMENT RELATING TO COOPERATIVE AGREEMENTS BETWEEN STATES AND INDIAN TRIBES.

Section 454(33) (42 U.S.C. 654(33)) is amended by striking "that receives funding pursuant to section 428 and".

SEC. 8315. STATE OPTION TO USE STATEWIDE AUTOMATED DATA PROCESSING AND INFORMATION RETRIEVAL SYSTEM FOR INTERSTATE CASES.

Section 466(a)(14)(A)(iii) (42 U.S.C. 666(a)(14)(A)(iii)) is amended by inserting "(but the assisting State may establish a cor-

responding case based on such other State's request for assistance)" before the semicolon.

SEC. 8316. MODIFICATION OF RULE REQUIRING ASSIGNMENT OF SUPPORT RIGHTS AS A CONDITION OF RECEIVING TANF.

(a) IN GENERAL.—Section 408(a)(3) (42 U.S.C. 608(a)(3)) is amended to read as follows:

"(3) NO ASSISTANCE FOR FAMILIES NOT ASSIGNING CERTAIN SUPPORT RIGHTS TO THE STATE.—

"(A) IN GENERAL.—Subject to subparagraph (B), a State to which a grant is made under section 403 shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to—

"(i) support from any other person which accrues during the period that the family receives assistance under the program; and

"(ii) at the option of the State, support from any other person which has accrued before such period.

"(B) LIMITATION.—The total amount of support that may be required to be provided with respect to rights assigned to a State by a family member pursuant to subparagraph (A) shall not exceed the total amount of assistance provided by the State to the family.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2008.

SEC. 8317. STATE OPTION TO DISCONTINUE CERTAIN SUPPORT ASSIGNMENTS.

Section 457(b) (42 U.S.C. 657(b)) is amended by striking "shall" and inserting "may".

SEC. 8318. TECHNICAL CORRECTION.

The second paragraph (7) of section 453(j) (42 U.S.C. 653(j)) is amended by striking "(7)" and inserting "(9)".

SEC. 8319. REDUCTION IN RATE OF REIMBURSEMENT OF CHILD SUPPORT ADMINISTRATIVE EXPENSES.

Section 455(a)(2) (42 U.S.C. 655(a)(2)) is amended—

(1) in subparagraph (B), by striking ", and" and inserting a semicolon;

(2) in subparagraph (C), by striking "fiscal year 1990 and each fiscal year thereafter." and inserting "fiscal years 1990 through 2006;"; and

(3) by adding at the end the following:

"(D) 62 percent for fiscal year 2007;

"(E) 58 percent for fiscal year 2008;

"(F) 54 percent for fiscal year 2009; and

"(G) 50 percent for fiscal year 2010 and each fiscal year thereafter.".

SEC. 8320. INCENTIVE PAYMENTS.

(a) IN GENERAL.—Section 455(a)(1) (42 U.S.C. 655(a)(1)) is amended by inserting "from amounts paid to the State under section 458 or" before "to carry out an agreement".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2007.

Subtitle D—Child Welfare

SEC. 8401. EXTENSION OF AUTHORITY TO APPROVE DEMONSTRATION PROJECTS.

Section 1130(a)(2) (42 U.S.C. 1320a–9(a)(2)) is amended by striking "2003" and inserting "2010".

SEC. 8402. ELIMINATION OF LIMITATION ON NUMBER OF WAIVERS.

Section 1130(a)(2) (42 U.S.C. 1320a–9(a)(2)) is amended by striking "not more than 10".

SEC. 8403. ELIMINATION OF LIMITATION ON NUMBER OF STATES THAT MAY BE GRANTED WAIVERS TO CONDUCT DEMONSTRATION PROJECTS ON SAME TOPIC.

Section 1130 (42 U.S.C. 1320a–9) is amended by adding at the end the following:

"(h) NO LIMIT ON NUMBER OF STATES THAT MAY BE GRANTED WAIVERS TO CONDUCT SAME OR SIMILAR DEMONSTRATION PROJECTS.—The Secretary shall not refuse to grant a waiver to a State under this section on the grounds that a purpose of the waiver or of the demonstration project for which the waiver is necessary would be the same as or similar to a purpose of another waiver or project that is or may be conducted under this section.".

SEC. 8404. ELIMINATION OF LIMITATION ON NUMBER OF WAIVERS THAT MAY BE GRANTED TO A SINGLE STATE FOR DEMONSTRATION PROJECTS.

Section 1130 (42 U.S.C. 1320a–9) is further amended by adding at the end the following:

"(i) NO LIMIT ON NUMBER OF WAIVERS GRANTED TO, OR DEMONSTRATION PROJECTS THAT MAY BE CONDUCTED BY, A SINGLE STATE.—The Secretary shall not impose any limit on the number of waivers that may be granted to a State, or the number of demonstration projects that a State may be authorized to conduct, under this section.".

SEC. 8405. STREAMLINED PROCESS FOR CONSIDERATION OF AMENDMENTS TO AND EXTENSIONS OF DEMONSTRATION PROJECTS REQUIRING WAIVERS.

Section 1130 (42 U.S.C. 1320a–9) is further amended by adding at the end the following:

"(j) STREAMLINED PROCESS FOR CONSIDERATION OF AMENDMENTS AND EXTENSIONS.—The Secretary shall develop a streamlined process for consideration of amendments and extensions proposed by States to demonstration projects conducted under this section.".

SEC. 8406. AVAILABILITY OF REPORTS.

Section 1130 (42 U.S.C. 1320a–9) is further amended by adding at the end the following:

"(k) AVAILABILITY OF REPORTS.—The Secretary shall make available to any State or other interested party any report provided to the Secretary under subsection (f)(2), and any evaluation or report made by the Secretary with respect to a demonstration project conducted under this section, with a focus on information that may promote best practices and program improvements.".

SEC. 8407. CLARIFICATION OF ELIGIBILITY FOR FOSTER CARE MAINTENANCE PAYMENTS AND ADOPTION ASSISTANCE.

(a) FOSTER CARE MAINTENANCE PAYMENTS.—Section 472(a) (42 U.S.C. 672(a)) is amended to read as follows:

"(a) IN GENERAL.—

"(1) ELIGIBILITY.—Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) into foster care if—

"(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and

"(B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

"(2) REMOVAL AND FOSTER CARE PLACEMENT REQUIREMENTS.—The removal and foster care placement of a child meet the requirements of this paragraph if—

"(A) the removal and foster care placement are in accordance with—

"(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

"(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 471(a)(15) for a child have been made;

"(B) the child's placement and care are the responsibility of—

"(i) the State agency administering the State plan approved under section 471; or

"(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and

"(C) the child has been placed in a foster family home or child-care institution.

"(3) AFDC ELIGIBILITY REQUIREMENT.—

"(A) IN GENERAL.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

"(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

"(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

"(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have

received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

"(B) RESOURCES DETERMINATION.—For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than $10,000 shall be considered a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of section 402(a)(7)(B)).

"(4) ELIGIBILITY OF CERTAIN ALIEN CHILDREN.—Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, if the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.".

(b) ADOPTION ASSISTANCE.—Section 473(a)(2) (42 U.S.C. 673(a)(2)) is amended to read as follows:

"(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

"(i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

"(bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause;

"(II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

"(III) is a child whose costs in a foster family home or childcare institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and

"(ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

"(B) Section 472(a)(4) shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien described in such section.

"(C) A child shall be treated as meeting the requirements of this paragraph for the purpose of paragraph (1)(B)(ii) if the child—

"(i) meets the requirements of subparagraph (A)(ii);

"(ii) was determined eligible for adoption assistance payments under this part with respect to a prior adoption;

"(iii) is available for adoption because—

"(I) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or

"(II) the child's adoptive parents have died; and

"(iv) fails to meet the requirements of subparagraph (A) but would meet such requirements if—

"(I) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and

"(II) the prior adoption were treated as never having occurred.".

SEC. 8408. CLARIFICATION REGARDING FEDERAL MATCHING OF CERTAIN ADMINISTRATIVE COSTS UNDER THE FOSTER CARE MAINTENANCE PAYMENTS PROGRAM.

(a) ADMINISTRATIVE COSTS RELATING TO UNLICENSED CARE.—Section 472 (42 U.S.C. 672) is amended by inserting after subsection (h) the following:

"(i) ADMINISTRATIVE COSTS ASSOCIATED WITH OTHERWISE ELIGIBLE CHILDREN NOT IN LICENSED FOSTER CARE SETTINGS.—Expenditures by a State that would be considered administrative expenditures for purposes of section 474(a)(3) if made with respect to a child who was residing in a foster family home or child-care institution shall be so considered with respect to a child not residing in such a home or institution—

"(1) in the case of a child who has been removed in accordance with subsection (a) of this section from the home of a relative specified in section 406(a) (as in effect on July 16, 1996), only for expenditures—

"(A) with respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster family home; or

"(B) with respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the State; and

"(2) in the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if—

"(A) reasonable efforts are being made in accordance with section 471(a)(15) to prevent the need for, or if necessary to pursue, removal of the child from the home; and

"(B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.".

(b) CONFORMING AMENDMENT.—Section 474(a)(3) of such Act (42 U.S.C. 674(a)(3)) is amended by inserting "subject to section 472(i)" before "an amount equal to".

SEC. 8409. TECHNICAL CORRECTION.

Section 1130(b)(1) (42 U.S.C. 1320a–9(b)(1)) is amended by striking "422(b)(9)" and inserting "422(b)(10)".

SEC. 8410. TECHNICAL CORRECTION.

Section 470 (42 U.S.C. 670) is amended by striking "June 1, 1995" and inserting "July 16, 1996".

Subtitle E—Supplemental Security Income

SEC. 8501. REVIEW OF STATE AGENCY BLINDNESS AND DISABILITY DETERMINATIONS.

Section 1633 (42 U.S.C. 1383b) is amended by adding at the end the following:

"(e)(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this title on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled as of a specified onset date. The Commissioner of Social Security shall review such a determination before any action is taken to implement the determination.

"(2)(A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

"(i) at least 20 percent of all determinations referred to in paragraph (1) that are made in fiscal year 2006;

"(ii) at least 40 percent of all such determinations that are made in fiscal year 2007; and

"(iii) at least 50 percent of all such determinations that are made in fiscal year 2008 or thereafter.

"(B) In carrying out subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review the determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.".

SEC. 8502. PAYMENT OF CERTAIN LUMP SUM BENEFITS IN INSTALLMENTS UNDER THE SUPPLEMENTAL SECURITY INCOME PROGRAM.

(a) IN GENERAL.—Section 1631(a)(10)(A)(i) (42 U.S.C. 1383(a)(10)(A)(i)) is amended by striking "12" and inserting "3".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 3 months after the date of the enactment of this Act.

Subtitle F—State and Local Flexibility

SEC. 8601. PROGRAM COORDINATION DEMONSTRATION PROJECTS.

(a) PURPOSE.—The purpose of this section is to establish a program of demonstration projects in a State or portion of a State to coordinate multiple public assistance, workforce development, and other programs, for the purpose of supporting working individuals

and families, helping families escape welfare dependency, promoting child well-being, or helping build stronger families, using innovative approaches to strengthen service systems and provide more coordinated and effective service delivery.

(b) DEFINITIONS.—In this section:

(1) ADMINISTERING SECRETARY.—The term "administering Secretary" means, with respect to a qualified program, the head of the Federal agency responsible for administering the program.

(2) QUALIFIED PROGRAM.—The term "qualified program" means—

(A) a program under part A of title IV of the Social Security Act; or

(B) the program under title XX of such Act.

(c) APPLICATION REQUIREMENTS.—The head of a State entity or of a sub-State entity administering 2 or more qualified programs proposed to be included in a demonstration project under this section shall (or, if the project is proposed to include qualified programs administered by 2 or more such entities, the heads of the administering entities (each of whom shall be considered an applicant for purposes of this section) shall jointly) submit to the administering Secretary of each such program an application that contains the following:

(1) PROGRAMS INCLUDED.—A statement identifying each qualified program to be included in the project, and describing how the purposes of each such program will be achieved by the project.

(2) POPULATION SERVED.—A statement identifying the population to be served by the project and specifying the eligibility criteria to be used.

(3) DESCRIPTION AND JUSTIFICATION.—A detailed description of the project, including—

(A) a description of how the project is expected to improve or enhance achievement of the purposes of the programs to be included in the project, from the standpoint of quality, of cost-effectiveness, or of both; and

(B) a description of the performance objectives for the project, including any proposed modifications to the performance measures and reporting requirements used in the programs.

(4) WAIVERS REQUESTED.—A description of the statutory and regulatory requirements with respect to which a waiver is requested in order to carry out the project, and a justification of the need for each such waiver.

(5) COST NEUTRALITY.—Such information and assurances as necessary to establish to the satisfaction of the administering Secretary, in consultation with the Director of the Office of Management and Budget, that the proposed project is reasonably expected to meet the applicable cost neutrality requirements of subsection (d)(4).

(6) EVALUATION AND REPORTS.—An assurance that the applicant will conduct ongoing and final evaluations of the project, and make interim and final reports to the administering Sec-

retary, at such times and in such manner as the administering Secretary may require.

(7) OTHER INFORMATION AND ASSURANCES.—Such other information and assurances as the administering Secretary may require.

(d) APPROVAL OF APPLICATIONS.—

(1) IN GENERAL.—The administering Secretary with respect to a qualified program that is identified in an application submitted pursuant to subsection (c) may approve the application and, except as provided in paragraph (2), waive any requirement applicable to the program, to the extent consistent with this section and necessary and appropriate for the conduct of the demonstration project proposed in the application, if the administering Secretary determines that the project—

(A) has a reasonable likelihood of achieving the objectives of the programs to be included in the project;

(B) may reasonably be expected to meet the applicable cost neutrality requirements of paragraph (4), as determined by the Director of the Office of Management and Budget; and

(C) includes the coordination of 2 or more qualified programs.

(2) PROVISIONS EXCLUDED FROM WAIVER AUTHORITY.—A waiver shall not be granted under paragraph (1) with respect to any provision of law relating to—

(A) civil rights or prohibition of discrimination;

(B) purposes or goals of any program;

(C) maintenance of effort requirements;

(D) health or safety;

(E) labor standards under the Fair Labor Standards Act of 1938; or

(F) environmental protection;

(3) AGREEMENT OF EACH ADMINISTERING SECRETARY REQUIRED.—

(A) IN GENERAL.—An applicant may not conduct a demonstration project under this section unless each administering Secretary with respect to any program proposed to be included in the project has approved the application to conduct the project.

(B) AGREEMENT WITH RESPECT TO FUNDING AND IMPLEMENTATION.—Before approving an application to conduct a demonstration project under this section, an administering Secretary shall have in place an agreement with the applicant with respect to the payment of funds and responsibilities required of the administering Secretary with respect to the project.

(4) COST-NEUTRALITY REQUIREMENT.—

(A) GENERAL RULE.—Notwithstanding any other provision of law (except subparagraph (B)), the total of the amounts that may be paid by the Federal Government for a fiscal year with respect to the programs in the State in which an entity conducting a demonstration project under this section is located that are affected by the project shall not exceed the estimated total amount that the Federal

Government would have paid for the fiscal year with respect to the programs if the project had not been conducted, as determined by the Director of the Office of Management and Budget.

(B) SPECIAL RULE.—If an applicant submits to the Director of the Office of Management and Budget a request to apply the rules of this subparagraph to the programs in the State in which the applicant is located that are affected by a demonstration project proposed in an application submitted by the applicant pursuant to this section, during such period of not more than 5 consecutive fiscal years in which the project is in effect, and the Director determines, on the basis of supporting information provided by the applicant, to grant the request, then, notwithstanding any other provision of law, the total of the amounts that may be paid by the Federal Government for the period with respect to the programs shall not exceed the estimated total amount that the Federal Government would have paid for the period with respect to the programs if the project had not been conducted.

(5) 90-DAY APPROVAL DEADLINE.—

(A) IN GENERAL.—If an administering Secretary receives an application to conduct a demonstration project under this section and does not disapprove the application within 90 days after the receipt, then—

(i) the administering Secretary is deemed to have approved the application for such period as is requested in the application, except to the extent inconsistent with subsection (e); and

(ii) any waiver requested in the application which applies to a qualified program that is identified in the application and is administered by the administering Secretary is deemed to be granted, except to the extent inconsistent with paragraph (2) or (4) of this subsection.

(B) DEADLINE EXTENDED IF ADDITIONAL INFORMATION IS SOUGHT.—The 90-day period referred to in subparagraph (A) shall not include any period that begins with the date the Secretary requests the applicant to provide additional information with respect to the application and ends with the date the additional information is provided.

(e) DURATION OF PROJECTS.—A demonstration project under this section may be approved for a term of not more than 5 years.

(f) REPORTS TO CONGRESS.—

(1) REPORT ON DISPOSITION OF APPLICATIONS.—Within 90 days after an administering Secretary receives an application submitted pursuant to this section, the administering Secretary shall submit to each Committee of the Congress which has jurisdiction over a qualified program identified in the application notice of the receipt, a description of the decision of the administering Secretary with respect to the application, and the reasons for approving or disapproving the application.

(2) REPORTS ON PROJECTS.—Each administering Secretary shall provide annually to the Congress a report concerning

demonstration projects approved under this section, including—

(A) the projects approved for each applicant;

(B) the number of waivers granted under this section, and the specific statutory provisions waived;

(C) how well each project for which a waiver is granted is improving or enhancing program achievement from the standpoint of quality, cost-effectiveness, or both;

(D) how well each project for which a waiver is granted is meeting the performance objectives specified in subsection (c)(3)(B);

(E) how each project for which a waiver is granted is conforming with the cost-neutrality requirements of subsection (d)(4); and

(F) to the extent the administering Secretary deems appropriate, recommendations for modification of programs based on outcomes of the projects.

Subtitle G—Repeal of Continued Dumping and Subsidy Offset

SEC. 8701. REPEAL OF CONTINUED DUMPING AND SUBSIDY OFFSET.

(a) REPEAL.—Section 754 of the Tariff Act of 1930 (19 U.S.C. 1675c), and the item relating to section 754 in the table of contents for title VII of that Act, are repealed.

(b) EXISTING ACCOUNTS.—All amounts remaining, upon the enactment of this title, in any special account established under section 754(e)(1) of the Tariff Act of 1930 (as in effect on the day before the date of the enactment of this title) shall be deposited in the general fund of the Treasury.

Subtitle H—Effective Date

SEC. 8801. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this title, this title and the amendments made by this title shall be effective as of October 1, 2005.

(b) EXCEPTION.—In the case of a State plan under title IV of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this title, the effective date of the amendments imposing the additional requirements shall be 3 months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

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