consider changes that would be made, based on a phaseout of allocations that may take place between now and then, and that it was absolutely necessary that this bill be acted upon at this time to extend the time of expiration by 4 months.

Mr. President, without going into a lot of provisions of the act, I advise the distinguished chairman that I shall be voting to oppose the passage of this measure.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 3717) was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. FANNIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the joint session of the two Houses this evening the Senate stand in adjournment until 11 a.m. tomorrow.

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

## ORDER FOR THE RECOGNITION OF SENATOR ROBERT C. BYRD AND FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow after the two leaders or their designees have been recognized under the standing order the junior Senator from West Virginia be recognized for not to exceed 15 minutes, after which there be a period for the transaction of routine morning business not to exceed 15 minutes with statements limited therein to 5 minutes each.

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

## ORDER OF BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, on tomorrow the Senate will take up any one or more of the following measures, not necessarily in the order in which they are stated, and the business is not necessarily confined to the measures identified, Calendar Orders No. 949, 1015, 1016, 1017, 1019, 1020, 1022. The Housing Conference Report may also be called up tomorrow, and the conference report on the Transportation appropriation bill may be called up on tomorrow if it is ready by that time.

## ORDER FOR RECESS UNTIL 8:20 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate stands in recess shortly, it stand in recess until the hour of 8:20 p.m. today, at which time Senators will assemble prior to going over to the other body to hear the President address the joint session.

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

## PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will shortly recess until the hour of 8:20 p.m. this evening. Senators will assemble in a body to go to the Hall of the House of Representatives, where the President of the United States will address a joint session of Congress.

Upon the conclusion of the President's address the Senate will stand in adjournment until 11 a.m. tomorrow.

At 11 o'clock a.m. tomorrow after the prayer the two leaders or their designees will be recognized under the standing order, after which the junior Senator from West Virginia will be recognized for not to exceed 15 minutes; after which there will be a period for the transaction of routine morning business of not to exceed 15 minutes with statements limited therein to 5 minutes each; at the conclusion of which the Senate will turn to any one of the following calendar measures: Calendar No. 949, order No. 1015, and orders numbered 1016, 1017, 1019, 1020, and 1022. In addition to any one or more of these being called up tomorrow, the Housing Conference Report may be called up and, if it is ready, and there is an opportunity to do so tomorrow, the conference on the transportation appropriation bill may be called up.

Rollcall votes may occur on tomorrow.

## RECESS UNTIL 8:20 P.M.

Mr. MOSS. Mr. President, I move, in accordance with the previous order, that the Senate stand in recess until 8:20 p.m. today.

The motion was agreed to; and at 3:36 p.m. the Senate took a recess until 8:20 p.m.; at which time the Senate reassembled when called to order by the President pro tempore (Mr. EASTLAND).

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

The PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

## JOINT SESSION OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 93-335)

The PRESIDENT pro tempore. Pursuant to the previous order Members of the Senate will now proceed to the Hall of the House of Representatives for the joint session.

Thereupon, at 8:39 p.m., the Senate, preceded by the Sergeant at Arms, William H. Wannall; the Secretary of the Senate, Francis R. Valeo; and the President pro tempore (JAMES O. EASTLAND), proceeded to the Hall of the House of Representatives to hear the address by the President of the United States, Gerald R. Ford.

(The address delivered by the President of the United States to the Joint Session of the two Houses of Congress, appears in the proceedings of the House of Representatives in today's RECORD.)

## ADJOURNMENT

At the conclusion of the Joint Session of the two Houses, and in accordance with the order previously entered, at 9:45 p.m., the Senate adjourned until tomorrow, August 13, 1974, at 11 a.m.

# HOUSE OF REPRESENTATIVES—*Monday, August 12, 1974*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

*Trust in the Lord with all thine heart; and lean not unto thine own understanding.*—Proverbs 3: 5.

O God, our Father, in this high hour of our national life help us to match our greatness with goodness and our democracy with a devotion to moral ideals that we may continue our upward way toward a more abundant life with liberty and justice for all.

Bless our President with wisdom, courage, and faith that he may lead us in the paths of peace along the way to a happy harmony at home and to a deeper spirit of unity among our people.

Bless him who resigned as President that he may face the future with faith and that he who did so much for peace in our world may find it in his own heart.

Sustained by Thy presence may we and our people be truehearted and wholehearted in our devotion to our country and harboring no ill will but filled with good will walk the path of truth until the end of life's day.

In the spirit of Him who is the way we pray. Amen.

## THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's pro-

ceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

## MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment, a concurrent resolution of the House of the following title:

H. Con. Res. 594. Concurrent resolution providing for a joint session of the two Houses on Monday, August 12, 1974, to receive a message from the President of the United States.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 15427. An act to amend the Rail Passenger Service Act of 1970 to provide financial assistance to the National Railroad Passenger Corporation, and for other purposes; and

H.R. 15842. An act to increase compensation for District of Columbia policemen, firemen, and teachers; to increase annuities payable to retired teachers in the District of Columbia; to establish an equitable tax on real property in the District of Columbia; to provide for additional revenue for the District of Columbia; and for other purposes.

## REMARKS BY GERALD R. FORD UPON BEING SWORN IN AS 38TH PRESIDENT OF THE UNITED STATES

Mr. RHODES. Mr. Speaker, I ask unanimous consent to include in the RECORD at this point the remarks of President Gerald R. Ford following his taking the oath of office as the 38th President of the United States.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The remarks are as follows:

REMARKS BY GERALD R. FORD UPON BEING SWORN IN AS 38TH PRESIDENT OF THE UNITED STATES IN THE EAST ROOM, THE WHITE HOUSE

Mr. Chief Justice, my dear friends, my fellow Americans:

The oath that I have taken is the same oath that was taken by George Washington and by every President under the Constitution. But I assume the Presidency under extraordinary circumstances, never before experienced by Americans. This is an hour of history that troubles our minds and hurts our hearts.

Therefore, I feel it is my first duty to make an unprecedented compact with my countrymen. Not an inaugural address, not a fireside chat, not a campaign speech. Just a little straight talk among friends. And I intend it to be the first of many.

I am acutely aware that you have not elected me as your President by your ballots, and so I ask you to confirm me as your President with your prayers. And I hope that such prayers will also be the first of many.

If you have not chosen me by secret ballot, neither have I gained office by any secret promises. I have not campaigned either for the Presidency or the Vice Presidency. I have not subscribed to any partisan platform. I am indebted to no man, and only to one woman—my dear wife—as I begin this very difficult job.

I have not sought this enormous responsibility, but I will not shirk it. Those who nominated me and confirmed me as Vice President were my friends and are my friends. They were of both parties, elected by all the people and acting under the Constitution in their name. It is only fitting then that I should pledge to them and to you that I will be the President of all the people.

Thomas Jefferson said the people are the only sure reliance for the preservation of our liberty. And down the years, Abraham Lincoln renewed this American article of faith asking, "Is there any better way or equal hope in the world?"

I intend, on Monday next, to request of the Speaker of the House of Representatives and the President pro tempore of the Senate the privilege of appearing before the Congress to share with my former colleagues and with you, the American people, my views on the priority business of the Nation and to solicit your views and their views. And may I say to the Speaker and the others, if I could meet with you right after these remarks, I would appreciate it.

Even though this is late in an election year, there is no way we can go forward except together and no way anybody can win except by serving the people's urgent needs. We cannot stand still or slip backwards. We must go forward now together.

To the peoples and the governments of all friendly nations, and I hope that could encompass the whole world, I pledge an uninterrupted and sincere search for peace. America will remain strong and united, but its strength will remain dedicated to the safety and sanity of the entire family of man, as well as to our own precious freedom.

I believe that truth is the glue that holds Government together, not only our Government, but civilization itself. That bond, though strained, is unbroken at home and abroad.

In all my public and private acts as your President, I expect to follow my instincts of openness and candor with full confidence that honesty is always the best policy in the end.

My fellow Americans, our long national nightmare is over.

Our Constitution works; our great Republic is a Government of laws and not of men. Here the people rule. But there is a higher power, by whatever name we honor Him, who ordains not only righteousness but love, not only justice but mercy.

As we bind up the internal wounds of Watergate, more painful and more poisonous than those of foreign wars, let us restore the golden rule to our political process, and let brotherly love purge our hearts of suspicion and of hate.

In the beginning, I asked you to pray for me. Before closing, I ask again your prayers, for Richard Nixon and for his family. May our former President, who brought peace to millions, find it for himself. May God bless and comfort his wonderful wife and daughters, whose love and loyalty will forever be a shining legacy to all who bear the lonely burdens of the White House.

I can only guess at those burdens, although I have witnessed at close hand the tragedies that befell three Presidents and the lesser trials of others.

With all the strength and all the good sense I have gained from life, with all the confidence my family, my friends, and my dedicated staff impart to me, and with the good will of countless Americans I have encountered in recent visits to 40 States, I now solemnly reaffirm my promise I made to you last December 6: To uphold the Constitution, to do what is right as God gives me to see the right, and to do the very best I can for America.

God helping me, I will not let you down.

Thank you.

## APPOINTMENT OF CONFEREES ON H.R. 12281, TO CONTINUE SUSPENSION OF DUTIES ON CERTAIN FORMS OF COPPER

Mr. BURKE of Massachusetts. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12281) to continue until the close of June 30, 1975, the suspension of duties on certain forms of copper, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts? The Chair hears none, and appoints the following conferees: Messrs. MILLS, ULLMAN, BURKE of Massachusetts, SCHNEEBELI, and COLLIER.

## PERMISSION TO FILE CONFERENCE REPORT ON H.R. 2, PENSION REFORM

Mr. DENT. Mr. Speaker, I ask unanimous consent that the managers have until midnight tonight to file a conference report on H.R. 2, to provide for pension reform.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

## EXPLANATION CONCERNING CONFERENCE REPORT ON H.R. 15544

(Mr. STEED asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEED. Mr. Speaker, on Tuesday of last week, August 6, the conferees met and reached agreement on the Treasury, Postal Service and Executive Office appropriation bill (H.R. 15544). Conference report No. 93–1262 was filed and has been printed. Certain amendments of the Senate were reported in technical disagreement concerning personnel in the Executive Office section of the bill. The House conferees were prepared to offer motions to the House to recede and concur with the Senate amendments with amendments which would conform the appropriation bill to the pending legislation (H.R. 14715) clarifying such employment. That legislation had passed both Houses, had been reported by the conferees, and the House had adopted the conference report.

Subsequent to that time, however, the Senate voted to table the conference report. Even though the Senate has now reconsidered, and under unanimous consent has sent the legislative bill back to conference, the conferees on the appropriation bill feel that it would be advisable to modify the wording of the motions on three Senate amendments in disagreement on the appropriation bill to take account of the action on the legislative bill.

The Senate conferees have agreed to moved to concur in the amendments as modified.

The conference report is scheduled for consideration in the House tomorrow, August 13. At that time I will, of course, explain each motion in whatever detail is desired by the Members.

The purpose of my remarks today is to inform the House that the motions I will offer tomorrow in connection with the bill (H.R. 15544) will, in three instances, be slightly different from that indicated in the printed conference report.

## IS THERE A LACK OF FAIRNESS IN CAPITAL JURIES?

(Mr. SIKES asked and was given permission to address the House for 1 minute, to revise and extend his remarks, and include extraneous matter.)

Mr. SIKES. Mr. Speaker, can defendants in the Watergate related cases receive fair trials in the District of Columbia? This question is being asked more and more. The feeling persists that association with the Nixon administration is likely to mean a verdict of guilty when trials are held in the Capital. Whether from prejudice or because of sensational publicity, the results of trials certainly point in that direction. The percentage of convictions is running much higher than in all other cases. Despite this situation, defendants are unable to get a change of venue.

The operation of the courts in the United States is frequently subject to criticism, but in most cases it has been because of the ability of the accused to escape punishment. It does not improve the standing of the system when one particular group of plaintiffs, almost to a man, are adjudged guilty.

## WATERGATE RECORD SHOULD BE COMPLETED

(Mr. BINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BINGHAM. Mr. Speaker, we all feel a sense of relief—almost of euphoria—at having a new President whom we like and can trust.

In this atmosphere, it is tempting to say that we should now just forget about the Watergate mess, that we should put all that behind us.

But that would be impossible, even if it were wise. The Special Prosecutor has been given a job to do, and he will be proceeding with it. The former President may be indicted; almost certainly he will be called as a witness. No doubt these judicial proceedings will produce new revelations; additional information about the various aspects of Watergate will be revealed in a piecemeal, unsystematic fashion.

In order that the Congress and the American people may have for the record as total and as balanced as possible a picture of this entire episode in our history, I would urge the Judiciary Committee not to consider that its work in the matter has been completed with the filing of its report in the coming weeks.

Certainly, its report should be filed, and the House should act to accept it. But there is much more information that will not be included in the report, notably the information contained in the many tapes and records that the committee subpenaed but which were never produced. I would urge the committee to communicate to President Ford a request that this material now be furnished to the committee so that it can give us a supplemental report in a balanced and comprehensive way.

## FOREIGN COUNTRIES BECOMING MAJORITY OWNERS IN OUR INDUSTRIES

(Mr. DENT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr DENT. Mr. Speaker, I thought it would be important to know that for the first quarter of the year there were $4.8 billion worth of stock transactions on the Big Board. Out of this considerable total of stock transactions, $2.9 billion or 60 percent of all the stock transactions on the Big Board of the United States were by foreign countries.

We are now in a position where every month more and more of the stock in our companies is being taken up by foreign countries. The 60-percent ratio if it is maintained from now until the end of the year will result in our finding the major part of our most important industries will be in the hands of foreigners.

I might also say the churning changes causing the fluctuations in the market to be unreadable and unrecognizable are because of the fact that while they bought $2.6 million, they sold $2.2 million.

In no way can anyone understand the market, and until we understand it the economy of this Nation will continue to go downhill.

## BEST WISHES TO PRESIDENT FORD

(Mr. DE LA GARZA asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. DE LA GARZA. Mr. Speaker, on Friday and Saturday, I was in Biloxi, Miss., and New Orleans, La., acting as chairman of a Merchant Marine and Fisheries Subcommittee hearing on matters of vital importance to our domestic fishing industry. Consequently, I was unable to record my vote on Senate Concurrent Resolution 108 extending the best wishes of the Congress to President Gerald R. Ford.

Had I been present I would have voted "aye" on this resolution.

Immediately upon my return to Washington, I wired President Ford my personal expression of good wishes. The text of my telegram is as follows:

Mr. President, Americans are looking to you for calm, reasonable, open leadership. I know that is what you will provide. I want to help however I can to bring about realization of the promise of unity implicit in your brief and moving remarks on taking the Oath of Office as President. Your words brought reassurance to millions of your fellow citizens. Please continue to count me among your many friends on Capitol Hill.

KIKA DE LA GARZA,
*Member of Congress.*

## RELIEF FROM INFLATION IS URGENT NEED

(Mr. ADDABBO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ADDABBO. Mr. Speaker, I recently sent a letter to my constituents in which I attempted to make them more aware of the consumer protection laws which Congress has written to protect consumers from unfair market practices. On the back side of the letter, I included a checklist of market information questions relating to unit pricing, honest advertising, labeling, perishables and meats, inviting constituent comments on the conditions within the stores they purchase the family food supply at each week.

I am now getting an overwhelming response from my constituents. For the most part, the early reports indicate that most grocery stores in my district are complying with the law, and are helpful to consumers wherever possible. There have been reports on alleged unsavory conditions at some stores which I will pass on to the appropriate authorities for investigation and action.

But I am impressed with one facet of the response that all of us need to keep in mind at all times as we consider legislation. Inflation must be turned around as quickly as possible. American families have suffered greatly through this extended inflationary period, and they must be given relief as soon as is humanly possible.

I urge this body to do everything possible to stem this corrosive national problem as soon as possible, and I call on President Ford to make inflation his top priority in the weeks ahead. Inflation is far more deadly to our way of life than any foreign threat. It permeates throughout American life on all stratas of income, though the poor, the aged, and the ill suffer most grievously.

## COMMENTS ON RESIGNATION OF MR. NIXON

(Mr. RUTH asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. RUTH. Mr. Speaker, I would like to insert in the RECORD my statement followed Mr. Nixon's resignation last Thursday:

STATEMENT OF EARL B. RUTH, AUGUST 8, 1974

An era has ended.

Speculation will cease and the most emotional debate of history will become moot.

The President's announcement has to be one of sadness. Even his enemies must feel compassion for him and his family.

His resignation came tonight but his finish came Monday with his confession of indiscretions. After his self-incriminating statement, when his fate was inevitable, some felt compelled to come out for impeachment. Since the final decision was yet to come, I found this action neither appropriate nor satisfying.

I hope history remembers him for his accomplishments and not just for the circumstances of his resignation.

## SUPERMARKET PRICING CHANGE WILL SAVE CONSUMERS MILLIONS OF DOLLARS

(Mr. PEYSER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PEYSER. Mr. Speaker, will all the dramatic things that have been happening here in Washington in the past month, it may have gone unnoticed by most of the Members that two supermarket chains have instituted a major reform by stopping the unfair practice of increasing the price of food once it appears on the shelf.

In my area in Metropolitan New York the First National Stores, and nationally the Safeway Stores, have started this program. I am urging my colleagues, the Members to contact consumer groups and people in their own districts and have those people start bringing pressure on their local food chains to do the same.

In this time of high food prices that are going even higher in the next several months, this change could save our people millions of dollars a year.

When I started my fight for this program, people in the food industry said that this battle could not be won. We have proven them wrong in my local area. Now I hope we will prove them wrong nationally.

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## TO CLARIFY EXISTING AUTHORITY FOR EMPLOYMENT OF WHITE HOUSE AND EXECUTIVE RESIDENCE PERSONNEL

Mr. HENDERSON. Mr. Speaker, I move to take from the Speaker's desk the bill (H.R. 14715) to clarify existing authority for employment of White House Office and Executive Residence personnel, and for other purposes, recede from the disagreement of the House to the Senate amendments and concur in the Senate amendments with further amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

That (a) section 105 of title 3. United States Code, is amended to read as follows:

"§ 105. Assistance and services for President and Vice President

"(a) Subject to the provisions of subsection (b) of this section, the President is authorized to appoint employees in the White House Office and the Executive Residence at the White House without regard to the provisions of title 5 governing appointments in the competitive service. Those employees shall perform such official duties as the President may prescribe.

"(b) The President, under the authority of subsection (a) of this section, may appoint and fix the pay of not more than—

"(1) fifteen employees at rates not to exceed the rate of basic pay then currently in effect for level II of the Executive Schedule of section 5313 of title 5;

"(2) twenty-five employees at rates not to exceed the rate of basic pay then currently in effect for level III of the Executive Schedule of section 5314 of title 5; and

"(3) thirty-five employees at rates not to exceed the rate af basic pay then currently paid for GS–18 of the General Schedule of section 5332 of title 5, without regard to chapter 51 and subchapter III of chapter 53 of such title.

"(c) The President is authorized to procure within the White House Office and the Executive Residence at the White House temporary or intermittent services of experts and consultants, as described in and in accordance with the first two sentences of section 3109(b) of title 5, at respective daily rates of pay for individuals not more than the daily equivalent of the rate of basic pay then currently in effect for level II of the Executive Schedule of section 5313 of title 5.

"(d) The President is authorized to procure goods and services for the maintenance, operationo, improvement, and preservation of the Executive Residence at the White House.

"(e) There are authorized to be appropriated each fiscal year to the President—

"(1) such sums as may be necessary to pay official reception, entertainment, and representation expenses, to be expended at the discretion of the President, except that the Comptroller General shall be furnished information requested by him relating to the expenditure of such funds and access to all necessary books, documents, papers, and records relating to any such expenditure, in order that he may determine whether the expenditure was for payment of official reception, entertainment, and representation expenses; and

"(2) such sums as may be necessary for allocation within the Executive Office of the President for official reception and representation expenses.

"(f) In order to enable the Vice President to provide assistance to the President in connection with the performance of funds specially assigned to the Vice President by the President in the discharge of Executive duties and responsibilities, the Vice President is authorized to—

"(1) procure temporary or intermittent services of experts and consultants, as described in and in accordance with the first two sentences of section 3109(b) of title 5, at respective daily rates of pay for individuals not more than the daily equivalent of the maximum rate of basic pay then currently paid under the General Schedule of section 5332 of title 5; and

"(2) appoint, without regard to the provisions of title 5 governing appointments in the competitive service, and fix the pay of not more than—

"(A) one employee at a rate not to exceed the rate of basic pay then currently in effect for level II of the Executive Schedule of section 5313 of title 5;

"(B) six employees at rates not to exceed the rate of basic pay then in effect for level III of the Executive Schedule of section 5314 of title 5; and

"(C) seven employees at rates not to exceed the rate of basic pay then currently paid for GS–18 of the General Schedule of section 5332 of title 5, without regard to chapter 51 and subchapter III of chapter 53 of such title."

(b) The table of sections at the beginning of chapter 2 of title 3, United States Code, is amended by deleting—

"105. Compensation of secretaries and executive, administrative, and staff assistants to President."

and inserting in place thereof—

"105. Assistance and services for President and Vice President.".

SEC. 2. (a) Section 106 of title 3, United States Code, is amended to read as follows:

"§ 106. Unanticipated personnel needs

"There are authorized to be appropriated to the President not to exceed $1,000,000 each fiscal year to enable the President, in his discretion and without regard to any provision of law regulating employment and pay of persons of the Government or regulating expenditures of Government funds, to appoint and pay employees to meet unanticipated personnel needs and to pay administrative expenses incurred with respect thereto."

(b) The table of sections at the beginning of chapter 2 of title 3, United States Code, is amended by deleting—

"106. Administrative assistants.".

and inserting in place thereof—

"106. Unanticipated personnel needs.".

SEC. 3. Section 103 of title 3, United States Code, relating to travel expenses of the President, is amended by deleting "$40,000" and inserting in place thereof "$100,000" and by deleting "and accounted for on his certificate solely" and inserting in place thereof a comma and the following: "except that the Comptroller General shall be furnished information requested by him relating to the expenditure of such sums and access to all necessary books, documents, papers, and records relating to any such expenditure, in order that he may determine whether the expenditure was for payment of traveling expenses of the President of the United States".

SEC. 4. (a) Section 102 of title 3, United States Code, is amended by striking out "Executive Mansion" and inserting in lieu thereof "Executive Residence at the White House".

(b)(1) Section 109 of such title 3 is amended—

(A) by striking out the section caption "Executive Mansion" and inserting in lieu thereof "Executive Residence at the White House"; and

(B) by striking out of the text "Executive Mansion" wherever it appears and inserting in lieu thereof "Executive Residence at the White House" each time.

(2) Item 109 in the table of sections at the beginning of chapter 2 of such title 3 is amended by striking out "Executive Mansion" and inserting in lieu thereof "Executive Residence at the White House".

(c)(1) Section 110 of such title 3 is amended—

(B) by inserting in the section caption, immediately before "White House", the following: "Executive Residence at the";

(B) by inserting in the first sentence immediately after "President's", the following: "Executive Residence at the White"; and

(c) by inserting immediately before "White House" wherever it appears "Executive Residence at the" each time.

(2) Item 110 in the table of sections at the beginning of chapter 2 of such title 3 is amended by inserting, immediately before "White House", the following: "Executive Residence at the".

SEC. 5. Section 107 of title 3, United States Code, is amended to read as follows:

"§ 107. Detail of employees of executive departments to office of President

"At the request of the President, the head of any department, agency, or independent establishment of the executive branch of the Government shall detail, from time to time, employees of such department, agency, or establishment to serve in the White House Office. The President shall advise the Congress of the names and general duties of all such employees so detailed to the White House Office. An employee may not be so detailed for full-time duty on a continuing basis for any period of more than one year. The White House Office shall reimburse each

such department, agency, or establishment, for the pay of each employee thereof so detailed for full-time duty on a continuing basis, for any period of such detail occurring after the close of the sixth month following the date on which such detail first becomes effective.".

SEC. 6. (a) Chapter 2 of title 3, United States Code, is amended by adding at the end thereof the following new section:

"§ 112. Statement of expenditures for employees

"(a) The President shall transmit to each House of the Congress reports with respect to expenditures for employees performing duties in the White House Office and the Executive Residence at the White House. Each such report shall be transmitted no later than sixty days after the end of each fiscal year and shall contain a detailed statement of such expenditures during the most recent complete fiscal year.

"(b) Each report required under subsection (a) shall contain (1) the name of every employee in the White House Office and the Executive Residence at the White House, (2) the amount of appropriated moneys paid to each such employee, (3) a general title and general job description for each such employee, (4) the amounts of any reimbursements made to each department, agency, or establishment for employees detailed to the White House Office under section 107 of this title, and (5) the name and general duties of the employee so detailed and the department, agency, or establishment from which the employee was detailed.

"§ 113. Limitation upon access of executive branch personnel to tax returns

"Notwithstanding any other provision of law or of any regulation made pursuant thereto, no return made with respect to any tax imposed by the Internal Revenue Code of 1954 shall be open for inspection by, nor shall any copy thereof be furnished to, any officer or employee in the executive branch, other than the President personally upon written request, or an officer or employee of the Department of the Treasury or the Department of Justice concerned with the filing and audit of such return, the payment, collection, or recovery of the tax with respect to which such return was made, or the prosecution of any offense arising out of that return."

(b) The table of sections for chapter 2 of such title 3 is amended by adding at the end thereof the following new items:

"112. State of expenditures for employees.
"113. Limitation upon access of executive branch personnel to tax returns."

(c) The amendments made by the provisions of this section shall apply with respect to fiscal years beginning after June 30, 1974.

SEC. 7. Effective July 1, 1978—

(1) sections 105, 106, and 107 of title 3, United States Code, are repealed; and

(2) items 105, 106, and 107 in the table of sections of chapter 2 such title 3 are repealed.

Amend the title so as to read: "An Act to clarify existing authority for employment of personnel in the White House Office and in the Executive Residence at the White House, employment of personnel by the President to meet unanticipated personnel needs, and for other purposes."

Mr. HENDERSON (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

MOTION OFFERED BY MR. HENDERSON

Mr. HENDERSON. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. HENDERSON moves that the House concur in the Senate amendments with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill, insert the following:

That (a) section 105 of title 3, United States Code, is amended to read as follows:

"SEC. 105. ASSISTANCE AND SERVICES FOR PRESIDENT AND VICE PRESIDENT

"(a) Subject to the provisions of subsection (b) of this section, the President is authorized to appoint employees in the White House Office and the Executive Residence at the White House without regard to the provisions of title 5 governing appointments in the competitive service. Those employees shall perform such official duties as the President may prescribe.

"(b) The number of employees appointed under authority of subsection (a) of this section may not include—

"(1) during the period beginning on the date of enactment of this subsection and ending immediately prior to January 1, 1976, more than—

"(A) 14 employees at the rate of basic pay then currently in effect for level II of the Executive Schedule of section 5313 of title 5; and

"(B) 21 employees at rates not to exceed the rate of basic pay then currently in effect for level III of the Executive Schedule of section 5314 of such title;

"(2) during the period beginning on January 1, 1976, and ending immediately prior to January 20, 1977, more than—

"(A) 12 employees at the rate of basic pay then currently in effect for level II of the Executive Schedule of section 5313 of such title;

"(B) 10 employees at the rate of basic pay then currently in effect for level III of the Executive Schedule of section 5314 of such title;

"(C) 9 employees at the rate of basic pay then currently in effect for level IV of the Executive Schedule of section 5315 of such title; and

"(D) 9 employees at the rate of basic pay then currently in effect for level V of the Executive Schedule of section 5316 of such title.

"(3) on and after January 20, 1977, more than—

"(A) 8 employees at the rate of basic pay then currently in effect for level II of the Executive Schedule of section 5313 of such title;

"(B) 10 employees at the rate of basic pay then currently in effect for level III of the Executive Schedule of section 5314 of such title;

"(C) 11 employees at the rate of basic pay then currently in effect for level IV of the Executive Schedule of section 5315 of such title; and

"(D) 11 employees at the rate of basic pay then currently in effect for level V of the Executive Schedule of section 5316 of such title.

The President is authorized to place, subject to the standards and procedures prescribed by chapter 51 of such title and in addition to the number of positions authorized in section 5108(a) of such title, a total of 35 positions in GS–16, GS–17, and GS–18 of the General Schedule of section 5332 of such title.

"(c) The President is authorized to procure for the White House Office and the Executive Residence at the White House temporary or intermittent services of experts and consultants, as described in and in accordance with the first two sentences of section 3109(b) of title 5, at respective daily rates of pay for individuals not more than the daily equivalent of the rate of basic pay then currently in effect for level II of the Executive Schedule of section 5313 of such title.

"(d) The President is authorized to procure goods and services for the maintenance, operation, improvement, and preservation of the Executive Residence at the White House.

"(e) There are authorized to be appropriated each fiscal year to the President—

"(1) such sums as may be necessary to pay official reception, entertainment, and representation expenses, to be expended at the discretion of the President, except that the Comptroller General shall be furnished information requested by him relating to the expenditure of such funds and access to all necessary books, documents, papers, and records relating to any such expenditure, in order that he may determine whether the expenditure was for payment of official reception, entertainment, and representation expenses; and

"(2) such sums as may be necessary for allocation within the Executive Office of the President for official reception and representation expenses.

"(f) In order to enable the Vice President to provide assistance to the President in connection with the performance of functions specially assigned to the Vice President by the President in the discharge of executive duties and responsibilities, the Vice President is authorized to—

"(1) procure temporary or intermittent services of experts and consultants, as described in and in accordance with the first two sentences of section 3109(b) of title 5, at respective daily rates of pay for individuals not more than the daily equivalent of the maximum rate of basic pay then currently paid under the General Schedule of section 5332 of such title:

"(2) appoint employees without regard to the provisions of such title governing appointments in the competitive service, except that he may appoint not more than—

"(A) 1 employee at the rate of basic pay then currently in effect for level II of the Executive Schedule of section 5313 of such title;

"(B) 3 employees at the rate of basic pay then currently in effect for level III of the Executive Schedule of section 5314 of such title; and

"(C) a combined total of 3 employees at the respective rates of basic pay then currently in effect for levels IV and V of the Executive Schedule of sections 5315 and 5316 of such title; and

"(3) place, subject to the standards and procedures prescribed by chapter 51 of such title and in addition to the number of positions authorized in section 5108(a) of such title, a total of 7 positions in GS–16, GS–17, and GS–18 of the General Schedule of section 5332 of such title

"(g) Notwithstanding any provision of law, other than the provisions of this chapter, no employee in the White House Office or in the Executive Residence at the White House, nor any employee under the Vice President appointed under subsection (f), may be paid a rate of basic pay in excess of the maximum rate of basic pay then currently paid for GS–15 of the General Schedule of section 5332 of title 5."

(b) The table of sections at the beginning of chapter 2 of title 3, United States Code, is amended by deleting—

"105. Compensation of secretaries and executive, administrative, and staff assistants to President."

and inserting in place thereof—

"105. Assistance and services for President and Vice President.".

SEC. 2. (a) Section 106 of title 3, United States Code, is amended to read as follows:

"SEC. 106. UNANTICIPATED PERSONNEL NEEDS

"(a) there is authorized to be appropriated to the President an amount not to exceed $500,000 each fiscal year to enable the President to appoint employees to meet unanticipated personnel needs and to pay administrative expenses incurred with respect thereto.

"(b) Positions to which appointments are made under subsection (a) shall be subject to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, except that any positions placed in GS–16, GS–17, and GS–18 of the General Schedule of section 5332 of such title shall be in addition to the number of positions authorized in section 5108(a) of such title.

"(c) The President shall transmit to each House of the Congress reports with respect to expenditures under this section. Each such report shall be transmitted not later than 60 days after the close of each fiscal year and shall contain a detailed statement of such expenditures during such fiscal year, including—

"(1) the name of every employee paid under this section;

"(2) the amount of appropriated moneys paid to each such employee;

"(3) a general title and general job description for each such employee; and

"(4) a detailed explanation of the purposes for the appointment of employees paid under the authority of this section."

(b) The table of sections at the beginning of chapter 2 of title 3, United States Code, is amended by deleting—

"106. Administrative assistants."

and inserting in place thereof—

"106. Unanticipated personnel needs.".

SEC. 3. Section 103 of title 3, United States Code, relating to travel expenses of the President, is amended by deleting "$40,000" and inserting in place thereof "$100,000" and by deleting "and accounted for on his certificate solely" and inserting in place thereof a comma and the following: "except that the Comptroller General shall be furnished information requested by him relating to the expenditure of such sums and access to all necessary books, documents, papers, and records relating to any such expenditure, in order that he may determine whether the expenditure was for payment of traveling expenses of the President of the United States".

SEC. 4. (a) Section 102 of title 3, United States Code, is amended by deleting "Executive Mansion" and inserting in place thereof "Executive Residence at the White House".

(b)(1) Section 109 of such title 3 is amended—

(A) by deleting from the section caption "Executive Mansion" and inserting in place thereof "Executive Residence at the White House"; and

(B) by deleting from the text "Executive Mansion" wherever it appears and inserting in place thereof "Executive Residence at the White House" each time.

(2) Item 100 in the table of sections at the beginning of chapter 2 of such title 3 is amended by deleting "Executive Mansion" and inserting in place thereof "Executive Residence at the White House."

(c)(1) Section 110 of such title 3 is amended—

(A) by inserting in the section caption, immediately before "White House", the following: "Executive Residence at the";

(B) by inserting in the first sentence immediately after "President's", the followlowing: "Executive Residence at the White"; and

(C) by inserting immediately before "White House" wherever it appears "Executive Residence at the"each time.

(2) Item 110 in the table of sections at the beginning of chapter 2 of such title 3 is amended by inserting immediately before "White House", the following: "Executive Residence at the".

(d) Section 202 of such title 3 is amended by deleting "Executive Mansion" and inserting in place thereof "White House".

SEC. 5. Section 107 of title 3, United States Code, is amended to read as follows:

"SEC. 107. DETAIL OF EMPLOYEES OF EXECUTIVE DEPARTMENTS TO OFFICE OF PRESIDENT

"At the request of the President, the head of any department, agency, or independent establishment of the executive branch of the Government shall detail, from time to time, employees of such department, agency, or establishment to serve in the White House Office. The President shall advise the Congress of the names and general duties of all such employees so detailed to the White House Office. An employee may not be so detailed for full-time duty on a continuing basis for any period of more than one year. The White House Office shall reimburse each such department, agency, or establishment, for the pay of each employee thereof so detained for full-time duty on a continuing basis, for any period of such detail occurring after the close of the sixth month following the date on which such detail first becomes effective.".

SEC. 6. (a) Chapter 2 of title 3, United States Code, is amended by adding at the end thereof the following new section:

"SEC. 112. STATEMENT OF EXPENDITURES FOR EMPLOYEES

"The President shall transmit to each House of the Congress reports with respect to expenditures for employees performing duties in the White House Office and the Executive Residence at the White House. Each such report shall be transmitted no later than 60 days after the end of each fiscal year and shall contain a detailed statement of such expenditures during such fiscal year, including—

"(1) the name of every employee in the White House Office and the Executive Residence at the White House;

"(2) the amount of appropriated moneys paid to each such employee;

"(3) a general title and general job description for each such employee;

"(4) the amounts of any reimbursements made to each department, agency, or establishment for employees detailed to the White House Office under section 107 of this title; and

"(5) the name and general duties of such employees so detailed and the department, agency, or establishment from which the employee was detailed.

(b) The table of sections for chapter 2 of such title 3 is amended by adding at the end thereof the following new item:

"112. Statement of expenditures for employees.".

(c) The amendments made by the provisions of this section shall apply with respect to fiscal years beginning after June 30, 1974.

SEC. 7. Notwithstanding the provisions of section 105 of title 3, United States Code, as amended by the first section of this Act, if an employee in the White House Office or the Executive Residence at the White House is receiving basic pay immediately before January 1, 1976, at a rate different than the rate authorized under such section 105, then, effective on January 1, 1976, he may continue to receive basic pay at the different rate so long as he continues to perform the duties of the position he occupied immediately prior to January 1, 1976.

SEC. 8. Effective October 1, 1978—

(1) sections 105, 106, and 107 of title 3, United States Code, as in effect immediately prior to such date, are repealed; and

(2) items 105, 106, and 107 in the table of sections of chapter 2 of such title 3 are repealed.

And in lieu of the matter proposed to be inserted by the amendment of the Senate to the title of the House bill, insert the following: "An Act to clarify existing authority for employment of personnel in the White House Office and in the Executive Residence at the White House, to clarify existing authority for employment of personnel by the President to meet unanticipated personnel needs, and for other purposes."

Mr. HENDERSON (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. HENDERSON. Mr. Speaker, this bill (H.R. 14715) is the authorization for staff support, administrative expenses, maintenance, and operation for the White House office, the Executive residence of the White House, and for the Executive duties and responsibilities of the Vice President.

My amendment contains language identical to the language of the conference agreement adopted by the House on August 6, but rejected by the Senate on August 7.

Mr. Speaker, this bill has been before the House twice, on July 18 when it was first passed by the House and on August 6 when the House agreed to the conference report which, by the way, was signed by each of the House and Senate conferees.

However, on last Wednesday, August 7, the Senate by a vote of 54 to 34 adopted a motion to table the conference report and the Senate then asked for a further conference.

Mr. Speaker, the House conferees see no need for a further conference and that is why I have offered this motion which includes the language recommended by the conferees.

A review of the Senate debate leads me to believe that the conferees' report was rejected by the Senate because the conference agreement did not include a provision of the original Senate amendment which provides that no Federal tax returns shall be made available for inspection by, nor shall any copy be furnished to, any officer or employee of the executive branch other than the President or an officer or employee of the Departments of Treasury or Justice concerned with the tax returns, the payment, collection, or recovery of the tax for which such return was made, or any offense arising out of the return.

The conferees unanimously rejected that provision on the basis that it was nongermane to the bill. Also, the conferees had received a letter from Chairman WILBUR D. MILLS and HERMAN T. SCHNEEBELI, ranking Republican member of the Ways and Means Committee, recommending that the provision not be approved on the basis that their committee was in the process of developing comprehensive legislation on the subject. Moreover, it was pointed out that serious questions had been raised on the basis that the amendment would prohibit the appropriate officials from using the tax returns for the purpose of furnishing necessary statistical and other data for authorized purposes such as the Bureau of Census program.

Mr. Speaker, in view of the fact that the Senate provisions relating to the tax returns are not germane to this bill and the fact that Chairman MILLS has advised that his committee has this matter under consideration, I am convinced that no useful purpose would be served by once again sending this bill to conference for the sole purpose of giving further consideration to the Senate tax provision.

I urge the adoption of my motion so that the bill can be sent back to the Senate for their reconsideration.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. HENDERSON. I yield to the gentleman from Iowa.

Mr. GROSS. I thank the gentleman for yielding. I want to commend the gentleman from North Carolina for the action he has proposed to the House in this instance.

I signed the conference report, and returning the report to the Senate is the only proper action the House of Representatives can take.

The SPEAKER. The question is on the motion offered by the gentleman from North Carolina (Mr. HENDERSON).

The motion was agreed to.

The Senate amendments, as amended, were concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HENDERSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the Senate amendments to the bill H.R. 14715.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

## ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair desires to make an announcement.

After consultation with the majority and minority leaders, and with their consent and approval, the Chair announces that this evening, when the Houses meet in joint session to hear an address by the President of the United States, only the doors immediately opposite the Speaker and those on his left and right will be open.

No one will be permitted on the floor of the House who does not have the privilege of the floor of the House.

Due to the large attendance which is anticipated, the Chair will stress that the rule regarding the privilege of the floor will be strictly adhered to.

Children of Members will not be permitted on the floor and the cooperation of all Members is requested.

## PROVIDING FOR CONSIDERATION OF H.R. 14214, HEALTH REVENUE SHARING AND HEALTH SERVICES ACT OF 1974

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1279 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1279

*Resolved,* That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14214) to amend the Public Health Service Act and related laws to revise and extend programs of health revenue sharing and health services, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule by titles instead of by sections. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Louisiana (Mr. LONG) is recognized for 1 hour.

Mr. LONG of Louisiana. Mr. Speaker, I yield 30 minutes to the distinguished gentleman from California (Mr. DEL CLAWSON), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1279 provides for an open rule with 1 hour of general debate on H.R. 14214, the Health Revenue Sharing and Health Services Act of 1974.

House Resolution 1279 provides that the bill shall be read for amendment by titles instead of by sections.

H.R. 14214 provides for a 2-year extension and revision of five expiring programs for health services with a total authorization of $1.736 billion. The programs are health revenue sharing, with a total authorization of $420 million for the 2 years; family planning, with a total authorization of $472.5 million; community mental health centers, for which $278 million is authorized; migrant health programs, with authorizations of $105 million; and the community health centers program, with a total authorization of $460 million.

Mr. Speaker, I urge the adoption of House Resolution 1279 in order that we may discuss, debate and pass H.R. 14214.

## CALL OF THE HOUSE

Mr. MONTGOMERY. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. O'NEILL. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 474]

| | | |
|---|---|---|
| Abdnor | Andrews, N.C. | Badillo |
| Abzug | Ashley | Beard |
| Alexander | Aspin | Blatnik |
| Boland | Griffiths | Murphy, N.Y. |
| Brasco | Grover | O'Hara |
| Breaux | Gubser | Passman |
| Brown, Mich. | Gunter | Pepper |
| Buchanan | Hanna | Podell |
| Burke, Calif. | Hansen, Wash. | Price, Tex. |
| Carey, N.Y. | Harsha | Quillen |
| Chisholm | Hébert | Rangel |
| Clark | Hogan | Rarick |
| Cohen | Holifield | Reid |
| Collier | Horton | Robison, N.Y. |
| Conlan | Jones, Tenn. | Rooney, N.Y. |
| Conyers | Karth | Roy |
| Culver | Kluczynski | Ruppe |
| Davis, Ga. | Landrum | Sandman |
| Dellums | Lehman | Shoup |
| Diggs | Lent | Sisk |
| Dingell | Litton | Slack |
| Dorn | Long, Md. | Stuckey |
| Downing | Lott | Thompson, N.J. |
| Dulski | McCloskey | Treen |
| Edwards, Calif. | McCormack | Udall |
| Evans, Colo. | McSpadden | Ullman |
| Fascell | Macdonald | Vander Jagt |
| Flynt | Maraziti | Wiggins |
| Ford | Mayne | Williams |
| Fulton | Moorhead, Calif. | Wydler |
| Giaimo | Moorhead, Pa. | Young, Ga. |
| Gibbons | Murphy, Ill. | Zablocki |
| Gray | | |

The SPEAKER. On this rollcall 337 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

## PROVIDING FOR CONSIDERATION OF H.R. 14214, HEALTH REVENUE SHARING AND HEALTH SERVICES ACT OF 1974

The SPEAKER. The Chair recognizes the gentleman from California (Mr. DEL CLAWSON).

Mr. DEL CLAWSON. Mr. Speaker, as previously noted, this rule, House Resolution 1279 provides for the consideration of H.R. 14214, the Health Revenue Sharing and Health Services Act of 1974. The rule provides 1 hour of general debate and the bill will be open to amendments. It also provides that the bill will be read for amendment by titles instead of by sections.

The primary purpose of H.R. 14214 is to extend and revise five health services programs for 2 years. The total authorization is $1.736 billion. Of this total amount $420 million is for health revenue sharing; $472.5 million is for family planning; $278 million is for community mental health centers; $105 million is for migrant health; and $460 million is for community health centers.

Mr. Speaker, I support this rule, so that the House may proceed to consider the merits of this legislation.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. LONG of Louisiana. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## PROVIDING FOR CONSIDERATION OF H.R. 5529, MOTOR VEHICLE AND SCHOOLBUS SAFETY AMENDMENTS OF 1974

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules,

I call up House Resolution 1304 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1304

*Resolved,* That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5529) to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations for the fiscal years 1974, 1975, and 1976, to provide for the recall of certain defective motor vehicles without charge to the owners thereof, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and said substitute shall be read for amendment by titles instead of by sections. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as many have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 5529, the Committee on Interstate and Foreign Commerce shall be discharged from the further consideration of the bill S. 355, and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 5529 as passed by the House.

The SPEAKER. The gentleman from Louisiana is recognized for 1 hour.

Mr. LONG of Louisiana. Mr. Speaker, I yield the usual 30 minutes for the minority to the distinguished gentleman from California (Mr. DEL CLAWSON), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1304 provides for an open rule with 1 hour of general debate on H.R. 5529, amending the National Traffic and Motor Vehicle Safety Act of 1966.

House Resolution 1304 provides it shall be in order to consider the amendment in the nature of a substiute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment and the substitute shall be read for amendment by titles instead of by sections.

House Resolution 1304 also provides after the passage of H.R. 5529, the Committee on Interstate and Foreign Commerce shall be discharged from the further consideration of the bill S. 355, and it shall then be in order in the House to move to strike out all after the enacting clause of S. 355 and insert in lieu thereof the provisions contained in H.R. 5529 as passed by the House.

H.R. 5529 authorizes sums not to exceed $55 million for fiscal year 1975, $60 million for fiscal year 1976, and $65 million for fiscal year 1977. H.R. 5529 provides for the remedy without charge to the owner of a motor vehicle or item of motor vehicle equipment which contains a defect relating to motor vehicle safety or which fails to comply with an applicable Federal motor vehicle safety standard.

H.R. 5529 also provides that the Secretary of Transportation must promulgate safety standards for schoolbuses and schoolbus equipment within a 2-year time period.

Mr. Speaker, I urge the adoption of House Resolution 1304 in order that we may discuss and debate H.R. 5529.

Mr. DEL CLAWSON. Mr. Speaker, as previously explained, this rule, House Resolution 1304, provides for the consideration of H.R. 5529, the Motor Vehicle and Schoolbus Safety Amendments of 1974. The rule contains several provisions. It provides 1 hour of general debate and that the bill will be open to amendments. The committee substitute is made in order as an original bill for the purpose of amendment, and it will be read for amendment by titles instead of by sections. In addition, it will be in order to insert the House-passed language in the Senate bill.

The primary purpose of H.R. 5529 is to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations of $55 million for fiscal year 1975, $60 million for fiscal year 1976, and $65 million for fiscal year 1977.

In addition, there are several other changes in the law. If an item of equipment or a vehicle has a defect relating to motor vehicle safety or which fails to comply with an applicable Federal motor vehicle safety standard, the registered owner or purchaser is to be notified by first-class mail. If it is a tire involved, notification is to be made by certified mail. The Secretary of Transportation is to be notified by certified mail also.

The remedy of any of these defects is to be done without charge to the owner or purchaser within a reasonable time. The Secretary shall determine if there should be an exemption for an inconsequential defect.

Mr. Speaker, I recommend adoption of the resolution.

Mr. LONG of Louisiana. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## PROVIDING FOR CONSIDERATION OF S. 1728, WAR CLAIMS ACT AMENDMENTS

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1306 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1306

*Resolved,* That upon the adoption of this resolution it shall be in order to move, clause 7 of rule XIII to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 1728) to increase benefits provided to American civilian internees in Southeast Asia. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI and clause 4, rule XXI are hereby waived. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. LONG of Louisiana. Mr. Speaker, I yield the usual 30 minutes to the minority to the gentleman from California (Mr. DEL CLAWSON), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1306 provides for an open rule with 1 hour of general debate on S. 1728, the War Claims Act Amendments of 1974.

House Resolution 1306 provides it shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of the amendment.

House Resolution 1306 provides that all points of order against clause 7, rule XIII of the Rules of the House of Representatives—requiring a cost estimate in the committee report—are waived.

House Resolution 1306 also provides that all points of order against the substitute for failure to comply with the provisions of clause 7, rule XVI—germaneness provision—and clause 4, rule XXI—prohibiting appropriations in a legislative measure—are waived.

S. 1728 amends the War Claims Act of 1948 for two purposes. The first is to increase the authorized detention benefit for American civilians during the Vietnam war from $60 per month to $150 per month. The second provides for first priority to the payment in full of the remaining individual awards for property losses arising out of World War II, with a second priority to the payment of the remaining corporate awards for similar losses up to $50,000. Mr. Speaker, I urge the adoption of House Resolution 1306 in order that we may discuss, debate and pass S. 1728.

Mr. DEL CLAWSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as noted, House Resolution 1306 provides for the consideration of the War Claims Act Amendments, S. 1728, under an open rule with 1 hour of general debate. In order to preserve the normal amending process, the rule makes

it in order to consider the committee substitute as an original bill for the purpose of amendment. In addition, this rule contains several waivers of points of order. There is a waiver of clause 7, rule XIII. This waiver is necessary because the committee report does not contain a cost estimate as required under the House rules. Clause 7, rule XVI is waived because the committee substitute contains a provision which is not germane to the original bill. The original bill dealt only with increasing the amount of benefits provided to American civilian prisoners of war in Southeast Asia. The committee substitute also includes a nongermane provision giving individuals priority over corporate claimants under the War Claims Act. Finally, the rule contains a waiver of clause 4, rule XXI, which prohibits appropriations on a legislative bill. In this bill, the amounts being distributed to individual civilian prisoners of war are being increased, and the formula for distributing funds under the War Claims Act are being altered. Technically, this is a new appropriation of funds and, therefore, a waiver is required.

S. 1728 has two separate purposes. Section 1 increases from $60 to $150 per month the benefits provided to American civilian prisoners of war in Southeast Asia. The proposed benefit of $150 per month for civilians would be equivalent to the current $5-per-day benefit for military personnel. These benefits would be paid for funds which have already been appropriated. Approximately $275,000 would be required.

Section 2 was added in the House Committee on Interstate and Foreign Commerce. It provides first priority for payment in full of individual awards for property losses arising out of World War II, then a second priority to the payment of the remaining corporate awards for similar losses up to a level of $50,000. Any funds remaining in the War Claims Fund would then be distributed on a pro rata basis among the rest of the corporate claims. The War Claims Fund consists of the net proceeds of German and Japanese assets seized in the United States during World War II.

Mr. Speaker, although this rule includes several waivers, each appears to me to be necessary, and I support the resolution and recommend its adoption.

Mr. Speaker, I have no further requests for time.

Mr. LONG of Louisiana. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## HEALTH REVENUE SHARING AND HEALTH SERVICES ACT OF 1974

Mr. STAGGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14214) to amend the Public Health Service Act and related laws, to revise and extend programs of health revenue sharing and health services, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from West Virginia (Mr. STAGGERS).

The motion was agreed to.

### IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 14214 with Mr. CHARLES H. WILSON of California in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from West Virginia (Mr. STAGGERS) will be recognized for 30 minutes, and the gentleman from Minnesota (Mr. NELSEN) will be recognized for 30 minutes.

The Chair now recognizes the gentleman from West Virginia.

Mr. STAGGERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 14214, the Health Revenue Sharing and Health Services Act of 1974.

H.R. 14214 provides a 2-year revision and extension of five expiring programs for health services with total authorizations of $1.736 billion. The authorization for 1975, which totals $809.5 million, can be compared with the comparable authorizations for the same programs of $903 million in 1973 and $663 million in 1974.

The five programs which are extended include:

First. The health revenue sharing program under section 314(d) of the PHS Act which provides money to States and local communities to help pay their costs in providing public health services. This program is given an authorization for the 2 years of $420 million, and revised to require of each State a detailed plan and reports concerning its provision of the public health services for which the funds may be used.

Second. The family planing programs under title 10 of the PHS Act. For these the bill authorizes $472.5 million and makes changes which repeal the unused formula grant authority, require that the family planning research authority be used rather than general authorities, and require annual updating of the 5-year plan for family planning.

Third. The community mental health centers program. The bill authorizes a total of $278 million for mental health centers and rewrites the act to define the nature, services, and operations of a center; complete present grants for existing centers; authorize new programs for the development and operation of new centers; authorize new support for construction for both existing and new centers; and authorize a new program to assist existing centers experiencing financial distress.

Fourth. The migrant health program under section 310 of the PHS Act. For this program the bill authorizes $105 million, and makes changes which define the nature, services, and operation of a migrant health center; place program emphasis on the funding of such centers; provide support for States and private activities intended to improve the migrants' environment; and require a study of migrant housing.

Fifth. Community health centers under existing section 314(e) of the PHS Act. The bill repeals the existing section 314(e) under which different types of community health centers are presently supported and creates a new section 330 which will provide specific authority designed by the committee for the support of such centers. The new section defines the nature, services, and operation of community health centers and authorizes $460 million for their support in medically underserved areas.

These five programs were all extended for a year by the Health Programs Extension Act of 1973. In the intervening year the committee has studied these programs in depth and held hearings on their extension which revealed unanimous support for them, except in some cases on the part of the administration. The legislation before you was prepared by the Subcommittee on Public Health and Environment, all of whose members cosponsored it. It was reported by the subcommittee and the full committee unanimously. In considering these programs the committee was continuously impressed that they are meeting profound needs on the part of their various target populations and doing it well. In family planning for instance we are told in hearings of cost benefit studies which show by conservative estimates that for every dollar we spend we have $2 in public funds.

I urge your support for this legislation.

Mr. NELSEN. Mr. Chairman, I just wish to emphasize the point that the committee did unanimously recommend this bill.

There are a large number of health programs that we used to handle separately contained in this bill.

One particular point of this program that I wish to mention is the mental health centers all over the country and the great benefit that has resulted because of them.

In our State of Minnesota, for example, many years ago we set up a program where we set up centers when Governor Youngdahl was our Governor. We set up these centers at that time because so many persons who went into State mental hospitals never came out. After the community mental health centers were started the population of the State hospitals went down, down, and down, and persons who might have wound up there stayed in their communities. This one program alone has been a tremendous help to the people all over the country.

Years ago also, we set up comprehensive planning whereby the States had to submit health plans. We have tried to do a very careful job of combing through some of the things that needed correction in trying to put into language in our bill some of the necessary words that would provide direction.

Mr. Chairman, I yield to the gentleman from Kentucky (Mr. CARTER) at this time such time as he may consume.

Mr. CARTER. Mr. Chairman, I thank my distinguished ranking Member for the time he has given me.

Mr. Chairman, the bill H.R. 14214, the Health Revenue Sharing and Health Services Act of 1974, provides for a 2-year extension of expiring health programs—health revenue sharing, family planning, community mental health centers, migrant health, and community health centers.

Our committee has conducted extensive hearings on these programs, which were extended through fiscal year 1974 in order to permit a more thorough review of their funding levels, needs, accomplishments, and objectives. A total authorization of $1,735.5 million for this 2-year extension is contained in the bill. the following is a breakdown for each program:

[In millions]

| | |
|---|---|
| I. Health revenue sharing | $420 |
| II. Family planning | $472.5 |
| III. Community mental health centers | $278 |
| IV. Migrant health | $105 |
| V. Community health centers | $460 |

Over the years, we have witnessed much progress in these programs and in the areas that they attempt to serve. There have been, of course, some difficulties. We cannot say that absolutely every single aspect of these programs has been positive, and, indeed, there have been many wrinkles to iron out. I believe, however, that the thrust of each of these has been beneficial, and our committee has attempted to look at this legislative area as thoroughly as possible.

I urge my colleagues to adopt this important measure so that we can continue funding these major health programs.

Mr. NELSEN. Mr. Chairman, I yield 3 minutes to the gentleman from Delaware (Mr. DU PONT).

Mr. DU PONT. Mr. Chairman, during the second session of the 92d Congress, I had the opportunity to serve as chairman of my party's research task force on population programs. We undertook an intensive evaluation of the Federal role in population research and family planning. The programs created by the 1970 family planning legislation were by then well underway. We believed that an assessment of HEW's progress was vital in order to make rational judgments about the future needs of this national program. The evidence presented by expert witnesses from private agencies and organizations and by administration officials led to several major conclusions. First, while President Nixon had pledged in 1969 to provide subsidized family planning services to all women who could not otherwise afford them, we were then and, I might add, still are a long way from achieving that goal. Second, scientific knowledge concerning human reproduction—and our present contraceptive methods—are simply not sufficient to meet the needs of all individuals in our society.

As you know, since about 1969 and until recently, the administration made great strides in furthering the goals of these programs. It consistently supported annual increases in the funding levels both for family planning services and population research. In more recent times, however, different Presidential advisers with somewhat different ideas about how the Federal Government should allocate resources, probably compounded by the lack of a Presidential science adviser, failed to continue the administration's earlier and, I believe, sincere commitment to the family planning field.

By 1975, approximately 47 million American women will be of childbearing age. These women will want and need to plan their families. They will need equitable access to family planning, health care, and for the poor, this will require continued Government subsidization of services. All will need better methods of birth control than we now have. Obviously, the reduction of unwanted fertility would contribute significantly to the solution of some of our national problems and to the alleviation of others. In view of the enormous impact of this program on the health and well-being of close to 50 million American women and their families, I strongly support H.R. 14214 which will permit these vital programs to continue for another 2 years.

Moreover, I wish to state my strong support for the provision in this bill which clarifies and strengthens earlier congressional intent with regard to the population sciences research program, conducted by the National Institutes of Health.

As I pointed out in my testimony earlier this year before the Public Health Subcommittee, the legislative authority for this program has been consistently and blatantly ignored by HEW since 1970. One of the primary purposes of the 1970 Family Planning Services and Population Research Act was to make this research effort visible, effective and accountable to the public's growing demand for safer and more effective means of contraception.

Yet it is apparent that this program authorization has never been utilized as Congress intended, with the effect that today the program remains without visibility, status, or stability, and important scientific research has now reached a virtual standstill. In addition, it is virtually impossible for Congress and the public to ascertain any reliable data on expenditures for this field or to even make general comparisons between expenditures in one year and the next. I am heartened by the amended research authority contained in this bill and congratulate the committee for its renewed commitment to increase program accountability and growth and for this vital field.

Mr. CARTER. Mr. Chairman, will the Chair recognize the gentleman from Kentucky.

Mr. DU PONT. I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, as the gentleman knows, I strongly support this legislation, and I also strongly support the Family Planning Act of 1970.

However, I wonder if the gentleman knows that at the present time we are at zero population growth in the United States.

Mr. DU PONT. Mr. Chairman, I would say to the gentleman that we are apparently very close to zero population growth.

Mr. CARTER. Mr. Chairman, we are not "close"; we are there. The rate is 1.9.

Mr. DU PONT. It may be more apparent than real, and the fact that for the moment the curve has dipped down to zero does not tell us anything, and I do not believe anyone knows where that curve is going to be tomorrow. Because we are at zero population growth at the moment is no reason to stop the progress being made in this field.

Mr. CARTER. Mr. Chairman, I would agree with the distinguished gentleman on that.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas (Mr. FISHER).

Mr. FISHER. Mr. Chairman, low-income couples continue to have higher birth rates than more affluent couples. But one of the most encouraging aspects of the decline in the birth rate in the United States over the last several years is that fertility rates are decreasing more rapidly among low-income women than among those with higher income. This has major significance for our overall national effort to reduce dependency and enhance the capacity for self-support among low-income persons.

The more rapid decline of low-income births is attributable in large measure to the success of the federally sponsored voluntary family planning program. By the end of fiscal year 1972, the overall program had reached the halfway mark toward our national objective of providing adequate family planning services by 1975 to all those who want them but cannot afford them. An estimated 3.2 million low-income women, including public assistance recipients, were receiving modern family planning care through organized clinic programs or private physicians. The clinic program had sustained an average rate of growth of 30 percent a year until 1972, and the rate of growth itself increased during fiscal year 1971 and fiscal year 1972 to 36 percent, reflecting the popularity of the program. At the current rate, the program is enrolling new patients at the rate of more than 1 million individuals a year.

There is no question that these programs are responsible for increasing the utilization of more modern birth planning methods by low-income persons, thereby assisting them to avert 150,000 to 200,000 unwanted births a year during the late 1960's—and probably more in 1971 and 1972. Since fertility was 55 percent greater in the early 1960's among low-income persons than among higher income persons, there remains a sizable differential. But for the first time, the trend has been reversed and low-income births are declining more rapidly than before. Given the popularity of the public family planning program, and the continued enrollment each year of increasing numbers of low-income women, there is every reason to believe that this trend can be accelerated and the historic differential further reduced, provided that the Federal support for family planning continues to grow with the needs of the field.

Most important is the fact that these programs are making a fundamental contribution to reducing dependency among the poor by enabling low-income

persons to plan the size and spacing of their children, thereby reducing unwanted pregnancy and recourse to abortion. It is, therefore, vitally important for every Member of this House to express strong support for this bill so that family planning can become a reality for each person in this country.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the chairman of the subcommittee, the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Chairman, on June 30, 1973, 12 very important health programs, developed by the Subcommittee on Public Health and Environment over the years, expired. Faced with substantial administration opposition to many of the programs and the press of other legislative business, it became impossible to conduct the in-depth, comprehensive analysis of the programs that they deserved prior to their expiration. For this reason, the subcommittee requested this body to pass a simple extension of these 12 programs, with the promise that the subcommittee would review these programs in depth during the next year. This review has been concluded, Mr. Chairman, and the committee is in the process of recommending legislation to this body with respect to each of these expiring authorities. Today, we are presenting to the House the results of our review of five of these programs—bloc grants to States for health services, community mental health centers, family planning, migrant health and community health centers. The subcommittee has made substantial revisions in four of the five legislative authorities based on the past several years of experience with programs supported by these authorities.

This bill is, then, Mr. Chairman, five bills in one. It packages five of this year's 12 expiring health programs into one comprehensive bill. It is based on extensive staff research, exhaustive hearings, and careful, deliberate executive sessions. It enjoys the support of all members of the subcommittee. We believe we are recommending to you a bill that requires guidelines sufficient to insure that the programs extended will accomplish their intended purposes and that authorizes reasonable funding levels in order to meet the national need.

Mr. Chairman, allow me to outline the major subcommittee decisions embodied in this legislation.

Title I of the bill extends, with significant revisions, the program of Federal grants to the States for public health and mental health programs authorized by section 314(d) of the Public Health Service Act. It revises the State plan requirements of existing law to make the reporting requirements more significant and more meaningful. Of particular significance is the requirement that the States present to HEW two plans—a Public Health Service part and a Mental Health Service part. Both parts require an assessment of the State's most serious public health and mental health problems. The mental health part also requires a plan designed to eliminate inappropriate placement of persons in mental institutions and to improve the quality of care for persons for whom institutionalization is necessary.

During the hearings, we were extremely impressed with the wide range of services the States are providing with 314(d) money and the fact that this program—initiated in 1966—truly is health revenue sharing. While the funding for the bloc grants authorized under section 314(d) has remained relatively constant over the past few years, the demand for and variety of services provided under this authority has increased considerably. For this reason, the legislation contains a recommendation to the Appropriations Committee of an approximate doubling of appropriations over the past few years—from $90 million in fiscal year 1974 to $200 million in fiscal year 1975 and $220 million in fiscal year 1976.

Mr. Chairman, the States need and deserve full funding of this provision and it is my hope that this will be the case.

Title II revises, with minor modifications, the existing authorities of the Public Health Service Act with respect to family planning programs and population research. This title repeals the State formula grant authority—which has never been funded, requires that the research authority of the original act—rather than general authority—be used to fund research and requires annual updating of the statutorily-required 5-year plan for family planning services. Authorizations are $215.5 million for fiscal year 1975 and $257 million for fiscal year 1976.

Title III, Mr. Chairman, constitutes the most extensive part of H.R. 14214. This is the title that extends for 2 years, with major revisions, the provisions of the Community Mental Health Centers Act.

Title III makes substantial changes in the Community Mental Health Centers Act, designed to reflect the need for modifications in the operation of individual CMHC's—based on our 11 years of experience under this law—but perhaps more importantly, designed to strengthen and maintain the system of community mental health care which is being established under this legislation prior to the enactment of national health insurance legislation which would give all Americans access to the health and mental health services they need and deserve.

In January 1972, the administration proposed, through the mechanism of the Federal budget, to terminate all support for initiation of new community mental health centers and specialized program for children, alcoholics, and drug abusers within these centers. While making no criticism of the value and success of community-based treatment programs, the administration suggested that the responsibility for support of new centers be transferred to State and local governments, while the Federal Government would continue to provide funds already committed to existing centers under the law.

The administration claimed—to quote their testimony before our subcommittee—that the "value and effectiveness of innovative community mental health centers have now been amply demonstrated" and the committee would agree. But the conclusion the administration drew, that "it is time to shift the responsibility for the developing and operating of such facilities to State and local agencies" is not supported by the Committee on Interstate and Foreign Commerce. We rejected this approach for several reasons.

First, while community mental health centers have proved a highly successful Federal investment, not all centers are operating in the best possible manner, nor are they all serving all the residents of their catchment area, particularly children and elderly persons.

Second, there is no evidence that States and localities are in any position to continue to support the approximately 600 Federal centers indefinitely, and at the same time to invest substantial sums necessary to start up another 900 centers which are still needed. States are still burdened with the expense of operating large mental institutions which cannot be closed down until a network of comprehensive and effective community mental health centers is established to care for people in their community. We found no evidence that these resources are available at the State level.

Third, the committee believes that some form of national health insurance, or improvements in medicare and medicaid, will, if enacted, provide the means for the Federal Government to drop out of the long-term support of some health services delivery programs through the categorical grant mechanism. Yet, if changes are not made in the operation of CMHC's, and no efforts are made to expand the CMHC system of care nor even to maintain the existing centers at their current level, enactment of national health insurance could be highly inflationary. We must insure the development of a system of economical and effective mental health care which has adequate cost and quality controls before national health insurance becomes effective to avoid a repetition of our experiences under medicare and medicaid.

The bill's revision of the Community Mental Health Centers Act is a result of careful study of the CMHC program. It reflects the belief that this is an excellent Federal program—one that needs now to be strengthened and expanded, not arbitrarily cut off at its current level. Thus, title III would improve the community mental health centers program, based upon our previous experience, to require centers to provide more comprehensive services and to improve the management and financial administration of CMHC's. It would also insure continued operation of all existing centers at, as a minimum, their current level of services.

Mr. Chairman, the revision of the Community Mental Health Centers Act envisioned by title III of the bill would place several meaningful and significant requirements on entities desiring to become community mental health centers. In the committee's view, these revisions, patterned after experience with the rest of this Nation's existing centers, are necessary in order to insure effectiveness and responsiveness at the local level of the centers.

One of the most important of these

new requirements is the mandate that the governing body of all new CMHC's be composed of individuals who reside in the catchment area and who are not health care providers, in order to assure that the boards truly represent the recipients of services. This requirement would solidify in the legislation the concept of a community governing board which must include adequate representation of all groups in the community and which would have meaningful authority over the centers' programs. The committee believes that this is the best method by which to insure that the center programs remain responsive to their communities' needs, and it is one which has worked well in the existing centers which operate in this manner.

I wish to emphasize that this requirements applies only to new centers and is not retroactively made incumbent on centers presently funded under old Community Mental Health Centers legislation. In this regard, I would like to include at this point in the RECORD a letter from the Speaker, and my response to him, which clarifies the fact that this requirement applies only to new centers initially funded after enactment of the legislative proposal in H.R. 14214.

THE SPEAKER'S ROOMS,
*Washington, D.C., June 6, 1974.*

Hon. PAUL G. ROGERS,
*Chairman, Subcommittee on Public Health and Environment, Committee on Inter-State and Foreign Commerce, U.S. House of Representatives, Washington D.C.*

DEAR MR. CHAIRMAN: It has come to my attention that there may be a serious flaw in HR 14214 that would prohibit public agencies such as State Departments of Mental Health from utilizing federal funds to operate community mental health centers.

I call your attention to Page 17 beginning with Line 12 of HR 14214 which states that the governing body of a community mental health center shall be composed of individuals who reside in the center's catchment areas.

State Departments of Mental Health can have only one governing body, generally, the state mental health board appointed under state statutes. In Oklahoma, the State Department of Mental Health operates community mental health centers with the assistance of community advisory boards. I would imagine that other public agencies would have similar arrangements.

It appears to me that as HR 14214 is now written only the non-profit local organizations would be able to apply and utilize federal funds to operate community mental health centers. I would consider this to be a serious flaw in this much-needed piece of legislation.

I am sure that you are aware that the State Departments of Mental Health are dedicated to serving all patients in the community including the very poor and hard-to-reach groups such as alcoholics, schizophrenics and serious drug abusers.

They have made excellent use of mental health center funds to create a continuance of care that reaches into local communities. We must not deny them the use of federal funds under this proposed legislation. I respectfully request that you consider the following amendment as a means to assuring public agency participation in the benefits of HR 14214:

Following the last sentence on Page 18, Line 2 add:

"Except that an advisory board may be substituted for a governing board in those instances when a community mental health center is a public agency under the control of a state agency already operating under a governing board in accordance with state statutes."

As a matter of personal concern to me, I am advised that the new community mental health center in my hometown of McAlester, Oklahoma, which is just now getting started and hasn't even been staffed yet, would be forced to close under the provisions of HR 14214 as now written.

I will appreciate your giving this your most careful consideration.

Sincerely,

CARL ALBERT,
*The Speaker.*

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JUNE 23, 1974.

Hon. CARL ALBERT,
*The Speaker, House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: Thank you for your letter of June 6th expressing your concern that certain provisions of H.R. 14214 would prohibit State Departments of Mental Health from operating federally funded community mental health centers, as well as forcing the closing of the community mental health center in McAlester, Oklahoma, a state-operated center.

By way of background, H.R. 14214 would completely rewrite the Community Mental Health Centers Act, a program whose concept has enjoyed the bipartisan support of Congress since 1963, and four other expiring health services programs. In its deliberations, the Subcommittee drew heavily on the experiences of community mental health centers which have been in operation for several years. As a result, the reported bill reflects an insistence by the Subcommittee that any new center funded after enactment of this legislation conform to specific criteria which the Subcommittee believed would insure successful response to community needs. These criteria would affect governing bodies, accounting, evaluation, specific services that must be offered, and cooperation with provision of services offered by other health and social service agencies.

It is important to point out that these provisions affect only those new centers whose initial applications are approved for funding after enactment of this new legislation. H.R. 14214 specifically provides for continuation of Federal support of those centers approved and funded prior to enactment of this legislation under the provisions stipulated by existing law.

One of the findings of the Subcommittee members in reviewing the operations of existing centers, was that the most successful centers were those that relied on community representatives to provide guidance in determining the mental health needs of the population residing in the area served by the center. For this reason, one of the requirements of H.R. 14214 which must be met by a new community mental health center is that it must have a governing body composed, where practicable, of individuals who reside in the center's catchment area, and who represent the residents of the area demographically. The Subcommittee felt very strongly that this local community participation would best insure that local needs of the area would be met; in fact, this provision was thought to be so important to the viability of such local programs that similar requirements were imposed on community health center programs and migrant health center programs, both of which are also subjects of H.R. 14214.

Because of your concern, I requested the Subcommittee staff to research the Oklahoma statutes to determine whether the governing board provisions in H.R. 14214 would be inconsistent with Oklahoma state law with respect to centers that receive their first Federal funding under the provisions of the new law. In the view of the staff, the new Federal requirement for local governing bodies would not be inconsistent with the pertinent sections of the Oklahoma state statutes which, in fact, already authorize a dual role for State and local participation. In the case of community mental health centers operating under the aegis of the Oklahoma State Department of Mental Health and Mental Retardation, the governing board of the Department would exercise certain responsibilities pursuant to sections 12 and 14 of Title 43A of the Oklahoma State Statutes. These duties pertain to the care, treatment, and hospitalization of the mentally ill and mentally retarded, and consenting to the designation by the Director of Mental Health of the type of patients to be cared for in institutions within the Department. In addition, sections 604 and 605 of Title 43A (Oklahoma Community Mental Health Services Act) authorize the governing boards of municipalities to establish local Community Mental Health Boards which, among other duties, are to advise the administrators of the local mental health programs on the adoption and implementation of policies. The staff has concluded that, since H.R. 14214 does not stipulate specific powers and duties for the local governing bodies, the State law, which sets forth separate responsibilities at both the local and state levels would not be inconsistent with the provisions of H.R. 14214.

Let me reiterate that with regard to your specific concern that the center in McAlester would be forced to close if the provisions of H.R. 14214 were enacted as written, I hope I have made it clear in the preceding discussion of the general issue that this would not be the case. The McAlester center, as a center already funded under existing law, would not be subject to the requirements for "new" centers under the provisions of H.R. 14214.

In summary, during our deliberation the Subcommittee members felt very strongly that the best way to insure community partipication and acceptability for new community mental health centers is by the establishment of local governing bodies. In the view of my staff, these local governing bodies which would be required of new centers would in no way infringe upon the existing statutory authority of the governing board of the Oklahoma State Department of Mental Health and Mental Retardation with respect to community mental health centers within the state that receive their initial Federal funding after enactment of the new law. Moreover, the requirement is inapplicable to existing centers, and, thus, does not apply to the McAlester center. I believe the amendment you suggest is, therefore, unnecessary to achieve the purposes outlined in your letter.

As you know. H.R. 14214 has been ordered reported by the full Committee on Interstate and Foreign Commerce, and I have asked the staff to add language to the Committee report which would clarify the distinction between the applicability of the bill's requirements on old and new centers as well as explain that the requirement that centers must have local governing bodies does not preclude the establishment of statewide governing boards with powers and duties such as those prescribed in the Oklahoma statutes. A draft of this report language is attached.

Both my staff and I are available in the event you have further questions about this issue.

Best personal regards.

Sincerely yours,

PAUL G. ROGERS,
*Chairman, Subcommittee on Public Health and Environment.*

Mr. Chairman, title IV of the bill revises and extends the Migrant Health Act, first enacted in 1962. This act—

contained in section 310 of the Public Health Service Act—is a legislative recognition of the health needs of American migrant agricultural workers. The revisions of the act in this bill are based on substantial attention to the needs for personal health services by migrants recognized after subcommittee hearings both in Washington and in the field. Thus, the Migrant Health Act has been completely rewritten to place funding emphasis on "home base" centers where most migrants live for a majority of the year.

The services which must be provided by these centers is clearly defined. Besides requiring provision of traditional services necessary to the insurance of good health for every American, the bill requires that each migrant health center provide a broad spectrum of environmental health services relating to the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal and related environmental factors. This requirement is a direct result of subcommittee hearings in Homestead, Fla., where national attention was focused on a typhoid outbreak at a migrant camp, which convinced subcommittee members of the need for more direction to centers to provide not only direct medical services to migrants, but also to insure that preventive health and environmental measures are emphasized.

Title V, Mr. Chairman, constitutes an extension of the Federal effort to institute neighborhood health centers and other similar projects which service poor ghetto and rural people. These centers have received funding from a variety of sources—particularly the Office of Economic Opportunity—and have gradually been transferred to the Department of Health, Education, and Welfare, which also has initiated many centers. We have chosen the term community health centers to reflect the fact that not only neighborhood health centers but family health centers and networks initiated through HEW funding are intended to be continued under this program.

Mr. Chairman, this is a wide ranging and significant bill. Its provisions affect million of Americans, most of them not as fortunate as we. I urge the bill's overwhelming adoption by a compassionate House.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the distinguished Speaker.

Mr. ALBERT. Mr. Chairman, I thank the distinguished chairman of the committee for yielding to me.

I take this time to inquire either of the gentleman from West Virginia (Mr. STAGGERS) or the gentleman from Florida (Mr. ROGERS) as to how title III of this bill would affect State-owned and operated community mental health centers. I am particularly concerned about the general provision of section 201(c) which would require a local governing board in order for a community mental health center to be eligible to receive Federal funds. In my own State, the State board of mental health owns and operates three community mental health centers, one in my hometown of McAlester, and Oklahoma law mandates a State governing body. Would this provision prohibit Oklahoma from receiving community mental health centers grants?

Mr. STAGGERS. Mr. Chairman, if the distinguished Speaker will yield, I would like to reply simply in the negative. The answer is "No." The gentleman from Florida (Mr. ROGERS) can give us a more extensive explanation.

Mr. ALBERT. I thank the gentleman.

Mr. ROGERS. Mr. Chairman, will the distinguished Speaker yield?

Mr. ALBERT. I yield to the gentleman from Florida.

Mr. ROGERS. Mr. Chairman, I thank the Speaker for yielding.

I concur in the answer that the chairman of the full committee has given and would hasten to assure the Speaker that this provision would not force the closing of any State owned and operated center.

The requirement that a community mental health center have a local governing body applies only to "new" centers whose initial applications are approved for funding after enactment of this legislation. As a matter of fact, I was pleased to receive a letter from the Speaker with respect to this matter, and have already inserted that letter and my response in the RECORD during my earlier remarks.

Moreover, it is my view that the requirements for local governing boards of "new" centers—which the committee felt to be critical to the success and local acceptance of centers—would not preclude States from establishing general policies applicable to State owned and operated institutions. I believe that this is made clear in the committee report on page 78. As the report states:

> In cases in which States have established State-wide boards, the committee intends that centers would receive guidance and direction from both the State-wide board and the local board.

Mr. ALBERT. Mr. Chairman, my specific concern is related to the community mental health center in my home town of McAlester, Okla. Does the gentleman assure me that section 201(c) would not result in rendering the McAlester Center ineligible for federal assistance?

Mr. STAGGERS. Mr. Chairman, I would like to assure the distinguished speaker that it certainly would not, and that this is not the intent of the law, and I yield to the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Chairman, I again thank the gentleman for yielding, and I concur in the answer here. We can give the gentleman from Oklahoma our firm assurances that this would not be the case. The requirements of section 201(c) will be incumbent only upon centers that receive their initial funding subsequent to enactment of this bill. Thus, the McAlester Center would not be subject to the local governing board requirement, although I would hope the center would see fit to establish a local governing board in order to assure that the center receives direction from the citizens who are directly affected by the center's operations.

Mr. ALBERT. Mr. Chairman, I thank the distinguished gentleman from West Virginia (Mr. STAGGERS) and the distinguished gentleman from Florida (Mr. ROGERS). I appreciate their comments, their answers, and their assurances. I also want to commend them and their committee for the great work they are doing in this area.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. GREEN).

Mr. GREEN of Pennsylvania. Mr. Chairman, I thank my friend, the chairman of the full committee, for yielding to me, and I would like to ask a question of either the chairman of the full committee, or the chairman of the subcommittee, the gentleman from Florida (Mr. ROGERS). My question concerns title V of the bill, entitled Community Health Centers.

As I am sure you know, the model cities programs will end soon. Many community health centers around the country, providing essential medical services, have been funded through model cities. One of the most successful programs is the Comprehensive Health Center at Episcopal Hospital and St. Christopher's Hospital for Children in Philadelphia.

What I am most concerned about is the future of these programs. Is it the intention of your committee that existing community health centers of demonstrated effectiveness, formerly funded through the model cities program, will receive funding under title V of the bill?

Mr. STAGGERS. The answer is "Yes. I can assure the gentleman from Pennsylvania that that is the case if they meet all the requirements of the bill, and I would yield further to the gentleman from Florida (Mr. ROGERS) for a further answer.

Mr. ROGERS. Mr. Chairman, I thank the gentleman for yielding. I also would like to give those assurances that they should receive funding under the bill. Of course, in order to be funded, such centers must meet the standards for community health centers established in the bill.

Mr. GREEN of Pennsylvania. In other words, the Bureau of Neighborhood Health Centers at HEW should give consideration to applications from established model cities centers, such as those in Philadelphia, in the distribution of the $220 million authorized in the bill for fiscal year 1975?

Mr. ROGERS. That would be the committee's intention. I would see no objection to the funding of such centers, as long as the applications for funding demonstrated that the centers would meet the bill's standards with respect to the type of services offered, organization, and the like.

Mr. GREEN of Pennsylvania. Mr. Chairman, I thank my friend, the gentleman from Florida (Mr. ROGERS), as well as my friend, the gentleman from West Virginia (Mr. STAGGERS).

I believe it is essential that the vital services provided by facilities like St. Christopher's and Episcopal Hospital in Philadelphia be continued.

Mr. NELSEN. Mr. Chairman, I yield such time as he may require to the gentleman from Kansas (Mr. SHRIVER).

Mr. SHRIVER. Mr. Chairman, I rise

in support of H.R. 14214, the Health Revenue Sharing and Health Services Act of 1974. I will direct my brief remarks to the sections of the bill which extend and improve the community mental health centers program.

I want to commend the committee for its recognition of the need to continue Federal financial support and guidance to a growing system of nearby, low-cost mental health treatment. In my view, there are few Federal efforts which have returned such positive and measurable results as the community mental health centers program since its inception in 1963.

A recent study of this program by the Government Accounting Office concluded that the operational mental health centers have increased the accessibility, quantity, and range of mental health services available at the community level. In addition, these centers have apparently been responsible for a substantial decline in the resident population of State mental hospitals. For example, the State hospital admission rate of catchment area residents in areas where a community mental health center has been in operation for 5 years is significantly lower—by 23 percent—than for the U.S. population as a whole.

Such statistics and unmeasurable benefits in human terms which I have seen in my own congressional district led me to join with two House colleagues last September in introducing H.R. 10546. Our bill's intent is the same as the provisions we are considering today—to continue for a reasonable period Federal start-up support for additional centers until full coverage of the Nation's population by such centers is achieved.

The proven record of accomplishment of ongoing centers and their resultant popularity in Congress were evident when Congressmen HUDNUT, WYMAN and myself asked for cosponsors for our bill. More than 60 Members of the House—almost equally divided between parties and representing all geographical and philosophical areas—have now joined in sponsoring our bill. We appreciate this response.

There are, of course, technical differences between the provisions of our bill and the provisions in this more-inclusive legislation we are considering today. Our bill included fewer Federal regulations pertaining to the operation of mental health centers, and I believe we were more stringent in regard to the phasing out of Federal support as other sources of funds were obtained. I still support the principle that Federal support should not be considered open-ended, but if the financial distress provisions of this bill are carefully administered, abuses of Federal funding can be avoided.

The committee bill does extend Federal support for consultation and education services offered by centers to schools, courts, clergy, community health and welfare agencies, police and others in the community, as did our bill. As I pointed out last September, these consultation and education services are important in the early detection of mental illness. However, since these services are not self-supporting financially, many centers would have to discontinue these efforts without this support.

Although the percentage levels of Federal support vary somewhat from those in the Shriver-Hudnut-Wyman bill, the committee's bill provides a similar 8-year program of decreasing Federal financial support for new centers. Assistance would be higher in poverty areas where patient input would be lower.

I would point out that existing centers have focused their priorities on persons who are less able to obtain mental health care through other, more expensive means. For example, in 1970, over 42 percent of the clients served were from families with incomes of less than $2,000 while more than 90 percent were members of families with annual incomes below $10,000.

The bill includes authorization for Federal assistance for the development and construction of centers, for their operation, including staffing, for the consultation and education services I mentioned earlier, and for financial distress grants for centers which, for various reasons, cannot stand alone at the end of the normal 8-year funding period.

In closing, I want to stress that I view this program as a much-needed, but limited, Federal "pump-priming" effort to make available low-cost mental health care to all of our citizens at locations near their homes and families. It is not intended to replace local and State input into better mental health care programs and facilities.

I am pleased to note, in this regard, the exemplary record of local and State support for community mental health centers in my State of Kansas. State law allows the use of one-quarter of a mill in local tax funds to be spent for mental health care, and Sedgwick County, including the city of Wichita, is providing that support.

In addition, the State legislature in its last session authorized a matching program at a 50–50 level to community mental health centers to match income from other sources, such as insurance payments, these from individuals, county government support and third-party payments. This, for the first time, puts the State government in the business of direct financial support of community mental health centers.

This growing input from State and local sources is a direct outgrowth of the Community Mental Health Centers Act, in my opinion. Centers which owe their starts to assistance under the act have demonstrated to local and State officials that they are worthy of continued support. This was the intent of the act, and it is the intent of the legislation I will support today.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may require to the gentleman from North Carolina (Mr. PREYER).

Mr. PREYER. Mr. Chairman, the purpose of the Family Planning Services and Population Research Act is to provide adequate family planning services to all persons who want them but cannot afford them. Progress has been made toward this goal and this should be recognized. The program is now serving close to 3 million women. But, we must also recognize that we are still a long way from reaching all women—medically and categorically indigent—who desperately need subsidized family planning services. The estimated number of Americans "in need" does not remain stationary but increases as the number of women and men in the reproductive age group—18–44 years—increases. Thus, as we seem to be nearing our goal of providing services to an estimated 7 million in need, our goal grows and is moved further from us. Thus, we must take bigger steps—we must increase our pace—if we are to keep up with the growth. We must not simply guarantee a constant level of subsidization, but must expand these services as the number in need expands.

Contributing to the increase in the potential number of patients are several factors: First, the explosion of women entering the childbearing years—18–44—as a result of the post World War II baby boom; second, economic hardship related to the excessive inflation and high unemployment; third, catastrophic illness or accidents which impose unexpected and extraordinary health bills thus forcing the otherwise financially solvent into the ranks of the working poor.

The ever growing number of persons in need of subsidized family planning services are depending on the continuation of programs that have given them some hope—some pathway to assist them in getting away from poverty. Unless we take positive action today, I am concerned that: First, the national goal of—providing adequate family planning services to all who need but cannot afford them—will fall outside our reach; second, a number of local family planning projects could be forced to shut down or at least curtail their programs leaving hundreds and thousands of low-income women without access to effective family planning services. We must act now to guarantee their futures and the future of generations to follow—we must pass H.R. 14214 at the increased spending levels for the next 2 years.

Mr. BINGHAM. Mr. Chairman, I rise in support of the Health Revenue Sharing and Health Services Act of 1974. H.R. 14214 would revise and extend for 2 years five expiring programs for the provision of health services with a total authorization of $1.736 billion. Since other Members of this body will provide detailed justifications for the titles of this bill dealing with health revenue sharing, community mental health centers, migrant health and community health centers, I would like only to draw attention to title II of the bill, which extends title X of the Public Health Service Act to provide funding for family planning services and population research. This highly successful program began with the passage in 1970 of the Family Planning Services and Population Research Act of 1970. Our former colleagues, Representatives James Scheuer and George Bush, former U.N. Ambassador and now chairman of the Republican National Committee, worked long and hard with the distinguished subcommittee chaired by the gentleman from Florida (Mr. ROGERS) to win enactment of

this program. Its funds have supported 3,500 clinics across the Nation and provided services to over 2 million women.

There are still many unresolved problems having to do with the manpower needs in family planning, the provision of services to minors, the equitable distribution of services nationwide, guaranteed financing for programs and services, and the cooperation of the public and the private sectors in meeting these needs. A recent publication by Planned Parenthood-World Population, "Family Planning U.S.A.," provides a concise discussion of public policy and programs and the delivery of services in the United States, and I would like to include it at this point in my remarks.

FAMILY PLANNING U.S.A. (EXCERPTS)

PUBLIC POLICY AND PROGRAMS

Until the 1960s, laws, regulations and administrative procedures on family planning at all levels in the U.S. were generally restrictive.

With the notable exception of Connecticut, where an archaic law forbade even the use of contraception, traditional restrictions did not prevent the practice of family planning, but they limited who could be told about contraception, how they could be told and where they could obtain it. Doctors were generally free to prescribe and pharmacies free to sell birth control devices. Within this framework, the restrictions weighed most heavily on those who depended on subsidized institutions and tax-supported services for their health care—the least educated, the poorest and the most resourceless. In addition, negative policies were buttressed by silence in chanels of public information which kept other millions in all income brackets ignorant or misinformed.

Negative public policy was principally embodied in the federal Comstock law, enacted in 1873 (and only repealed in 1971), which included contraceptives among banned "obscene" materials, and in the state laws patterned after it, which banned the dissemination of information and the sale of contraceptive products.

*End of an era*

The end of the "Comstock era" was reached in the 1960s. First, restrictions were removed, then positive legislation authorizing family planning programs was adopted in a number of states and the U.S. Congress. Increasing federal subsidies provided the necessary impetus to program development. Today, new laws and policies are characteristically positive and enabling. The only area where any substantial impediment remains is in the wide availability of all fertility control services to minors.

During 1965–66, five states—New York, Ohio, Massachusetts, Minnesota and Missouri—removed Comstock era restrictions on the dissemination of contraceptive information. Laws authorizing or encouraging public health departments and/or welfare boards to provide family planning services at public expense were adopted in eleven others.

Contraception is now legal for adults in all states (with the possible exception of Wisconsin which prohibits physicians from prescribing to unmarried persons, a law now under court challenge). By mid-1972, 29 of 50 states had affirmed the right of unmarried girls who had reached the age of 18 to consent to their own medical contraceptive care and, in 19 of the 29 states, they were able to do so at younger ages or with no age restrictions at all.

How public policy evolved can be seen by a glance at key national developments.

In 1961, President John F. Kennedy defined population growth as a "staggering" problem. He saw the sudden rise in human numbers as a brake on social and economic development. His administration's domestic antipoverty efforts led to early concern with voluntary family planning as a self-help measure. Mr. Kennedy formally endorsed reproductive research to make new knowledge available to all the world so that individuals could make their own decisions about family size.

In 1963, Congress amended its Foreign Aid bill to authorize use of funds for "research into problems of population growth."

A year later, Congress made the first federal appropriation of funds for birth control. The modest sum of $1,000 was allocated for a project in the District of Columbia. The same year, the government anti-poverty program for the first time assigned $9,000 for an experimental project in Corpus Christi, Texas, to determine if family planning would be wanted and used by the poor.

In 1965, the National Academy of Sciences, the nation's leading scientific organization, urged that family planning be made an integral part of domestic public medical programs and suggested the appointment of an official at a "high national level" to facilitate government progress.

The same year, the U.S. Supreme Court struck down Connecticut's antibirth control law as unconstitutional. Its landmark decision established the constitutional right of married couples to plan their families free of state interference. (In 1972, in the Baird case, the Court in effect extended this right to the unmarried as well.)

President Lyndon B. Johnson repeatedly stressed the importance of providing family planning services and coping with problems associated with population growth. In his 1966 health message, he said: "It is essential that all families have access to information and service that will provide freedom to choose the number and spacing of their children within the dictates of individual conscience."

Between 1965 and 1967, dozens of antipoverty programs incorporated family planning services as a regular part of their activities. Some maternity and infant care programs subsidized by the federal government began to provide family planning as part of their postpartum programs. A number of city health departments and hospitals followed suit.

In 1967, the Agency for International Development (AID) was authorized to provide contraceptives in its overseas development programs. In 1967, the U.S. government's parallel interest in domestic and overseas family planning was expressed in congressional action earmarking specific funds for the first time to support these programs on an ongoing basis.

Domestically, Congress designated family planning for "special emphasis" in the antipoverty program and amended the Child Health Act to reserve and allocate for family planning services not less than six percent of the tax funds appropriated for maternal and child health. This greatly expanded the resources available for subsidized services.

In overseas programs, Congress also gave special emphasis to family planning by adding a new section on "Programs Relating to Population Growth" to the Foreign Assistance Act, effective 1968. For the first time, the Act allocated specific funds to make contraceptive and other family planning assistance available to other countries, upon their request.

In July 1969, President Richard Nixon's Message on Population and Family Planning called for increased federal support in domestic family planning services, in biomedical and social research and in foreign aid assistance, and requested the establishment of a commission to study the U.S. population problem. Mr. Nixon committed the nation to assist American families to have no more children than they wished to have and said:

*"It is my view that no American woman should be denied access to family planning assistance because of her economic condition. I believe, therefore, that we should establish as a national goal the provision of adequate family planning services within the next five years to all those who want them but cannot afford them. This we have the capacity to do."*

*Assigning substantial funds*

In December 1970, Congress passed the Family Planning Services and Population Research Act authorizing a three-year program of services and research to supplement already ongoing activities.

In 1971, in accordance with the requirements of this law, a five-year plan was prepared by the responsible government agency outlining a phased program to bring family planning services to an estimated 6.6 million women of low or marginal income by 1975.

In 1972, more than 2,700 public and voluntary hospitals, local health departments and voluntary agencies reported that they were collectively providing family planning in more than half of U.S. counties to an estimated 2.6 million women.

The rise in government spending for family planning has been substantial. The federal budget increased this item from a total of $2.5 million in 1965 to a total of $187.8 million for fiscal 1972. For fiscal 1973, the budget was $161 million. (Research budgets not included.)

The ideal contraceptive would be safe and free of side effects. It would be effective, aesthetically acceptable, coitus-independent and accessible commercially rather than medically. In addition, it would be inexpensive, easy to use and reversible. This contraceptive does not exist.

Presidents Kennedy, Johnson and Nixon all explicitly supported increased government support for fertility research to improve methods. Congress increased allocations for this purpose from almost nothing in 1962 to $39 million in fiscal 1973.

The federal government assesses the safety of all birth control methods and keeps them regularly under review. A small but growing program in behavioral and attitudinal research is a further part of the total research effort. The Foreign Assistance program has also grown considerably. Starting in 1965 with $2 million, government funds for family planning abroad steadily increased, reaching a $125 million appropriation in fiscal 1973. The major portion of the overseas budget goes to assisting qualified and interested countries in establishing family planning delivery systems, including the means, information and staffing required to provide the services. Substantial financial aid also goes to research, demographic social science and institutional support.

DELIVERING THE U.S. SERVICES

Voluntary family planning today enjoys exceptionally broad national support. Leading professional organizations in medicine, public health, nursing, law, social work and education have adopted strong favorable policies.

Major faiths agree on family planning goals; differences now center on the permissibility of methods, not on general principles.

Citizen attitudes are also favorable. Most Americans practice family planning or expect to do so. Government programming budgeting reflects this consensus.

The chief aim of U.S. government expenditure is to meet the needs of the medically indigent. The non-poor receive their health care from private physicians and usually get their family planning guidance the same way.

Unlike some other nations, the U.S. has no single national health system. As a result, many channels must be utilized if the population in need is to be served. Among the chief providers of service are hospitals, health

departments and voluntary agencies like Planned Parenthood.

The voluntary agencies carry an important part of organized program responsibility. In 1971, close to 41 percent of all patients of organized programs obtained their birth control from non-governmental sources. Planned Parenthood affiliates, for example, operated clinics in more than 700 separate locations in 42 states and the District of Columbia.

City and county public health departments collectively served 36 percent of all patients. Hospitals served the remaining 23 percent.

Some federal financial support went to most of these programs. While a number of government agencies contribute, main responsibility for funding and supervision is vested in the Office of Population Affairs and the Bureau of Community Health Services in the U.S. Department of Health, Education, and Welfare. Regional offices identify needs, coordinate efforts, process grant applications, supervise and evaluate programs and initiate backup support in manpower training and information and educational resources. The research program (exclusive of census activities) is part of the National Institutes of Health, the major health research arm of the federal government (also in the Department of Health, Education, and Welfare). Both services and research are under the direct supervision of the Deputy Assistant Secretary for Population Affairs of the Department, Dr. Louis Hellman.

*The service record*

The government's five-year plan in the family planning field estimates that there are currently some 25 million fertile, sexually active U.S. women between the ages of 14 and 44. Of these, between 1971 and 1975, more than 6 million low-income women are estimated to constitute the population in need of subsidized services. Naturally the size of this group may vary from year to year—partly in response to economic change and partly because of the increasing number of women of childbearing age.

An estimated 2.6 million patients were being served in organized programs in 1972. When the estimated number of low-income women receiving family planning care from private physicians is added to those served by organized programs, the total receiving birth control help by 1972 was close to half the patient goal.

The median patient age was 23. Eighty-two percent had three or fewer children. The median educational level stood at 12th grade. Some 62 percent were white, 38 percent were non-white and 16 percent of the total were recipients of public assistance.

*Planned Parenthood's role*

Along with contraception, most patients also benefited from other health services—breast and pelvic examinations, pap smears, checks for venereal disease, etc.

Organized family planning services were available in 1972 in nearly two-thirds of all U.S. counties. The largest group of providers were 1,637 local public health departments. Hospitals rank second. Of the 4,622 general non-profit hospitals where 99 percent of American women deliver their babies, 729 offer birth control services.

Planned Parenthood adds a third large group of providers: 170 of its affiliates offer medically supervised birth control. The others concentrate their efforts in education only. Many receive federal grants. Most also raise private funds for program support and, in addition to meeting federal requirements, they serve patients ineligible for government programs and patients residing in localities without adequate public facilities. Planned Parenthood affiliates also offer programs of education for marriage and sex education, and act to promote community understanding of family planning and population dynamics.

Some 437 other providers, public and voluntary, also offered family planning in 1972. At the local level, these include such agencies as Family Health, Inc., which operates a statewide Louisiana program; Better Family Planning, Inc., whose activities are centered in Philadelphia, and the Los Angeles Regional Family Planning Council which unites many diverse agencies in southern California.

*Professional groups*

At the national level, several professional organizations conduct programs in the family planning field—among them the American Public Health Association, the American College of Obstetricians and Gynecologists and the Council on Social Work Education. The National Urban League also provides education and counseling in support of family planning programs.

Foundations, research organizations and universities are concerned with family planning. The Population Council provides technical assistance to family planning, principally overseas, along with a major effort in biomedical and demographic research. Specialized training programs for family planning have been established at universities, among them Chicago, Columbia, Harvard, Hawaii, Michigan, Puerto Rico, North Carolina, Pittsburgh and Tulane. Some commercial enterprises have also undertaken family planning projects in recent years, usually in the field of research and education, rather than direct service.

Planned Parenthood's Center for Family Planning Program Development monitors national efforts, pioneers methods of program planning, provides technical assistance and publishes the professional quarterly, *Family Planning Perspectives*.

SUCCESS IS WITHIN REACH

In the U.S., more family planning programming remains to be done than has been achieved. But specialists expect to see rapid progress.

As recently as 1960, not even the most optimistic family planner dreamed that the U.S. would go so far so fast in meeting national birth control needs.

But what seemed impossible became desirable, practical and feasible, when a working partnership of government and voluntary agencies came into existence.

The public-private partnership, combining substantial public funds, official expertise and supervision, with the experience, enthusiasm, flexibility and dedication of the volunteer and the voluntary agency proved to be the key to rapid progress.

Despite America's many unresolved family planning problems—and they are many and difficult—Margaret Sanger's vision of a day when every baby would be born wanted to loving parents appears clearly outlined on the American horizon.

Mr. Chairman, the committee has called attention in its report to the serious administrative problem of grant consolidation. HEW has embarked on an effort to reduce the number of local projects for which the Department has direct monitoring responsibility by consolidating various projects into one grant. The danger of such grant consolidation is that it may threaten the integrity of some family planning projects, especially those which were started by the Office of Economic Opportunity. These projects usually emphasized community involvement in the program design and delivery and maximum involvement of paraprofessionals in delivering family planning services to low-income women. Neither of these concepts is received with much enthusiasm in many State and city health agencies, which are usually chosen by HEW to coordinate and consolidate grants.

Mr. Chairman, the committee has a full understanding of this problem and has expressed its intent in the committee report that HEW insure that grant consolidation not lead to the domination of family planning services in any area by one type of service provider. I have expressed my own concern on this matter to the Secretary of HEW and would like to include my letter, his reply, and the relevant portion of the committee's report at the conclusion of my remarks.

HOUSE OF REPRESENTATIVES,
*Washington, D.C., April 15, 1974.*

HON. CASPAR W. WEINBERGER,
*Department of Health, Education, and Welfare, Washington, D.C.*

DEAR MR. SECRETARY: It has recently come to my attention that family planning grantees in the City of New York have been told that the administrative responsibility for their programs is to be given to the New York City Department of Health. Other grantees in the State have been told that they must henceforth apply for family planning funds to the State Health Department rather than through the DHEW regional office as has been the case since the inception of the Title X family planning program in 1970. Grantees in New Jersey have also been told that their grant applications are to be submitted to Trenton, not DHEW, and apparently, this pattern of so-called "consolidation" is nation-wide in scope. These instructions which were only delivered orally to Region II grantees were apparently perceived by the grantees as beyond appeal although they are clearly arbitrary, will be injurious to the program, and have only been justified to the grantees on the grounds that they are in line with the Administration "transition" to block grants and health revenue sharing.

To my knowledge (and I was a sponsor of the family planning legislation in 1970 and again in this Congressional session), Congress was and is fully aware of the distinction between project grants to local "public and private non-profit organizations" and grants to a designated State public agency. As a matter of fact, in the 1970 legislation, Congress authorized both types of financial support: a project grant mechanism, in which the relationship is between the local grantee agency and the Federal government, fectively in meeting its goals.
and a formula grant program, in which the agree that the program has functioned ef-relationship is between the State Health ministration and the Congress appear to Agency and the Federal Government. Unaccountably, DHEW consistently refused to request funds for the support of state health agency programs and Congress let the authority lapse last year. However, both the House Subcommittee on Public Health, and the Senate Committee on Human Resources have approved the constinuation of the family planning project grant program, as initiated in 1970, through 1976. Both the Ad-

DHEW is certainly justified in making administrative decisions which would improve the operation of programs which have been entrusted to it by the Congress. But it must not be permitted to make administrative decisions which are incompatible with or thwart legislative intent. The Department can, and should, encourage the coordination and consolidation of local programs. It is not, however, authorized to transform, under the name of consolidation and by arbitrary administrative means, a project grant program into a sort of formula grant arrangement in which allocations among provider agencies are controlled not by DHEW, but by the State Health Agency, itself (directly or indi-

rectly) a provider of services and, in that sense, a competitor for funds. DHEW cannot relinquish the responsibility given to it by Congress to directly monitor and assist its individual grantees.

The family planning program has achieved in a few years, a remarkable level of support among the general public, the client population and minority groups where not long ago the "genocide" charge was frequently made. This could not have occurred without active encouragement of consumer and patient participation, community outreach, intensive use of para-professional personnel, participation of a very wide variety of provider agencies with broad constituencies, and flexible modes of service delivery. I gravely doubt that this level of support, and the high achievements of the program, can be maintained under the new conditions created, arbitrarily, by DHEW.

Would you please explain the Department's policies in this regard to me, including the legal justification for them? If these policies are in fact what they appear to be, I urge you to reconsider the Department's position which, in my judgment, is contrary to the Congressional intent and will surely be harmful to the program.

With best wishes,

Sincerely,

JONATHAN B. BINGHAM.

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THE SECRETARY OF HEALTH,
EDUCATION, AND WELFARE,
*Washington, D.C., May 16, 1974.*

Hon. JONATHAN B. BINGHAM,
*House of Representatives,*
*Washington, D.C.*

DEAR MR. BINGHAM: Thank you for your letter of April 15 requesting information concerning family planning services project grant consolidations.

I understand that Dr. Carl S. Shultz, Director, Office of Population Affairs, has discussed with Mr. Gordon C. Kerr, your Administrative Assistant, a number of the specific problems in New Jersey and New York dealt with in your letter. In instances where such problems arise, special consideration and review will, of course, be provided. Dr. Shultz will continue to work with your Office as we endeavor to resolve these special situations.

The Administration has requested extension rather than termination of the Public Health Service Act health services project grant authority with minor modifications which make clear the intent to support family planning services projects. This legislation has been introduced as H.R. 12892.

Perhaps the confusion relating to conversion of project grants to formula grants arose due to the Congressional mandate within Title V of the Social Security Act. With regard to family planning projects supported under Title V, P.L. 93-53 extended Social Security Act Title V project grant authority through fiscal year 1974. At the end of that period, States are to assume responsibility through Title V formula grants for continuing services (including family planning services) to population groups previously receiving services through projects in fiscal year 1974.

The object of the family planning services program is not to support individual service providers but rather to provide services to those low-income individuals who desire but cannot afford them. Congress authorized not only the provision of services through projects (Section 508 of Social Security Act Title V and Section 1001 of the Public Health Service Act) but required under Section 506 of Social Security Act Title V that each State have a plan for extending family planning services to mothers in all parts of the State by July 1, 1975.

With the enactment of Title X of the Public Health Service Act in 1970, the major authorization for family planning project grants, and the major program level planned to fund that authority, it was recognized that by the end of the initial three-year period, there could be as many as 2,000 to 3,000 grants. Since adequate administration of so large a number of grants would be exceedingly difficult, the concept of consolidation received increasing emphasis as a means of fostering effective program management. The consolidation process is carried out through existing agencies such as State and local health departments as well as through the establishment of State and local coordinating bodies (umbrella agencies) such as the Illinois Family Planning Coordinating Council and the Los Angeles Regional Family Planning Council. Consolidation does not decrease the number of individuals served and it does not necessarily decrease the total number of agencies receiving funds since each consolidated grantee or umbrella agency may subcontract for services with any number of facilities in its general geographic area.

At one stage in the development of the family planning services program, there were over five hundred family planning services projects supported by the DHEW and the Office of Economic Opportunity (OEO). By the end of fiscal year 1974, this number will have been reduced through consolidation to approximately three hundred. Although the number of service providers has been and will have been reduced, the quantity and quality of services has consistently been increased. Rather than subverting the intent of the Congress, consolidation in appropriate cases is a means for improving the effectiveness of family planning programs.

Please let me know if I can be of any additional assistance.

Sincerely,

CASPAR W. WEINBERGER,
*Secretary.*

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COMMITTEE REPORT ON H.R. 14214

GRANT CONSOLIDATION

The original title X legislation authorized two funding mechanisms for the support of family planning programs: a project grant program of direct assistance to local public and private nonprofit agencies and a program of grants to state health agencies, on a formula basis, to enable them to assist local programs in planning for, and delivering family planning services. HEW did not request any funds for the formula grant authority in its first three years and accordingly, the Congress let the authority lapse in the Public Health Services Extension Act of 1973. Few state health agencies have made substantial progress in assuming a stronger role in the provision of effective administrative, planning and technical assistance support to local programs. The number of full-time state health agency administrative personnel assigned to family planning has remained almost constant for the past three years and is far below what the HEW Five Year Plan itself indicates to be required.

In extending the project grant program, the Committee is mindful of these facts and states its intent that HEW must continue to have direct responsibility for the monitoring of local projects, the provision of technical assistance and training, as needed, and the allocation of resources between projects. It is recognized that, in some instances, it may be necessary for administrative reasons for HEW to encourage or even require that local grantees consolidate their grant applications. This type of consolidation may have important cost-beneficial aspects for the operation of community-based programs since it may assist in promoting coordination between local agencies, joint planning and joint decisions as to the allocation of resources. When the consolidation of project grants is undertaken, it is imperative that the consolidation take place at the local community level, that no one agency be in a position to determine or unduly influence the allocation of resources to other potential family planning providers, that all potential providers be able to participate in the basic policies governing the implementation of the grant, and that HEW provide adequate resources to foster a meaningful, programmatic consolidation and coordination. A systematic attempt by HEW to consolidate local project grants under the control of state agencies and to shift a large part of the administrative responsibilities and of the decisions as to resource allocations to these state agencies would be contrary to the intent of the law.

Mr. MATSUNAGA. Mr. Chairman, I rise in support of H.R. 14214, the proposed Health Revenue Sharing and Health Services Act of 1974.

I would like to congratulate the distinguished committee chairman from West Virginia (Mr. STAGGERS) and the equally distinguished chairman of the subcommittee, the gentleman from Florida (Mr. ROGERS) for their efforts in the development of this excellent legislative proposal.

The Health Revenue Sharing and Health Services Act of 1974 contains authorization to continue funding five separate and proven Federal health programs for 2 additional years. These include health revenue sharing, family planning, community mental health centers, migrant health and community health centers. Slightly less than $1.8 billion is authorized for the 2-year period. In fact, the 1975 authorization of $809.5 million is almost $100 million less than the comparable authorization for 1973. If we are receiving proper value for our money, then it seems apparent that what we have here is indeed a bargain.

When we speak about spending $1¾ billion, we need to know what we are buying, and whether more effective alternative programs could be devised for the taxpayers' money. The choice which we have in promoting health is either to purchase services to promote normal growth and development; to contain chronic conditions and comfort the suffering; or to repair acute conditions. The least dramatic, and perhaps most effective, of these approaches is the promotion of normal growth and development.

By creating conditions where health, rather than illness, thrives, we eliminate more pain and suffering, at less cost, than we could by treating the victims of disease. How much better to be able to care for people so that they will not suffer, than to cure them only after the pain has begun. This is the purpose of the bill which we have before us.

But even in agreement with these principles, one might well ask how are we to accomplish the utopian goal of preventing disease? Indeed, a cursory examination of the appearance of health services would say that this is impossible. However, this is a case where appearances hide facts. And the fact is that we can and do have effective disease prevention programs, and that these programs could be even more effective.

However, first let us examine the available evidence. In the year of my birth, which is not very long ago, but longer than most people think, the 10 leading causes of death in the United States were: Heart disease, pneumonia, and in-

fluenza, tuberculosis, nephritis, intracranial lesions of vascular origin (stroke), cancer and other malignancies, diarrhea, enteritis and other diseases of the intestinal tract, nonmotor vehicle accidents, premature births, and syphilis. In 1971, tuberculosis, nephritis, intestinal diseases, prematurity, and syphilis were not included among the 10 largest killers. Instead, there was a higher percentage of deaths related to heart disease, cancer, stroke and other conditions which had not previously been on the list which are chronic conditions associated with old age. Some might say that this evidence indicates that we are losing ground. But the observer who sees a glass half full rather than half empty knows that we have made real and substantial progress in overcoming premature death.

In fact, communicable and infectious diseases whose very names were once sufficient to evoke terror—diphtheria, typhoid, typhus, smallpox—are now all but forgotten. In the not too distant future, we may well be able to add rubella, measles, and polio to that list.

Just over 20 years ago polio was one of the most dreaded diseases. Since then polio has been almost totally eliminated. In 1972, there were fewer than 40 new cases of polio reported in America. There is no reason to believe that other disease-control programs will not be equally effective.

The opportunity of accomplishing this goal is presented to us by this bill. It would provide Federal assistance in supporting public health activities which each State may choose in its effort to accomplish its own most important health objectives, under title I, the health revenue sharing authorization.

Titles II, III, IV, and V would promote health saving and assuring activities. Assistance to family planning activities, under title II, would encourage services to assure proper family size at the appropriate time. Assistance in avoiding the problems related to unwanted children will be provided. As an original sponsor of the family planning legislation, I am particularly pleased with the committee's extension and improvement of this vital law.

The case of unwanted children whose families could not afford to support them was poignantly presented to me when, as a very junior Congressman, I was forced by an aircraft malfunction to make an unplanned stop in Calcutta, India. There the frightening experience of losing an aircraft engine in flight was overshadowed by the horror of seeing emaciated children dying in the gutter. It was this cultural shock which prompted me to offer the Matsunaga family planning amendment to Public Law 480, the Food for Peace Act. The activities carried out under this amendment have helped India to reduce its booming population growth.

We can be grateful that the United States has never suffered from such extreme overpopulation. We have been spared the indignity of public death of our children, but many American families are unable to provide proper care and nutrition to their unwanted children. It is the relief of these families—and of the children themselves—that title II is intended to provide.

Similarly, title III, the community mental health centers program, is an effort to reduce pain by preventing it. We now know that mental public health activities can successfully reduce the incidence of mental disease, or failing the reduction of incidence, at least lessen the duration and intensity. In addition to reducing the pain of mental illness—and this is an immeasurable benefit—we already know that the community mental health centers programs are effective in the reduction of the amount of expensive mental health hospitalization which the States must provide and the patients must endure. Indeed, like family planning, the community mental health program is among the most humane provided by Congress.

The Health Revenue Sharing and Health Services Act of 1974 is truly a commendable legislative effort—one which we, who vote to approve, will be able to list among our accomplishments with justifiable pride.

Mr. DELLUMS. Mr. Chairman, I rise in support of the Health Services Act. Title II of this measure authorizes an extension of the Family Planning Services and Population Research Act of 1970 (Public Law 91–572). Last year, prior to the passage of the Health Programs Extensions Act, I introduced H.R. 6021—along with 46 cosponsors—to extend family planning services and population research programs through fiscal year 1978. Earlier this year I testified before the Interstate and Foreign Commerce Committee, and I wish to commend the members of that committee for their fine work as exemplified in this bill.

All of us agree that it is a fundamental human right to decide whether or not to bear or beget a child. The family planning services programs of the Federal Government provides the means by which all people—regardless of income—may exercise this right. Furthermore, I have not heard anyone condemn either the quality or the cost of family planning services provided under title X of the Public Health Service Act. Members of the committee—and indeed a great many of our colleagues—recognize that these programs provide an excellent and needed service and that they should be continued.

No one contends that the family planning project grants are ineffective, too costly or unnecessary. But earlier this year, the Nixon administration proposed an immediate halt to the growth of the program through project grants. HEW announced its intention to finance expansion through title IV–A—social services—and title XIX—medicaid—and to phase out project grants to the maximum possible extent in the near future. This shift, from a health to a welfare orientation, carried with it considerable implications in terms of eligibility for family planning services, in terms of standards of care for family planning, and in terms of freedom from coercion, actual or implied. I believe that had the Department's initiative been allowed to succeed, it would have done irreparable harm to what has been up to now a popular, effective program broadly accepted and utilized by low-income women and men.

I support the continuation and expansion of the authorization for family planning services project grants because I believe this is the best mechanism for the provision of such services. It was on this crucial point that I was in very basic and strong disagreement with the Nixon administration. I am glad that they decided to listen, and to—finally—support this legislation.

Medicaid and title IV–A programs are undesirable as primary vehicles for the provision of family planning services to women who are poor:

These are programs in which eligibility is very narrowly defined.

These are programs over which we Members of Congress have very little control.

They make no pretense of having national standards of medical care.

They are national only in the sense that they are made up of an aggregate of 50 welfare programs each having 50 varying State criteria for eligibility and quite different State standards of care.

They are administered, for the most part, by State welfare agencies, some of which are not exactly known for their high level of concern for the health and well-being of low-income women or for their progressive policies with regard to such women and their personal privacy. I do not believe that State welfare agencies which staged midnight "man in the house" raids and have been known to threaten or actually force women off welfare rolls, can be trusted totally to insure voluntarism as a basic principle in the conduct of birth control programs. Even if they are, I am sure that prospective patients would be leery of the intentions of these agencies and reluctant to participate in family planning programs sponsored by public assistance agencies. Furthermore, I fear that the suspicions of those who cry "genocide" would all too soon be reinforced if family planning services become too closely associated with these and other welfare programs. It is imperative from my viewpoint, that strong Federal direction and supervision be present in these programs at all times.

Let me also point out that there is unanimous agreement that medicaid is an extremely expensive and ineffective program which has failed specifically to provide preventive health services. Many physicians refuse to treat medicaid-eligible patients, and the relatively few that do generally have incredibly busy practices with little time to give each patient.

Women who are poor and must rely on medicaid for their health care needs are neither as knowledgeable nor can they afford to be as demanding of their physicians as can the average middle-class woman. Medicaid physicians can always refuse services to any recipient if they so choose. We saw what happened in Aiken, S.C., when medicaid women refused to be bullied into sterilization. When the physicians who insisted on sterilization as a condition of their providing prenatal and obstetrical care to medicaid patients were condemned for their behavior, they simply refused to provide services to medicaid patients. The result, according to the Medical Tribune,

is that women who rely on medicaid for obstetrical care in Aiken, S.C., can no longer find a physician there willing to give it to them. They must now travel 40 to 50 miles in order to deliver their babies or to get gynecological examinations and pregnancy-related care.

It seems to me that it is up to us as Members of Congress to make sure that family planning programs are directly authorized, supervised, and monitored by the Federal Government. It is up to us to insure that national standards of quality health care are established and maintained. It is up to us to see that the freedom of choice of the poor patient is guaranteed by the Federal Government.

The medical protocol developed and established for the provision of family planning services under the Family Planning Services and Population Research Act is excellent. Through family planning services projects following this protocol, in 1971 of the 798,000 women enrolled as new or continuing HEW family planning services patients, 88 percent received gynecological examinations, 632,000 received Pap smears for the detection of cervical cancer, and 60 percent received lab tests and other examinations including infertility and hemoglobin. The point is that for the first time, good preventive health care is being provided to vast numbers of women of childbearing age and of limited income.

Therefore, I would like to ask that this body make clear once and for all its displeasure with any attempt to force all expansion of family planning services provision to take place under medicaid and title IV–A rather than through the special project grants authority by giving full support to H.R. 14214 as reported to the floor.

Mr. HUDNUT. Mr. Chairman, I rise today to add my support to H.R. 14214, the Health Revenue Sharing and Health Services Act of 1974. This legislation provides a 2-year extension of five expiring programs for the provision of health services. It authorizes a total of $1,735.5 million for fiscal year 1975 and fiscal year 1976, and makes a number of substantive revisions. The five programs involve health revenue sharing, family planning, community mental health centers, migrant health, and community health centers.

Our Nation is steadily moving toward some type of national health-care delivery system, as is evidenced by the number and variety of plans for national health insurance now under consideration by the Ways and Means Committee. The goals of the health legislation are shared by all, even though the methods of attaining it differs greatly. Every citizen of the United States should have quality health care available to him at a price that he can afford.

My service on the Public Health and Environment Subcommittee which held hearings on this bill has made me acutely aware of the necessity of its passage. These five programs which have been discussed in detail by others on the committee are no longer experimental, demonstration projects. They have proven with community after community, to be a viable and workable solution to our Nation's health care crisis. Costs for health care have more than doubled in the past 7 years. The persons or families who are hurt the most by this inflation are those members of the middle income group. The health center and mental health center approach to health care delivery assures all Americans, especially the middle income Americans, of quality medical care.

I believe this bill, H.R. 14214, of which I am a cosponsor, goes a long way toward assuring quality health care for all. More importantly, it provides an excellent framework for the Federal Government to work with the local communities in order to provide complete and comprehensive health care that is needed by that community.

On June 30, 1974, I participated in the dedication of the brand new Citizen's Ambulatory Health Center, 1650 North College in Indianapolis, Ind. This facility will provide excellent comprehensive health care services including all primary health care, dental care, and eye care. The $1.3 million building came about only after many months of work by citizens who came together on a community level and proceeded hand in hand with governmental officials at all levels to achieve their goal of quality health care that is available for everyone in their community. In addition, I have visited the Neighborhood Health Centers operated by Methodist Hospital of Indiana, Inc., in the inner city of Indianapolis. I am including as part of my remarks a letter I received from Dr. Dale S. Benson, the director, together with information on the philosophy and program which is provided in these centers.

The community based mental health centers are also a step in the right direction from a mental health care standpoint. As a former president of the Marion County Mental Health Association, I am well acquainted with some of the backward attitudes that society holds toward mental health and those requiring mental health treatment. After a deliberate review of the decade-long history of Community Mental Health Centers, I feel we must make a national commitment to supplement our institutionally based mental health system with more effective and more humane community-based care.

The Midtown Community Mental Health Center at Marion County General Hospital in Indianapolis, Ind., is a perfect example of the effectiveness of a mental health facility designed for community based use. In 1974, the center had 7,000 outpatient visits, 3,500 day-care visits and 600 inpatient admissions—who stay institutionalized an average of 12 days. However, at least three more community mental health centers are needed in Marion County. This legislation with accompanying appropriations would help alleviate this deficiency. The mental health system of America should continue to move away from the institutional approach and more toward treatment on a community basis.

In my view, one of the most serious challenges America faces today is how to deal with the continuing increase in health care cost while at the same time giving assurance of quality health care service for all Americans.

This legislation, if enacted and properly administered, will be a big step in the right direction to the solution of this problem.

The information follows:

NEIGHBORHOOD HEALTH CENTERS,
*Indianapolis, Ind., June 21, 1974.*

Hon. WILLIAM H. HUDNUT III,
*Longworth Building,*
*Washington, D.C.*

DEAR CONGRESSMAN HUDNUT: Thank you for your visit to our Health Centers earlier this month, and for your continuing interest and support in our Neighborhood Health Center program.

The enclosed information which you requested should be useful to you in understanding the philosophy and the program which we are providing. Two of the three pieces relate specifically to our program of relating pastoral counseling into the actual patient care environment. I hope that this information will be useful to you. I will be happy to supply further details or answer any questions you may have if this would be helpful.

My continuing concern, in addition to adequate funds to carry on programs of this nature, is that those providing the funds will recognize the importance of the "whole" person approach to health care. I feel very strongly that the components of our program, such as the chaplaincy and health education support, is vitally necessary in order to make any significant impact on the patient's health needs. We run into problems with this on the local level from those who do not understand this concept. I'm sure the same problem could exist on a much larger scale at the Federal level.

We appreciate the fact that you are cosponsoring the special health revenue sharing bill. This, in addition to the personal interest you have shown our Health Centers, is extremely encouraging.

I stand ready to be of assistance to you at anytime.

Sincerely,

DALE S. BENSON, M.D.,
*Director.*

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NEIGHBORHOOD HEALTH CENTERS

BACKGROUND

Methodist Hospital presently operates three Neighborhood Health Centers in three distinct and separate areas of the inner city of Indianapolis.

The Southeast Health Center was established in September of 1968 at the request of the Southeast community. The Southeast community is an upper-lower class area that is 95 percent White. The neighborhood is fairly stable but has been progressively deteriorating over the last fifty years. The mean income is low, $6,600, and the Southeast Health Center was established because of the lack of medical support in the neighborhood. The population density is 12,446 per square mile.

Presently the South Health Center services approximately 1,200 patient visits per month with a total patient base of some 9,000 patients. The facility is housed on the first floor of a large three-story building that has been completely remodeled in the past two years. National recognition was given to the facility by the American Architect Association for an outstanding remodeled health care facility in the year of 1972. It is planned that the second and third floors of the facility will be used for multiservice components.

The Central Avenue Health Center was also established in September of 1968. The Central Avenue neighborhood is definitely more transient and a lower socio-economic neigh-

borhood. Eighty-five percent of the housing is multi-family units. The mean income is $5,300. The population is more transient, and the Black-White ratio is 50–50. Population density is 17,790 per square mile.

The Central Avenue Health Center is presently housed in two stories of a large wing of the Central Avenue United Methodist Church. The square feet is 4,700. A 1.3 million dollar, 24,000 square foot Health facility is being built close to the Central Avenue Health Center and it is possible that the Central Avenue Health Center will be transferred to this facility within the next six months. The Central Avenue Health Center presently serves approximately 1,200 patient visits per month, with a total patient population of 12,000.

The Southwest Health Center was established in January of 1972. It is located in a blue-collar area of the city and was primarily established because of a lack of medical resources in the neighborhood. It, as well as the other two Health Centers, charge patient fees on a sliding fee scale and the Southwest Health Center presently generates approximately 50 percent of its cost by patient fees. This is in contrast to 10–15 percent at Southeast and Central Avenue Health Centers. The mean income of the neighborhood is $7,056.00. Population density is 4,592 per square mile. The Southwest Health Center is presently serving 600–700 patient visits per month, with a total patient base of 3,500.

The situation of having three Neighborhood Health Centers under the same direction in three distinct neighborhoods of the city offers the unique opportunity of evaluating two standardized health care delivery programs in the context of the differing patient populations. The opportunity exists to demonstrate simultaneously the effectiveness of an idea or program for a health care delivery system in three characteristic but different health care situations.

PHILOSOPHY

The program in all three Health Centers is under the direction of one Medical Director with direct administrative relationships to Methodist Hospital. Consequently, the program philosophy is the same in all three Health Centers although certain characteristics may differ in response to the particular needs of the neighborhood.

The Neighborhood Health Centers strive to deliver, to the residents of the neighborhood, family-oriented health care that is comprehensive, personal, and efficient. The Health Centers recognize that health care involves dealing with the whole person and the complex interrelationships of the social-economic, emotional, familial, and environmental situations with the medical problems. Thus, every effort is made to deal with the patient as a whole person when they present to the Health Center.

The patients respond best when treated as a human being with dignity and thus a continuing emphasis is placed on personalization of care. Finally, a continuing emphasis is placed on providing care with the maximum of efficiency, not only as a service to our patients, but also to be able to deliver a maximum amount of care at a reasonable cost.

In summary, every effort is made in the Health Centers to provide a program of comprehensive primary ambulatory health care with a concern for the total individual in the family setting and with emphasis on personalized, high quality care delivered with maximum efficiency.

PROGRAM

The entire program is built around the philosophy of health care previously outlined. It includes each of the components briefly outlined below. This program is essentially delivered in all three of the Health Centers to the three differing population groups.

*A. Patient care program*

1. Full Time Staff of Six M.D.'s

Four Family Practice Physicians (two Board eligible), two Pediatricians (one Board eligible, one Board certified), all full time, are on the Neighborhood Health Center staff.

2. Full Time Staff of Five Family Nurse Clinicians

All graduates of an accredited Family Nurse Clinician School.

3. A well-developed problem oriented practice

Problem oriented medical records have been used for fours years in the Health Centers. The records are dictated by the medical staff in order to make the medical information more easily accessible in the record.

4. A probelm oriented data base system

This system has been developed and is tailored to meet the needs of the individual patient and designed so that the data base is automatically accumulated on each patient.

5. Principles of practice

Principles of practice have been written by the medical staff in order to establish, in writing, the commitment of the medical staff regarding their responsibilities to the patients.

6. Procedural audit

A weekly procedural audit is carried out on the problem oriented chart and the results made available to the medical staff.

7. Performance audit

A monthly performance audit has been designed and is in its initial trial stages.

8. Community services

A community services division functions in the Health Centers and provides pastoral counseling concern in addition to casework assistance for the patient. Emotional, psychological, familial, and social-economic problems are dealt with on the primary, ambulatory level by this division working in close coordination with the medical staff.

9. Health education

Health education is made available as an integral part of the program in the Health Centers. There is presently a staff of two professional health educators to design and implement the programs and give health education support to the medical staff.

10. Problem oriented record

The problem oriented record is totally integrated in that the community services and health education staff utilize the patient problem list and progress note dictation system on an equal basis with the nurse clinicians and medical doctor staff.

11. Volunteer program

An organized volunteer program has been in effect in the Health Centers for five years. The volunteers provide support, mainly in the patient care areas, such as assisting in health education, community services and specialized classes for patients.

12. Laboratory program

A formalized laboratory program exists in the Health Centers with built in quality control systems.

13. 24-hour telephone coverage

Twenty-four hour telephone coverage utilizing Nurse Clinicians is available at the Southeast Health Center and hopefully can be made available to the other Centers in the near future.

14. Chart filing system

The chart filing system is organized on a family basis to emphasize the family orientation to patient care.

*B. Management program:*

1. A management by objectives program is functional in the Health Centers and is utilized by all supervisory personnel.

2. A sophisticated statistical gathering system using keypunch techniques and computer readouts has been developed and hopefully will be implemented within the next several months.

3. A formalized on-the-job training program has been developed which functions not only for on-the-job training but also for continuing quality control evaluations of employees.

4. An in-service training program on a weekly basis has been developed and is functioning in order to upgrade the entire Health Center staff.

5. A formal continuing medical education program for the medical and nursing staff functions on a weekly basis.

6. A management reporting system has been developed which alerts management personnel to problem areas in health center efficiency and productivity. The management reporting system is done on a weekly basis.

7. A detailed procedures manual has been developed outlining each step of every procedure that employees may need to follow.

8. Time and motion standards on many of the procedures have also been developed and are useful in evaluating employee efficiency and productivity.

9. An Industrial Engineer is on the staff to assist in the Health Centers continuing emphasis on efficiency of patient care.

10. The relationship of the Health Centers to Methodist Hospital provides a wide range of expertise in a variety of departments which are utilized by the Health Centers.

SUMMARY

As can be seen above, the Health Centers have developed and presently are functioning with a considerable amount of experience, a fairly compete patient care program with an emphasis on sound management techniques. It is all designed to provide to the patient, dignified and personalized care that is as comprehensive as possible, but yet delivered with a maximum of efficiency and respect not only for the patient but for the dollars that are being invested in his care. Since this program essentially exists in all three Health Centers, it provides the unique opportunity of evaluating health care delivery systems and also health care delivery management systems in three distinct social-economic populations.

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THE ROLE OF PSYCHOSOCIAL AND QUALITY OF LIFE SERVICES IN NEIGHBORHOOD HEALTH CENTERS, METHODIST HOSPITAL OF INDIANA, INC.

THE NEED

The whole person coming as a patient to the Neighborhood Health Centers comes because he is not feeling well or not feeling happy. Frequently, he is uncertain which it is—sometimes it is both. This often makes it difficult for the medical staff to evaluate and treat the presenting complaint appropriately. Many times, the patient brings a hidden agenda which he unrealistically expects the physician and medical staff to intuitively understand. The physician is one of the few professionals that the alienated inner city person trusts most readily. Statistics show that the majority of persons with social and emotional problems turn first to a physician or clergyman.

Unfortunately, with the increasing sophistication of scientific medicine, society has turned away from the age old concept of the physician presenting holistic medicine to a whole person and views him as a specialist in dealing with the physical complaints of fragmented persons. Our patients have learned well from their culture. Because of cultural taboos regarding emotional illness patients frequently feel it is more acceptable to present physical complaints when they are unhappy or emotionally upset. This is both conscious and unconscious. In addition, their internalization or withholding of spir-

itual and emotional complaints often contribute to psychogenic problems. When the diagnosis indicates that the etiology is in non-organic illness, these same patients tend to resist both the diagnosis and any subsequent referral. The need to reintegrate the healing disciplines has been a growing concern of the various healing professions.

Developments in psychological medicine indicated the intimate relationship of spirit, mind, and body. This discovery has shown that subconscious spiritual disorders frequently play an important part in causing many kinds of illness, both mental and physical. Most important, it has disclosed that successful treatment of disease in one aspect is not possible without consideration of the other two.[1]

PSYCHOLOGICAL AND QUALITY OF LIFE SERVICE

The concept of total patient care for the whole person because of the close interrelationship of these causal factors is mitigating the fragmentary specialty care which has arisen. Both private and nonprofit group practices are emerging which incorporate the various healing disciplines in treatment in order to assure comprehensive care and greater patient compliance.[2] The American Hospital Association has also recognized the necessity for total patient care.

Total patient care involves more than excellence in medical or surgical achievement because man is more than a physiologic structure. Total patient care is concerned with the social, emotional, spiritual, and economical—as well as the physical and chemical—restoration of human beings.

To help a sick person accept himself and believe that he is indeed a creature of worth has become a vital aspect of medical care and treatment.[3]

PSYCHOSOCIAL AND QUALITY OF LIFE SERVICES

The mission of psychosocial and quality of life services in Neighborhood Health Centers is to "assist all Neighborhood Health Center patients and families to attain and maintain psychosocial and spiritual health." Within this purpose, the primary objectives are to: (1) help all patients identify their psychosocial and spiritual health needs; (2) provide to all patients comprehensive treatment of high quality to the limit of our capability and capacity; and (3) provide to all patients effective referrals when resolution is beyond our capability or capacity and when other community agencies might be effectively utilized.

The Division of Community Services[4] in the Health Centers of Methodist Hospital provides psychosocial and "quality of life" services through chaplaincy, pastoral counseling, and social casework. The intensity with which chaplaincy, pastoral counseling, and social casework are integrated into the comprehensive care system in the Neighborhood Health Centers is perhaps not experienced anywhere else in the country in a similar setting. The primary uniqueness of their role in our Health Centers is to function closely and comfortably in the exam room with the rest of the health treatment team—before, after, or at the same time as the physician—assisting in evaluation, diagnosis, and treatment as well as routine care and support. Through careful listening and sensitivity the Community Services staff often help to verbalize the unexpressed needs and hidden agenda which are frequently their primary reason for coming to the Health Center.

Often they will either refer the patient to a local pastor or community agency or follow the patient themselves with home visits or hospital calls, as the need arises. A second area of their responsibility is to provide structured counseling and group work. This has become increasingly refined with structured intakes and psychological testing. The third area of responsibility for the staff is in fostering relationships with community agencies, churches and pastors, and using their educational skills to assist persons outside of the Health Centers to meet patient/resident needs. Even with a comprehensive care staff they cannot and do not attempt healing for all of the lonely and alienated persons touched. The Health Centers are an extension of the churches and other community groups and agencies and rely on them to provide on-going communities of love and concern as well as further treatment and support.

The clinically trained chaplain or pastoral counselor utilizes the skills of the psychotherapist in counseling and the skills of the pastor in reaching out and into person with sensitive concern for their wholeness and health. The use of sensitive initiative, especially in the unstructured exam room setting, is most helpful in establishing trustful and therapeutic relationships with patients. The clinically trained chaplain or pastoral counselor acquires most of his specialized training beyond the university and seminary level. Most common is one or two years of full-time residency training in a general or mental health institution, as well as additional academic graduate work beyond seminary. The supervised training is accredited by the Association for Clinical Pastoral Education and/or the American Association of Pastoral Counselors. The emphasis is on patient care and interdisciplinary teamwork.

For a number of years the American Protestant Hospital Association has fostered the establishment of clinical chaplaincy as a necessary part of patient care through their Division of the College of Chaplains. The Director of the College of Chaplains has just recently been appointed Executive Director of the A.P.H.A. The American Hospital Association likewise provides strong support for clinical chaplaincy documented in their Statement on Hospital Chaplaincy approved on May 8–10, 1967.

The American Hospital Association recognizes that chaplaincy programs are a necessary part of the hospital's provision for total patient care, and that qualified chaplains and adequate facilities, as well as the support of administration and medical staff, are essential in carrying out an effective ministry for patients.

The American Hospital Association believes that its proper role in connection with hospital chaplaincy is as follows:

1. To serve as a catalyst by:

a. Stimulating interest in qualified chaplaincy services in hospitals and hospital-related health care facilities for all types of patients.

b. Advancing and describing at national, regional, state, and community conferences and conventions the need for formal hospital chaplaincy programs.[5]

They further define the function and tasks of the chaplain as follows:

Because caring for the religious needs of patients is an essential part of total patient care, the hospital chaplain should function as a member of the healing team. He can recognize the spiritual needs of the patient in relationship to his physical problems and help to avoid the breakdowns in communication and the fragmentation and division of interests that may be likely to arise in the highly complex, highly specialized world of the modern hospital.

The chaplain's own direct ministry is broadly twofold: He renders pastoral care to the patients . . . and he provides a broader service to all who are involved in patient care. . . . In both aspects of his work the chaplain's role is that of guide, of one who encourages others in decision-making during times of crisis.[6]

TYPICAL PATIENT SITUATIONS AND EFFICIENT UTILIZATION OF PHYSICIAN TIME

Mr. and Mrs. X and their children were repeatedly in the clinic for episodic illness and their children verged on pneumonia several times. A housing problem was discovered by Community Services staff and the social worker eventually succeeded in getting the apartment house condemned and initiating relocation not only for this family but a number of others including an elderly blind couple.

Mrs. Z was the mother of seven children, separated from her alcoholic husband, and receiving ADC. She has some real history of organic illness including cancer. However, she kept returning to the clinic at one period with recurring rectal bleeding. Each time she was referred to outpatient clinic at Methodist the bleeding had disappeared by the following day. After sensitive probing by Community Services staff with both the patient and her family it was discovered that the patient was lacerating herself with a coathanger in order to mobilize the concern of both her family and the treatment team. The real problem was focused upon and her denials and manipulations were cared for. Then ten days elapsed with no word from Mrs. Z. She was very pleased because she had spent ten days at St. Vincent's with many tests (and probably a phenomenal bill) and they had not been able to find anything.

Grief reactions often bring patients to the Health Center and it is not unusual for one of the chaplains to be called into a particular exam room because the patient burst into tears as soon as a physician or nurse walked in to help. On the other hand, it is not unusual to visit patients in the exam room and learn that they are concerned about possible heart problems. In responding to their sometimes depressed mood we find a recent history of multiple death in the family which is causing the patient to question the state of his own health. This information is relayed to the physician or nurse clinician who is also seeing the patient.

Next week, a patient will return for her regular three week followup visit. After seven years of being incapacitated by anxiety and being unable to work and thus on ADC, she spent almost one year in weekly psychotherapy with one of the pastoral counselors as well as being on medication. She is now happy and functioning confidently in her work situation as well as her role as mother to two daughters. She is gradually withdrawing from the medication.

Last week, one of the pastoral counselors spent an hour evaluating a young wife who wanted the doctor to sign a note for husband to get a hardship discharge from the military. Her mother refused to take her to a psychiatrist. The doctor's time was spared. He did not sign the note because we were not convinced the presence of her husband would alleviate her very real emotional problems. We did succeed in referring her to Community Mental Health for further evaluation and treatment.

A pastoral counselor or social worker may be asked to evaluate a potential case of child abuse. Through an in depth intake interview and family history a more accurate assessment can be made regarding the cause of injuries or marks on a child. Hesitation to report a legitimate case may result in further abuse and danger for the child. On the other hand, a premature accusation of child abuse against a parent may damage the therapeutic relationship and squelch a bid for assistance by a parent in dealing with a hyperactive or unruly child. In realty, there are as many or more cases of parent abuse with an unruly child in control of a frustrated and inadequate parent.

Mrs. D brought her 30 month old child into the Health Center to get help with her uncontrolled behavior. One of the pastoral counselors was summoned to interview the mother when the physician suspected child abuse after examining bruises and a burn on the child. During a fuller in depth inter-

Footnotes at end of article.

view, it became clear in the observation of the child's behavior that the child was injuring itself during temper tantrums. The mother was at a loss to firmly discipline the child. In fact the child was not the least bit afraid of its parent—which would be characteristic of an abused child—and struck the parent when she failed to satisfy the child's demand. Knowing that she was suspected of child abuse the mother was already defensive even though the real problem was one of parent abuse.

Frequently laymen and non-psychiatric medical staff are uncomfortable with psychotic patients and assume they should be hospitalized. The pastoral counselor or social worker can assist the medical staff in evaluating how well a psychotic patient is functioning and coping with his daily tasks. Many psychotic patients do not need in-patient hospitalization and do much better with frequent contact in an out-patient facility. If necessary, medication can be utilized in the control of their illness. Sometimes these patients need assistance from Community Services staff in interpreting their behavior and patterns of thought to other members of their family or other members of the community with whom they come into contact so as to reduce the patient's sense of rejection and alienation which is a primary cause of his illness in the first place.

FOOTNOTES

[1] *Manual On Hospital Chaplaincy,* American Hospital Association, Chicago, 1970, p. 5.

[2] American Medical News, "MD-clergy teams working to meet total health needs," October 4, 1971.

[3] *Manual On Hospital Chaplaincy,* ibid, p. 7.

[4] The term "community services" in the title of this Division is rather nonspecific and has an increasing diversity of meanings and uses within community and government agencies which frequently leads to confusion in understanding the function of this Division. Its revision to "Psychosocial and Quality of Life Services" or something similar is being considered.

[5] *Manual on Hospital Chaplaincy,* ibid, p. v.

[6] *Ibid.,* p. 8.

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PRESENT ROLE AND IDENTITY COMMUNITY SERVICES DIVISION, NEIGHBORHOOD HEALTH CENTERS OF METHODIST HOSPITAL, METHODIST HOSPITAL OF INDIANA, INC.

PRESENT FUNCTIONS

1. Social and emotional health assessment of Health Center patients recorded as a Patient/Family Profile.

2. Consultation and evaluation of specific patient problems for Health Center Staff.

3. Brief and repetitive counseling through exam room treatment.

4. Referral counseling and follow up after fourteen days to provide documentation of completed referrals. Volunteers or neighborhood case aides might be utilized for documention of completed referrals.

5. Socioeconomic counseling with planning for: Finances; Vocational Satisfaction; School Problems; Recreation; Family Size; Enabling the Aged, and Extended Hospitalization/Nursing Home Care.

6. Psychotherapeutic Counseling:

Crisis Counseling: Grief; Problem Pregnancy; Hospitalization; Catastrophic/Terminal Illness, and Other Sudden Life Changes.

Intrapersonal Counseling: Anxiety; Depression; Psychosomatic; Psychosis; Guilt Feelings; Religious Concerns; Loneliness; Alcohol Abuse, and Drug Abuse.

Interpersonal Counseling: Marital Conflict; Family Conflict; Child/Adolescent Behavior; Hyperactivity, and Sexual Problems.

Psychological Testing: Testing is done on all patients in psychotherapeutic counseling and the results are shared with the counselees as an aid in the process of self understanding and not primarily as a diagnostic tool.

Counseling is done with professional supervision from Buchanan Counseling Center at Methodist Hospital and with psychiatric consultation from Dr. Wally Shellenberger of Community Mental Health Center. If the need for further psychiatric treatment or hospitalization beyond the capabilities of our staff is identified a referral for psychiatric treatment at Community Mental Health Center or some other facility is usually more quickly accepted by the patient based on the trust already established in the present relationship with Health Center Staff.

7. Advocacy for patients regarding patient satisfaction with the services of our Health Center and other Community Agencies.

8. Consultation with community professionals—clergy, school social workers, Community Health Nurses, probation officers, etc.

RELATIONSHIP TO INTEGRATED TREATMENT TEAM

*Utilization of integrated family chart with other staff*

Application of PORK (Problem Oriented Record Keeping) to psychosocial progress notes as well as medical progress notes in the chart discipline the pastoral counselors and caseworkers to keep uppermost in mind the patient's problems or goals and avoid confusing the goals of the treatment staff with the goals of the patient. This helps to avoid danger of attempting to remake the patient in the image of the staff.

Dictation by Community Services Staff on all patient contacts following SOAP format not only makes their evaluation and treatment of patient immediately available to other staff members but enables the counselors and caseworkers to carry through their treatment of the patient in a very orderly manner forming adequate plans in advance and educating the patient in the process.

*Availability of services*

Exam room—A primary uniqueness of our services is to provide routine social and emotional assessments, brief and repetitive treatment, referral counseling, and staff consultation right in the exam room before, after, or at the same time as the physician. In treating the whole person it is important to determine whether they are happy or sad as well as healthy or sick and the accessibility of counseling skills to both staff and patients is helpful especially in identifying the hidden agendas which many of the patients bring to the exam room but hesitate to verbalize. It is recommended that pastoral counseling and chaplaincy coverage be provided full time in all clinics through the services of two full time pastoral counselors who can share both the clinic coverage and the office counseling and other responsibilities. This would be in addition to full time casework services.

Office—The office setting provides direct accessibility for the patient for all of the functions of the pastoral counselor and caseworker, as well as being the primary area for intensive socioeconomic and psychotherapeutic counseling.

Home visits—Community Services Staff are frequently the only professional available to make patient/family assessments in the home and to provide consultation for medical staff regarding conditions in the home. When contact has been lost with a family or patient mobility is a problem, Community Services Staff can provide follow up and brief counseling or referral counseling in the home.

Hospital visits—The chaplains and caseworkers attempt to follow all of our Health Center patients who are hospitalized in order to assure that their anxieties and concerns regarding their illness and hospitalization can be dealt with. Also the caseworker frequently gets involved in arranging care for other family members during hospitalization or for patient care in an extended care facility following hospitalization. New procedures are presently being established.

Agency visits—Staff maintains relationships and current information on other facilities in the community which can assist in meeting our patients' needs. On occasion staff members may also accompany patients to agencies either to function as advocate or as an interpreter.

IDENTITY OF COMMUNITY SERVICES TEAM

*Pastoral counselor and chaplain*

Specialists in taking the initiative to reach out to and into patients who come for health maintenance and treatment, especially those patients who request help indirectly or give off non verbal signals.

Sensitive to unique personal needs and hidden agendas. Responds to ultimate concerns, life goals, and religious concerns especially as they relate to health care and happiness.

Provides a prophetic role and responsibility for ethical concerns in human relationships and institutional programming.

Supervised clinical training in pastoral care and psychotherapy with continuing professional supervision.

Sufficient personal psychotherapeutic investigation into their own personality dynamics to avoid contaminating their patients problems with their own.

*Caseworker*

Specialist in making appropriate and effective referrals by matching up the persons need with those resources in the community who have been identified to help that need. Specialist in mobilizing resources in the patient's immediate environment and community to effect the fullest and happiest life for the patient and his family.

Assists the family in the utilization and integration of those resources within their family relationships and home life.

Mr. BROWN of California. Mr. Chairman, if we are sincerely concerned with the well-being of future generations we must take action now on the bill before us (H.R. 14214) to extend family planning services for 2 years at increased spending levels. Current programs under the Family Planning Services and Population Research Act are in a temporary holding pattern until we take action. We cannot afford to remain in this pattern for long. As you all know, the programs have not had any appreciable growth since 1972. They have been frozen at levels which were inadequate then and with the current rate of inflation cannot sustain new activities or expanded programs.

At a time when the family planning programs need special impetus to keep moving ahead, we would be coming dangerously close to letting them falter if we did not take positive action here today to insure continued and increased support by passage of this bill.

Lately, statistics on the falling birth rate in the United States have been widely publicized. Make no mistake, they are significant. But we are nowhere near the achievement of a stable population. In reality, we are just getting on course and unless we can maintain this positive trajectory of changing patterns of marriage and childbearing which result in

a declining birth rate we can easily be thrown off course and set back significantly. We can only do this if we continue to make the means by which American couples can plan their families effectively available. Without this, the goal of achieving population stabilization could suffer an indefinite postponement, and when finally achieved would be stabilization at a much higher level than desired.

I have recently become one of 50 U.S. Senators and Representatives to sign The Declaration on Food and the Population which "deals with the crisis of serious population pressures and widespread famine in many countries of the world." The Declaration urged that governments "support sound population policies relevant to national needs which respect national sovereignty and the diversity of social, economic, and cultural conditions; accept and assure the human right of each couple to decide for themselves the spacing and size of their families; and recognize the corresponding responsibility of governments to provide their peoples the information and the means to exercise this right effectively."

Voluntary family planning and contraception are intimately related to the whole spectrum of health, environmental, economic, and social conditions in the United States and these relationships intensify as the population grows and societal pressures increase. You may hear some unrealistic optimists say "we have made progress—just look at the falling birth rate." So they advocate a shifting of priorities. This is certainly a premature move. Anyone who understands the dynamics of population growth will recognize the folly in this suggestion. The fact that we have achieved—for a short period—replacement reproduction or perhaps an even lower rate cannot be taken out of context and used to justify the diverting of funds to other causes. The essential point is that we need to maintain this balance of replacement reproduction for approximately the next 70 years; if, and only if, this can be done will we be on the road to arriving at population stabilization in this country in the foreseeable future.

In support of 1974 as World Population Year, President Nixon issued a proclamation on July 9 taking a strong stand in favor of population stabilization and calling on the Congress and officials of our Federal, State and local governments as well as organization representatives and the people of the United States generally "to join this year in promoting a better understanding of the magnitude and consequences of world population growth and its relation to the quality of human life and in renewing our commitment to human dignity and social justice."

To maintain this balance, support of voluntary family planning services must be continued and expanded to meet the needs of established programs and to initiate new programs in underserviced areas. This requires increased spending levels to the authorized levels. And, let me reiterate that we need guarantees of increased funding now. By delaying action and approval of the bill before us we are stifling the progress and withholding services for the women in need of subsidized family planning services. This is not a new program—we all know of its activities and achievements and of the great demand for its continuation. Thus, I urge expeditious handling of this bill and a vote in the affirmative as soon as possible.

Mr. HEINZ. Mr. Chairman, I urge my colleagues to give their strongest and fullest support for H.R. 14214, The Health Revenue Sharing and Health Services Act of 1974. I am proud that H.R. 14214 includes the major provisions of my bill as its title III, The Community Mental Health Centers Amendments of 1974.

H.R. 14214 is an omnibus health services bill. It extends with important improvements, five existing health programs including community mental health centers, migrant health programs, community health centers, family planning services, and grants to the States for health services—restructured as health services revenue sharing.

This legislation is critical if we are to maintain the strong Federal-State-local partnerships that have developed for the provision of these health services.

As author of many of the provisions contained in the Community Mental Health Centers portion of this bill, which I originally introduced as H.R. 11518, I would like to take a few minutes to focus on title III of H.R. 14214.

Over the last 18 months opponents of the Federal-State-private partnership in the community mental health centers program have argued for the termination of the Federal role in this program. Even these opponents of CMHC universally agree that it has been a startling success in providing more humane and more effective care while saving taxpayers dollars. But despite the fact that only one-third of the population of this Nation is currently served by CMHC's, they still insist that Federal help to the States for the establishment of community-based mental health facilities should end. They have characterized this creative, dynamic congressional initiative as just another demonstration program, and they have argued that the heavy burden of establishing the 1,000 additional centers needed across this Nation should be left solely to the initiative and the resources of State and local governments with an assist from payments from individual and third party insurors.

As a member of the Public Health and Environment Subcommittee, I would like to point out not only how hollow these arguments are, but also how misleading they are.

First, let it be clearly understood that the Community Mental Health Centers Act is not just another demonstration program. In fact, Congress never conceived of it, designed it, or built it as a demonstration program. Rather, the community mental health centers program stands as a solemn congressional commitment to the American people to bring community-based mental health care to every American requiring it. This congressional determination was made clear in 1963 when the program was first enacted, and this determination has lived on as reflected in the amendments to the act of 1965, 1967, 1968, and 1970. Now, after an extensive, deliberate review of the decade-long history of this program, the subcommittee and committee, without a single dissenting vote, reaffirmed this national commitment to supplant our institutionally based mental health system with more effective and more humane community-based care. The reaffirmation is embodied in title III of H.R. 14214.

During hearings on community mental health centers legislation the subcommittee explored the validity of HEW contentions concerning the availability and reliability of State and local financing for CMHC's, and third-party insurance coverage of mental health benefits. Testimony clearly established that most centers will be unable to provide the full range of mental health services without continued Federal support.

In its extensive study of the community mental health centers program, the General Accounting Office concluded that those services which provide little or no revenue—such as preventive consultation and education services—or are not self-supporting (such as out-patient services) would be the first candidates for curtailment or elimination in the event of total withdrawal of Federal assistance. Furthermore, in a finding directly contrary to earlier HEW contentions, the GAO stated:

> We noted that the alternative financial assistance available cannot realistically replace federal funds in total.

Insurance coverage for outpatient services—which constitute 85 percent of CMHC services—was found to be nearly nonexistent. Consultation and education services generate no revenues to cover their costs. Local communities have not provided significant financial support to the centers. General revenue sharing funds have provided little or no income for CMHC's.

Most importantly of all, there is no reason to assume that the expensive start-up costs of new centers—of which we still need nearly 1,000 nationwide—will be born solely by the State. It is well known that the care provided by CMHC's is more effective, more humane and less expensive than institutionally based centers. But since the States cannot simultaneously reduce support to State hospitals while financing the establishment and early operating costs of community-based centers, under the HEW plan each State would be forced to bear the full burden of supporting State mental hospitals while building their new network of CMHC's. Only after the CMHC system was solidly in place and fully operating could the State begin to phase down State hospital operations.

The key question, then, is this: Under pressure from an electorate that is already reeling under a heavy tax burden, how many States will actually establish and support CMHC's with no Federal help? I believe the answer is obvious—very few, if any.

This raises still another strong argument for the overwhelming approval of this legislation to continue and

strengthen the community mental health centers program.

This Nation is within a year or two of initiating a system of national health insurance. Regardless which program Congress finally adopts, it will confront us with one serious challenge—how to avoid runaway inflation while assuring every American access to all necessary health care regardless of cost.

The inflationary effects of the medicare program are all too familiar. Recent inflation in the health care field has been so severe that despite medicare the average costs of medical care for older Americans is about equal to the percentage of their income they paid for health care prior to the enactment of medicare.

The lesson of our medicare experience is clear: If we are to avoid inflation while we build a national health insurance mechanism we must simultaneously build a true system of mental health care—which presently is so inadequate. If we do not see that adequate services are available along with the trained personnel needed to provide those services, the availability of more private and public dollars to purchase health care will only result in more deadly inflation.

What is demanded in the mental health field, then, is a fully comprehensive system of humane care which is both effective and efficient, with built-in cost and quality controls. Such a system must assure a full range of readily accessible services—both preventive and remedial—which are coordinated with other health and social services.

What is in fact demanded is that this Congress carry out its decade-old commitment to bring community mental health centers to every American who requires their services. The CMHC program, as extended and reformed by title III of H.R. 14214, does provide for fully comprehensive remedial and preventive services, coordination with other service agencies, built-in cost and quality controls—all in the community setting proven to be so vital for both effective and humane care.

The CMHC Act has been amazingly successful. It is encouraging a comprehensive system of care for the mentally ill—an essential first step before we provide national health insurance. It has resulted in highly innovative and very successful programs which, as can be clearly demonstrated, have saved the taxpayer money. We simply cannot afford to toss the program aside and turn the clock back more than a decade in the hopes that States and localities will not support the development of CMHC's. The 10 percent of our population estimated to be in need of mental health care in any one year deserves better than that.

I believe this bill meets the aspirations of the American people for a responsible approach to public health. Building upon the experience of the past, we can construct a sounder, better managed and superior community mental health program for all Americans.

I urge all Members to give their strongest support to H.R. 14214 and its title III: The Community Mental Health Centers Amendments of 1974.

Mr. Chairman, I would like to take just a few minutes extra to address a problem that relates to the running of the health programs in this bill and other health programs.

Specifically, it has come to my attention that there are some real dangers to a number of key health programs of the Federal Government—including the community mental health centers program—as a consequence of administrative decisions within HEW. What I have particularly in mind are the consequences of decentralization to and reorganization in the 10 regional offices of the Department. As the Members I believe all know, the Department has over the last few years moved toward decentralization of a number of health programs and this has been of major concern to many citizens and health professionals throughout the country. Currently, for example, the basic technical assistance, decision-making and program monitoring regarding community mental health centers program rests with the regional office mental health staff. This committee, other committees of the House and parallel committees in the Senate have questioned the Secretary and HEW officials about this and urged a moratorium on further decentralization.

The recent reorganization of the health components in the HEW regional offices has further weakened the ability of the Federal Government to provide leadership in various health areas. State and local officials as well as interested citizens have called to my attention and to the attention of other members of the committee the fact that the quality of regional office consultation has seriously deteriorated in the last 2 or 3 years.

I would like to share with the Members some facts in this regard that have come to my attention in relation to the community mental health centers program. Following the creation of the Alcohol, Drug Abuse, and Mental Health Administration, there have been major changes in all of the 10 regional offices of HEW. The person-years available in the regional offices for mental health activities have been reduced from 83 to 65 in the last year and a half. This is a consequence of the downgrading of the mental health programs and the abolition of the position of Associate Regional Health Director for Mental Health. In 8 of the 10 regions there now exist special branches within the Health Services Division which deal with the areas of alcoholism, drug abuse and mental health. In the remaining two regions there is only one professional person who is assigned on a full time basis to the area of mental health. I would like to alert the Secretary of Health, Education, and Welfare and the Assistant Secretary for Health to the fact that I and other members of this subcommittee will avail ourselves of the next opportunity to question the Department on its intent in this regard and would urge the Department to take steps to reverse this deterioration of the regional offices capability to provide the necessary leadership in the area of mental health.

An additional consequence of the regional office reorganization is the likely downgrading of the grade levels for the mental health personnel. While this appears to effect incumbents only in rare instances, it undoubtedly will lead to great difficulty in recruiting replacements for such persons as they retire, are promoted or move elsewhere within the Federal service. For example, in most regions the leadership for mental health programs in the future will have to be recruited from persons who are willing to join the Federal service at one or two grades lower than had previously been the case.

Undoubtedly this will soon affect the caliber of consultative and technical assistance which regional office staff can provide to States and communities. By way of summary, in several regions the personnel staff in the office of the regional health administrator have made it clear that as present incumbents leave, they will be replaced with lower grade level staff generalists. This will greatly reduce the ability of the regional office of the Department to attract the qualified professional staff required for technical assistance to States and communities.

Finally, there appears to be a clear intent on the part of the Department and the regional health administrators to take previously specialized personnel in the mental health area and turn them into health generalists. While obviously collaboration with other health programs is essential, there are very specialized problems and needs in the mental health field and it is clear that generalists will not have the skills and abilities required to work with State mental health authorities, with local mental health leadership and with the appropriate citizen and professional groups.

I have just chosen to focus on the area of mental health, but I understand that similar problems exist in other areas of health. For example, maternal and child health, family planning, et cetera. The Department's administrative action in this regard would appear to be in direct conflict with the intent of Congress in terms of insuring that appropriate attention is given to some of these long-neglected areas of health.

By way of summary, let me say that this legislation which we will be enacting shortly can be successfully implemented only if the Department strengthens the capability of the regional office mental health staff as well as specialized health staff in relation to other health programs so that the intent of the Congress is fully realized. I and other members of the subcommittee will be watching very carefully the steps that the Department takes over the next 6 months to strengthen the regional office staff in these specialized areas.

Mr. CONTE. Mr. Chairman, I rise in support of H.R. 14214. This is the single most important piece of health legislation that has come before the 93d Congress.

Last year we passed a simple 1-year extension of the five programs before us now to hold them in place while we took a more careful look at them.

I want to commend my distinguished

colleagues, the gentleman from West Virginia (Mr. STAGGERS), and the gentleman from Florida (Mr. ROGERS) for bringing to the floor a bill developed on the basis of careful evaluation of past peformance of these programs and assessment of our needs for health services resources under any reasonably comprehensive plan for national health insurance.

The five programs before us now for extension and revision are the backbone of our Federal health services delivery effort for particularly vulnerable groups in our country—the poor, the young and the old, the migrant worker and his family. They are absolutely essential.

I can speak now to only a few features of this truly massive piece of legislation.

Our consideration of title II, for family planning programs, takes on special significance. It comes in the middle of the year designated by the United Nations General Assembly as "world population year," a year of consideration on how to deal with the complex population problems confronting all nations. It also comes exactly 1 week before the opening of the first worldwide, intergovernmental conference ever held on world population. Next week, government officials and planners from more than 100 countries will meet in Bucharest, Romania, to consider population problems and policies.

Title II of H.R. 14214 extends the specific authorization for research related to population and family planning. Earlier this year, the Labor-Health, Education, and Welfare Appropriations Subcommittee, of which I am a member, heard eloquent testimony from Dr. Neena B. Schwartz, professor of physiology at Northwestern University Medical School, on the need for greater research knowledge and its importance for improving the health of mothers and children and for developing better, safer, and socially responsible methods of family planning. I am including excerpts from Dr. Schwartz's testimony at the close of these remarks for the RECORD.

I want to make only a few points about the provisions in the bill for family planning services. First, the bill reaffirms the congressional intention that these services be absolutely voluntary so far as the recipient is concerned. Second, the congressional intention that priority be given to providing services to economically disadvantaged groups is sharpened. These programs provide to the poor the information and services that other economic groups have come to take for granted. And third, services are organized so that the mother and child are brought into a whole range of health care services.

The second title of this bill I want to address is title III, extending and revising the community mental health centers program.

In 1963, with the passage of the original community mental health centers legislation, we embarked on a major experiment in caring for the mentally ill in a more humanitarian way. That experiment has been remarkably successful.

Federal funds have been provided to initiate almost 600 community mental health centers, 392 of which were fully operational by the end of 1973. Centers which have been in operation for 3 or more years have reduced by one-third the chances that residents in the area they serve needing mental health care will be sent to a State institution. Overall, the resident population of State mental hospitals has declined from 570,000 before the start of this program to only 248,564 in 1973, a trend to which the centers have made a major contribution.

Community mental health centers have also reduced the costs of mental illness. By making maximum use of outpatient services and partial hospitalization, by keeping inpatient admissions and stays low, the financial and social costs of mental illness have been markedly reduced. Patients have often continued to stay at home and to hold jobs during treatment, or they have been returned to a normal life more quickly. Preventive mental health services have made an even greater contribution to reducing the toll of mental illness.

In renewing and amending the original community mental health centers legislation, the Congress has consistenty reaffirmed its commitment to establishing a national network of 1,500 to 2,000 centers. We are still a long way from that goal. The availability of community services is even more important as we move toward some form of national health insurance.

Title III strengthens several features of the community mental health centers program that I consider of special importance. It continues the pattern of providing Federal support for only part of the expenses of a center and decreasing it each year until the center is totally supported from other sources. It provides a longer period of support for centers in poverty areas. It strengthens community participation and defines more clearly the services that each center must provide. For the first time, services for the aging are required. Up to now, the aging have accounted for only 4 percent of the services provided under this program.

Mr. Chairman, this is sound and important legislation. I support it, and I urge my colleagues to join me.

Testimony of Dr. Neena B. Schwartz, professor of physiology, Northwestern University Medical School, Chicago, Ill., before Labor-Health, Education, and Welfare Appropriations Subcommittee, May 7, 1974:

STATEMENT OF DR. NEENA B. SCHWARTZ

Dr. SCHWARTZ. Mr. Chairman, I am Neena B. Schwartz, professor of physiology at Northwestern University Medical School, Chicago, Ill. I am grateful for the opportunity to be here today to state my views, as an individual, pertaining to fiscal year 1975 appropriations for the field of population sciences research.

As you know, the birth rate in the United States is now at the lowest point since the Government began gathering reliable statistics early in this century. Following the "baby boom" of the decade after the Second World War, both the birth rate and more precise measurement called the fertility rate have declined steadily every year, with a small exception in 1969–70. Since 1970, however, the decline has been precipitous, and some have suggested that inflation and economic bad times have tended to encourage couples to have fewer children. Others suggest that couples are both postponing marriage and/or the time at which they will start their families. Whether or not these theories prove accurate, it is apparent that American couples are choosing to have smaller families, and that to accomplish this aim they make the widest possible use of all available methods of family size limitation. This is despite the fact that all birth planning methods have serious limitations in their availability, effectiveness, acceptability and health side effects which often accompany them. As a matter of fact, as time goes on and as both practical experience and scientific knowledge increase, they reveal new and difficult problems with all known methods. It has become all too obvious that both our basic knowledge of human reproductive physiology and our present ability to promote or control fertility is abysmally deficient, particularly as we search for methods which complement and extend the body's natural processes.

Nevertheless, there is no question that the dramatic increase in the use of modern contraceptive methods has enabled many individuals to better realize their family planning goals. Yet, in spite of this, more than one-third of American couples who use a birth planning method will experience an unwanted pregnancy within 5 years. One indication of the inadequacy of existing technology is the large number of abortions performed in this country alone each year. Recently, at hearings before the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee, it was estimated that approximately one million legal and illegal abortions were performed in the United States each year during the period 1970–72. In addition, health problems and side effects associated with our two most modern methods, the IUD and the pill, demonstrate the unqualified need for improved techniques to reduce or prevent unwanted births. It should be pointed out that mortality associated with the pill, based upon studies in Great Britain in 1968, show a rate of three deaths per 100,000 users per year. This can be compared with a rate of three deaths per 100,000 legal abortions in the United States in 1972.

There is wide agreement on the need to develop varied methods of fertility regulation since it is apparent that no single method can be universally acceptable for the present 42 million American women of childbearing age. As Dr. Andre Hellegers, professor of obstetrics at Georgetown University and director of the Kennedy Institute for the Study of Human Reproduction and Bioethics, recently stated:

"* * * [I]f I could today make one positive, constructive suggestion it would be that on this divisive issue of abortion, we all join in fostering the basic reproductive biological research whch could make the entire subject moot."

This research is essential not only for the development of a wide range of safe and effective birth planning technology but to the solution of problems of human infertility in order to assist millions of couples who want desperately to bear children.

Mr. ECKHARDT. Mr. Chairman, I rise to support H.R. 14214 and especially to heighten your understanding of the great needs in the area of population and family planning research. I want to talk with you about one particular aspect of population/family planning research—an aspect that is not really appreciated in terms of the significance of its goals. I refer to the broad area of social and behavioral science research. This research impacts heavily on the effectiveness of family planning service programs and on the acceptance of contraceptive technology. We know far too little about the social, psychological, and economic factors which significantly affect decisions about family planning and

the development of population policies. We can no longer afford to operate with this knowledge void in the social sciences.

In order to strengthen research programs in the social and behavioral sciences we must place a higher priority on these programs and increase our allocation of funds for it. We have a poor track record in this area: In 1972 $6.7 million was originally budgeted for population research in the social sciences. However, OMB subsequently reduced the amount to $5.5 million. Despite upward projections for behavioral sciences research in the HEW 5-year plan of $17.5 million in fiscal year 1974 and $25 million in fiscal year 1975, the actual funding level was less than 20 percent of the expert projections. Only $3.3 million and $3.6 million were appropriated for this important research in fiscal year 1974 and fiscal year 1975, respectively.

The figures alone are demonstrative of the low priority given this research. They become even more distressing when we look at the critical topics which demand investigation and answers if we are to approach understanding of the social and behavioral aspects of population and family planning. The primary goals of the behavioral science program of research in population are twofold:

First to ascertain the social, psychological, and economic determinants of fertility in the United States; and second, to develop an increased understanding of the consequences of population growth and change so that public policy may be guided by adequate information. Within this broad context we must look specifically at some of the following: attitudes toward various methods of regulating fertility; motivation affecting family planning use; the dynamics of family behavior; the relationships between the status of women and their fertility patterns; the effects of birth order, the sex of the infant, and socio-economic status on the maternal-child relationship; the acceptability and use of fertility control measures by young adults and married couples; accessibility and acceptability of methods of birth planning for special subgroups of the population; attitudes for the general population and of selected subgroups to population policy issues; the effect of housing and zoning laws, tax policy, food programs, etcetera on population phenomena such as the family size and birth rates; and determinants and consequences of migration and population redistribution.

This listing is not all inclusive, but it should be an indicator of the size and significance of the research task in the social and behavioral sciences—a task we have just barely begun. We must not take a myopic view of research. We must include the whole area of social science research and guarantees funding sufficient for the development of new projects and new talents, a development which has been hindered due to inadequate funding and insufficient emphasis.

We must realize that the population and family planning research "team" is not complete without the social and behavioral scientists. I urge you to support this bill and I urge you to take note of the research tasks which remain on the horizon so that we can in the future authorize funding in line with need.

Mr. KYROS. Mr. Chairman, I rise in support of H.R. 14214. This legislation authorizes valuable new health programs as well as the continuation and expansion of various health services programs including community mental health services and family planning services. As a member of the Health Subcommittee of the Interstate and Foreign Commerce Committee, I am fortunate enough to have worked on the original national family planning legislation which was overwhelmingly approved by the House in the fall of 1970 by a vote of 298 to 32 as well as on improvement of these programs over the past several years.

The passage of this major legislation launched one of the most popular and successful programs ever undertaken by the Federal Government. Both the health system and the people responded overwhelmingly to this landmark law. Today, more than 3 million low-income women are receiving voluntary, comprehensive family planning health care through the organized family planning programs of a variety of health agencies. For this and other reasons the Subcommittee on Health was unanimous in its support of H.R. 14214.

I believe that all of us who are favorably associated with H.R. 14214 and the family planning program can take pride in the achievements of this field. As you know, this legislation authorizes special project grants for subsidized family planning services for all low-income individuals who could not otherwise afford them and, in addition, expands our national research effort to develop improved birth planning technology.

In my view, the support of Congress for this vital national program stems from a recognition of the invaluable preventive health aspects of comprehensive family planning services. Just as maternal and infant care projects have significantly reduced infant mortality among our inner city, low-income population, family planning services allow a low-income mother to space her children so that they can be amply provided for, and offer the means of preventing unwanted pregnancy and childbearing, which many of us believe to be a basic human right. Without this right, unwanted children are born—an estimated 750,000 to 1 million per year in the United States—and many of these unwanted children are forced to suffer lives void of love or opportunity. H.R. 14214 which provides for subsidized family planning programs for low- and marginal-income families can promote conditions allowing for choice in childbearing and thus reduce the number of unwanted children. I enthusiastically endorse the extension of this legislation.

Mr. Chairman, unwanted births are not equitably distributed throughout the population; the burden of unwantedness in childbearing falls disproportionately on those who can least afford it. Data for 1971–72 from the current population survey reveal that organized family planning programs are serving a rapidly increasing number of women who come from low- and marginal-income families.

Correspondingly, the fertility rate of economically disadvantaged families has dropped dramatically, although it still remains higher than those of other income groups. These findings are significant and offer a note of optimism. The programs under this act can and should assist additional low- and marginal-income families in avoiding unwanted childbearing. This will help to rectify the situation and improve the outlook for American families with limited finances who must be assured an equal chance for happiness and future well-being—a chance for participating in and sharing in the benefits of society.

The effects of unwantedness on children has been a long-neglected area of research, but in the past decade a growing concern for the rights and welfare of children has led again and again to this issue. An important study by Forssman and Thuwe—1966—conducted in Sweden analyzed the consequences of being "unwanted" upon the development of the child. The differences between the "unwanted" and the "wanted" children in the control group were striking and indicate that "unwanted" children suffer over twice the social, emotional, and mental disabilities that wanted children do. Unwanted children experience a variety of problems ranging from a need for psychiatric care, juvenile delinquency, unemployment, unfitness for military service, to the more serious problems of low educational performance and achievement, and a multitude of social disabilities.

These effects on the unwanted child are devastating to the child and costly to society. They may be translated into measurable costs to society in the form of increased crime, poorly educated citizenry, increased number of welfare recipients—costs which present a danger to a healthy society. We must take action to help all those families who cannot afford private health service to successfully plan the size and spacing of their children. We must help them to avoid unwanted pregnancies by taking preventive action—providing effective family planning services on a voluntary basis to those who need and want them.

Although the consequences of unwanted pregnancies and subsequent births represent substantial costs to the individual and to society, unfortunately the story does not end here. Many of the most severe cases of "unwantedness" have a much more tragic end—child abuse, the occurrence of which is denied by some as part of modern American society, but we must recognize that it does occur today and, as far as I am concerned, it occurs all too frequently.

In a study by Dr. Phillip J. Resnick—1970—it was revealed that 83 percent of the cases of intentional infant deaths could be attributed to "unwantedness" by the mother. Other studies of child abuse—Schwartz, 1970—report between 30,000 and 37,000 children badly beaten each year, and these figures do not reflect the many children who are abused without receiving physical injury. We must not abide these abuses. We must reverse the trend toward increasing vio-

lence and crime in our country and the growing neglect and abuse of a future generation of children. We must call for a better quality of life for our citizens. This cannot be corrected without providing the poor women and men of this country with a means of planning their childbearing.

In my own State of Maine, there is a clear and serious need for Federal support for family planning services. There, over 15 percent of all women of childbearing age are poor, and these women want and need subsidized family planning health care. Of the 11 family planning programs in my State, 3 are without Federal support and are struggling for survival, and 5 other programs have in the past been wholly dependent upon OEO for support. The fate of these programs is, therefore, quite uncertain. Moreover, considerably less than half of the women in need of family planning services remain unserved, due to lack of program support.

Mr. Chairman, H.R. 14214 provides an authorization of $150 million for family planning project grants in fiscal year 1975 and $175 million in fiscal year 1976. This authorization, if fully funded, would provide an additional $25 million in fiscal year 1975 for the extension of services to an additional estimated 400,000 patients throughout the United States. For this reason I urge that you support H.R. 14214.

Mr. TIERNAN. Mr. Speaker, I would like to take this opportunity to speak in favor of the Health Revenue Sharing and Health Services Act of 1974. This bill would provide a 2-year revision and extension of five expiring programs for the provision of health services with total authorizations of $1.736 billion. This bill would provide authorization of $278 million for community mental health centers and $460 million in community health centers.

The programs we have initiated, the community mental health centers and the neighborhood health centers have brought medical services to many people who were previously neglected. I have observed in my own State the beneficial and meritorius use of these funds. Both the Providence Health Center and the Newport County Community Mental Health Center have made excellent use of funds provided by the programs of this bill.

In order to continue providing adequate medical health services this bill must be enacted into law.

Mr. STAGGERS. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. Pursuant to the rule, the Clerk will now read the bill by title.

The Clerk read as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Health Revenue Sharing and Health Services Act of 1974".

TITLE I—HEALTH REVENUE SHARING

SEC. 101. This title may be cited as the "Special Health Revenue Sharing Act of 1974".

SEC. 102. Section 314(d) of the Public Health Service Act is amended to read as follows:

"Comprehensive Public Health Services

"(d)(1) From allotments made pursuant to paragraph (4), the Secretary may make grants to State health and mental health authorities to assist in meeting the costs of providing comprehensive public health services under State plans approved under paragraph (3).

"(2) No grant may be made under paragraph (1) to the State health or mental health authority of any State unless an application therefor has been submitted to and approved by the Secretary and unless—

"(A) the State has submitted to the Secretary a State plan for the provision of comprehensive public health services and has had the plan initially approved by him under paragraph (3); and

"(B) in the case of a State which has had a State plan initially approved under such paragraph, the Secretary, upon his annual review of the State plan of the State, determines that the plan and the activities undertaken under it continue to meet the requirements of such paragraph.

An application for a grant under paragraph (1) shall be submitted in such form and manner and shall contain such information as the Secretary may require.

"(3) A State plan for the provision of comprehensive public health services shall include such information and assurances as the Secretary may find necessary for approval of the plan and shall be comprised of the following three parts:

"(A) An administrative part setting out a program for the performance of the activities prescribed by the public health service and mental health service parts of the State plan, which program shall—

"(i) provide for administration, or supervision of administration of such activities, by the State health authority or, with respect to mental health activities, the State mental health authority;

"(ii) set forth policies and procedures to be followed in the expenditure of funds received from grants made under paragraph (1);

"(iii) contain or be supported by assurances satisfactory to the Secretary that (I) the funds paid to the State public and mental health authorities under grants made under paragraph (1) will be used to make a significant contribution toward providing and strengthening public health services in the various political subdivisions of the State; (II) such funds will be made available to other public or nonprofit private agencies, institutions, and organizations, in accordance with criteria which the Secretary determines are designed to secure maximum participation of local, regional, or metropolitan agencies and groups in the provision of such services; (III) such funds will be used to supplement and, to the extent practical, to increase the level of non-Federal funds that would otherwise be made available for the purposes for which the allotment funds are provided and not to supplant such non-Federal funds; and (IV) the plan is compatible with the total health program of the State;

"(iv) provide that the State health authority or, with respect to mental health activities, the State mental health authority, will, from time to time but not less often than annually, (I) review and evaluate its State plan and submit to the Secretary appropriate modifications thereof, (II) report to the Secretary (by such categories as the Secretary may prescribe) a description of the services provided pursuant to the public health service and mental health service parts of the State plan in the preceding fiscal year and the amounts of funds spent by such categories for the provision of such services, and (III) report to the Secretary the extent to which services provided under the State plan for persons with developmental disabilities and for the prevention and treatment of alcohol and drug abuse are integrated with services provided under the plan through community mental health centers;

"(v) provide that the State health authority or, with respect to mental health activities, the State mental health authority will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

"(vi) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid under grants under paragraph (1); and

"(vii) include provisions, meeting such requirements as the Civil Service Commission may prescribe, relating to the establishment and maintenance of personnel standards on a merit basis;

"(viii) contain such additional provisions as the Secretary may find necessary for the proper and efficient operation of the State plan.

"(B) A public health service part setting out a plan for the provision within the State of public health services (other than mental health services). Such plan shall—

"(i) require that such services provided within the State be provided in conformity with the applicable provisions and requirements of any comprehensive State health plans developed with assistance provided under subsection (a) of this section;

"(ii) include an assessment of the most serious public health problems that exist within the State, based upon data pertaining to mortality and morbidity within the State and to the economic impact of public health problems within the State and upon other appropriate information; and

"(ii) provide for programs relating to environmental health, health education, preventive medicine, health manpower and facilities licensure, and, commensurate with the extent of the problem, services for the prevention and treatment of drug abuse, drug dependence, alcohol abuse, and alcoholism.

"(C) A mental health service part setting out a plan for the provision within the State of mental health services. Such plan shall be prepared by the State mental health authority. Such plan shall—

"(i) require that such services provided within the State be provided in conformity with the applicable provisions and requirements of any comprehensive State health plans developed with assistance provided under subsection (a) of this section;

"(ii) include an assessment of the most serious mental health problems that exist within the State, based upon data pertaining to mortality and morbidity within the State and to the economic impact of mental health problems within the State and upon other appropriate information;

"(iii) include a detailed plan designed to eliminate inappropriate placement of persons with mental health problems in institutions and to improve the quality of care for those with mental health problems for whom institutional care is appropriate;

"(iv) prescribe minimum standards for the maintenance and operation of mental health programs and facilities (including community mental health centers) within the State and for the enforcement of such standards; and

"(v) provide for assistance to courts and other public agencies and to appropriate private agencies to facilitate (I) screening by community mental health centers (or, if there are no such centers, other appropriate entities) of residents of the State who are being considered for in-patient care in a

mental health facility to determine if such care is necessary, and (II) provision of followup care by community mental health centers (or, if there are no such centers, by other appropriate entities) for residents of the State who have been discharged from mental health facilities.

The Secretary shall approve a State plan submitted to him which meets the requirements of subparagraphs (A), (B), and (C) of this paragraph and such other requirements as he is authorized to prescribe under this paragraph. The Secretary shall review annually each State plan which has been initially approved by him and the activities undertaken under the plan to determine if the plan and such activities continue to meet the requirements of such subparagraphs.

"(4) In each fiscal year the Secretary shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (7) among the States on the basis of the population and the financial need of the respective States. The populations of the States shall be determined on the basis of the latest figures for the population of the States available from the Department of Commerce.

"(5) The Secretary shall determine the amount of any grant under paragraph (1); but the amount of grants made in any fiscal year to the public and mental health authorities of any State may not exceed the amount of the State's allotment available for obligation in such fiscal year. Payments under such grants may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

"(6) In any fiscal year—

"(A) not less than 15 per centum of a State's allotment under paragraph (4) shall be made available only for grants under paragraph (1) to the State's mental health authority for the provision of mental health services pursuant to its State plan; and

"(B) not less than—

"(i) 70 per centum of the amount of a State's allotment which is made available for grants to the mental health authority, and

"(ii) 70 per centum of the remainder of the State's allotment,

shall be available only for the provision under the State plan of services in communities of the State.

"(7) For the purpose of making grants under paragraph (1) there are authorized to be appropriated $200,000,000 for the fiscal year ending June 30, 1975, and $220,000,000 for the fiscal year ending June 30, 1976."

TITLE II—FAMILY PLANNING PROGRAMS

SEC. 201. This title may be cited as the "Family Planning and Population Research Act of 1974".

SEC. 202. (a) Section 1001(c) of the Public Health Service Act is amended (1) by striking out "and" after "1973;" and (2) by inserting after "1974" the following: "; $150,000,000 for the fiscal year ending June 30, 1975; and $175,000,000 for the fiscal year ending June 30, 1976".

(b) Section 1003(b) of such Act is amended (1) by striking out "and" after "1973;" and (2) by inserting after "1974" the following: "; $4,000,000 for the fiscal year ending June 30, 1975; and $5,000,000 for the fiscal year ending June 30, 1976".

(c) Section 1004 of such Act is amended to read as follows:

"RESEARCH

"SEC. 1004. (a) The Secretary may—

"(1) conduct, and

"(2) make grants to public or nonprofit private entities and enter into contracts with public or private entities and individuals for projects for,

research in the biomedical, contraceptive development, behavioral, and program implementation fields related to family planning and population.

"(b)(1) To carry out subsection (a) there are authorized to be appropriated $60,000,000 for the fiscal year ending June 30, 1975, and $75,000,000 for the fiscal year ending June 30, 1976.

"(2) No funds appropriated under any provision of this Act (other than this subsection) may be used to conduct or support the research described in subsection (a)."

(d) Section 1005(b) of such Act is amended (1) by striking out "and" after "1973;" and (2) by inserting after "1974" the following: "; $1,500,000 for the fiscal year ending June 30, 1975; and $2,000,000 for the fiscal year ending June 30, 1976".

(e) The last sentence of section 1006(c) of such Act is amended by inserting immediately before the period the following: "so as to insure that economic status shall not be a deterrent to participation in the programs assisted under this title".

SEC. 203. (a) Title X of such Act is amended by inserting after section 1008 the following new section:

"PLANS AND REPORTS

"SEC. 1009. (a) As soon as practicable after the end of each fiscal year, the Secretary shall make a report to the Congress setting forth a plan to be carried out over the next five fiscal years for—

"(1) extension of family planning services to all persons desiring such services,

"(2) family planning and population research programs,

"(3) training of necessary manpower for the programs authorized by this title and other Federal laws for which the Secretary has responsibility, and

"(4) carrying out the other purposes set forth in this title and the Family Planning Services and Population Research Act of 1970.

"(b) Such a plan shall, at a minimum, indicate on a phased basis—

"(1) the number of individuals to be served by family planning programs under this title and other Federal laws for which the Secretary has responsibility, the types of family planning and population growth information and educational materials to be developed under such laws and how they will be made available, the research goals to be reached under such laws, and the manpower to be trained under such laws;

"(2) an estimate of the costs and personnel requirements needed to meet the purposes of this title and other Federal laws for which the Secretary has responsibility and which pertain to family planning programs; and

"(3) the steps to be taken to maintain a systematic reporting system capable of yielding comprehensive data on which service figures and program evaluations for the Department of Health, Education, and Welfare shall be based.

"(c) Each report submitted under subsection (a) shall—

"(1) compare results achieved during the preceding fiscal year with the objectives established for such year under the plan contained in such report;

"(2) indicate steps being taken to achieve the objectives during the remaining fiscal years of the plan contained in such report and any revisions necessary to meet these objectives; and

"(3) make recommendations with respect to any additional legislative or administrative action necessary or desirable in carrying out the plan contained in such report."

(b) Section 5 of the Family Planning Services and Population Research Act of 1970 is repealed.

TITLE III—COMMUNITY MENTAL HEALTH CENTERS

SEC. 301. This title may be cited as the "Community Mental Health Centers Amendments of 1974".

SEC. 302. The Congress finds that—

(1) community mental health care is the most effective and humane form of day care for a majority of mentally ill individuals;

(2) the federally funded community mental health centers have had a major impact on the improvement of mental health care by—

(A) fostering coordination and cooperation between various agencies responsible for mental health care which in turn has resulted in a decrease in overlapping services and more efficient utilization of available resources,

(B) bringing comprehensive community mental health care to all in need within a specific geographic area regardless of ability to pay, and

(C) developing a system of care which insures continuity of care for all patients, and thus are a national resource to which all Americans should enjoy access; and

(3) there is currently a shortage and maldistribution of quality community mental health care resources in the United States.

SEC. 303. The Community Mental Health Centers Act is amended to read as follows:

"TITLE II—COMMUNITY MENTAL HEALTH CENTERS

"PART A—OPERATIONS ASSISTANCE

"REQUIREMENTS FOR COMMUNITY MENTAL HEALTH CENTERS

"SEC. 201. (a) For purposes of this title (other than part B thereof), the term 'community mental health center' means a legal entity (1) through which comprehensive mental health services are provided in the area served by the center (referred to in this title as a 'catchment area') in the manner prescribed by subsection (b) and (2) which is organized in the manner prescribed by subsection (c).

"(b) (1) The comprehensive mental health services which shall be provided through a community mental health center shall include—

"(A) services for individuals who are inpatients in a hospital or other health services delivery facility, outpatient services, day care and similar partial hospitalization services, and emergency services;

"(B) a program of specialized services for the mental health of children, including a full range of diagnostic, treatments liaison, and followup services (as prescribed by the Secretary);

"(C) a program of specialized services for the mental health of the elderly, including a full range of diagnostic, treatments liaison, and followup services (as prescribed by the Secretary);

"(D) consultation and education services for health professionals, schools, State and local law enforcement and correctional agencies, public welfare agencies, health services delivery agencies, and other appropriate entities;

"(E) assistance to courts and other public agencies in screening residents of the center's catchment area who are being considered for referral to a State mental health facility for inpatient treatment to determine if they should be so referred and provision, where appropriate, of treatment for such persons through the center as an alternative to inpatient treatment at such a facility;

"(F) provision of followup care for residents of its catchment area who have been discharged from a State mental health facility; and

"(G) provision of each of the following

service programs (other than a service program for which there is not sufficient need (as determined by the Secretary) in the center's catchment area, or the need for which in the center's catchment area the Secretary determines is currently being met):

"(i) A program for the prevention and treatment of alcoholism and alcohol abuse and for the rehabilitation of alcohol abusers and alcoholics.

"(ii) A program for the prevention and treatment of drug addiction and abuse and for the rehabilitation of drug addicts, drug abusers, and other persons with drug dependency problems.

"(2) The provision of comprehensive mental health services through a center shall be coordinated with the provision of services by other health and social service agencies in the center's catchment area to insure that persons receiving services through the center have access to all such health and social services as they may require. The center's services (A) may be provided at the center or satellite centers through the staff of the center or through appropriate arrangements with health professionals and others in the center's catchment area, (B) shall be available and accessible to the residents of the area promptly, as appropriate, and in a manner which assures continuity and which overcomes geographic, cultural, linguistic, or economic barriers to the receipt of services, and (C) when medically necessary, shall be available and accessible twenty-four hours a day and seven days a week.

"(c)(1) The governing body of a community mental health center shall be composed of individuals who reside in the center's catchment area and who, as a group, represent the residents of that area taking into consideration their employment, age, sex, and place of residence. At least one-half of the members of such body shall be individuals who are not providers of health care services. For purposes of this paragraph, the term 'provider of health care services' means an individual who receives (either directly or through his spouse) more than one-tenth of his gross annual income from fees or other compensation for the provision of health care services or from financial interests in entities engaged in the provision of health care services or in producing or supplying drugs or other articles for individuals and entities engaged in the provision of such services, or from both such compensation and such interests.

"(2) A center shall have organizational arrangements, established in accordance with regulations prescribed by the Secretary, for (A) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (B) maintaining the confidentiality of patient records.

"GRANTS FOR DEVELOPMENT OF COMMUNITY MENTAL HEALTH CENTER PROGRAMS

"SEC. 202. (a) The Secretary may make grants to public and nonprofit private entities to carry out projects to develop community mental health center programs. In connection with a project for a community mental health center program for an area the grant recipient shall (1) assess the needs of the area for mental health services, (2) design a community mental health center program for the area based on such assessment, (3) obtain within the area financial and professional assistance and support for the program, and (4) initiate and encourage continuing community involvement in the development and operation of the program. The amount of any grant under this subsection shall be determined by the Secretary.

"(b) A grant under subsection (a) may be made for not more than one year, and if a grant is made under such subsection for a project no other grant may be made for such project under such subsection.

"(c) The Secretary shall give special consideration to applications submitted for grants under this section for projects for community mental health centers programs for areas designated by the Secretary as urban or rural poverty aeas.

"(d) There are authorized to be appropriated for payments under grants under this section $5,000,000 for the fiscal year ending June 30, 1975, and $5,000,000 for the fiscal year ending June 30, 1976.

"GRANTS FOR INITIAL OPERATION OF CENTERS

"SEC. 203. (a) The Secretary may make grants to public and nonprofit private community mental health centers to assist them in meeting their costs of operation (other than costs related to construction) during the first five years (or eight years in the case of a community mental health center providing services for persons residing in an area designated by the Secretary as an urban or rural poverty area) after their establishment.

"(b) Each grant under this section to a community mental health center shall be made for the costs of its operation for the one year period beginning on the first day of the first month for which such grant is made. No center may receive more than five grants under this section unless the center provides services for persons residing in an area designated by the Secretary as an urban or rural poverty area, in which case it may receive not more than eight such grants.

"(c)(1) Except as provided in paragraph (2), the amount of any grant made under this section for a community mental health center's costs of operation may not exceed 80 per centum of such costs for the first year of the center's operation, 65 per centum of such costs for the second year of its operation, 50 per centum of such costs for the third year of its operation, 35 per centum of such costs for the fourth year of its operation, and 20 per centum of such costs for the fifth year of its operation.

"(2) In the case of any grant under the section for a community mental health center providing services for persons in an area designated by the Secretary as an urban or rural poverty area, the amount of such grant for the center's costs of operation may not exceed 90 per centum of such costs for the first year of its operation, 80 per centum of such costs for the second year of its operation, 70 per centum of such costs for the third year of its operation, 60 per centum of such costs for the fourth year of its operation, 50 per centum of such costs for the fifth year of its operation, 40 per centum of such costs for the sixth year of its operation, 30 per centum of such costs for the seventh year of its operation, and 20 per centum of such costs for the eighth year of its operation.

"(d)(1) There are authorized to be appropriated for payments under initial grants under this section $85,000,000 for the fiscal year ending June 30, 1975, and $105,000,000 for the fiscal year ending June 30, 1976.

"(2) For the fiscal year ending June 30, 1976, and for each of the succeeding seven fiscal years there are authorized to be appropriated such sums as may be necessary to make payments under continuation grants under this section to community mental health centers which first received an initial grant under this section for the fiscal year ending June 30, 1975, or the next fiscal year and which are eligible for a grant under this section in a fiscal year for which sums are authorized to be appropriated under this paragraph.

"GRANTS FOR CONSULTATION AND EDUCATION SERVICES

"SEC. 204. (a)(1) The Secretary may make annual grants to any community mental health center for the costs of providing the consultation and education services described in section 201(b)(1)(D) if the center (A) received for the fiscal year ending June 30, 1974, a staffing grant under section 220 of this title (as in effect before the date of the enactment of the Community Mental Health Centers Amendments of 1974) and may not because of limitations respecting the period for which grants under that section may be made receive an additional grant under section 304 of such Amendments, (B) received a continuation of such section 220 grant under section 304 of such Amendments or is receiving such a continuation grant under such section 304 and such grant because of limitations respecting the period for which grants under that section may be made is the last one which the center may receive under that section, or (C) received a grant under section 203 of this title or is receiving such a grant and such grant because of limitations respecting the period for which grants under that section may be made is the last one which the center may receive under that section.

"(2) The Secretary may also make annual grants to a public or nonprofit private entity—

"(A) which has not received any grant under this title (other than a grant under this section as amended by the Community Mental Health Centers Amendments of 1974),

"(B) which meets the requirements of section 201 except, in the case of an entity which has not received a grant under this section, the requirement for the provision of consultation and education services, and

"(C) the catchment area of which is not within (in whole or in part) the catchment area of a community mental health center, for the costs of providing the consultation and education services described in section 201(b)(1)(D).

"(b) The amount of any grant made under subsection (a) shall be determined by the Secretary, but no such grant to a center may exceed the lesser of 100 per centum of such center's costs of providing such consultation and education services during the year for which the grant is made or—

"(1) in the case of each of the first two years for which a center receives such grant, the sum of (A) an amount equal to the product of $0.50 and the population of the center's catchment area, and (B) the lesser of (i) one-half the amount determined under clause (A), or (ii) one-half of the amount received by the center in such year from charges for the provision of such services;

"(2) in the case of the third year for which a center receives such a grant, the sum of (A) an amount equal to the product of $0.50 and the population of the center's catchment area, and (B) the lesser of (i) one-half the amount determined under clause (A), or (ii) one-fourth of the amount received by the center in such year from charges for the provision of such services; and

"(3)(A) except as provided in subparagraph (B), in the case of the fourth year and each subsequent year thereafter for which a center receives such a grant, the lesser of (i) the sum of (I) an amount equal to the product of $0.125 and the population of the center's catchment area, and (II) one-eighth of the amount received by the center in such year from charges for the provision of such services, or (ii) $50,000; or

"(B) in the case of the fourth year and each subsequent year for which a center receives such a grant, the sum of (i) an amount equal to the product of $0.25 and the population of the center's catchment area, and (ii) the lesser of (I) the amount determined under clause (i) of this subparagraph or (II) one-fourth of the amount received by the center in such year from charges for the provision for such services if the amount of the last grant received by the center under section 220 of this title as

in effect before the date of the enactment of the Community Mental Health Amendments of 1974, section 304 of such amendments, or section 203 of this title, as the case may be, was determined on the basis of the center making services available to persons in an area designated by the Secretary as urban or rural poverty area.

For purposes of this subsection, the term 'center' includes an entity which receives a grant under subsection (a)(2).

"(c) There are authorized to be appropriated for payments under grants under this section $4,000,000 for the fiscal year ending June 30, 1975, and $9,000,000 for the fiscal year ending June 30, 1976.

"GENERAL PROVISIONS RESPECTING GRANTS UNDER THIS PART

"SEC. 205. (a)(1) No grant may be made under this part to any entity or community mental health center in any State unless a State plan for the provision of comprehensive mental health services within such State has been submitted to, and approved by, the Secretary under section 237.

"(2) No grant may be made under section 202 or 203 to any entity which received a grant under section 220, 242, 243, 251, 256, 264, or 271 in a fiscal year beginning before the date of the enactment of the Community Mental Health Centers Amendments of 1974.

"(b) No grant may be made under this part unless an application therefor has been submitted to, and approved by the Secretary. Such an application shall be submitted in such form and manner as the Secretary shall prescribe and shall contain such information as the Secretary may require.

"(c)(1) An application for a grant under section 203 or 204 shall contain or be supported by assurances satisfactory to the Secretary that—

"(A) the community mental health center for which the application is submitted will provide, in accordance with regulations of the Secretary, an effective procedure for developing, compiling, evaluating, and reporting to the Secretary, statistics and other information (which the Secretary shall publish and disseminate on a periodic basis and which the center shall disclose at least annually to the general public) relating to (i) the cost of the center's operation, (ii) the patterns of utilization of its services, (iii) the availability, accessibility, and acceptability of its services, (iv) the impact of its services upon the mental health of the residents of its catchment area, and (v) such other matters as the Secretary may require;

"(B) such community mental health center will, in consultation with the residents of its catchment area, review its program of services, and the statistics and other information referred to in subparagraph (A) to assure that its services are responsive to the needs of the residents of the catchment area;

"(C) to the extent practicable, such community mental health center will enter into cooperative arrangements with health maintenance organizations serving residents of the center's catchment area for the provision through the center of mental health services for the members of such organizations under which arrangements the charges to the health maintenance organizations for such services shall be not less than the actual costs of the center in providing such services;

"(D) such community mental health center will develop a plan for, and use its best efforts to insure that, adequate financial support will be available to such community mental health center from Federal sources (other than this part) and non-Federal sources (including, to the maximum extent feasible, reimbursement from the recipients of consultation and education services and screening services provided in accordance with sections 201(b)(1)(D) and 201(b)(1)(E)) so that the center will be able to continue to provide comprehensive mental health services when financial assistance provided under this part is reduced or terminated, as the case may be;

"(E) such community mental health center will make available a reasonable volume of services to persons unable to pay therefor, and in the case of an application for a grant under section 203 for initial operation of a community mental health center which will provide services to persons in an area designated by the Secretary as an urban or rural poverty area, the applicant will use the additional grant funds it receives under section 203(c)(2) (because of services to persons in such an area) to provide services to persons in such an area who are unable to pay therefor; and

"(F) such community mental health center will adopt and enforce a policy (i) under which fees for the provision of mental health services through the center will be paid to the center, and (ii) which prohibits health professionals who provide such services to patients through the center from providing such services to such patients except through the center.

An application for such a grant shall also contain a long range plan for the expansion of the program of the community mental health center for which the application is submitted for the purpose of meeting anticipated increases in demand by residents of the center's catchment area for the comprehensive mental health services described in section 201(b)(1). Such a plan shall include a description of planned growth in the programs of the center, estimates of increased costs arising from such growth, estimates of the portion of such increased costs to be paid from Federal funds, and anticipated sources of non-Federal funds to pay such increased costs.

"(2) The Secretary may approve an application for a grant under section 203 or 204 only if the application is recommended for approval by the National Advisory Mental Health Council and the application meets the requirements of paragraph (1) and the Secretary—

"(A) determines that the facilities and equipment of the applicant under the application meet such requirements as the Secretary may prescribe;

"(B) determines that the application contains or is supported by satisfactory assurances that—

"(i) the comprehensive mental health services (in the case of an application for a grant under section 203) or the consultation and education services (in the case of an application for a grant under section 204) to be provided by the applicant will constitute an addition to, or a significant improvement in quality (as determined in accordance with criteria of the Secretary) of, services that would otherwise be provided in the catchment area of the applicant; and

"(ii) Federal funds made available under section 203 or 204, as the case may be, will (I) be used to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds, including third-party health insurance payments, that would in the absence of such Federal funds be made available for the applicant's comprehensive mental health services or consultation and education services, as the case may be, and (II) in no event supplant such State, local, and other non-Federal funds;

"(iii) in the case of an applicant which received a grant for the preceding fiscal year, determines that during such preceding fiscal year the applicant met the requirements of section 201 and complied with the assurances which were contained in or supported the applicant's application for its grant for the preceding year; and

"(iv) in the case of an application for a grant the amount of which is to be determined under section 203(c)(2) or 204(b)(3)(B), determines that the application contains or is supported by assurances satisfactory to the Secretary that the services of the applicant will, to the extent feasible, be utilized by a significant number of persons residing in an area designated by the Secretary as an urban or rural poverty area and requiring such services.

"(3) In each fiscal year for which a community mental health center receives a grant under section 203 or 204, such center shall obligate for a program of continuing evaluation of the effectiveness of its programs in serving the needs of the residents of its catchment area and for a review of the quality of the services provided by the center not less than an amount equal to 2 per centum of the amount obligated by the center in the preceding fiscal year for its operating expenses.

"(4) The costs for which grants may be made under section 203 or 204 shall be determined in the manner prescribed in regulations of the Secretary issued after consultation with the National Advisory Mental Health Council.

"(d) An application for a grant under this part which is submitted to the Secretary shall at the same time be submitted to the State mental health authority for the State in which the project or community mental health center for which the application is submitted is located. A State mental health authority which receives such an application under this subsection may review it and submit its comments to the Secretary within the forty-five-day period beginning on the date the application was received by it. The Secretary shall take action to require an applicant to revise his application or to approve or disapprove an application within the period beginning on the date the State mental health authority submitted its comments or on the expiration of such forty-five-day period, which ever occurs first, and ending on the ninetieth day following the date the application was submitted to him.

"(e) Not more than 2 per centum of the total amount appropriated under sections 203 and 204 for any fiscal year shall be used by the Secretary to provide directly through the Department technical assistance for program management and for training in program management to community mental health centers which received grants under such sections or to entities which received grants under section 220 of this title in a fiscal year beginning before the date of the enactment of the Community Mental Health Centers Amendments of 1974 or under section 304 of such Amendments.

"PART B—FINANCIAL DISTRESS GRANTS

"GRANT AUTHORITY

"SEC. 211. The Secretary may make grants for the operation of community mental health centers which (1) received grants under section 220 of this title as in effect before the date of the enactment of the Community Mental Health Centers Amendments of 1974 or a continuation of such section 220 grants under section 304 of such Amendments, (2) because of limitations respecting the period for which grants under section 304 of such Amendments may be made are not eligible for additional continuation grants under that section, and (3) demonstrate that without a grant under this section there will be a significant reduction in the types or quality of services provided or there will be an inability to provide the services described in section 201(b).

"GRANT REQUIREMENTS

"SEC. 212. (a) No grant may be made under section 211 to any community mental health center in any State unless a State plan for the provision of comprehensive mental health services within such State has been submitted to, and approved by, the Secretary under section 237. Any grant under

section 211 may be made upon such terms and conditions as the Secretary determines to be reasonable and necessary, including requirements that the community mental health center agree (1) to disclose any financial information or data deemed by the Secretary to be necessary to determine the sources of causes of that center's financial distress, (2) to conduct a comprehensive cost analysis study in cooperation with the Secretary, (3) to carry out appropriate operational and financial reforms on the basis of information obtained in the course of the comprehensive cost analysis study or on the basis of other relevant information, and (4) to use a grant received under section 211 to enable it to provide (within such period as the Secretary may prescribe) the comprehensive mental health services described in section 201(b) and to revise its organization to meet the requirements of section 201(c).

"(b) An application for a grant under section 211 must contain or be supported by the assurances prescribed by subparagraphs (A), (B), (C), (E), and (F) of section 205(c)(1) and assurances satisfactory to the Secretary that the applicant will expend for its operation as a community mental health center, during the fiscal year for which such grant is sought, an amount of funds (other than funds for construction, as determined by the Secretary) from non-Federal sources which is at least as great as the average annual amount of funds expended by such applicant for such purpose (excluding expenditures of a nonrecurring nature) in the three fiscal years immediately preceding the fiscal year for which such grant is sought. The Secretary may not approve such an application unless it has been recommended for approval by the National Advisory Mental Health Council. The requirements of section 205(d) respecting opportunity for review of applications by State mental health authorities and time limitations on actions by the Secretary on applications shall apply with respect to application submitted for grants under section 211.

"(c) The amount of any grant under this section shall be determined by the Secretary, but (1) the first grant under this section to any community mental health center may not exceed (A) 75 per centum of the amount of the last grant which such center received under section 220 of this title as in effect before the date of the enactment of the Community Mental Health Centers Amendments of 1973, or (B) if such center received a continuation grant under section 304 of such Amendments, 75 per centum of the amount of the last grant made under that section to such center, and (2) the amount of the second and any subsequent grant under this section to such center may not exceed 90 per centum of the amount of the last grant made under this section to such center.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 213. There are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1975, and $10,000,000 for the fiscal year ending June 30, 1976, for payments under grants under section 211.

"PART C—FACILITIES ASSISTANCE

"ASSISTANCE AUTHORITY

"SEC. 221. (a) From allotments made under section 227 the Secretary shall pay, in accordance with this part, the Federal share of projects for (1) the acquisition or remodeling, or both, of facilities for community mental health centers, (2) the leasing (for not more than twenty-five years) of facilities for such centers, (3) the construction of new facilities or expansion of existing facilities for community mental health centers if not less than 25 per centum of the residents of the centers' catchment areas are members of low-income groups (as determined under regulations prescribed by the Secretary), and (4) the initial equipment of a facility acquired, remodeled, leased, or constructed with financial assistance provided under payments under this part. Payments shall not be made for the construction of a new facility or the expansion of an existing one unless the Secretary determines that it is not feasible for the recipient to acquire or remodel an existing facility.

"(b) (1) For purposes of this part, the term 'Federal share' with respect to any project described in subsection (a) means the portion of the cost of such project to be paid by the Federal Government under this part.

"(2) The Federal share with respect to any project described in subsection (a) in a State shall be the amount determined by the State agency of the State, but, except as provided in paragraph (3), the Federal share for any such project may not exceed 66⅔ per centum of the costs of such project or the State's Federal percentage, whichever is the lower. Prior to the approval of the first such project in a State during any fiscal year, the State agency shall give the Secretary written notification of (A) the maximum Federal share, established pursuant to this paragraph, for such projects in such State which the Secretary approves during such fiscal year, and (B) the method for determining the specific Federal share to be paid with respect to such project; and such maximum Federal share and such method of Federal share determination for such projects in such State during such fiscal year shall not be changed after the approval of the first such project in the State during such fiscal year.

"(3) In the case of any community mental health center which provides or will, upon completion of the project for which application has been made under this part, provide services for persons in an area designated by the Secretary as an urban or rural poverty area, the maximum Federal share determined under paragraph (2) may not exceed 90 per centum of the costs of the project.

"(4)(A) For purposes of paragraph (2), the Federal percentage for (i) Puerto Rico, Guam, American Samoa, and the Virgin Islands shall be 66⅔ per centum, and (ii) any other State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the average per capita income of the fifty States and the District of Columbia.

"(B) The Federal percentages under clause (ii) of subparagraph (A) shall be promulgated by the Secretary between July 1 and September 30 of each even-numbered year, on the basis of the average of the per capita incomes of the States subject to such Federal percentages and of the fifty States and the District of Columbia for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation.

"APPROVAL OF PROJECTS

"SEC. 222. (a) For each project for a community mental health center facility pursuant to a State plan approved under section 237, there shall be submitted to the Secretary, through the State agency of the State, an application by the State or a political subdivision thereof or by a public or other nonprofit agency. If two or more such agencies join in the project, the application may be filed by one or more of such agencies. Such application shall set forth—

"(1) a description of the site for such project;

"(2) plans and specifications therefor in accordance with the regulations prescribed by the Secretary under section 236;

"(3) except in the case of a leasing project, reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or other nonprofit agency which is to operate the community mental health center;

"(4) reasonable assurance that adequate financial support will be available for the project and for its maintenance and operation when completed;

"(5) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a construction or remodeling project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act), and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c);

"(6) a certification by the State agency of the Federal share for the project; and

"(7) the assurances described in section 205(c)(1).

Each applicant shall be afforded an opportunity for a hearing before the State agency respecting its application.

"(b) The Secretary shall approve an application submitted in accordance with subsection (a) if—

"(1) sufficient funds to pay the Federal share for the project for which the application was submitted are available from the allotment to the State;

"(2) the Secretary finds that the application meets the applicable requirements of subsection (a) and the community mental health center for which the application was submitted will meet the requirements of the State plan (under section 237) of the State in which the project is located; and

"(3) the Secretary finds that the application has been approved and recommended by the State agency and is entitled to priority over other projects within the State, as determined under the State plan.

No application shall be disapproved by the Secretary until he has afforded the State agency an opportunity for a hearing. The Secretary may not approve an application under this part for a project for a facility for a community mental health center or other entity which received a grant under section 220, 242, 243, 251, 264, or 274 of this title in a fiscal year beginning before the date of the enactment of the Community Mental Health Centers Amendments of 1974 unless the Secretary determines that the application is for a project for a center or entity which upon completion of such project will be able to significantly expand its services and which demonstrates exceptional financial need for assistance under this part for such project. Amendment of any approved application shall be subject to approval in the same manner as an original application.

"SEC. 223. (a)(1) Upon certification to the Secretary by the State agency, based upon inspection by it, that work has been performed upon a construction or remodeling project, or purchases for such a project have been made, in accordance with the approved plans and specifications, and that payment of an installment is due to the applicant, such installment shall be paid to the State, from the applicable allotment of such State, except that (1) if the State is not authorized by law to make payments to the applicant, the payment shall be made directly to the applicant, (2) if the Secretary, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring action pursuant to subsection (c) of this section, payment may, after he has given the State agency notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on

such hearing, and (3) the total of payments with respect to such project may not exceed an amount equal to the Federal share of the cost of such project.

"(2) In case an amendment to an approved application is approved or the estimated cost of a construction or remodeling project is revised upward, any additional payment with respect thereto may be made from the applicable allotment of the State for the fiscal year in which such amendment or revision is approved.

"(b) Payments from a State allotment for acquisition and leasing projects shall be made in accordance with regulations which the Secretary shall promulgate.

"(c)(1) If the Secretary finds that—

"(A) a State agency is not substantially complying with the provisions required by section 237 to be in a State plan or with regulations issued under section 236;

"(B) any assurance required to be in an application filed under section 222 is not being carried out;

"(C) there is substantial failure to carry out plans and specifications approved by the Secretary under section 222; or

"(D) adequate State funds are not being provided annually for the direct administration of a State plan approved under section 237,

the Secretary may take the action authorized under paragraph (2) of this subsection if the finding was made after reasonable notice and opportunity for hearing to the involved State agency.

"(2) If the Secretary makes a finding described in paragraph (1), he may notify the involved State agency, which is the subject of the finding or which is connected with a project or State plan which is the subject of the finding, that—

"(A) no further payments will be made to the State from allotments under section 227; or

"(B) no further payments will be made from allotments under section 227 for any project or projects designated by the Secretary as being affected by the action or inaction referred to in subparagraph (A), (B), (C), or (D) of paragraph (1),

as the Secretary may determine to be appropriate under the circumstances; and, except with regard to any project for which the application has already been approved and which is not directly affected, further payments from such allotments may be withheld, in whole or in part, until there is no longer any failure to comply (or to carry out the assurance or plans and specifications or to provide adequate State funds, as the case may be) or, if such compliance (or other action) is impossible, until the State repays or arranges for the repayment of Federal moneys to which the recipient was not entitled.

"JUDICIAL REVIEW

"SEC. 224. If—

"(1) the Secretary refuses to approve an application for a project submitted under section 222, the State agency through which such application was submitted, or

"(2) any State is dissatisfied with the Secretary's action under section 223(c) or 237(c), such State, may appeal to the United States court of appeals for the circuit in which such State agency or State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside his order. The findings of the Secretary as to the facts, if supported by good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the Court, operate as a stay of the Secretary's action.

"RECOVERY

"SEC. 225. If any facility of a community mental health center remodeled, constructed, or acquired with funds provided under this part is, at any time within twenty years after the completion of such remodeling or construction or after the date of its acquisition with such funds—

"(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 222, or (B) which is not approved as a transferee by the State agency of the State in which such facility is located, or its successor; or

"(2) not used by a community mental health center in the provision of comprehensive mental health services, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment.

"NONDUPLICATION

"SEC. 226. No grant may be made under the Public Health Service Act for the construction or modernization of a facility for a community mental health center unless the Secretary determines that there are no funds available under this part for the construction or modernization of such facility.

"ALLOTMENTS TO STATES

"SEC. 227. (a) In each fiscal year, the Secretary shall, in accordance with regulations, make allotments from the sums appropriated under section 228 to the several States (with State plans approved under section 237) on tht basis of (1) the population, (2) the extent of the need for community mental health centers, and (3) the financial need of the respective States; except that no such allotment to any State, other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, in any fiscal year may be less than $100,000. Sums so allotted to a State other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, in a fiscal year and remaining unobligated at the er[illegible] of such year shall remain available to such State for such purpose in the next fiscal year (and in such year only), in addition to the sums allotted for such State in such next fiscal year. Sums so allotted to the Virgin Islands, American Samoa, Guam, or the Trust Territory of the Pacific Islands in a fiscal year and remaining unobligated at the end of such year shall remain available to it for such purpose in the next two fiscal years (and in such years only), in addition to the sums allotted to it for such purpose in each of such next two fiscal years.

"(b) The amount of an allotment under subsection (a) to a State in a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State in a fiscal year shall be deemed to be a part of its allotment under subsection (a) in such fiscal year.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 229. There are authorized to be appropriated $20,000,000 for the fiscal year ending June 30, 1975, and $25,000,000 for the fiscal year ending June 30, 1976, for allotments under section 227.

"PART D—GENERAL PROVISIONS

"DEFINITIONS

"SEC. 235. For purposes of this title—

"(1) The term 'State' includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

"(2) The term 'State agency' means the State mental health authority responsible for the mental health service part of a State's plan under section 314(d) of the Public Health Service Act.

"(3) The term 'Secretary' means the Secretary of Health, Education, and Welfare.

"(4) The term 'National Advisory Mental Health Council' means the National Advisory Mental Health Council established under section 217 of the Public Health Service Act.

"REGULATIONS

"SEC. 236. Regulations issued by the Secretary for the administration of this title shall include provisions applicable uniformly to all the States which—

"(1) prescribe the general manner in which the State agency of a State shall determine the priority of projects for community mental health centers on the basis of the relative need of the different areas of the State for such centers and their services and requiring special consideration for projects on the basis of the extent to which a center to be assisted or established upon completion of a project (A) will, alone or in conjunction with other centers owned or operated by the applicant for the project or affiliated or associated with such applicant, provide comprehensive mental health services for residents of a particular community or communities, or (B) will be part of or closely associated with a general hospital;

"(2) general standards for facilities and equipment for centers of different classes and in different types of location; and

"(3) require that the State plan of a State submitted under section 237 provide for adequate community mental health centers for people residing in the State, and provide for adequate community mental health centers to furnish needed services for persons unable to pay therefor.

The Federal Hospital Council (established by section 641 of the Public Health Service Act) and the National Advisory Mental Health

Council shall be consulted by the Secretary before the issuance of regulations under this section.

"STATE PLAN

"SEC. 237. (a) A State plan for the provision of comprehensive mental health services within a State shall be comprised of the following two parts:

"(1) An administrative part containing provisions respecting the administration of the plan and related matters. Such part shall—

"(A) provide for the designation of a State advisory council to consult with the State agency in administering such plan which council shall include (i) representatives of nongovernment organizations or groups, and of State agencies, concerned with planning, operation, or utilization of community mental health centers or other mental health facilities, and (ii) representatives of consumers and providers of the services provided by such centers and facilities who are familiar with the need for such services;

"(B) provide that the State agency will make such reports in such form and containing such information as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports;

"(C) provide that the State agency will from time to time, but not less often than annually, review the State plan and submit to the Secretary appropriate modifications thereof which it considers necessary; and

"(D) include provisions, meeting such requirements as the Civil Service Commission may prescribe, relating to the establishment and maintenance of personnel standards on a merit basis.

"(2) A services and facilities part containing provisions respecting services to be offered within the State by community mental health centers and provisions respecting facilities for such centers. Such part shall—

"(A) be consistent with the mental health services part of the State's plan under section 314(d) of the Public Health Service Act;

"(B) set forth a program for community mental health centers within the State (i) which is based on a statewide inventory of existing facilities and a survey of need for the comprehensive mental health services described in section 201(b); (ii) which conforms with regulations prescribed by the Secretary under section 236; and (iii) which shall provide for adequate community mental health centers to furnish needed services for persons unable to pay therefor;

"(C) set forth the relative need, determined in accordance with the regulations prescribed under section 236, for the projects included in the program described in subparagraph (B), and, in the case of projects under part C, provides for the completion of such projects in the order of such relative need;

"(D) emphasize the provision of outpatient services by community mental health centers as a preferable alternative to inpatient hospital services; and

"(E) provide minimum standards (to be fixed in the discretion of the State) for the maintenance and operation of centers which receive Federal aid under this title and provide for enforcement of such standards with respect to projects approved by the Secretary under this title.

"(b) The State agency shall administer or supervise the administration of the State plan.

"(c) A State shall submit a State plan in such form and manner as the Secretary shall by regulation prescribe. The Secretary shall approve any State plan (and any modification thereof) which complies with the requirements of subsection (a). The Secretary shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

"(d)(1) At the request of any State, a portion of any allotment or allotments of such State under section 227 for any fiscal year shall be available to pay one-half (or such smaller share as the State may request) Secretary for the proper and efficient administration of the provisions of the State plan approved under this section which relate to construction projects for facilities for community mental health centers; except that not more than 5 per centum of the total of the allotments of such State for any fiscal year, or $50,000, whichever is less, shall be available for such purpose. Amounts made available to any State under this paragraph from its allotment or allotments under section 227 for any fiscal year shall be available only for such expenditures (referred to in the preceding sentence) during such fiscal year or the following fiscal year. Payments of amounts due under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

"(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from State sources for such year for administration of such provisions of the State plan approved under this section not less than the total amount expended for such purposes from such sources during the fiscal year ending June 30, 1968.

"CATCHMENT AREA REVIEW

"SEC. 238. Each agency of a State which administers or supervises the administration of a State's health planning functions under a State plan approved under section 314 (a) of the Public Health Service Act shall, in consultation with that State's mental health authority, periodically review the catchment areas of the community mental health centers located in that State to (1) insure that the sizes of such areas are such that the services to be provided through the centers (including their satellites) serving the areas are available and accessible to the residents of the areas promptly, as appropriate, (2) insure that the boundaries of such areas conform, to the extent practicable, with relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (3) insure that the boundaries of such areas eliminate, to the extent possible, barriers to access to the services of the centers serving the areas, including barriers resulting from an area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation.

"STATE CONTROL OF OPERATIONS

"SEC. 239. Except as otherwise specifically provided, nothing in this title shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any community mental health center with respect to which any funds have been or may be expended under this title.

"RECORDS AND AUDIT

"SEC. 240. (a) Each recipient of assistance under this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the assistance received under this title.

"NONDUPLICATION

"SEC. 241. In determining the amount of any grant under part A, B, or C for the costs of any project there shall be excluded from such costs an amount equal to the sum of (1) the amount of any other Federal grant which the applicant for such grant has obtained, or is assured of obtaining, with respect to such project, and (2) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

"DETERMINATION OF POVERTY AREA

"SEC. 242. For purposes of any determination by the Secretary under this title as to whether any urban or rural area is a poverty area, the Secretary may not determine that an area is an urban or rural poverty area unless—

"(1) such area contains one or more subareas which are characterized as subareas of poverty;

"(2) the population of such subarea or subareas constitutes a substantial portion of the population of such rural or urban area; and

"(3) the project, facility, or activity, in connection with which such determination is made, does, or (when completed or put into operation) will, serve the needs of the residents of such subarea or subareas.

"PROTECTION OF PERSONAL RIGHTS

"SEC. 243. In making grants under parts A or B, the Secretary shall take such steps as may be necessary to assure that no individual shall be made the subject of any research involving surgery which is carried out (in whole or in part) with funds under such grants unless such individual explicitly agrees to become a subject of such research.

"REIMBURSEMENT

"SEC. 244. The Secretary shall, to the extent permitted by law, work with States, private insurers, community mental health centers, and other appropriate entities to assure that community mental health centers shall be eligible for reimbursement for their mental health services to the same extent as general hospitals and other licensed providers.

"SHORT TITLE

"SEC. 245. This title may be cited as the 'Community Mental Health Centers Act'.".

SEC. 304. (a) Any entity which received a grant under section 220, 242, 243, 251, 256, 264, or 271 of the Community Mental Health Centers Act for the fiscal year which began before the date of the enactment of this Act may, notwithstanding the amendment made by section 203 of this Act, continue to receive such grant—

(1) for the period, and in the amount, prescribed for the grant under the section of the Community Mental Health Centers Act under which it was made or under section 201 of the Community Mental Health Centers Amendments of 1970, whichever is applicable, and

(2) in accordance with any other terms and conditions applicable to such grant.

(b) There are authorized to be appropriated for the fiscal year which begins after the date of the enactment of this Act and for each of the next six fiscal years such sums as may be necessary to continue in accordance with subsection (a) the grants referred to in that subsection.

SEC. 305. The amendment made by section 303 shall take effect July 1, 1974; except that after January 1, 1974, the Secretary of Health, Education, and Welfare may take such action, including the promulgation of regulations, the receipt and approval of applications under the terms and conditions of title II of the Mental Retardation Facil-

ities and Community Mental Health Centers Construction Act of 1963 as amended by section 303, and the submission of budget requests, as may be necessary to have the amendment effective beginning with the fiscal year beginning July 1, 1974.

SEC. 306. (a) Section 513 of the Public Health Service Act is amended by striking out "or by grants or contracts" and inserting in lieu thereof "or, except in the case of evaulations of programs under the Community Mental Health Centers Act, by grants or contracts".

(b) The amendment made by subsection (a) shall apply with respect to evaluations of programs under the Community Mental Health Centers Act made under such section 513 with appropriations for the fiscal year ending June 30, 1975.

SEC. 307. (a) Not later than six months after the date of the enactment of this Act the Secretary of Health, Education, and Welfare shall make a report to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare of the Senate setting forth a plan, to be carried out in a period of five years, for the extension of comprehensive mental health services through community mental health centers to persons in all areas in which there is a demonstrated need for such services. Such plan shall, at a minimum, indicate on a phased basis the number of persons to be served by such services and an estimate of the cost and personnel requirements needed to provide such services.

(b) Not later than eighteen months after the date of the enactment of this Act the Secretary of Health, Education, and Welfare shall submit to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare of the Senate a report setting forth (1) national standards for care provided by community mental health centers, and (2) criteria for evaluation of community mental health centers and the quality of the services provided by the centers.

TITLE IV—MIGRANT HEALTH

SEC. 401. Section 310 of the Public Health Service Act is amended to read as follows:

"HEALTH SERVICES FOR AGRICULTURAL MIGRANTS

"SEC. 310. (a) (1) For purposes of this section, the term 'migrant health center' means an entity which—

"(A) provides, in the manner prescribed by paragraph (2), the services described in such paragraph to—

"(i) agricultural migratory workers and their families, and

"(ii) persons in the area served by the entity who perform seasonal agricultural services similar to the services performed by agricultural migratory workers and their families if the Secretary finds that the provision of such services to such persons may contribute to the improvement of the health conditions of agricultural migratory workers and their families, and

"(B) is organized in the manner prescribed by paragraph (3).

"(2) A migrant health center shall provide each of the following:

"(A) Primary health services,

"(B) As may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

"(C) Referral to provides of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

"(D) Environmental health services, including, as may be appropriate for particular centers, the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health,

"(E) As may be appropriate for particular centers, infectious and parasitic disease screening and control,

"(F) As may be appropriate for particular centers, accident prevention, including prevention of excessive pesticide exposure, and

"(G) Information on the availability and proper use of health services.

The services of a center shall be provided directly through its staff and supporting resources or through contracts or cooperative arrangements with public or private entities. Primary health services shall be available and accessible in the area served by the center promptly, as appropriate, and in a manner which assures continuity.

"(3) (A) The governing body of a migrant health center shall meet at least once a month, shall establish general policies for the center, shall approve the center's annual budget, and shall approve the selection of a director for the center. The composition and the manner of selection of the members of the governing body of a migrant health center shall be prescribed by regulations of the Secretary, except that there shall be on the governing body of a center an equitable representation of consumers of health services from the center, providers of health services, and the general public.

"(B) The center shall have organizational arrangements, established in accordance with regulations prescribed by the Secretary, for (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records.

"(b) For purposes of this section:

"(1) The term 'agricultural migratory worker' means an individual whose principal employment is employment in agriculture on a seasonal basis, who has been so employed within the last twenty-four months, and who establishes for the purpose of such employment a temporary abode.

"(2) The term 'primary health services' means—

"(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

"(B) diagnostic laboratory and radiologic services;

"(C) preventive health services (including children's eye examinations to determine the need for vision correction, peri-natal services, well child services, and family planning services);

"(D) emergency medical services;

"(E) transportation services as required for adequate patient care; and

"(F) preventive dental services.

"(3) The term 'supplemental health services' means services which are not included as primary health services and which are—

"(A) hospital services;

"(B) home health services;

"(C) extended care facility services;

"(D) rehabilitation services;

"(E) dental services;

"(F) mental health services;

"(G) vision services;

"(H) allied health services;

"(I) pharmaceutical services;

"(J) health education services; and

"(K) services which promote and facilitate optimal use of primary health services and the services referred to in the preceding subparagraphs of this paragraph.

"(4) The term 'high impact area' means a county or other political subdivision within a State which has not less than six thousand agricultural migratory workers residing within its boundaries for more than two months in any calendar year.

"(c) The Secretary may make grants to public and nonprofit private entities to assist in (1) the establishment and initial operation of migrant health centers which will serve one or more high impact areas, and (2) meeting the costs of the continued operation of migrant health centers serving one or more such areas, including training related to the provision of primary, supplemental, and environmental health services and program management.

"(d) The Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities, in areas in which no migrant health centers exist and which are not high impact areas—

"(1) for the provision of emergency care to agricultural workers and their families;

"(2) for the provision of primary care (as defined in regulations of the Secretary) for agricultural workers and their families;

"(3) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under paragraph (2)) to agricultural workers and their families; or

"(4) for activities which improve the health of agricultural migratory workers and their families.

"(e) The Secretary may enter into contracts with public and private entities to—

"(1) assist the States in the implementation and enforcement of acceptable environmental health standards, including enforcement of standards for sanitation in migrant labor camps and applicable Federal and State pesticide control standards; and

"(2) conduct projects and studies to assist the several States in the assessment of problems related to camp and field sanitation, pesticide hazards, and other environmental health problems faced by agricultural migratory workers.

"(f) (1) For payments under grants and contracts under this section, there are authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1975; and $55,000,000 for the fiscal year ending June 30, 1976.

"(2) Of the funds appropriated under paragraph (1) of this subsection for any fiscal year, not more than 30 per centum of such funds shall be used for grants and contracts under subsection (d) for the fiscal year ending June 30, 1975, and not more than 20 per centum of such funds shall be used for such grants and contracts for any suceeding fiscal year. Of the funds appropriated under this subsection for any fiscal year, not more than 10 per centum of such funds shall be used for contracts under subsection (e).

"(g) No grant may be made or contract entered into under this section unless an application therefor has been submitted to and approved by the Secretary. Such application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. The Secretary may not approve an application for a grant under subsection (c) for a migrant health center unless he determines that—

"(1) the center will compile and report such statistics and other information as the Secretary may require with respect to (A) the cost of its operations, (B) the patterns of use of its services, (C) the availability, accessibility, and acceptability of its services, and (D) such other matters as the Secretary may require;

"(2) the center will demonstrate its financial responsibility by the use of accounting procedures and other requirements as may be prescribed by the Secretary in order to insure that the center will maintain a solvent operation;

"(3) the center (A) has or will have a contractual or other arrangement with the agency of the State in which it provides services, which administer or supervises the administration of a State plan approved un-

der title XIX of the Social Security Act, for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (B) has made or will make every reasonable effort to enter into such an arrangement; and

"(4) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of such Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program.

"(h) Contracts under this section may be entered into without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 42 U.S.C. 5)."

SEC. 402. (a) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") shall conduct or arrange for the conduct of a study of—

(1) the quality of housing which is available to agricultural migratory workers in the United States during the period of their employment in seasonal agricultural activities while away from their permanent abodes;

(2) the effect on the health of such workers of deficiencies in their housing conditions during such period; and

(3) Federal, State, and local government standards respecting housing conditions for such workers during such period and the adequacy of the enforcement of such standards.

In conducting or arranging for the conduct of such study, the Secretary shall consult with the Secretary of Housing and Urban Development.

(b) Such study shall be completed and a report detailing the findings of the study and the recommendations of the Secretary for Federal action (including legislation) respecting such housing conditions shall be submitted to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare of the Senate within eighteen months of the date of the enactment of the first Act making appropriations for such study.

TITLE V—COMMUNITY HEALTH CENTERS

SEC. 501. (a) Part C of title III of the Public Health Service Act is amended by adding after section 329 the following new section:

"COMMUNITY HEALTH CENTERS

"SEC. 330. (a)(1) For purposes of this section, the term 'community health center' means an entity which (A) provides, in the manner prescribed by paragraph (2)—

"(i) primary health services,

"(ii) as may be appropriate for particular centers, supplemental health services as necessary for the adequate support of primary health services,

"(iii) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

"(iv) as may be appropriate for particular centers, environmental health services, and

"(v) information on the availability and proper use of health services,

for all residents of the area it serves (referred to in this section as a 'catchment area'), and (B) is organized in the manner prescribed by paragraph (3).

"(2) The services of a community health center shall be provided directly through its staff and supporting resources or through contracts or cooperative arrangements with public or private entities. Primary health services shall be available and accessible in the area served by the center promptly, as appropriate, and in a manner which assures continuity.

"(3)(A) The governing body of a community health center shall meet at least once a month, shall establish general policies for the center, shall approve the center's annual budget, and shall approve the selection of a director for the center. The composition and the manner of selection of the members of the governing body of a community health center shall be prescribed by regulations of the Secretary, except that there shall be on the governing body of a center an equitable representation of consumers of health services from the center, providers of health services, and the general public.

"(B) The center shall have organizational arrangements, established in accordance with regulations prescribed by the Secretary, for (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records.

"(b) For purposes of this section:

"(1) The term 'primary health services' means—

"(A) services of psysicians and, where feasible, services of physicians' assistants and nurse clinicians;

"(B) diagnostic laboratory and radiologic services;

"(C) preventive health services (including children's eye examinations to determine the need for vision correction, perinatal services, well child services, and family planning services);

"(D) emergency medical services;

"(E) transportation services as required for adequate patient care; and

"(F) preventive dental services.

"(2) The term 'supplemental health services' means services which are not included as primary health services and which are—

"(A) hospital services;

"(B) home health services;

"(C) extended care facility services;

"(D) rehabilitation services;

"(E) mental health services;

"(F) dental services;

"(G) vision services;

"(H) allied health services;

"(I) pharmaceutical services;

"(J) health education services; and

"(K) services which promote and facilitate optimal use of primary health services and the services referred to in the preceding subparagraphs of this paragraph.

"(c)(1) The Secretary may make grants to public and nonprofit private entities to assist in (A) the establishment (including modernization of facilities) and initial operation of community health centers which will serve a medically underserved population, (B) meeting the cost of the continued operation of community health centers serving such a population, (C) organizing and coordinating such center and (D) providing training related to the provision of primary, supplemental health, and environmental health services and program management. For purposes of this paragraph, the term 'medically underserved population' means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services.

"(2) Each community health center which receives a grant under paragraph (1) of this subsection shall review periodically its catchment area to (A) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the residents of the area promptly and as appropriate, (B) insure that the boundaries of such area conform, to the extent practicable, with relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (C) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation.

"(d) No grant may be made under subsection (c) unless an application therefor has been submitted to and approved by the Secretary. Such application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. The Secretary may not approve an application for a grant for a community health center unless he determines that—

"(1) the center will compile and report such statistics and other information as the Secretary may require with respect to (A) the cost of its operations, (B) the patterns of use of its services, (C) the availability, accessibility, and acceptability of its services, and (D) such other matters as the Secretary may require;

"(2) the center will demonstrate its financial responsibility by the use of accounting procedures and other requirements as may be prescribed by the Secretary in order to insure that the center maintains a solvent operation;

"(3) the center (A) has or will have a contractual or other arrangement with the agency of the State in which it provides services which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (B) has made or will make every reasonable effort to enter into such an arrangement; and

"(4) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of such Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program.

"(e) For the purpose of making payments under grants under subsection (c), there are authorized to be appropriated $220,000,000 for the fiscal year ending June 30, 1975, and $240,000,000 for the fiscal year ending June 30, 1976.".

(b) Subsection (e) of section 314 of the Public Health Service Act is repealed.

Mr. STAGGERS (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: Page 17, line 8, insert "linguistic," after "cultural,".

Page 17, strike out lines 12 through 14, and insert in lieu thereof the following:

"(c)(1) The governing body of a community mental health center shall, where practicable, be composed of individuals who reside in the center's catchment area and shall be composed of individuals who, as a group, represent

Page 17, line 16, strike out "and place of residence" and insert "place of residence, and other demographic characteristics".

Page 28, line 3, strike out "such a grant" and insert in lieu thereof "a grant under section 203".

Page 29, strike out "and" at the end of line 9.

Page 32, insert after line 2, the following: "(f) For purposes of subsections (c), (d), and (e) of this section, the term 'community mental health center' includes an entity which applies for or has received a grant under section 204(a)(2).

Page 35, line 16, strike out "the catchment areas of which" and insert in lieu thereof "the centers' catchment areas".

Page 47, line 21, strike out "229" and insert in lieu thereof "228".

Page 49, line 11, insert "prescribe" before "general".

Page 52, line 4, strike out "provides" and insert in lieu thereof "provide".

Page 57, line 15, strike out "203" and insert in lieu thereof "303".

Page 58, beginning in line 22, strike out "the fiscal year ending June 30, 1975" and insert in lieu thereof "fiscal years ending after June 30, 1974".

Page 61, insert "(and their families)" after "persons" in line 7 and 11; and strike out "and their families" in line 10.

Page 73, line 5, strike out "center" and insert in lieu thereof "centers serving such populations".

Mr. STAGGERS (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mr. STAGGERS. Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD. They are just amendments as to misspelling of words, punctuation, and such things as that.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

Mr. RONCALIO of Wyoming. Mr. Chairman, reserving the right to object, and I shall not object, would someone tell me what the word "catchment" means when applied to mental health operations?

Mr. STAGGERS. I will be very happy to explain to the gentleman. A catchment is like a basin that catches water. It flows into that. It might be downhill, or it might be uphill. It catches those that come into the area.

Mr. RONCALIO of Wyoming. It has nothing to do with the apprehension and care?

Mr. STAGGERS. No.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

Mr. GROSS. Mr. Chairman, I move to strike the necessary number of words.

Mr. Chairman, if the cost of this bill was stated earlier, I did not hear it. As I understand it, this is a 2-year bill. What is the cost?

Mr. STAGGERS. If the gentleman from Iowa will yield, it is $1.735 billion. I will say to the gentleman that this is even a reduction from what we had in 1973 for the five bills. At that time we had $902,750,000, and this bill that we have here only calls for $809,000,000 during this year and $926,000,000 during the next year, making the total $1,735,000,000.

I might say to the gentleman, to be utterly clear about it, that in 1973 it was higher than it was in 1974, because in 1974 there was $663 million, which is just a little bit below the total amount that we have for these 2 years in this bill, but it takes in five programs.

Mr. GROSS. Does the gentleman anticipate that this will be a growing cost to the taxpayers, or that this consolidation into one bill or one program will mean less expenditure in the future?

Mr. STAGGERS. If the gentleman will yield, I will say that it is hard to say. I would hope that we could in the years ahead—when I will not be here and the gentleman from Iowa will not be here—cut these funds as we go along and learn more and learn how to do and get caught up in the building and experimenting and putting all these things into operation across the Nation.

Mr. GROSS. This is, in fact, an expansion program; is it not?

Mr. STAGGERS. Very small for the 2-year period; yes; but it takes in five programs. In fact, it is really not an expansion of 1973, because they really are subtracted after that.

Mr. GROSS. I thank the gentleman.

Mr. HEINZ. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I wish to compliment the gentleman from Florida (Mr. ROGERS) and our ranking minority member, the gentleman from Minnesota (Mr. NELSEN), for the excellent job they did in bringing this complicated and very much needed piece of legislation to the floor. Indeed, the entire subcommittee and full committee has labored long and hard and are to be commended.

Mr. Chairman, I also rise to discuss title II of H.R. 14314, which amends and extends Public Law 91-572, "The Family Planning Services and Population Research Act of 1970."

One of the purposes of this legislation is "to establish an Office of Population Affairs in the Department of Health, Education, and Welfare as a primary focus within the Federal Government on matters pertaining to population research and family planning, through which the Secretary of Health, Education, and Welfare shall carry out the purposes of this act."

In defining the functions of the Deputy Assistant for Population Affairs, the law states in particular his responsibility" to act as a clearinghouse for information pertaining to domestic and international population research and family planning programs" and "to provide a liaison with the activities carried on by other agencies and instrumentalities of the Federal Government relating to population research and family planning."

Mr. Chairman, this Federal office performs an important and sensitive function. To assist in meeting these far-reaching responsibilities the Secretary of Health, Education, and Welfare has appointed an Advisory Committee on Population Affairs. The Deputy Assistant Secretary is the chairman of this committee, which includes 12 additional members.

I am sure that it was the intent of the Secretary that this committee be broadly representative of the varying viewpoints present in our society toward family planning and population research. Yet, as I review the list of those who serve on the committee, I am amazed to find that there is apparently no representative to speak for the views of those who hold the Roman Catholic faith. The question of family planning and related questions is of grave concern to many Americans, and particularly Roman Catholics. Yet, it appears that the people sharing this concern have been totally excluded from the committee. This seems to me extraordinarily unwise, callous, and discriminatory.

I believe the Secretary would be well advised to meet the intent and purposes of the law that Congress has asked him to administer. The Office of Population Affairs cannot act in good faith as a "primary focus" or a "clearinghouse" or "to provide a liaison" if it continues to exclude, from what is supposed to be a nationally representative advisory committee, the input and advice of a major segment of our Nation's population.

At present, the committee's membership includes two physicians, two lawyers, one endocrinologist, one engineer, one social worker, one student, one Baptist minister, one demographer, one sociologist, and an advertising executive. It is certainly legitimate to include professionals in medicine, law, and the biomedical and social sciences. But it seems to me, in the consideration of questions so fundamental to the future of mankind and the meaning of life, the height of utilitarian arrogance to almost totally ignore the views from the fields of theology, ethics, philosophy, and the humanities.

In my own district, the Family Planning Council of Western Pennsylvania has very successfully included representatives of differing viewpoints, including Monsignor Seli, director of family life programs for the Pittsburgh Catholic Diocese and Monsignor Enright of the Catholic Diocese of Erie, Pa. It is impossible to understand why the Secretary of Health, Education, and Welfare should not make his Advisory Committee on Population Affairs equally broad-based.

In a few days, the Secretary of Health, Education, and Welfare will leave for Bucharest, Romania, as the head of the U.S. delegation to the World Population Conference, which begins on August 19. At this conference the United Nations' Population Commission will present its proposed plan of action. Secretary Weinberger upon return will submit this plan I understand, to the advisory committee for comments and recommendations. It seems to me vital that the Secretary, in view of the imminent additional respon-

sibilities of the advisory committee, move immediately to make the committee broadly representative of viewpoints bearing on the issues of family planning and population research. I view this as a matter of unusual importance and urgency, and I hope that the Secretary will promptly make his intentions clear to the Congress.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker, having resumed the chair, Mr. CHARLES H. WILSON of California, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 14214) to amend the Public Health Service Act and related laws, to revise and extend programs of health revenue sharing and health services, and for other purposes, pursuant to House Resolution 1279, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendments.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. SCHERLE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 359, nays 12, not voting 63, as follows:

[Roll No. 475]

YEAS—359

| | | |
|---|---|---|
| Abzug | Brinkley | Conable |
| Adams | Brooks | Conte |
| Addabbo | Broomfield | Conyers |
| Anderson, Calif. | Brotzman | Corman |
| Anderson, Ill. | Brown, Calif. | Cotter |
| Andrews, N. Dak. | Brown, Ohio | Coughlin |
| Annunzio | Broyhill, N.C. | Cronin |
| Archer | Broyhill, Va. | Daniel, Dan |
| Arends | Buchanan | Daniel, Robert W., Jr. |
| Armstrong | Burgener | Daniels, Dominick V. |
| Ashley | Burke, Calif. | Danielson |
| Badillo | Burke, Fla. | Davis, S.C. |
| Bafalis | Burke, Mass. | Davis, Wis. |
| Baker | Burlison, Mo. | de la Garza |
| Barrett | Burton, John | Delaney |
| Bauman | Burton, Phillip | Dellenback |
| Bell | Butler | Dellums |
| Bennett | Byron | Denholm |
| Bergland | Camp | Dennis |
| Bevill | Carney, Ohio | Dent |
| Biaggi | Carter | Derwinski |
| Biester | Casey, Tex. | Dickinson |
| Bingham | Cederberg | Diggs |
| Blackburn | Chamberlain | Donohue |
| Boggs | Chappell | Drinan |
| Boland | Clancy | Duncan |
| Bolling | Clark | du Pont |
| Bowen | Clausen, Don H. | Eckhardt |
| Brademas | Clawson, Del | Edwards, Ala. |
| Bray | Clay | Edwards, Calif. |
| Breaux | Cleveland | Eilberg |
| Breckinridge | Cochran | Erlenborn |
| Brasco | Collins, Ill. | Esch |
| Brown, Mich. | Collins, Tex. | Eshleman |
| Brown, Ohio | Conable | Evins, Tenn. |
| Broyhill, N.C. | Conte | Findley |
| Broyhill, Va. | Conyers | Fish |
| Buchanan | Corman | Fisher |
| Burgener | Cotter | Flood |
| Burke, Calif. | Coughlin | Flowers |
| Burke, Fla. | Cronin | Foley |
| Burke, Mass. | Daniel, Dan | Ford |
| Burlison, Mo. | Daniel, Robert W., Jr. | Forsythe |
| Burton, John | Daniels, Dominick V. | Fountain |
| Burton, Phillip | Danielson | Fraser |
| Butler | Davis, S.C. | Frelinghuysen |
| Byron | Davis, Wis. | Frenzel |
| Camp | de la Garza | Frey |
| Carney, Ohio | Delaney | Froehlich |
| Carter | Dellenback | Fulton |
| Casey, Tex. | Dellums | Fuqua |
| Cederberg | Denholm | Gaydos |
| Chamberlain | Dennis | Gettys |
| Chappell | Dent | Gibbons |
| Clancy | Derwinski | Gilman |
| Clark | Dickinson | Ginn |
| Clausen, Don H. | Diggs | Goldwater |
| Clawson, Del | Donohue | Gonzalez |
| Clay | Drinan | Grasso |
| Cleveland | Duncan | Green, Oreg. |
| Cochran | du Pont | Green, Pa. |
| Collins, Ill. | Eckhardt | Griffiths |
| Collins, Tex. | Edwards, Ala. | Grover |
| Conable | Edwards, Calif. | Guyer |
| Conte | Eilberg | Haley |
| Conyers | Erlenborn | Hamilton |
| Corman | Esch | Hammer-schmidt |
| Cotter | Eshleman | Hanley |
| Coughlin | Evins, Tenn. | Hanrahan |
| Cronin | Findley | Hansen, Idaho |
| Daniel, Dan | Fish | Harrington |
| Daniel, Robert W., Jr. | Fisher | Harsha |
| Daniels, Dominick V. | Flood | Hastings |
| Danielson | Flowers | Hawkins |
| Davis, S.C. | Foley | Hays |
| Davis, Wis. | Ford | Hechler, W. Va. |
| de la Garza | Forsythe | Heckler, Mass. |
| Delaney | Fountain | Heinz |
| Dellenback | Fraser | Helstoski |
| Dellums | Frelinghuysen | Henderson |
| Denholm | Frenzel | Hicks |
| Dennis | Frey | Hillis |
| Dent | Froehlich | Hinshaw |
| Derwinski | Fulton | Hogan |
| Dickinson | Fuqua | Holifield |
| Diggs | Gaydos | Holt |
| Donohue | Gettys | Holtzman |
| Drinan | Gibbons | Hosmer |
| Duncan | Gilman | Howard |
| du Pont | Ginn | Huber |
| Eckhardt | Goldwater | Hudnut |
| Edwards, Ala. | Gonzalez | Hungate |
| Edwards, Calif. | Grasso | Hunt |
| Eilberg | Green, Oreg. | Hutchinson |
| Erlenborn | Green, Pa. | Ichord |
| Esch | Griffiths | Jarman |
| Eshleman | Grover | Johnson, Calif. |
| Evins, Tenn. | Guyer | Johnson, Colo. |
| Findley | Haley | Johnson, Pa. |
| Fish | Hamilton | Jones, Ala. |
| Fisher | Hammer-schmidt | Jones, N.C. |
| Flood | Hanley | Jones, Okla. |
| Flowers | Hanrahan | Jordan |
| Foley | Hansen, Idaho | Karth |
| Ford | Harrington | Kastenmeier |
| Forsythe | Harsha | Kazen |
| Fountain | Hastings | Kemp |
| Fraser | Hawkins | Ketchum |
| Frelinghuysen | Hays | King |
| Frenzel | Hechler, W. Va. | Koch |
| Frey | Heckler, Mass. | Kuykendall |
| Froehlich | Heinz | Kyros |
| Fulton | Helstoski | Lagomarsino |
| Fuqua | Henderson | Landrum |
| Gaydos | Hicks | Latta |
| Gettys | Hillis | Leggett |
| Gibbons | Hinshaw | Long, La. |
| Gilman | Hogan | Long, Md. |
| Ginn | Holifield | Lujan |
| Goldwater | Holt | Luken |
| Gonzalez | Holtzman | McClory |
| Grasso | Hosmer | McCloskey |
| Green, Oreg. | Howard | McCollister |
| Green, Pa. | Huber | McDade |
| Griffiths | Hudnut | McEwen |
| Grover | Hungate | McFall |
| Guyer | Hunt | McKay |
| Haley | Hutchinson | McKinney |
| Hamilton | Ichord | Macdonald |
| Hammer-schmidt | Jarman | Madden |
| Hanley | Johnson, Calif. | Madigan |
| Hanrahan | Johnson, Colo. | Mahon |
| Hansen, Idaho | Johnson, Pa. | Mallary |
| Harrington | Jones, Ala. | Mann |
| Harsha | Jones, N.C. | Martin, Nebr. |
| Hastings | Jones, Okla. | Martin, N.C. |
| Hawkins | Jordan | Mathias, Calif. |
| Hays | Karth | Mathis, Ga. |
| Hechler, W. Va. | Kastenmeier | Matsunaga |
| Heckler, Mass. | Kazen | Mazzoli |
| Heinz | Kemp | Meeds |
| Helstoski | Ketchum | Melcher |
| Henderson | King | Metcalfe |
| Hicks | Koch | Mezvinsky |
| Hillis | Kuykendall | Michel |
| Hinshaw | Kyros | Milford |
| Hogan | Lagomarsino | Miller |
| Holifield | Landrum | Mills |
| Holt | Latta | Minish |
| Holtzman | Leggett | Mink |
| Hosmer | Long, La. | Minshall, Ohio |
| Howard | Long, Md. | Mitchell, Md. |
| Huber | Lujan | Mitchell, N.Y. |
| Hudnut | Luken | Mizell |
| Hungate | McClory | Moakley |
| Hunt | McCloskey | Mollohan |
| Hutchinson | McCollister | Montgomery |
| Ichord | McDade | Morgan |
| Jarman | McEwen | Mosher |
| Johnson, Calif. | McFall | Moss |
| Johnson, Colo. | McKay | Murphy, Ill. |
| Johnson, Pa. | McKinney | Murtha |
| Jones, Ala. | Macdonald | Myers |
| Jones, N.C. | Madden | Natcher |
| Jones, Okla. | Madigan | Nedzi |
| Jordan | Mahon | Nichols |
| Karth | Mallary | Nix |
| Kastenmeier | Mann | Obey |
| Kazen | Martin, Nebr. | O'Brien |
| Kemp | Martin, N.C. | O'Hara |
| Ketchum | Mathias, Calif. | O'Neill |
| King | Mathis, Ga. | Owens |
| Koch | Matsunaga | Parris |
| Kuykendall | Mazzoli | Patman |
| Kyros | Meeds | Patten |
| Lagomarsino | Melcher | Perkins |
| Landrum | Metcalfe | Pettis |
| Latta | Mezvinsky | Peyser |
| Leggett | Michel | Pickle |
| Long, La. | Milford | Pike |
| Long, Md. | Miller | Poage |
| Lujan | Mills | Powell, Ohio |
| Luken | Minish | Preyer |
| McClory | Mink | Price, Ill. |
| McCloskey | Minshall, Ohio | Price, Tex. |
| McCollister | Mitchell, Md. | Pritchard |
| McDade | Mitchell, N.Y. | Quie |
| McEwen | Mizell | Railsback |
| McFall | Moakley | Randall |
| McKay | Mollohan | Rangel |
| McKinney | Montgomery | Rees |
| Macdonald | Morgan | Regula |
| Madden | Mosher | Reuss |
| Madigan | Moss | Rhodes |
| Mahon | Murphy, Ill. | Riegle |
| Mallary | Murtha | Rinaldo |
| Mann | Myers | Roberts |
| Martin, Nebr. | Natcher | Rodino |
| Martin, N.C. | Nedzi | Roe |
| Mathias, Calif. | Nichols | Rogers |
| Mathis, Ga. | Nix | Roncalio, Wyo. |
| Matsunaga | Obey | Roncallo, N.Y. |
| Mazzoli | O'Brien | Rooney, Pa. |
| Meeds | O'Hara | Rose |
| Melcher | O'Neill | Rosenthal |
| Metcalfe | Owens | Rostenkowski |
| Mezvinsky | Parris | Roush |
| Michel | Patman | Rousselot |
| Milford | Patten | Roybal |
| Miller | Perkins | Runnels |
| Mills | Pettis | Ruppe |
| Minish | Peyser | Ruth |
| Mink | Pickle | Ryan |
| Minshall, Ohio | Pike | St Germain |
| Mitchell, Md. | Poage | Sarasin |
| Mitchell, N.Y. | Powell, Ohio | Sarbanes |
| Mizell | Preyer | Satterfield |
| Moakley | Price, Ill. | Scherle |
| Mollohan | Price, Tex. | Schneebeli |
| Montgomery | Pritchard | Schroeder |
| Morgan | Quie | Sebelius |
| Mosher | Railsback | Seiberling |
| Moss | Randall | Shipley |
| Murphy, Ill. | Rangel | Shriver |
| Murtha | Rees | Sikes |
| Myers | Regula | Sisk |
| Natcher | Reuss | Skubitz |
| Nedzi | Rhodes | Smith, Iowa |
| Nichols | Riegle | Smith, N.Y. |
| Nix | Rinaldo | Snyder |
| Obey | Roberts | Spence |
| O'Brien | Rodino | Staggers |
| O'Hara | Roe | Stanton, J. William |
| O'Neill | Rogers | Stanton, James V. |
| Owens | Roncalio, Wyo. | Stark |
| Parris | Roncallo, N.Y. | Steed |
| Patman | Rooney, Pa. | Steele |
| Patten | Rose | Steelman |
| Perkins | Rosenthal | Steiger, Ariz. |
| Pettis | Rostenkowski | Steiger, Wis. |
| Peyser | Roush | Stephens |
| Pickle | Rousselot | Stokes |
| Pike | Roybal | Stratton |
| Poage | Runnels | Stubblefield |
| Powell, Ohio | Ruppe | Studds |
| Preyer | Ruth | Sullivan |
| Price, Ill. | Ryan | Symington |
| Price, Tex. | St Germain | Talcott |
| Pritchard | Sarasin | Taylor, Mo. |
| Quie | Sarbanes | Taylor, N.C. |
| Railsback | Satterfield | Teague |
| Randall | Scherle | Thomson, Wis. |
| Rangel | Schneebeli | Thone |
| Rees | Schroeder | Thornton |
| Regula | Sebelius | Tiernan |
| Reuss | Seiberling | Towell, Nev. |
| Rhodes | Shipley | Traxler |
| Riegle | Shriver | Udall |
| Rinaldo | Sikes | Ullman |
| Roberts | Sisk | Van Deerlin |
| Rodino | Skubitz | Vander Jagt |
| Roe | Smith, Iowa | Vander Veen |
| Rogers | Smith, N.Y. | Vanik |
| Roncalio, Wyo. | Snyder | Veysey |
| Roncallo, N.Y. | Spence | Vigorito |
| Rooney, Pa. | Staggers | Waggonner |
| Rose | Stanton, J. William | Waldie |
| Rosenthal | Stanton, James V. | Walsh |
| Rostenkowski | Stark | Wampler |
| Roush | Steed | Whalen |
| Rousselot | Steele | White |
| Roybal | Steelman | Whitehurst |
| Runnels | Steiger, Ariz. | Whitten |
| Ruppe | Steiger, Wis. | Widnall |
| Ruth | Stephens | Wilson, Bob |
| Ryan | Stokes | Wilson, Charles H., Calif. |
| St Germain | Stratton | Wilson, Charles, Tex. |
| Sarasin | Stubblefield | Winn |
| Sarbanes | Studds | Wolff |
| Satterfield | Sullivan | Wright |
| Scherle | Symington | Wyatt |
| Schneebeli | Talcott | Wydler |
| Schroeder | Taylor, Mo. | Wylie |
| Sebelius | Taylor, N.C. | Wyman |
| Seiberling | Teague | Yates |
| Shipley | Thomson, Wis. | Yatron |
| Shriver | Thone | Young, Alaska |
| Sikes | Thornton | Young, Fla. |
| Sisk | Tiernan | Young, Ill. |
| Skubitz | Towell, Nev. | Young, S.C. |
| Smith, Iowa | Traxler | Young, Tex. |
| Smith, N.Y. | Udall | Zablocki |
| Snyder | Ullman | Zion |
| Spence | Van Deerlin | Zwach |
| Staggers | Vander Jagt | |
| Stanton, J. William | Vander Veen | |
| Stanton, James V. | Vanik | |
| Stark | Veysey | |
| Steed | Vigorito | |
| Steele | Waggonner | |
| Steelman | Waldie | |
| Steiger, Ariz. | Walsh | |
| Steiger, Wis. | Wampler | |
| Stephens | Whalen | |
| Stokes | White | |
| Stratton | Whitehurst | |
| Stubblefield | Whitten | |
| Studds | Widnall | |
| Sullivan | Wilson, Bob | |
| Symington | Wilson, Charles H., Calif. | |
| Talcott | Wilson, Charles, Tex. | |
| Taylor, Mo. | Winn | |
| Taylor, N.C. | Wolff | |
| Teague | Wright | |
| Thomson, Wis. | Wyatt | |
| Thone | Wydler | |
| Thornton | Wylie | |
| Tiernan | Wyman | |
| Towell, Nev. | Yates | |
| Traxler | Yatron | |
| Udall | Young, Alaska | |
| Ullman | Young, Fla. | |
| Van Deerlin | Young, Ill. | |
| Vander Jagt | Young, S.C. | |
| Vander Veen | Young, Tex. | |
| Vanik | Zablocki | |
| Veysey | Zion | |
| Vigorito | Zwach | |
| Waggonner | | |
| Waldie | | |
| Walsh | | |
| Wampler | | |
| Whalen | | |
| White | | |
| Whitehurst | | |
| Whitten | | |
| Widnall | | |
| Wilson, Bob | | |
| Wilson, Charles H., Calif. | | |
| Wilson, Charles, Tex. | | |
| Winn | | |
| Wolff | | |
| Wright | | |
| Wyatt | | |
| Wydler | | |
| Wylie | | |
| Wyman | | |
| Yates | | |
| Yatron | | |
| Young, Alaska | | |
| Young, Fla. | | |
| Young, Ill. | | |
| Young, S.C. | | |
| Young, Tex. | | |
| Zablocki | | |
| Zion | | |
| Zwach | | |

NAYS—12

| | | |
|---|---|---|
| Ashbrook | Devine | Robinson, Va. |
| Burleson, Tex. | Goodling | Shuster |
| Collins, Tex. | Gross | Symms |
| Crane | Landgrebe | Ware |

NOT VOTING—63

| | | |
|---|---|---|
| Abdnor | Brasco | Conlan |
| Alexander | Brown, Mich. | Culver |
| Andrews, N.C. | Carey, N.Y. | Davis, Ga. |
| Aspin | Chisholm | Dingell |
| Beard | Cohen | Dorn |
| Blatnik | Collier | Downing |
| Dulski | Lent | Rarick |
| Evans, Colo. | Litton | Reid |
| Fascell | Lott | Robison, N.Y. |
| Flynt | McCormack | Rooney, N.Y. |
| Giaimo | McSpadden | Roy |
| Gray | Maraziti | Sandman |
| Gubser | Mayne | Shoup |
| Gude | Moorhead, Calif. | Slack |
| Gunter | Moorhead, Pa. | Stuckey |
| Hanna | Murphy, N.Y. | Thompson, N.J. |
| Hansen, Wash. | Nelsen | Treen |
| Hébert | Passman | Wiggins |
| Horton | Pepper | Williams |
| Jones, Tenn. | Podell | Young, Ga. |
| Kluczynski | Quillen | |
| Lehman | | |

So the bill was passed.

The Clerk announced the following pairs:

Mr. Thompson of New Jersey with Mr. Andrews of North Carolina.

Mr. Murphy of New York with Mr. Blatnik.

Mr. Rooney of New York with Mr. Culver.

Mr. Moorhead of Pennsylvania with Mr. Davis of Georgia.

Mr. Fascell with Mr. Dorn.

Mr. Kluczynski with Mr. Dulski.

Mr. Hébert with Mr. Gunter.

Mr. Giaimo with Mr. Abdnor.

Mr. Flynt with Mr. Shoup.

Mr. Carey of New York with Mr. Robison of New York.

Mr. Alexander with Mr. Quillen.

Mrs. Chisholm with Mrs. Hansen of Washington.

Mr. Dingell with Mr. Cohen.

Mr. Evans of Colorado with Mr. Gubser.

Mr. Downing with Mr. Collier.

Mr. Jones of Tennessee with Mr. Lott.

Mr. Podell with Mr. Brown of Michigan.

Mr. Slack with Mr. Gude.

Mr. Young of Georgia with Mr. Gray.

Mr. Pepper with Mr. Lent.

Mr. Passman with Mr. Beard.

Mr. Roy with Mr. Maraziti.

Mr. Stuckey with Mr. Conlan.

Mr. Aspin with Mr. Mayne.

Mr. Lehman with Mr. Horton.

Mr. Litton with Mr. Moorhead of California.

Mr. McCormack with Mr. Nelsen.

Mr. McSpadden with Mr. Sandman.

Mr. Rarick with Mr. Wiggins.

Mr. Reid with Mr. Treen

Mr. Hanna with Mr. Williams.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

## PERMISSION TO FILE CONFERENCE REPORT ON S. 3066, HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Mr. PATMAN. Mr. Speaker, I ask unanimous consent that the managers have until midnight tonight to file a conference report on the Senate bill S. 3066, to consolidate, simplify, and improve laws relative to housing and housing assistance, to provide Federal assistance in support of community development activities, and for other purposes.

The SPEAKER. Is there objection to

the request of the gentleman from Texas?

There was no objection.

CONFERENCE REPORT (H. REPT. No. 93-1279)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3066) to consolidate, simplify, and improve laws relative to housing and housing assistance, to provide Federal assistance in support of community development activities, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment to the text of the bill insert the following:

That this Act may be cited as the "Housing and Community Development Act of 1974."

TITLE I—COMMUNITY DEVELOPMENT

FINDINGS AND PURPOSE

SEC. 101. (a) The Congress finds and declares that the Nation's cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from—

(1) the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities; and

(2) inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment.

(b) The Congress further finds and declares that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable urban communities as social, economic, and political entities, and require—

(1) systematic and sustained action by Federal, State, and local governments to eliminate blight, to conserve and renew older urban areas, to improve the living environment of low- and moderate-income families, and to develop new centers of population growth and economic activity;

(2) substantial expansion of and greater continuity in the scope and level of Federal assistance, together with increased private investment in support of community development activities; and

(3) continuing effort at all levels of government to streamline programs and improve the functioning of agencies responsible for planning, implementing, and evaluating community development efforts.

(c) The primary objective of this title is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the Federal assistance provided in this title is for the support of community development activities which are directed toward the following specific objectives—

(1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;

(2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;

(3) the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;

(4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

(5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income; and

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons.

It is the intent of Congress that the Federal assistance made available under this title not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

(d) It is also the purpose of this title to further the development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid which—

(1) provides assistance on an annual basis, with maximum certainty and minimum delay, upon which communities can rely in their planning;

(2) encourages community development activities which are consistent with comprehensive local and areawide development planning;

(3) furthers achievement of the national housing goal of a decent home and a suitable living environment for every American family; and

(4) fosters the undertaking of housing and community development activities in a coordinated and mutually supportive manner.

DEFINITIONS

SEC. 102. (a) As used in this title—

(1) The term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; the Trust Territory of the Pacific Islands; and Indian tribes, bands, groups, and nations, including Alaska Indians, Aleuts, and Eskimos, of the United States. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

(2) The term "State" means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(3) The term "metropolitan area" means a standard metropolitan statistical area as established by the Office of Management and Budget.

(4) The term "metropolitan city" means (A) a city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or (B) any other city, within a metropolitan area, which has a population of fifty thousand or more.

(5) The term "city" means (A) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (B) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possess powers and performs functions comparable to those associated with municipalities, (ii) is closely settled, and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census.

(6) The term "urban county" means any county within a metropolitan area which (A) is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and (B) has a combined population of two hundred thousand or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (i) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities.

(7) The term "population" means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(8) The term "extent of poverty" means the number of persons whose incomes are below the poverty level. Poverty levels shall be determined by the Secretary pursuant to criteria provided by the Office of Management and Budget, taking into account and making adjustments, if feasible and appropriate and in the sole discretion of the Secretary, for regional or area variations in income and cost of living, and shall be based on data referable to the same point or period in time.

(9) The term "extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(10) The term "Federal grant-in-aid program" means a program of Federal financial assistance other than loans and other than the assistance provided by this title.

(11) The term "program period" means the period beginning January 1, 1975, and ending June 30, 1975, and the period covering each fiscal year thereafter.

(12) The term "Community Development Program" means a program described in section 104(a)(2).

(13) The term "Secretary" means the Secretary of Housing and Urban Development.

(b) Where appropriate, the definitions in subsection (a) shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year. The Secretary may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

(c) One or more public agencies, includ-

ing existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government to undertake a Community Development Program in whole or in part.

AUTHORIZATION TO MAKE GRANTS

SEC. 103. (a)(1) The Secretary is authorized to make grants to States and units of general local government to help finance Community Development Programs approved in accordance with the provisions of this title. The Secretary is authorized to incur obligations on behalf of the United States in the form of grant agreements or otherwise in amounts aggregating such sum, not to exceed $8,400,000,000, as may be approved in an appropriation Act. The amount so approved shall become available for obligation on January 1, 1975, and shall remain available until obligated. There are authorized to be appropriated for liquidation of the obligations incurred under this subsection not to exceed $2,500,000,000 prior to the close of the fiscal year 1975, which amount may be increased to not to exceed an aggregate of $5,450,000,000 prior to the close of the fiscal year 1976, and to not to exceed an aggregate of $8,400,000,000 prior to the close of the fiscal year 1977. Subject to the limitations contained in the preceding sentence, appropriations for—

(A) grants under title VII of the Housing Act of 1961;

(B) grants under sections 702 and 703 of the Housing and Urban Development Act of 1965; and

(C) supplemental grants under title I of the Demonstration Cities and Metropolitan Development Act of 1966,

may be used, to the extent not otherwise obligated prior to January 1, 1975, for the liquidation of contracts entered into pursuant to this section.

(2) Of the amounts approved in appropriation Acts pursuant to paragraph (1), $50,000,000 for each of the fiscal years 1975 and 1976 shall be added to the amount available for allocation under section 106(d) and shall not be subject to the provisions of section 107.

(b) In addition to the amounts made available under subsection (a), and for the purpose of facilitating an orderly transition to the program authorized under this title, there are authorized to be appropriated not to exceed $50,000,000 for each of the fiscal years 1975 and 1976, and not to exceed $100,000,000 for the fiscal year 1977, for grants under this title to units of general local government having urgent community development needs which cannot be met through the operation of the allocation provisions of section 106.

(c) Sums appropriated pursuant to this section shall remain available until expended.

(d) To assure program continuity and orderly planning, the Secretary shall submit to the Congress timely requests for additional authorizations for the fiscal years 1978 through 1980.

APPLICATION AND REVIEW REQUIREMENTS

SEC. 104. (a) No grant may be made pursuant to section 106 unless an application shall have been submitted to the Secretary in which the applicant—

(1) sets forth a summary of a three-year community development plan which identifies community development needs, demonstrates a comprehensive strategy for meeting those needs and specifies both short- and long-term community development objectives which have been developed in accordance with areawide development planning and national urban growth policies;

(2) formulates a program which (A) includes the activities to be undertaken to meet its community development needs and objectives, together with the estimated costs and general location of such activities, (B) indicates resources other than those provided under this title which are expected to be made available toward meeting its identified needs and objectives, and (C) takes into account appropriate environmental factors;

(3) describes a program designed to—

(A) eliminate or prevent slums, blight, and deterioration where such conditions or needs exist; and

(B) provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate.

(4) submits a housing assistance plan which—

(A) accurately surveys the condition of the housing stock in the community and assesses the housing assistance needs of lower-income persons (including elderly and handicapped persons, large families, and persons displaced or to be displaced) residing in or expected to reside in the community.

(B) specifies a realistic annual goal for the number of dwelling units or persons to be assisted, including (i) the relative proportion of new, rehabilitated, and existing dwelling units, and (ii) the sizes and types of housing projects and assistance best suited to the needs of lower-income persons in the community, and

(C) indicates the general locations of proposed housing for lower-income persons, with the objective of (i) furthering the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible, (ii) promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low-income persons, and (iii) assuring the availability of public facilities and services adequate to serve proposed housing projects;

(5) provides satisfactory assurances that the program will be conducted and administered in conformity with Public Law 88-352 and Public Law 90-234; and

(6) provides satisfactory assurances that, prior to submission of its application, it has (A) provided citizens with adequate information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements, (B) held public hearings to obtain the views of citizens on community development and housing needs, and (C) provided citizens an adequate opportunity to participate in the development of the application; but no part of this paragraph shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its Community Development Program.

(b)(1) Not more than 10 per centum of the estimated costs referred to in subsection (a)(2) which are to be incurred during any contract period may be designated for unspecified local option activities which are eligible for assistance under section 105(a) or for a contingency account for activities designated by the applicant pursuant to subsection (a)(2).

(2) Any grant under this title shall be made only on condition that the applicant certify to the satisfaction of the Secretary that its Community Development Program has been developed so as to give maximum feasible priority to activities which will benefit low- or moderate-income families or aid in the prevention or elimination of slums or blight. The Secretary may also approve an application describing activities which the applicant certifies and the Secretary determines are designed to meet other community development needs having a particular urgency as specifically described in the application.

(3) The Secretary may waive all or part of the requirements contained in paragraphs (1), (2), and (3) of subsection (a) if (A) the application for assistance is in behalf of a locality having a population of less than 25,000 according to the most recent data compiled by the Bureau of the Census which is located either (i) outside a standard metropolitan statistical area, or (ii) inside such an area but outside an "urbanized area" as defined by the Bureau of the Census (or as such definition is modified by the Secretary for purposes of this title), (B) the application relates to the first community development activity to be carried out by such locality with assistance under this title, (C) the assistance requested is for a single development activity under this title of a type eligible for assistance under title VII of the Housing Act of 1961 or title VII of the Housing and Urban Development Act of 1965, and (D) the Secretary determines that, having regard to the nature of the activity to be carried out, such waiver is not inconsistent with the purposes of this title.

(4) The Secretary may accept a certification from the applicant that it has complied with the requirements of paragraphs (5) and (6) of subsection (a).

(c) The Secretary shall approve an application for an amount which does not exceed the amount determined in accordance with section 106(a) unless—

(1) on the basis of significant facts and data, generally available and pertaining to community and housing needs and objectives, the Secretary determines that the applicant's description of such needs and objectives is plainly inconsistent with such facts or data; or

(2) on the basis of the application, the Secretary determines that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant pursuant to subsection (a); or

(3) the Secretary determines that the application does not comply with the requirements of this title or other applicable law or proposes activities which are ineligible under this title.

(d) Prior to the beginning of fiscal year 1977 and each fiscal year thereafter, each grantee shall submit to the Secretary a performance report concerning the activities carried out pursuant to this title, together with an assessment by the grantee of the relationship of those activities to the objectives of this title and the needs and objectives identified in the grantee's statement submitted pursuant to subsection (a). The Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out a program substantially as described in its application, whether that program conformed to the requirements of this title and other applicable laws, and whether the applicant has a continuing capacity to carry out in a timely manner the approved Community Development Program. The Secretary may make appropriate adjustments in the amount of the annual grants in accordance with his findings pursuant to this subsection.

(e) No grant may be made under this title unless the application therefor has been submitted for review and comment to an areawide agency under procedures established by the President pursuant to title II of the Demonstration Cities and Metropolitan Development Act of 1966 and title IV of the Intergovernmental Cooperation Act of 1968.

(f) An application subject to subsection (c), if submitted after any date established by the Secretary for consideration of applications, shall be deemed approved within 75 days after receipt unless the Secretary informs the applicant of specific reasons for disapproval. Subsequent to approval of the application, the amount of the grant may be adjusted in accordance with the provisions of this title.

(g) Insofar as they relate to funds provided under this title, the financial transactions of recipients of such funds may be audited by

the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(h)(1) In order to assure that the policies of the National Environmental Policy Act of 1969 are most effectively implemented in connection with the expenditure of funds under this title, and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to applicants who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act that would apply to the Secretary were he to undertake such projects as Federal projects. The Secretary shall issue regulations to carry out this subsection only after consultation with the Council on Environmental Quality.

(2) The Secretary shall approve the release of funds for projects subject to the procedures authorized by this subsection only if, at least fifteen days prior to such approval and prior to any commitment of funds to such projects other than for purposes authorized by section 105(a)(12) or for environmental studies, the applicant has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of paragraph (3). The Secretary's approval of any such certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act insofar as those responsibilities relate to the applications and releases of funds for projects to be carried out pursuant thereto which are covered by such certification.

(3) A certification under the procedures authorized by this subsection shall—

(A) be in a form acceptable to the Secretary.

(B) be executed by the chief executive office or other officer of the applicant qualified under regulations of the Secretary.

(C) specify that the applicant has fully carried out its responsibilities as described under paragraph (1) of this subsection, and

(D) specify that the certifying officer (i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply pursuant to paragraph (1) of this subsection, and (ii) is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

COMMUNITY DEVELOPMENT PROGRAM ACTIVITIES ELIGIBLE FOR ASSISTANCE

SEC. 105. (a) A Community Development Program assisted under this title may include only—

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restortaion of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or (E) to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements—including neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations and platforms for air rights sites, pedestrian malls and walkways, and parks, playgrounds, and recreation facilities, flood and drainage facilities in cases where assistance for such facilities under other Federal laws or programs is determined to be unavailable and parking facilities, solid waste disposal facilities, and fire-protection services and facilities which are located in or which serve designated community development areas;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, and rehabilitation of buildings and improvements (including interim assistance and financing rehabilitation of privately owned properties when incidental to other activities);

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities under this title;

(7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

(8) provision of public services not otherwise available in areas where other activities assisted under this title are being carried out in a concentrated manner, if such services are determined to be necessary or appropriate to support such other activities and if assistance in providing or securing such services under other applicable Federal laws or programs has been applied for and denied or not made available within a reasonable period of time, and if such services are directed toward (A) improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas, and (B) coordinating public and private development programs;

(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of the Community Development Program;

(10) payment of the cost of completing a project funded under title I of the Housing Act of 1949;

(11) relocation payments and assistance for individuals, families, businesses, organizations, and farm operations displaced by activities assisted under this title;

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation; and

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities.

(b) Upon the request of the recipient of a grant under this title, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a)(4).

ALLOCATION AND DISTRIBUTION OF FUNDS

SEC. 106. (a) Of the amount approved in an appropriation Act under section 103(a) for grants in any year (excluding the amount provided for use in accordance with sections 103(a)(2) and 107), 80 per centum shall be allocated by the Secretary to metropolitan areas. Except as provided in subsections (c) and (e), such metropolitan city and urban county shall, subject to the provisions of section 104 and except as otherwise specifically authorized, be entitled to annual grants from such allocation in an aggregate amount not exceeding the greater of its basic amount computed pursuant to paragraph (2) or (3) of subsection (b) or its hold-harmless amount computed pursuant to subsection (g).

(b)(1) The Secretary shall determine the amount to be allocated to all metropolitan cities which shall be an amount that bears the same ratio to the allocation for all metropolitan areas as the average of the ratios between—

(A) the population of all metropolitan cities and the population of all metropolitan areas;

(B) the extent of poverty in all metropolitan cities and the extent of poverty in all metropolitan areas; and

(C) the extent of housing overcrowding in all metropolitan cities and the extent of housing overcrowding in all metropolitan areas.

(2) From the amount allocated to all metropolitan cities the Secretary shall determine for each metropolitan city a basic grant amount which shall equal an amount that bears the same ratio to the allocation for all metropolitan cities as the average of the ratios between—

(A) the population of that city and the population of all metropolitan cities;

(B) the extent of poverty in that city and the extent of poverty in all metropolitan cities; and

(C) the extent of housing overcrowding in that city and the extent of housing overcrowding in all metropolitan cities.

(3) The Secretary shall determine the basic grant amount of each urban county by—

(A) calculating the total amount that would have been allocated to metropolitan cities and urban counties together under paragraph (1) of this subsection if data pertaining to the population, extent of poverty, and extent of housing overcrowding in all urban counties were included in the numerator of each of the fractions described in such paragraph; and

(B) determining for each county the amount which bears the same ratio to the total amount calculated under subparagraph (A) of this paragraph as the average of the ratios between—

(i) the population of that urban county and the population of all metropolitan cities and urban counties;

(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan cities and urban counties; and

(iii) the extent of housing overcrowding in that urban county and the extent of housing overcrowding in all metropolitan cities and urban counties.

(4) In determining the average of ratios under paragraphs (1), (2), and (3), the ratio involving the extent of poverty shall be counted twice.

(5) In computing amounts or exclusions under this section with respect to any urban county there shall be excluded units of gen-

eral local government located in the county (A) which receive hold-harmless grants pursuant to subsection (h), or (B) the populations of which are not counted in determining the eligibility of the urban county to receive a grant under this subsection.

(c) During the first three years for which funds are approved for distribution to a metropolitan city or urban county under this section, the basic grant amount of such city or county as computed under subsection (b) shall be adjusted as provided in this subsection if the amount so computed for the first such year exceeds the city's or county's hold-harmless amount as determined under subsection (g). Such adjustment shall be made so that—

(1) the amount for the first year does not exceed one-third of the full basic grant amount computed under subsection (b), or the hold-harmless amount, whichever is the greater,

(2) the amount for the second year does not exceed two-thirds of the full basic grant amount computed under subsection (b), or the hold-harmless amount, or the amount allowed under paragraph (1) of this subsection, whichever is the greatest, and

(3) the amount for the third year does not exceed the full basic grant amount computed under subsection (b).

(d) Any portion of the amount allocated to metropolitan areas under the first sentence of subsection (a) which remains after the allocation of grants to metropolitan cities and urban counties in accordance with subsections (b) and (c) and any amounts added in accordance with the provisions of section 103(a)(2) shall be allocated by the Secretary—

(1) first, for grants to metropolitan cities, urban counties, and other units of general local government within metropolitan areas to meet their hold-harmless needs as determined under subsections (g) and (h); and

(2) second, for grants to units of general local government (other than metropolitan cities and urban counties) and States for use in metropolitan areas, allocating for each such metropolitan area an amount which bears the same ratio to the allocation for all metropolitan areas available under this paragraph as the average of the ratios between—

(A) the population of that metropolitan area and the population of all metropolitan areas.

(B) the extent of poverty in that metropolitan area and the extent of poverty in all metropolitan areas, and

(C) the extent of housing overcrowding in that metropolitan area and the extent of housing overcrowding in all metropolitan areas.

In determining the average of ratios under paragraph (2), the ratio involving the extent of poverty shall be counted twice; and in computing amounts under such paragraph there shall be excluded any metropolitan cities, urban counties, and units of general local government which receive hold-harmless grants pursuant to subsection (h).

(e) Any amounts allocated to a metropolitan city or urban county pursuant to the preceding provisions of this section which are not applied for during a program period or which are not approved by the Secretary, and any other amounts allocated to a metropolitan area which the Secretary determines, on the basis of the applications and other evidence available, are not likely to be fully obligated during such program period, shall be reallocated during the same period for use by States, metropolitan cities, urban counties, or units of general local government, first, in any metropolitan area in the same State, and second, in any other metropolitan area. The Secretary shall review determinations under this subsection from time to time as appropriate with a view of assuring maximum use of all available funds in the period for which such funds were appropriated.

(f)(1) Of the amount approved in an appropriation Act under section 103(a) for grants in any year (excluding the amount provided for use in accordance with sections 103(a)(2) and 107), 20 per centum shall be allocated by the Secretary—

(A) first, for grants to units of general local government outside of metropolitan areas to meet their hold-harmless needs as determined under subsection (h); and

(B) second, for grants to units of general local government outside of metropolitan areas and States for use outside of metropolitan areas, allocating for the nonmetropolitan areas of each State an amount which bears the same ratio to all allocations available under this subparagraph for the nonmetropolitan areas of all States as the average of the ratios between—

(i) the population of the nonmetropolitan areas of that State and the population of the nonmetropolitan areas of all the States,

(ii) the extent of poverty in the nonmetropolitan areas of that State and the extent of poverty in the nonmetropolitan areas of all the States, and

(iii) the extent of housing overcrowding in the nonmetropolitan areas of that State and the extent of housing overcrowding in the nonmetropolitan areas of all the States.

In determining the average of ratios under subparagraph (B), the ratio involving the extent of poverty shall be counted twice; and in computing amounts under such subparagraph there shall be excluded units of general local government which receive hold-harmless grants pursuant to subsection (h).

(2) Any amounts allocated to a unit of general local government under paragraph (1) which are not applied for during a program period or which are not approved by the Secretary, and any amounts allocated to the metropolitan areas of a State under paragraph (1)(B) which the Secretary determines, on the basis of applications and other evidence available, are not likely to be fully obligated during such period, shall be reallocated as soon as practicable during the same period to the metropolitan areas of other States. The Secretary shall review determinations under this paragraph from time to time with a view to assuring maximum use of all available funds in the program period for which such funds were appropriated.

(g)(1) The full hold-harmless amount of each metropolitan city or urban county shall be the sum of (i) the sum of the average during the five fiscal years ending prior to July 1, 1972, of (1) commitments for grants (as determined by the Secretary) pursuant to part A of title I of the Housing Act of 1949; (2) loans pursuant to section 312 of the Housing Act of 1964; (3) grants pursuant to sections 702 and 703 of the Housing and Urban Development Act of 1965; (4) loans pursuant to title II of the Housing Amendments of 1955; and (5) grants pursuant to title VII of the Housing Act of 1961; and (ii) the average annual grant, as determined by the Secretary, made in accordance with part B of title I of the Housing Act of 1949 during the fiscal years ending prior to July 1, 1972, or during the fiscal year 1973 in the case of a metropolitan city or urban county which first received a grant under part B of such title in such fiscal year. In the case of a metropolitan city or urban couny which has participated in the program authorized under section 105 of the Demonstration Cities and Metropolitan Development Act of 1966 and which has been funded or extended in the fiscal year 1973 for a period ending after June 30, 1973, determinations of the hold-harmless amount of such metropolitan city or urban county for the following specified years shall be made so as to include, in addition to the amounts specified in clauses (i) and (ii) of the preceding sentence, the following percentages of the average annual grant, as determined by the Secretary made in accordance with such section during fiscal years ending prior to July 1, 1972—

(A) 100 per centum for each of a number of years which, when added to the number of funding years for which the city or county received grants under section 105, equals five;

(B) 80 per centum for the year immediately following year five as determined pursuant to clause (A),

(C) 60 per centum for the year immediately following the year provided for in clause (B); and

(D) 40 per centum for the year immediately following the year provided for in clause (C).

For the purposes of this paragraph the average annual grant under part B of title I of the Housing Act of 1949 or under section 105 of the Demonstration Cities and Metropolitan Development Act of 1966 shall be established by dividing the total amount of grants made to a participant under the program by the number of months of program activity for which funds were authorized and multiplying the result by twelve.

(2) During the fiscal years 1975, 1976, and 1977, the hold-harmless amount of any metropolitan city or urban county shall be the full amount computed for the city or county in accordance with paragraph (1). In the fiscal years 1978, 1979, and 1980, if such amount is greater than the basic grant amount of the metropolitan city or urban county for that year, as computed under subsection (b)(2) or (3), it shall be reduced so that—

(i) in the fiscal year 1978, the excess of the hold-harmless amount over the basic grant amount shall equal two-thirds of the difference between the amount computed under paragraph (1) and the basic grant amount for such year,

(ii) in the fiscal year 1979, the excess of the hold-harmless amount over the basic grant amount shall equal one-third of the difference between the amount computed under paragraph (1) and the basic grant amount for such year, and

(iii) in the fiscal year 1980, there shall be no excess of the hold-harmless amount over the basic grant amount.

(h)(1) Any unit of general local government which is not a metropolitan city or urban county shall, subject to the provisions of section 104 and except as otherwise specifically authorized, be entitled to grants under this title for any year in an aggregate amount at least equal to a hold-harmless amount as computed under the provisions of subsection (g)(1) if, during the five-fiscal-year period specified in the first sentence of subsection (g)(1) (or during the fiscal year 1973 in the case of a locality which first received a grant for a neighborhood development program in that year), one or more urban renewal projects, code enforcement programs, neighborhood development programs, or model cities programs were being carried out by such unit of general local government pursuant to commitments for assistance entered into during such period under title I of the Housing Act of 1949 or title I of the Demonstration Cities and Metropolitan Development Act of 1966.

(2) In the fiscal years 1978, 1979, and 1980, in determining the hold-harmless amount of units of general local government qualifying under this subsection, the second sentence of subsection (g)(2) shall be applied as though such units were metropolitan cities or urban counties with basic grant amounts of zero.

(i) In excluding the population, poverty, and housing overcrowding data of units of general local governments which receive a hold-harmless grant pursuant to subsection (h) from the computations described in sub-

sections (b)(5), (d), and (f) of this section, the Secretary shall exclude only two-thirds of such data for the fiscal year 1978 and one-third of such data for the fiscal year 1979.

(j) Any unit of general local government eligible for a hold-harmless grant pursuant to subsection (h) may, not later than thirty days prior to the beginning of any program period, irrevocably waive its eligibility under such subsection. In the case of such a waiver the unit of general local government shall not be excluded from the computations described in subsections (b)(5), (d), and (f) of this section.

(k) The Secretary may fix such qualification or submission dates as he determines are necessary to permit the computations and determinations required by this section to be made in a timely manner, and all such computations and determinations shall be final and conclusive.

(l) Not later than March 31, 1977, the Secretary shall make a report to the Congress setting forth such recommendations as he deems advisable, in furtherance of the purposes and policy of this title, for modifying or expanding the provisions of this section relating to the method of funding and the allocation of funds and the determination of the basic grant entitlement, and for the application of such provisions in the further distribution of funds under this title. In making this report, the Secretary shall conduct a study to determine how funds authorized under this title can be distributed in accordance with community development needs, objectives, and capacities, measured to the maximum extent feasible by objective standards.

DISCRETIONARY FUND

SEC. 107. (a) Of the total amount of authority to enter into contracts approved in appropriation Acts under section 103(a)(1) for each of the fiscal years 1975, 1976, and 1977, an amount equal to 2 per centum thereof shall be reserved and set aside in a special discretionary fund for use by the Secretary in making grants (in addition to any other grants which may be made under this title to the same entities or for the same purposes)—

(1) in behalf of new communities assisted under title VII of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968;

(2) to States and units of general local government which join in carrying out housing and community development programs that are areawide in scope;

(3) in Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands;

(4) To States and units of general local government for the purpose of demonstrating innovative community development projects;

(5) to States and units of general local government for the purpose of meeting emergency community development needs caused by federally recognized disasters; and

(6) to States and units of general local government where the Secretary deems it necessary to correct inequities resulting from the allocation provisions of section 106.

(b) Not more than one-fourth of the total amount reserved and set aside in the special discretionary fund under subsection (a) for each year may be used for grants to meet emergency disaster needs under subsection (a)(5).

(c) Amounts reserved and set aside in the special discretionary fund under subsection (a) in any fiscal year but not used in such year shall remain available for use in accordance with subsections (a) and (b) in subsequent fiscal years.

GUARANTEE OF LOANS FOR ACQUISITION OF PROPERTY

SEC. 108. (a) The Secretary is authorized, upon such terms and conditions as he may prescribe, to guarantee and make commitments to guarantee the notes or other obligations issued by units of general local government, or by public agencies designated by such units of general local government, for the purpose of financing the acquisition or assembly of real property (including such expenses related thereto as the Secretary may permit by regulation) to serve or be used in carrying out activities which are eligible for assistance under section 105 and are identified in the application under section 104, and with respect to which grants have been or are to be made under section 103, but no such guarantee shall be issued in behalf of any agency designed to benefit, in or by the flotation of any issue, a private individual or corporation.

(b) No guarantee or commitment to guarantee shall be made with respect to any unit of general local government or public agency designated by any such unit of general local government unless—

(1) the Secretary, from sums approved in appropriation Acts and allocated for obligation to the unit of general local government pursuant to sections 106 and 107, shall have reserved and withheld, for the purpose of paying the guaranteed obligations (including interest), an amount which is at least equal to 110 per centum of the difference between the cost of acquiring the land and related expenses and the estimated proceeds to be derived from the sale or other disposition of the land, as determined or approved by the Secretary, which amount may subsequently be increased by the Secretary to the extent he determines such increase is necessary or appropriate because of any unanticipated, major reduction in such estimated disposition proceeds;

(2) the unit of general local government shall have given to the Secretary, in a form acceptable to him, a pledge of its full faith and credit, or a pledge of revenues approved by the Secretary, for the repayment of so much of any amount required to be paid by the United States pursuant to any guarantee under this section as is equal to the difference between the principal amount of the guaranteed obligations and interest thereon and the amount which is to be reserved and withheld under paragraph (1); and

(3) the unit of general local government has pledged to the repayment of any amounts which are required to be paid by the United States pursuant to its guarantee under this section, and which are not otherwise fully repaid when due pursuant to paragraph (1) and (2), the proceeds of any grants for which such unit of general local government may become eligible under this title.

(c) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

(d) The Secretary may issue obligations to the Secretary of the Treasury in an amount outstanding at any one time sufficient to enable the Secretary to carry out his obligations under guarantees authorized by this section. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Secretary issued under this section, and for such purposes is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which such securities may be issued under such Act are extended to include the purchases of the Secretary's obligations hereunder.

(e) Obligations guaranteed under this section may, at the option of the issuing unit of general local government or designated agency, be subject to Federal taxation as provided in subsection (g). In the event that taxable obligations are issued and guaranteed, the Secretary is authorized to make, and to contract to make, grants to or on behalf of the issuing unit of general local government or public agency to cover not to exceed 30 per centum of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing unit or agency of such obligations.

(f) Section 3689 of the Revised Statutes, as amended (31 U.S.C. 711), is amended by adding at the end thereof a new paragraph as follows:

"(22) For payments required from time to time under contracts entered into pursuant to section 108 of the Housing and Community Development Act of 1974 for payment of interest costs on obligations guaranteed by the Secretary of Housing and Urban Development under that section."

(g) With respect to any obligation issued by a unit of general local government or designated agency which such unit or agency has elected to issue as a taxable obligation pursuant to subsection (e) of this section, the interest paid on such obligation shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954.

NONDISCRIMINATION

SEC. 109. (a) No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits or, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(b) Whenever the Secretary determines that a State or unit of general local government which is a recipient of assistance under this title has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of such State or the chief executive officer of such unit of local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the Governor or the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); (3) exercise the powers and functions provided for in section 111(a) of this Act; or (4) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State government or unit of general local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

LABOR STANDARDS

SEC. 110. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 275a—275a-5): *Provided*, That this section shall apply to the rehabilitation of residential property only if such property is designed for residential use for eight or more families. The Secretary of

Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).

REMEDIES FOR NONCOMPLIANCE

SEC. 111. (a) If the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this title has failed to comply substantially with any provision of this title, the Secretary, until he is satisfied that there is no longer any such failure to comply, shall—

(1) terminate payments to the recipient under this title, or

(2) reduce payments to the recipient under this title by an amount equal to the amount of such payments which were not expended in accordance with this title, or

(3) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

(b)(1) In lieu of, or in addition to, any action authorized by subsection (a), the Secretary may, if he has reason to believe that a recipient has failed to comply substantially with any provision of this title, refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Upon such a referral the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this title which was not expended in accordance with it, or for mandatory or injunctive relief.

(c)(1) Any recipient which receives notice under subsection (a) of the termination, reduction, or limitation of payments under this title may, within sixty days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) The Secretary shall file in the court the record of the proceeding on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary may modify his findings of fact, or make new findings, by reason of the new evidence so taken and filed with the court, and he shall also file such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole, and shall also file his recommendation, if any, for the modification of setting aside of his original action.

(4) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

USE OF GRANTS TO SETTLE OUTSTANDING URBAN RENEWAL LOANS

SEC. 112. (a) The Secretary is authorized, notwithstanding any other provision of this title, to apply a portion of the grants, not to exceed 20 per centum thereof without the request of the recipient, made or to be made under section 103(a) in any fiscal year pursuant to an allocation under section 106 to any unit of general local government toward payment of the principal of, and accrued interest on, any temporary loan made in connection with urban renewal projects under title I of the Housing Act of 1949 being carried out within the jurisdiction of such unit of general local government if—

(1) the Secretary determines, after consultation with the local public agency carrying out the project and the chief executive of such unit of general local government, that the project cannot be completed without additional capital grants, or

(2) the local public agency carrying out the project submits to the Secretary an appropriate request which is concurred in by the governing body of such unit of general local government.

In determining the amounts to be applied to the payment of temporary loans, the Secretary shall make an accounting for each project taking into consideration the costs incurred or to be incurred, the estimated proceeds upon any sale or disposition of property, and the capital grants approved for the project.

(b) Upon application by any local public agency carrying out an urban renewal project under title I of the Housing Act of 1949, which application is approved by the governing body of the unit of general local government in which the project is located, the Secretary may approve a financial settlement of such project if he finds that a surplus of capital grant funds after full repayment of temporary loan indebtedness will result and may authorize the unit of general local government to use such surplus funds, without deduction or offset, in accordance with the provisions of this title.

REPORTING REQUIREMENTS

SEC. 113. (a) Not later than 180 days after the close of each fiscal year in which assistance under this title is furnished, the Secretary shall submit to the Congress a report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this title; and

(2) a summary of the use of such funds as approved by the Secretary during the preceding fiscal year.

(b) The Secretary is authorized to require recipients of assistance under this title to submit to him such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a).

CONSULTATION

SEC. 114. In carrying out the provisions of this title including the issuance of regulations, the Secretary shall consult with other Federal departments and agencies administering Federal grant-in-aid programs.

INTERSTATE AGREEMENTS

SEC. 115. The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative effort and mutual assistance in support of community development planning and programs carried out under this title as they pertain to interstate areas and to localities within such states, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

TRANSITION PROVISIONS

SEC. 116. (a) Except with respect to projects and programs for which funds have been previously committed, no new grants or loans shall be made after January 1, 1975, under (1) title I of the Demonstration Cities and Metropolitan Development Act of 1966, (2) title I of the Housing Act of 1949, (3) section 702 or section 703 of the Housing and Urban Development Act of 1965, (4) title II of the Housing Amendments of 1955, or (5) title VII of the Housing Act of 1961.

(b) To the extent that grants under title I of the Housing Act of 1949 or title I of the Demonstration Cities and Metropolitan Development Act of 1966 are payable from appropriations made for the fiscal year 1975, and are made with respect to a project or program being carried on in any unit of general local government which is eligible to receive a grant for such fiscal year under section 106 (a) or (h) of this Act, the amount of such grants made under title I of the Housing Act of 1949 of title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall be deducted from the amounts of grants which such unit of general local government is eligible to receive for the fiscal year 1975 under such section 106 (a) or (h). The deduction required by the preceding sentence shall be disregarded in determining the amount of grants made to any unit of general local government that may be applied, pursuant to section 112 of this Act, to payment of temporary loans in connection with urban renewal projects under title I of the Housing Act of 1949. The amount of any appropriations made for the fiscal year 1975 which is used for grants so as to be subject to the provisions of this subsection relating to deductions shall be deemed to have been appropriated for grants pursuant to section 103(a) of this Act for such fiscal year for purposes of calculations under sections 106 and 107 of this Act.

(c) The first sentence of section 103(b) of the Housing Act of 1949 is amended by inserting before the period at the end thereof the following: ", and by such sums as may be necessary thereafter".

(d)(1) Section 111(b) of the Demonstration Cities and Metropolitan Development Act of 1966 is amended by inserting immediately after the first sentence the following new sentence: "In addition, there are authorized to be appropriated for such purpose such sums as may be necessary for the fiscal year ending June 30, 1975."

(2) Section 111(c) of such Act is amended by striking out "July 1, 1974" and inserting in lieu thereof "July 1, 1975".

(e)(1) Section 312(h) of the Housing Act of 1964 is amended (A) by striking out "after October 1, 1974" and inserting in lieu thereof "after the close of the one-year period beginning on the date of the enactment of the Housing and Community Development Act of 1974", and (B) by striking out "that date" and inserting in lieu thereof "the close of that period".

(2) Section 312(a)(1) of such Act is amended by inserting "or' at the end of subparagraph (C), and by adding after subparagraph (C) the following new subparagraph:

"(D) the rehabilitation is a part of, or is necessary or appropriate to the execution of, an approved community development program under title I of the Housing and Community Development Act of 1974 or an approved urban homestead program under section 809 of such Act;".

(f) With respect to the program period beginning, January 1, 1975, the Secretary may, without regard to the requirements of section 104, advance to any metropolitan city, urban county or other unit of general local government, out of the amount allocated to such entity pursuant to section 106 (a) or (h), an amount not to exceed 10 per centum of the amount so allocated which shall be available only for use (1) to continue projects of activities to be assisted under this title. (2) of subsection (a) of this section, or (2) to plan and prepare for the implementation of activities to be assisted under this title.

(g) In the case of funds available for any

fiscal year, the Secretary shall not consider any application from a metropolitan city or urban county for a grant pursuant to section 106(a) of from a unit of general local government for a grant pursuant to section 106 (h) unless such application is submitted on or prior to such date (in that fiscal year) as the Secretary shall establish as the final date for submission of applications for such grants in that year.

LIQUIDATION OF SUPERSEDED PROGRAMS

SEC. 117. (a) Section 3689 of the Revised Statutes, as amended (31 U.S.C. 711), is amended by adding after paragraph (22) (as added by section 108(f) of this Act) the following new paragraph:

"(23) For payments required from time to time under contracts entered into pursuant to section 103(b) of the Housing Act of 1949 with respect to projects or programs for which funds have been committed on or before December 31, 1974, and for which funds have not previously been appropriated."

(b) The Secretary is authorized to transfer the assets and liabilities of any program which is superseded or inactive by reason of this title to the revolving fund for liquidating programs established pursuant to title II of the Independent Offices Appropriation Act of 1965 (Public Law 81-428; 68 Stat. 272, 295).

EMPLOYMENT OPPORTUNITIES FOR LOWER INCOME PERSONS

SEC. 118. Section 3 of the Housing and Urban Development Act of 1968 is amended by inserting ", including community development block grants under title I of the Housing and Community Development Act of 1974," immediately after "direct financial assistance".

## TITLE II—ASSISTED HOUSING

AMENDMENT TO THE UNITED STATES HOUSING ACT OF 1937

SEC. 201. (a) The United States Housing Act of 1937 is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'United States Housing Act of 1937'.

"DECLARATION OF POLICY

"SEC. 2. It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this Act, to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income and, consistent with the objectives of this Act, to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs. No person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-income housing project.

"DEFINITIONS

"SEC. 3. When used in this Act—

"(1) The term 'low-income housing' means decent, safe, and sanitary dwellings within the financial reach of families of low income, and embraces all necessary appurtenances thereto. Except as otherwise provided in this section, income limits for occupancy and rents shall be fixed by the public housing agency and approved by the Secretary. The rental for any dwelling unit shall not exceed one-fourth of the family's income as defined by the Secretary. Notwithstanding the preceding sentence, the rental for any dwelling unit shall not be less than the higher of (A) 5 per centum of the gross income of the family occupying the dwelling unit, and (B) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated. At least 20 per centum of the dwelling units in any project placed under annual contributions contracts in any fiscal year beginning after the effective date of this section shall be occupied by very low-income families. In defining the income of any family for the purpose of this Act, the Secretary shall consider income from all sources of each member of the family residing in the household, except that there shall be excluded—

"(A) the income of any family member (other than the head of the household or his spouse) who is under eighteen years of age or is a full-time student;

"(B) the first $300 of the income of a secondary wage earner who is the spouse of the head of the household;

"(C) an amount equal to $300 for each member of the family residing in the household (other than the head of the household or his spouse) who is under eighteen years of age or who is eighteen years of age or older and is disabled or handicapped or a full-time student;

"(D) nonrecurring income, as determined by the Secretary;

"(E) 5 per centum of the family's gross income (10 per centum in the case of elderly families);

"(F) such extraordinary medical or other expenses as the Secretary approves for exclusion; and

"(G) an amount equal to the sums received by the head of the household or his spouse from, or under the direction of, any public or private nonprofit child placing agency for the care and maintenance of one or more persons who are under eighteen years of age and were placed in the household by such agency.

"(2) The term 'low-income families' means families of low income who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. The term 'very low-income families' means families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families. The term 'families' includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age or is under a disability as defined in section 223 of the Social Security Act or in section 102(5) of the Development Disabilities Services and Facilities Construction Amendments of 1970, or is handicapped, (B) a displaced person, and (C) the remaining member of a tenant family; and the term 'elderly families' means families whose heads (or their spouses), or whose sole members, are persons described in clause (A). A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes his ability to live independently, and (iii) is of such a nature that such ability could be improved by more suitable housing conditions. The term 'displaced person' means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. Notwithstanding the preceding provisions of this paragraph, the term 'elderly families' includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living with another person who is determined under regulations of the Secretary to be a person essential to their care or well being.

"(3) The term 'development' means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-income housing project. The term 'development cost' comprises the cost incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges), and in otherwise carrying out the development of such project. Construction activity in connection with a low-income housing project may be confined to the reconstruction, remodeling, or repair of existing buildings.

"(4) The term 'operation' means any or all undertakings appropriate for management, operation, services, maintenance, security (including the cost of security personnel), or financing in connection with a low-income housing project. The term also means the financing of tenant programs and services for families residing in low-income housing projects, particularly where there is maximum feasible participation of the tenants in the development and operation of such tenant programs and services. As used in this paragraph, the term 'tenant programs and services' includes the development and maintenance of tenant organizations which participate in the management of low-income housing projects; the training of tenants to manage and operate such projects and the utilization of their services in project management and operation; counseling on hourehold management, housekeeping, budgeting, money management, child care, and similar matters; advise as to resources for job training and placement, education, welfare, health, and other community services; services which are directly related to meeting tenant needs and providing a wholesome living environment; and referral to appropriate agencies when necessary for the provision of such services. To the maximum extent available and appropriate, existing public and private agencies in the community shall be used for the provision of such services.

"(5) The term 'acquisition cost' means the amount prudently required to be expended by a public housing agency in acquiring a low-income housing project.

"(6) The term 'public housing agency' means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

"(7) The term 'State' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes, bands, groups, and Nations, including Alaska Indians, Aleuts, and Eskimos, of the United States.

"(8) The term 'Secretary' means the Secretary of Housing and Urban Development.

"(9) The term 'low-income housing project' or 'project' means (A) any low-income housing developed, acquired, or assisted by a public housing agency under this Act, and (B) the improvement of any such housing.

"LOANS FOR LOW-INCOME HOUSING PROJECTS

"SEC. 4. (a) The Secretary may make loans or commitments to make loans to public housing agencies to help finance or refinance the development, acquisition, or operation of low-income housing projects by such agencies. Any contract for such loans and any amendment to a contract for such loans shall provide that such loans shall bear interest at a rate specified by the Secretary which shall not be less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus one-eighth of 1 per centum. Such loans shall be secured

in such manner and shall be repaid within such period not exceeding forty years, or not exceeding forty years from the date of the bonds evidencing the loan, as the Secretary may determine. The Secretary may require loans or commitments to make loans under this section to be pledged as security for obligations issued by a public housing agency in connection with a low-income housing project.

"(b) The Secretary may issue and have outstanding at any one time notes and other obligations for purchase by the Secretary of the Treasury in an amount which will not, unless authorized by the President, exceed $1,500,000,000. For the purpose of determining obligations incurred to make loans pursuant to this Act against any limitation otherwise applicable with respect to such loans, the Secretary shall estimate the maximum amount to be loaned at any one time pursuant to loan agreements then outstanding with public housing agencies. Such notes or other obligations shall be in such forms and denominations and shall be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. The notes or other obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations of the Secretay issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"ANNUAL CONTRIBUTIONS FOR LOW-INCOME HOUSING PROJECTS

"SEC. 5. (a) The Secretary may make annual contributions to public housing agencies to assist in achieving and maintaining the low-income character of their projects. The Secretary shall embody the provisions for such annual contributions in a contract guaranteeing their payment. The contribution payable annually, under this section shall in no case exceed a sum equal to the annual amount of principal and interest payable on obligations issued by the public housing agency to finance the development or acquisition cost of the low-income project involved. The amount of annual contributions which would be established for a newly constructed project by a public housing agency designed to accommodate a number of families of a given size and kind may be established under this section for a project by such public housing agency which would provide housing for the comparable number, sizes, and kinds of families through the acquisition and rehabilitation, or use under lease, of structures which are suitable for low-income housing use and obtained in the local market. Annual contributions payable under this section shall be pledged, if the Secretary so requires, as security for obligations issued by a public housing agency to assist the development or acquisition of the project to which annual contributions relate and shall be paid over a period not to exceed forty years.

"(b) The Secretary may prescribe regulations fixing the maximum contributions available under different circumstances, giving consideration to cost, location, size, rent-paying ability of prospective tenants, or other factors bearing upon the amounts and periods of assistance needed to achieve and maintain low rentals. Such regulations may provide for rates of contribution based upon development, acquisition, or operation costs, number of dwelling units, number of persons housed, interest charges, or other appropriate factors.

"(c) The Secretary is authorized to enter into contracts for annual contributions aggregating not more than $1,199,250,000 per annum, which limit shall be increased by $225,000,000 on July 1, 1971, by $150,000,000 on July 1, 1972, by $400,000,00 on July 1, 1973, and by $965,000,000 on July 1, 1974. Of the aggregate amount of contracts for annual contributions authorized to be entered into on or after July 1, 1974, the Secretary shall enter into contracts for annual contributions aggregating at least $150,000,000 per annum to assist in financing the development or acquisition cost of low-income housing projects to be owned by public housing agencies. Not more than 50 per centum of the dwelling units placed under contract pursuant to the preceding sentence may be constructed or substantially rehabilitated for ownership by public housing agencies under section 8 of this Act. In addition to the amount of contracts for annual contributions required to be entered into by the Secretary under the second sentence of this subsection, the Secretary shall enter into contracts for annual contributions, out of the aggregate amount of contracts for annual contributions authorized under this section to be entered into on or after July 1, 1974, aggregating at least $15,000,000 per annum, which amount shall be increased by not less than $15,000,000 per annum, on July 1, 1975, to assist in financing the development or acquisition cost of low-income housing for families who are members of any Indian tribe, band, pueblo, group, or community of Indians or Alaska Natives which is recognized by the Federal Government as eligible for service from the Bureau of Indian Affairs, or who are wards of any State government, except that none of the funds made available under this sentence shall be available for use under section 8. For the purpose of the preceding sentence, the annual contributions for a project shall, notwithstanding any other provisions of this Act, be equal to the difference between the sum of the total debt service payment plus approved operating costs, and the rental payments that tenants are required to make under setcion 3(1) of this Act. The Secretary shall enter into only such new contracts for preliminary loans as are consistent with the number of dwelling units for which contracts for annual contributions may be entered into. The faith of the United States is solemnly pledged to the payment of all annual contributions contracted for pursuant to this section, and there are hereby authorized to be appropriated in each fiscal year, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such payments. All payments of annual contributions pursuant to this section shall be made out of any funds available for purposes of this Act when such payments are due, except that funds obtained through the issuance of obligations pursuant to section 4(b) (including repayments or other realizations of the principal of loans made out of such funds) shall not be available for the payment of such annual contributions.

"(d) Any contract for loans or annual contributions, or both, entered into by the Secretary with a public housing agency, may cover one or more than one low-income housing project owned by such public housing agency; in the event the contract covers two or more projects, such projects may, for any of the purposes of this Act and of such contract (including, but not limited to, the determination of the amount of the loan, annual contributions, or payments in lieu of taxes, specified in such contract), be treated collectively as one project.

"(e) In recognition that there should be local determination of the need for low-income housing to meet needs not being adequately met by private enterprise—

"(1) the Secretary shall not make any contract with a public housing agency for preliminary loans (all of which shall be repaid out of any moneys which become available to such agency for the development of the projects involved) for surveys and planning in respect to any low-income housing projects (i) unless the governing body of the locality involved has by resolution approved the application of the public housing agency for such preliminary loan; and (ii) unless the public housing agency has demonstrated to the satisfaction of the Secretary that there is need for such low-income housing which is not being met by private enterprise; and

"(2) the Secretary shall not make any contract for loans (other than preliminary loans) or for annual contributions pursuant to this Act unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Secretary pursuant to this Act.

"(f) Subject to the specific limitations or standards in this Act governing the terms of sales, rentals, leases, loans, contracts for annual contributions, or other agreements, the Secretary may, whenever he deems it necessary or desirable in the fulfillment of the purposes of this Act, consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, amount of annual contribution, or any other term, of any contract or agreement of any kind to which the Secretary is a party. When the Secretary finds that it would promote economy or be in the financial interest of the Federal Government or is necessary to assure or maintain the low-income character of the project or projects involved, any contract heretofore or hereafter made for annual contributions, loans, or both, may be amended or superseded by a contract entered into by mutual agreement between the public housing agency and the Secretary. Contracts may not be amended or superseded in a manner which would impair the rights of the holders of any outstanding obligations of the public housing agency involved for which annual contributions have been pledged. Any rule of law contrary to this provision shall be deemed inapplicable.

"(g) In addition to the authority of the Secretary under subsection (a) to pledge annual contributions as security for obligations issued by a public housing agency, the Secretary is authorized to pledge annual contributions as a guarantee of payment by a public housing agency of all principal and interest on obligations issued by it to assist the development or acquisition of the project to which the annual contributions relate, except that no obligation shall be guaranteed under this subsection if the income thereon is exempt from Federal taxation.

"(h) Notwithstanding any other provision of law, a public housing agency may sell a low-income housing project to its low-income tenants, on such terms and conditions as the agency may determine, without affecting the Secretary's commitment to pay annual contributions with respect to that project, but such contributions shall not exceed the maximum contributions authorized under subsection (a) of this section.

"CONTRACT PROVISIONS AND REQUIREMENTS

"SEC. 6. (a) Secretary may include in any contract for loans, annual contributions, sale, lease, mortgage, or any other agreement or instrument made pursuant to this Act, such covenants conditions, or provisions as he may deem necessary in order to insure the low-income character of the project involved. Any such contract may contain a condition requiring the maintenance of an open space or playground in connection with the housing project involved if deemed necessary by the Secretary for the safety or health of chil-

dren. Any such contract shall require that, except in the case of housing predominantly for the elderly, high-rise elevator projects shall not be provided for families with children unless the Secretary makes a determination that there is no practical alternative.

"(b) Every contract made pursuant to this Act for loans (other than preliminary loans) or annual contributions shall provide that the cost of construction and equipment of the project (excluding land, demolition, and nondwelling facilities) on which the computation of any annual contributions under this Act may be based shall not exceed by more than 10 per centum the appropriate prototype cost for the area. The prototype costs shall be determined at least annually by the Secretary on the basis of his estimate of the construction costs of new dwelling units of various types and sizes in the area suitable for occupancy by persons assisted under this Act. In making his determination the Secretary shall take into account (1) the extra durability required for safety and security and economical maintenance of such housing, (2) the provision of amenities designed to guarantee a safe and healthy family life and neighborhood environment, (3) the application of good design as an essential component of such housing for safety and security as well as other purposes, (4) the maintenance of quality in architecture to reflect the standards of the neighborhood and community, (5) the need for maximizing the conservation of energy for heating, lighting, and other purposes, (6) the effectiveness of existing cost limits in the area, and (7) the advice and recommendations of local housing producers. The prototype costs for any area shall become effective upon the date of publication in the Federal Register.

"(c) Every contract for annual contributions shall provide that—

"(1) the Secretary may require the public housing agency to review and revise its maximum income limits if the Secretary determines that changed conditions in the locality make such revision necessary in achieving the purposes of this Act;

"(2) the public housing agency shall determine, and so certify to the Secretary, that each family in the project was admitted in accordance with duly adopted regulations and approved income limits; and the public housing agency shall review the incomes of families living in the project at intervals of two years (or at shorter intervals where the Secretary deems it desirable);

"(3) the public housing agency shall promptly notify (i) any applicant determined to be ineligible for admission to the project of the basis for such determination and provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination, and (ii) any applicant determined to be eligible for admission to the project of the approximate date of occupancy insofar as such date can be reasonably determined; and

"(4) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to—

"(A) the establishment of tenant selection criteria designed to assure that, within a reasonable period of time, the project will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems, but this shall not permit maintenance of vacancies to await higher income tenants where lower income tenants are available;

"(B) the establishment of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the cast of nonpayment of rent;

"(C) the establishment of effective tenant-management relationships designed to assure that satisfactory standards of tenant security and project maintenance are formulated and that the public housing agency (together with tenant councils where they exist) enforces those standards fully and effectively; and

"(D) the development by local housing authority managements of viable homeownership opportunity programs for low-income families capable of assuming the responsibilities of homeownership.

"(d) Every contract for annual contributions with respect to a low-income housing project shall provide that no annual contributions by the Secretary shall be made available for such project unless such project (exclusive of any portion thereof which is not assisted by annual contributions under this Act) is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision; and such contract shall require the public housing agency to make payments in lieu of taxes equal to 10 per centum of the sum of the annual shelter rents charged in such project, or such lesser amounts as (i) is prescribed by State law, or (ii) is agreed to by the local governing body in its agreement for local cooperation with the public housing agency required under section 5(e)(2) of this Act, or (iii) is due to failure of a local public body or bodies other than the public housing agency to perform any obligation under such agreement. If any such project is not exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision, such contract shall provide, in lieu of the requirement for tax exemption and payments in lieu of taxes, that no annual contributions by the Secretary shall be made available for such project unless and until the State, city, county, or other political subdivision in which such project is situated shall contribute, in the form of cash or tax remission, the amount by which the taxes paid with respect to the project exceed 10 per centum of the annual shelter rents charged in such project.

"(e) Every contract for annual contributions shall provide that whenever in any year the receipts of a public housing agency in connection with a low-income housing project exceed its expenditures (including debt service, operation, maintenance, establishment of reserves, and other costs and charges), an amount equal to such excess shall be applied, or set aside for application, to purposes which, in the determination of the Secretary, will effect a reduction in the amount of subsequent annual contributions.

"(f) Every contract for annual contributions shall provide that when the public housing agency and the Secretary mutually agree that a housing project is obsolete as to physical condition, or location, or other factors, making it unusable for housing purposes, a program of modifications or closeout shall be prepared. If it is mutually determined that such project can be returned to useful life, then the Secretary is authorized to utilize such annual contributions as are necessary to enable the local public housing agency to undertake an agreed-upon program of modifications. If it is mutually determined that no program of modifications is feasible or that such a program would not return the housing to a useful life, then the Secretary is authorized to prepare a closeout program, utilizing such annual contributions as are necessary to accommodate the outstanding indebtedness on the project, the cost of demolition (if the physical improvements are not to be sold), and the cost of relocating displaced families into satisfactory replacement housing. The net closeout cost to the Federal Government shall take into consideration any receipts from the sale of physical improvements, land, or other assets, pursuant to the provisions of the annual contributions contract.

"(g) Every contract for annual contributions (including contracts which amend or supersede contracts previously made) may provide that—

"(1) upon the occurrence of a substantial default in respect to the covenants or conditions to which the public housing agency is subject (as such substantial default shall be defined in such contract), the public housing agency shall be obligated at the option of the Secretary either to convey title in any case where, in the determination of the Secretary (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this Act, or to deliver to the Secretary possession of the project, as then constituted, to which such contract relates; and

"(2) the Secretary shall be obligated to reconvey or redeliver possession of the project, as constituted at the time of reconveyance or redelivery, to such public housing agency or to its successor (if such public housing agency or a successor exists) upon such terms as shall be prescribed in such contract, and as soon as practicable (i) after the Secretary is satisfied that all defaults with respect to the project have been cured, and that the project will, in order to fulfill the purposes of this Act, thereafter be operated in accordance with the terms of such contract; or (ii) after the termination of the obligation to make annual contributions available unless there are any obligations or covenants of the public housing agency to the Secretary which are then in default. Any prior conveyances and reconveyances or deliveries and redeliveries of possession shall not exhaust the right to require a conveyance or delivery of possession of the project to the Secretary pursuant to subparagraph (1) upon the subsequent occurrence of a substantial default.

Whenever such a contract for annual contributions includes provisions which the Secretary in such contract determines are in accordance with this subsection, and the portion of the annual contribution payable for debt service requirements pursuant to such contract has been pledged by the public housing agency as security for the payment of the principal and interest on any of its obligations, the Secretary (notwithstanding any other provisions of this Act) shall continue to make such annual contributions available for the project so long as any of such obligations remain outstanding, and may covenant in such contract that in any event such annual contributions shall in each year be at least equal to an amount which, together with such income or other funds as are actually available from the project for the purpose at the time such annual contribution is made, will suffice for the payment of all installments, falling due within the next succeeding twelve months, of principal and interest on the obligations for which the annual contributions provided for in the contract shall have been pledged as security. In no case shall such annual contributions be in excess of the maximum sum specified in the contract involved, nor for longer than the remainder of the maximum period fixed by the contract.

"CONGREGATE HOUSING

"SEC. 7. The Secretary shall encourage public housing agencies, in providing housing predominantly for displaced or elderly families, to design, develop, or otherwise acquire such housing to meet the special needs of the occupants and, wherever practicable, for use in whole or in part as congregate housing: *Provided*, That not more than 10 per centum of the total amount of contracts for annual contributions entered into any fiscal year pursuant to the new authority granted under section 202 of the Housing and Urban Development Act of 1970 or under any law subsequently enacted shall be entered into with respect to units in congregate housing.

As used in this section the term 'congregate housing' means low-income housing (A) in which some or all of the dwelling units do not have kitchen facilities, and (B) connected with which there is a central dining facility to provide wholesome and economical meals for elderly and displaced families under terms and conditions prescribed by the public housing agency to permit a generally self-supporting operation. Expenditures incurred by a public agency in the operation of a central dining facility in connection with congregate housing (other than the cost of providing food and service) shall be considered one of the costs of operation of the project.

"LOWER-INCOME HOUSING ASSISTANCE

"SEC. 8. (a) For the purpose of aiding lower-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing, newly constructed, and substantially rehabilitated housing in accordance with the provisions of this section.

"(b)(1) The Secretary is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section. In areas where no public housing agency has been organized or where the Secretary determines that a public housing agency is unable to implement the provisions of this section, the Secretary is authorized to enter into such contracts and to perform the other functions assigned to a public housing agency by this section.

"(2) To the extent of annual contributions make assistance payments to such owners or authorizations under section 5(c) of this Act, the Secretary is authorized to make assistance payments pursuant to contracts with owners or prospective owners who agree to construct or substantially rehabilitate housing in which some or all of the units shall be available for occupancy by lower-income families in accordance with the provisions of this section. The Secretary may also enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to prospective owners.

"(c)(1) An assistance contract entered into pursuant to this section shall establish the maximum monthly rent (including utilities and all maintenance and management charges) which the owner is entitled to receive for each dwelling unit with respect to which such assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically but not less than annually for existing or newly constructed rental dwelling units of various sizes and types in the market area suitable for occupancy by persons assisted under this section, except that the maximum monthly rent may exceed the fair market rental by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent or that such higher rent is necessary to the implementation of a local housing assistance plan as defined in section 213(a)(5) of the Housing and Community Development Act of 1974. Proposed fair market rentals for an area shall be published in the Federal Register with reasonable time for public comment, and shall become effective upon the date of publication in final form in the Federal Register.

"(2)(A) The assistance contract shall provide for adjustment annually or more frequently in the maximum monthly rents for units covered by the contract to reflect changes in the fair market rentals established in the housing area for similar types and sizes of dwelling units or, if the Secretary determines, on the basis of a reasonable formula.

"(B) The contract shall further provide for the Secretary to make additional adjustments in the maximum monthly rent for units under contract to the extent he determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs which are not adequately compensated for by the adjustment in the maximum monthly rent authorized by subparagraph (A).

"(C) Adjustments in the maximum rents as hereinbefore provided shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the Secretary.

"(3) The amount of the monthly assistance payment with respect to any dwelling unit, in the case of a large very low-income family, a very large lower income family, or a family with exceptional medical or other expenses, as determined by the Secretary, shall be the difference between 15 per centum of one-twelfth of the annual income of the family occupying the dwelling unit and the maximum monthly rent which the contract provides that the owner is to receive for the unit. In the case of other families, the Secretary shall establish the amount of the assistance payment as the difference between not less than 15 per centum nor more than 25 per centum of the family's income and the maximum rent, taking into consideration the income of the family, the number of minor children in the household, and the extent of medical or other unusual expenses incurred by the family. Reviews of family income shall be made no less frequently than annually (except that such reviews may be made at intervals no longer than two years in the case of families who are elderly families).

"(4) The assistance contract shall provide that assistance payments may be made only with respect to a dwelling unit under lease for occupancy by a family determined to be a lower income family at the time it initially occupied such dwelling unit, except that such payments may be made with respect to unoccupied units for a period not exceeding sixty days (A) in the event that a family vacates a dwelling unit before the expiration date of the lease for occupancy or (B) where a good faith effort is being made to fill an unoccupied unit.

"(5) Assistance payments may be made with respect to up to 100 per centum of the dwelling units in any structure upon the application of the owner or prospective owner. Within the category of projects containing more than fifty units and designed for use primarily by nonelderly and nonhandicapped persons, the Secretary may give preference to applications for assistance involving not more than 20 per centum of the dwelling units in a project. In according any such preference, the Secretary shall compare applications received during distinct time periods not exceeding sixty days in duration.

"(6) The Secretary shall take such steps as may be necessary, including the making of contracts for assistance payments in amounts in excess of the amounts required at the time of the initial renting of dwelling units, the reservation of annual contributions authority for the purpose of amending housing assistance contracts, or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts, to assure that assistance payments are increased on a timely basis to cover increases in maximum monthly rents or decreases in family incomes.

"(7) At least 30 per centum of the families assisted under this section with annual allocations of contract authority shall be very low-income families at the time of the initial renting of dwelling units.

"(8) To the extent authorized in contracts entered into by the Secretary with a public housing agency, such agency may purchase any structure containing one or more dwelling units assisted under this section for the purpose of reselling the structure to the tenant or tenants occupying units aggregating in value at least 80 per centum of the structure's total value. Any such resale may be made on the terms and conditions prescribed under section 5(h) and subject to the limitation contained in such section.

"(d)(1) Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that—

"(A) the selection of tenants for such unit shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency;

"(B) the agency shall have the sole right to give notice to vacate, with the owner having the right to make representation to the agency for termination of tenancy;

"(C) maintenance and replacement (including redecoration) shall be in accordance with the standard practice for the building concerned as established by the owner and agreed to by the agency; and

"(D) the agency and the owner shall carry out such other appropriate terms and conditions as may be mutually agreed to by them.

"(2) Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months.

"(e)(1) The Secretary shall not contract to make assistance payments with respect to a newly constructed or substantially rehabilitated dwelling unit for a term of less than one month or more than two hundred and forty months. In the case of a project owned by, or financed by a loan or loan guarantee from, a State or local agency, the term may not exceed four hundred and eighty months.

"(2) The contract between the Secretary and the owner with respect to newly constructed or substantially rehabilitated dwelling units shall provide that all ownership, management, and maintenance responsibilities, including the selection of tenants and the termination of tenancy, shall be assumed by the owner (or any entity, including a public housing agency, approved by the Secretary, with which the owner may contract for the performance of such responsibilities).

"(3) The construction or substantial rehabilitation of dwelling units to be assisted under this section shall be eligible for financing with mortgages insured under the National Housing Act. Assistance with respect to such dwelling units shall not be withheld or made subject to preferences by reason of the availability of mortgage insurance pursuant to section 244 of such Act or by reason of the tax-exempt status of the bonds or other obligations to be used to finance such construction or rehabilitation.

"(4) Nothing in this Act shall be deemed to prohibit an owner from pledging, or offering as security for any loan or obligation, a contract for assistance payments entered into pursuant to this section: *Provided*, That such security is in connection with a project constructed or rehabilitated pursuant to authority granted in this section, and the terms of the financing or any refinancing have been approved by the Secretary.

"(f) As used in this section—

"(1) the term 'lower income families' means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on

the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors;

"(2) the term 'very low-income families' means those families whose incomes do not exceed 50 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families;

"(3) the term 'income' means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary;

"(4) the term 'owner' means any private person or entity, including a cooperative, or a public housing agency, having the legal right to lease or sublease newly constructed or substantially rehabilitated dwelling units as described in this section; and

"(5) the terms 'rent' or 'rental' mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.

"(g) Notwithstanding any other provision of this Act, assistance payments under this section may be provided, in accordance with regulations prescribed by the Secretary, with respect to some or all of the units in any project approved pursuant to section 202 of the Housing Act of 1959.

"(h) The provisions of section 3(1), 5(e), and 6, and any other provisions of this Act, which are inconsistent with the provisions of this section shall not apply to contracts for assistance entered into under this section.

"ANNUAL CONTRIBUTIONS FOR OPERATION OF LOW-INCOME HOUSING PROJECTS

"SEC. 9. (a) In addition to the contributions authorized to be made for the purposes specified in section 5 of this Act, the Secretary may make annual contributions to public housing agencies for the operation of low-income housing projects. The contributions payable annually under this section shall not exceed the amounts which the Secretary determines are required (1) to assure the low-income character of the projects involved, and (2) to achieve and maintain adequate operating services and reserve funds. The Secretary shall embody the provisions for such annual contributions in a contract guaranteeing their payment subject to the availability of funds. For purposes of making payments under this section, the Secretary shall establish standards for costs of operation and reasonable projections of income, taking into account the character and location of the project and characteristics of the families served, or the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed project.

"(b) The aggregate rentals required to be paid in any year by families residing in the dwelling units administered by a public housing agency receiving annual contributions under this section shall not be less than an amount equal to one-fifth of the sum of the incomes of all such families.

"(c) Of the aggregate amount of contracts for annual contributions authorized in section 5(c) of this Act to be entered into on or after July 1, 1974, the Secretary is authorized to enter into contracts for annual contributions under this section aggregating not more than $500,000,000 per annum, which amount shall be increased by $60,000,000 on July 1, 1975.

"GENERAL PROVISIONS

"SEC. 10. (a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this Act, the Secretary, notwithstanding the provisions of any other law, shall—

"(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by the Government Corporation Control Act, as amended; and

"(2) maintain an integral set of accounts which shall be audited annually by the General Accounting Office in accordance with the principles and procedures applicable to commercial transactions as provided by the Government Corporation Control Act, as amended, and no other audit shall be required.

"(b) All receipts and assets of the Secretary under this Act shall be available for the purposes of this Act until expended.

"(c) The Federal Reserve banks are authorized and directed to act as depositories, custodians, and fiscal agents for the Secretary in the general exercise of his powers under this Act, and the Secretary may reimburse any such bank for its services in such manner as may be agreed upon.

"FINANCING LOW-INCOME HOUSING PROJECTS

"SEC. 11. (a) Obligations issued by public housing agency in connection with low-income housing projects which (1) are secured (A) by a pledge of a loan under any agreement between such public housing agency and the Secretary, or (B) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary, or (C) by a pledge of both annual contributions under an annual contributions contract and a loan under an agreement between such public housing agency and the Secretary, and (2) bear, or are accompanied by, a certificate of the Secretary that such obligations are so secured, shall be incontestable in the hands of a bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for such obligations.

"(b) Except as provided in section 5(g), obligations, including interest thereon, issued by public housing agencies in connection with low-income housing projects shall be exempt from all taxation now or hereafter imposed by the United States whether paid by such agencies or by the Secretary. The income derived by such agencies from such projects shall be exempt from all taxation now or hereafter imposed by the United States.

"LABOR STANDARD

"SEC. 12. Any contract for loans, annual contributions, sale, or lease pursuant to this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the low-income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 8 of this Act, where the public housing agency or the Secretary and the builder or sponsor enter into an agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract."

(b) The provisions of subsection (a) of this section shall be effective on such date or dates as the Secretary of Housing and Urban Development shall prescribe, but not later than eighteen months after the date of the enactment of this Act; except that (1) all of the provisions of section 3(1) of the United States Housing Act of 1937, as amended by subsection (a) of this section, shall become effective on the same date, (2) all of the provisions of sections 5 and 9(c) of such Act as so amended shall become effective on the same date, and (3) section 8 of such Act as so amended shall be effective not later than January 1, 1975.

APPLICABILITY OF RENTAL REQUIREMENTS

SEC. 202. To the extent that section 3(1) of the United States Housing Act of 1937, as amended by section 201(a) of this Act, would require the establishment of an increased monthly rental charge for any family which occupies a low-income housing unit as of the effective date of such section 3(1) (other than by reason of the provisions relating to welfare assistance payments), the required adjustment shall be made, in accordance with regulations of the Secretary, as follows: (A) the first adjustment shall not exceed $5 and shall become effective as of the month following the month of the first review of the family's income pursuant to section 6(c)(2) of such Act which occurs at least six months after the effective date of such section 3(1), and (B) subsequent adjustments, each of which shall not exceed $5, shall be made at six-month intervals over whatever period is necessary to effect the full required increase in the family's rental charge.

EXEMPTIONS OF CERTAIN PROJECTS FROM RENTAL FORMULA

SEC. 203. The rental or income contribution provisions of the United States Housing Act of 1937, as amended by section 201 of this Act, shall not preclude the use of special schedules of required payments as approved by the Secretary for participants in mutual help housing projects who contribute labor, land, or materials to the development of such projects.

REPEAL OF SPECIFICATION REQUIREMENTS IN CONSTRUCTION CONTRACTS

SEC. 204. Section 815 of the Housing Act of 1954 is repealed.

Retroactive Effect of Repeal of Section 10(j)

SEC. 205. Section 206(c) of the Housing Act of 1961 (Public Law 87-70, approved June 30, 1961, 75 Stat. 165) is amended by adding at the end thereof the following sentence: "The Secretary of Housing and Urban Development is authorized to agree with a public housing agency to the amendment of any annual contributions contract containing the provision prescribed in section 10 (j) of the United States Housing Act of 1937 (as in effect prior to the enactment of the Housing and Community Development Act of 1974), so as to delete such provision and waive any rights of the United States that are accrued or may accrue under such provision."

AMENDMENT TO NATIONAL BANK ACT

SEC. 206. The sixth sentence of paragraph "Seventh" of section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), is amended—

(1) by striking out "1421a(b) of title 42" wherever it appears and inserting in lieu thereof "6(g) of the United States Housing Act of 1937";

(2) by striking out "either" before clause (1);

(3) by striking out "(which obligations shall have a maturity of not more than eighteen months)" in clause (1);

(4) by striking out "or" before clause (2); and

(5) by inserting before the colon before the first proviso the following: ", or (3) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with

any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity".

AMENDMENTS TO LANHAM ACT

SEC. 207. (a) Section 606 of the Act of October 14, 1940, as amended (42 U.S.C. 1586), is amended by striking out that part of the first sentence in subsection (b) which follows the parenthetical phrase and inserting in lieu thereof a period, and by striking out all of the second sentence.

(b) Section 606(c)(1) of such Act is amended by inserting before the semicolon at the end thereof the following: ", or, with the Secretary's approval, used to finance the repair or rehabilitation of a project or part thereof conveyed to the public housing agency under this section".

LEASED HOUSING

SEC. 208. Nothing in this title or any other provision of law authorizes the Secretary of Housing and Urban Development to apply any policy or procedure established by him with respect to the rights of an owner under a lease entered into under section 23 of the United States Housing Act of 1937 if such lease was entered into prior to the effective date of such policy or procedure.

LOW-INCOME HOUSING FOR THE ELDERLY OR HANDICAPPED

SEC. 209. The Secretary shall consult with the Secretary of Health, Education, and Welfare to insure that special projects for the elderly or the handicapped authorized pursuant to United States Housing Act of 1937 shall meet acceptable standards of design and shall provide quality services and management consistent with the needs of the occupants. Such projects shall be specifically designed and equipped with such "related facilities" (as defined in section 202(d)(8) of the Housing Act of 1959) as may be necessary to accommodate the special environmental needs of the intended occupants and shall be in support of and supported by the applicable State plans for comprehensive services pursuant to section 134 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963 or State and area plans pursuant to title III of the Older Americans Act of 1965.

REVISION OF SECTION 202 PROGRAM FOR ELDERLY AND HANDICAPPED

SEC. 210. (a) Section 202(a)(3) of the Housing Act of 1959 is amended by striking out all that follows "and shall bear interest at a rate" and inserting in lieu thereof "which is not more than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program."

(b) Section 202(d)(4) of such Act is amended—

(1) by striking out "a physical" in the second sentence and inserting in lieu thereof "an"; and

(2) by inserting after the second sentence the following new sentence: "A person shall also be considered handicapped if such person is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950."

(c) Section 202 of such Act is further amended by adding at the end thereof the following new subsection:

"(f) In carrying out the provisions of this section, the Secretary shall seek to assure, pursuant to applicable regulations, that housing and related facilities assisted under this section will be in appropriate support of, and supported by, applicable State and local plans which respond to Federal program requirements by providing an assured range of necessary services for individuals occupying such housing (which services may include, among others, health, continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, transportation where necessary to facilitate access to social services, and services designed to encourage and assist recipients to use the services and facilities available to them), including plans approved by the Secretary of Health, Education, and Welfare pursuant to section 134 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963 or pursuant to title III of the Older Americans Act of 1965."

(d) Section 202(a)(4) of such Act is amended—

(1) by inserting "(A)" immediately after "(4)";

(2) by inserting ", and the proceeds from notes or other obligations issued under subparagraph (B)," after "Amounts so appropriated"; and

(3) by adding at the end thereof the following new subparagraphs:

"(B)(i) To carry out the purposes of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount not to exceed $800,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act; and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"(ii) The receipts and disbursements of the fund shall not be included in the total of the Budget of the United States Government and shall be exempt from any limitation on annual expenditure or net lending.

"(C) Amounts in the fund shall be available to the Secretary for the purpose of making loans under this section and for paying interest on obligations issued under subpargraph (B). The aggregate loans made under this section in any fiscal year shall not exceed the limits on such lending authority established for such year in appropriation Acts."

(e) Section 202(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) To the maximum extent practicable, the Secretary shall use the services and facilities of the private mortgage industry in servicing mortgage loans made under this section."

(f) Section 202(d)(8) of such Act is amended by inserting immediately after "families" the following: "residing in the project or in the area".

(g)(1) In determining the feasibility and marketability of a project under section 202 of the Housing Act of 1959, the Secretary shall consider the availability of monthly assistance payments pursuant to section 8 of the United States Housing Act of 1937 with respect to such a project.

(2) The Secretary shall insure that with the original approval of a project authorized pursuant to section 202 of the Housing Act of 1959, and thereafter at each annual revision of the assistance contract under section 8 of the United States Housing Act of 1937 with respect to units in such project, the project will serve both low- and moderate-income families in a mix which he determines to be appropriate for the area and for viable operation of the project; except that the Secretary shall not permit maintenance of vacancies to await tenants of one income level where tenants of another income level are available.

SINGLE-FAMILY MORTGAGE ASSISTANCE

SEC. 211. (a) Section 235 of the National Housing Act is amended—

(1) by striking out "and by $200,000,000 on July 1, 1971" in subsection (h)(1) and inserting in lieu thereof "by $200,000,000 on July 1, 1971, and by such sums as may be approved in appropriation Acts after June 30, 1974, and prior to July 1, 1976";

(2) by adding at the end of subsection (h)(1) the following: "Upon the expiration of one year following the date of enactment of the Housing and Community Development Act of 1974, the Secretary shall not enter into new contracts for assistance payments under this section utilizing authority approved in appropriation Acts prior to July 1, 1974.";

(3) by striking out paragraph (2) of subsection (h) and inserting in lieu thereof the following:

"(2) Assistance payments under this section may be made only with respect to a family whose income at the time of initial occupancy does not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low median family incomes, or other factors.";

(4) by striking out "prior to July 1, 1972" in subsection (h)(3)(B) and inserting in lieu thereof "on or after July 1, 1969";

(5) by inserting after "mortgage" in the first sentence of subsection (i)(1) the following: "(including advances with respect to property construction or rehabilitation pursuant to a self-help program)";

(6) by striking out paragraph (3)(C) of subsection (i) and inserting in lieu thereof the following:

"(C) be executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property, at least an amount equal to 3 per centum of the Secretary's estimate of the cost of acquisition."; and

(7) by striking out "October 1, 1974" in subsection (m) and inserting in lieu thereof "June 30, 1976".

(b) Section 235(a) of such Act is amended by inserting after "this section" at the end of the second sentence the following: "or which mortgages are assisted under a State or local program providing assistance through loans, loan insurance or tax abatement".

(c)(1) The last proviso in section 235(b)(2) of such Act is amended by striking out "$18,000", "$21,000", "$21,000", and "$24,000", and inserting in lieu thereof "$21,600", "$25,200", "$25,200", and "$28,800", respectively.

(2) Section 235(i)(3)(B) of such Act is amended by striking out "$18,000", "$21,000", "$21,000", and "$24,000" and inserting in lieu thereof "$21,600", "$25,200", '$25,200", and '$28,800", respectively.

MULTI-FAMILY MORTGAGE ASSISTANCE

SEC. 212. Section 236 of the National Housing Act is amended—

"(1) by inserting "(1)" after "(f)" at the beginning of subsection (f), and by redesignating clauses (1) and (2) of such subsection as clauses (A) and (B), respectively;

(2) by adding at the end of subsection (f) (1) the following: "With respect to those projects which the Secretary determines have separate utility metering for some or all dwelling units, the Secretary is authorized—

"(i) to permit the basic rental charge and the fair market rental charge to be determined on the basis of operating the project without the payment of the cost of utility services used by such dwelling units; and

"(ii) to permit the charging of a rental for such dwelling units at such an amount less than 25 per centum of a tenant's income as the Secretary determines represents a proportionate decrease for the utility charges to be paid by such tenant, but in no case shall such rental be lower than 20 per centum of a tenant's income.

"(2) With respect to 20 per centum of the dwelling units in any project made subject to a contract under this section after the date of enactment of the Housing and Community Development Act of 1974, the Secretary shall make, and contract to make additional assistance payments to the project owner on behalf of tenants whose incomes are too low for them to afford the basic rentals with 25 per centum of their income or such lower per centum as may be established pursuant to the provisions of clause (ii) of the last sentence of paragraph (1). The additional assistance payments authorized by this paragraph with respect to any dwelling unit shall be the amount required to reduce the rental payment by the tenant to 25 per centum of the tenant's income or such lower per centum as may be established pursuant to the provisions of clause (ii) of the last sentence of paragraph (1). In no case shall such rental payment be reduced below an amount equal to utility costs attributable to the unit occupied by the tenant, unless the Secretary determines that the application of this requirement in any area would result in undue hardship because of unusually high utility costs prevailing seasonally or otherwise in such area. Notwithstanding the foregoing provisions of this paragraph, the Secretary may—

"(A) reduce such 20 per centum requirement in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

"(B) increase such 20 per centum requirement in the case of any project if he determines that such action is necessary and feasible in order to assure, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or that such action is to be taken to meet the housing needs of elderly or handicapped families.

"(3) For each project there shall be established an initial operating expense level, which shall be the sum of the cost of utilities and local property taxes payable by the project owner at the time the Secretary determines the property to be fully occupied, taking into account anticipated and customary vacancy rates. At any time subsequent to the establishment of an initial operating expense level, the Secretary is authorized to make, and contract to make, additional assistance payments to the project owner in an amount up to the amount by which the sum of the cost of utilities and local property taxes exceeds the initial operating expense level, but not to exceed the amount required to maintain the basic rentals of any units at levels not in excess of 30 per centum, or such lower per centum not less than 25 per centum as shall reflect the reduction permitted in clause (ii) of the last sentence of paragraph (1), of the income of tenants occupying such units. Any contract to make additional assistance payments may be amended periodically to provide for appropriate adjustments in the amount of the assistance payments. Additional assistance payments shall be made pursuant to this paragraph only if the Secretary finds that the increase in the cost of utilities or local property taxes, is reasonable and is comparable to cost increases affecting other rental projects in the community.";

(3) by striking out subsection (g) and inserting in lieu thereof the following:

"(g) The project owner shall, as required by the Secretary, accumulate, safeguard, and periodically pay to the Secretary all rental charges collected in excess of the basic rental charges. Such excess charges shall be credited to a reserve fund to be used by the Secretary to make additional assistance payments as provided in paragraph (3) of subsection (f). During any period that the Secretary determines that the balance in the reserve fund is adequate to meet the estimated additional assistance payments, such excess charges shall be credited to the appropriation authorized by subsection (i) and shall be available until the end of the next fiscal year for the purpose of making assistance payments with respect to rental housing projects receiving assistance under this section. For the purpose of this subsection and paragraph (3) of subsection (f), the initial operating expense level for any project assisted under a contract entered into prior to the date of enactment of the Housing and Community Development Act of 1974 shall be established by the Secretary not later than 180 days after the date of enactment of such Act.";

(4) by striking out "and by $200,000,000 on July 1, 1971" in subsection (i) (1) and inserting in lieu thereof "by $200,000,000 on July 1, 1971, and by $75,000,000 on July 1, 1974";

(5) by striking out paragraphs (2) and (3) of subsection (i) and inserting in lieu thereof the following:

"(2) Contracts for assistance payments under this section may be entered into only with respect to tenants whose incomes do not exceed 80 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

"(3) Not less than 10 per centum of the total amounts of contracts for assistance payments authorized by appropriation Acts to be made after June 30, 1974, shall be available for use only with respect to dwellings, or dwelling units in projects, which are approved by the Secretary prior to rehabilitation.

"(4) At least 20 per centum of the total amount of contracts for assistance payments authorized in appropriation Acts to be made after June 30, 1974, shall be available for use only with respect to projects which are planned in whole or in part for occupancy by elderly or handicapped families. As used in this paragraph, the term 'elderly families' means families which consist of two or more persons the head of which (or his spouse) is sixty-two years of age or over or is handicapped. Such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.";

(6) by striking out "October 1, 1974" in subsection (n) and inserting in lieu thereof "June 30, 1976"; and

(7) by adding at the end thereof the following:

"(p) The Secretary is authorized to enter into contracts with State or local agencies approved by him to provide for the monitoring and supervision by such agencies of the management by private sponsors of projects assisted under this section. Such contracts shall require that such agencies promptly report to the Secretary any deficiencies in the management of such projects in order to enable the Secretary to take corrective action at the earliest practicable time."

LOCAL HOUSING ASSISTANCE PLANS; ALLOCATION OF HOUSING FUNDS

SEC. 213. (a) (1) The Secretary of Housing and Urban Development, upon receiving an application for housing assistance under the United States Housing Act of 1937, section 235 or 236 of the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, or section 202 of the Housing Act of 1959, if the unit of general local government in which the proposed assistance is to be provided has an approved housing assistance plan, shall—

(A) not later than ten days after receipt of the application, notify the chief executive officer of such unit of general local government that such application is under consideration; and

(B) afford such unit of general local government the opportunity, during the thirty-day period beginning on the date of such notification, to object to the approval of the application on the grounds that the application is inconsistent with its housing assistance plan.

(2) If the unit of general local government objects to the application on the grounds that it is inconsistent with its housing assistance plan, the Secretary may not approve the application unless he determines that the application is consistent with such housing assistance plan. If the Secretary determines, that such application is consistent with the housing assistance plan, he shall notify the chief executive officer of the unit of general local government of his determination and the reasons therefor in writing. If the Secretary concurs with the objection of the unit of local government, he shall notify the applicant stating the reasons therefor in writing.

(3) If the Secretary does not receive an objection by the close of the period referred to in paragraph (1) (B), he may approve the application unless he finds it inconsistent with the housing assistance plan. If the Secretary determines that an application is inconsistent with a housing assistance plan, he shall notify the applicant stating the reasons therefor in writing.

(4) The Secretary shall make the determinations referred to in paragraphs (2) and (3) within thirty days after he receives an objection pursuant to paragraph (1) (B) or within thirty days after the close of the period referred to in paragraph (1) (B), whichever is earlier.

(5) As used in this section, the term "housing assistance plan" means a housing assistance plan submitted and approved under section 104 of this Act or, in the case of a unit of general local government not participating under title 1 of this Act, a housing plan approved by the Secretary as meeting the requirements of this section.

(b) The provisions of subsection (a) shall not apply to—

(1) applications for assistance involving 12 or fewer units in a single project or development;

(2) applications for assistance with respect to housing in new community developments approved under title IV of the Housing and Urban Development Act of 1968 or title VII of the Housing and Urban Development Act of 1970 which the Secretary determines are

necessary to meet the housing requirements under such title; or

(3) applications for assistance with respect to housing financed by loans or loan guarantees from a State or agency thereof, except that the provisions of subsection (a) shall apply where the unit of general local government in which the assistance is to be provided objects in its housing assistance plan to the exemption provided by this paragraph.

(c) For areas in which an approved local housing assistance plan is not applicable, the Secretary shall not approve an application for housing assistance unless he determines that there is a need for such assistance, taking into consideration any applicable State housing plans, and that there is or will be available in the area public facilities and services adequate to serve the housing proposed to be assisted. The Secretary shall afford the unit of general local government in which the assistance is to be provided an opportunity, during a 30-day period following receipt of an application by him, to provide comments or information relevant to the determination required to be made by the Secretary under this subsection.

(d)(1) In allocating financial assistance under the provisions of law specified in subsection (a) of this section, the Secretary, so far as practicable, shall consider the relative needs of different areas and communities as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, or other objectively measurable conditions, subject to such adjustments as may be necessary to assist in carrying out activities designed to meet lower income housing needs as described in approved housing assistance plans submitted by units of general local government or combinations of such units assisted under section 107(a)(2) of this Act. The amount of assistance allocated to nonmetropolitan areas pursuant to this section in any fiscal year shall not be less than 20 nor more than 25 per centum of the total amount of such assistance.

(2) In order to facilitate the provision of, and long-range planning for housing for persons of low- and moderate-income in new community developments approved under title IV of the Housing and Urban Development Act of 1968 and title VII of the Housing and Urban Development Act of 1970, the Secretary shall reserve such housing assistance funds as he deems necessary for use in connection wtih such new community developments.

(3) The Secretary may reserve such housing assistance funds as he deems appropriate for use by a State or agency thereof.

## TITLE III—MORTGAGE CREDIT ASSISTANCE

### INSURED ADVANCES

SEC. 301. Title V of the National Housing Act is amended by adding at the end thereof the following new section:

"ADVANCES

"SEC. 525. The Secretary is authorized to insure mortgage proceeds advanced during construction or rehabilitation or otherwise prior to final endorsement of a project mortgage for the purpose of (1) financing improvements to the property and the purchase of materials and building components delivered to the property, and (2) providing funds to cover the cost of building components where such components have been assembled and specifically identified for incorporation into the property but are located at a site other than the mortgaged property, with such security as the Secretary may require."

### INCREASE IN MAXIMUM MORTGAGE AMOUNTS UNDER FHA ONE- TO FOUR-FAMILY MORTGAGE INSURANCE PROGRAMS

SEC. 302. (a) Section 203(b)(2) of the National Housing Act is amended by striking out "$33,000", "$35,750", and "$41,250" wherever they appear and inserting in lieu thereof "$45,000", $48,750", and "$56,000", respectively.

(b) Section 220(d)(3)(A) of such Act is amended by striking out "$33,000", "$35,750", and "$41,250" wherever they appear and inserting in lieu thereof "$45,000", "$48,750", and "$56,000", respectively.

(c) Section 221(d)(2)(A) of such Act is amended—

(1) by striking out "$18,000", "$21,000", "$24,000", "$32,400", and "$39,600" in the matter preceding the first proviso and inserting in lieu thereof "$21,600", "$25,200", "$28,000", "38,880", and "$47,520", respectively; and

(2) by striking out "$21,000", "$24,000", "$30,000", "$38,400", and "$45,600" in the second proviso and inserting in lieu thereof "$25,200", "$28,800", "$36,000", "$46,080", and "$54,720", respectively.

(d) Section 222(b)(2) of such Act is amended by striking out "$33,000" and inserting in lieu thereof "$45,000".

(e) Section 234(c) of such Act is amended by striking out "$33,000" and inserting in lieu thereof "$45,000".

### INCREASE IN MAXIMUM MORTGAGE AMOUNTS UNDER FHA MULTIFAMILY MORTGAGE INSURANCE PROGRAMS

SEC. 303. (a)(1) Section 207(c)(3) of the National Housing Act is amended by striking out "$9,900", "$13,750", "$16,500", "$20,350", "23,100", and "$2,500" in the matter preceding the first semicolon and inserting in lieu thereof "$13,000", "$18,000", "$21,500", "$26,500", "$30,000" and "$3,250", respectively.

(2) Section 207(c)(3) of such Act is further amended by striking out "$11,550", "$16,500", "$19,800", "$24,750", and "$28,050" in the matter following the first semicolon and inserting in lieu thereof "$15,000", "$21,000", "$25,570", "$32,250", and "$36,465", respectively.

(b)(1) Section 213(b)(2) of such Act is amended by striking out "$9,900", "$13,750", "$16,500", "$20,350", and "$23,100" in the matter preceding the first proviso and inserting in lieu thereof "$13,000", "$18,000", "$21,500", "$26,500", and "$30,000", respectively.

(2) Section 213(b)(2) of such Act is further amended by striking out "$11,550", "$16,500", "$19,800", "$24,750", and "$28,050" in the first proviso and inserting in lieu thereof "$15,000", "$21,000", "$25,750", "$32,250", and "$36,465", respectively.

(c)(1) Section 220(d)(3)(B)(iii) of such Act is amended by striking out "$9,900", "$13,750", "$16,500", "$20,350", and "$23,100" in the matter preceding "except" where it first appears and inserting in lieu thereof "$13,000", "$18,000", "$21,500", "$26,500", and "$30,000", respectively.

(2) Section 220(d)(3)(B)(iii) of such Act is further amended by striking out "$11,550", "$16,500", "$19,800", "$24,750", and "$28,050" in the matter following "except" where it first appears and inserting in lieu thereof "$15,000", "$21,000", "$25,750", "$32,250", and "$36,465", respectively.

(d) Section 221(d)(3)(ii) of such Act is amended—

(A) by striking out "$9,200", "$12,937.50", "$15,525", "$19,550", and "$22,137.50" and inserting in lieu thereof "$11,240", "$15,540", "$18,630", "$23,460", and "$26,570", respectively; and

(B) by striking out "$10,925", "$13,500", "$18,400", "$23,000", and "$26,162.50" and inserting in lieu thereof "$13,120", "$16,200", "$22,080", "$27,600", and "$32,000", respectively.

(e)(1) Section 221(d)(4)(ii) of such Act is amended by striking out "$9,200", "$12,937.50", "$15,525", "$19,550", and "$22,137.50" in the matter preceding the first semicolon and inserting in lieu thereof "$12,300", "$17,188", "$20,525", "$24,700", and "$29,038", respectively.

(2) Section 221(d)(4)(ii) of such Act is further amended by striking out "$10,525", "$15,525", "$18,400", "$23,000", and "$26,-162.50" in the matter following the first semicolon and inserting in lieu thereof "$13,975", "$20,025", "$24,350", "$31,500", and "$34,578", respectively.

(f)(1) Section 231(c)(2) of such Act is amended by striking out "$8,800", "$12,375", "$14,850", "$18,700", and "$21,175" in the matter preceding the first semicolon and inserting in lieu thereof "$12,300", "$17,188", "$20,525", "$24,700", and "$29,038", respectively.

(2) Section 231(c)(2) of such Act is further amended by striking out "$10,450", "$14,-850", $17,600", "$22,000", and $25,025" in the matter following the first semicolon and inserting in lieu thereof "$13,975", "$20,-025", "$24,350", "$31,500", and "$34,578", respectively.

(g)(1) Section 234(c)(3) of such Act is amended by striking out "$9,900", "$13,750", "$16,500", "$20,350", and "$23,100" in the matter preceding the first proviso and inserting in lieu thereof "$13,000", "$18,000", "$21,500", "$26,500", and "$30,000", respectively.

(2) Section 234(e)(3) of such Act is further amended by striking out "$11,550", "$16,-500", "$19,800", "$24,750", and "$28,050" in the first proviso and inserting in lieu thereof "$15,000", "$21,000", "$25,750", "$32,250", and "$36,465", respectively.

### ELIMINATION OF PROJECT MORTGAGE DOLLAR LIMITS

SEC. 304. (a)(1) Section 207(c) of the National Housing Act is amended by striking out paragraph (1).

(2) Section 207(c)(3) of such Act is amended by striking out "or $1,000,000 per mortgage for trailer courts or parks".

(b) Section 213(b) of such Act is amended by striking out paragraph (1).

(c) Section 213(c) of such Act is amended by striking out "not to exceed $12,500,000 and".

(d) Section 220(d)(3)(B) of such Act is amended by striking out clause (i).

(e) Section 221(d) of such Act is amended—

(1) by striking out clause (i) in paragraph (3); and

(2) by striking out clause (i) in paragraph (4).

(f) Section 231(c) of such Act is amended by striking out paragraph (1).

(g) Section 232(d)(2) of such Act is amended by striking out "not to exceed $12,-500,000, and".

(h) Section 234(e) of such Act is amended by striking out paragraph (1).

(i) Section 242(d)(2) of such Act is amended by striking out "not to exceed $50,000,000, and".

(j)(1) Section 810(f) of such Act is amended by striking out "(1) not to exceed $5,000,000 or (2)".

(2) Section 810(g) of such Act is amended by striking out "not to exceed $5,000,000 and".

(k) Section 1002(c) of such Act is amended by striking out the second sentence.

(l) Section 1101(c) of such Act is amended by striking out paragraph (1).

### ENERGY CONSERVATION

SEC. 305. Title V of the National Housing Act (as amended by section 301 of this Act) is amended by adding at the end thereof the following new section:

"ENERGY CONSERVATION

"SEC. 526. To the maximum extent feasible, the Secretary of Housing and Urban Development shall promote the use of energy saving techniques through minimum property standards established by him for newly constructed residential housing subject to mortgages insured under this Act."

COMPENSATION FOR DEFECTS

SEC. 306. Section 518(b) of the National Housing Act is amended to read as follows:

"(b) The Secretary is authorized to make expenditures to correct, or to reimburse the owner for the correction of, structural or other major defects which so seriously effect use and livability as to create a serious danger to the life or safety of inhabitants of any one or two family dwelling which is covered by a mortgage insured under section 235 of this Act or which is located in an older, declining urban area and is covered by a mortgage insured under section 203 or 221 on or after August 1, 1968, but prior to January 1, 1973, and which is more than one year old on the date of the issuance of the insurance commitment, if (1) the owner requests assistance from the Secretary not later than one year after the insurance of the mortgage, or, in the case of a dwelling covered by a mortgage insured under section 203 or 221 the insurance commitment for which was issued on or after August 1, 1968, but prior to January 1, 1973, not more than one year after the date of enactment of the Housing and Community Development Act of 1974, and (2) the defect is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably be expected to disclose. The Secretary may require from the seller of any such dwelling an agreement to reimburse him for any payments made pursuant to this subsection with respect to such dwelling. Expenditures pursuant to this subsection shall be the obligation of the Special Risk Insurance Fund."

CO-INSURANCE

SEC. 307. Title II of the National Housing Act is amended by adding at the end thereof the following new section:

"CO-INSURANCE

"SEC. 244. (a) In addition to providing insurance as otherwise authorized under this Act, and notwithstanding any other provision of this Act inconsistent with this section, the Secretary, upon request of any mortgagee and for such mortgage insurance premium as he may prescribe (which premium, or other charges to be paid by the mortgagor, shall not exceed the premium, or other charges, that would otherwise be applicable), may insure and make a commitment to insure under any provision of this title any mortgage, advance, or loan otherwise eligible under such provision, pursuant to a co-insurance contract providing that the mortgagee will—

"(1) assume a percentage of any loss on the insured mortgage, advance, or loan in direct proportion to the amount of the co-insurance, which co-insurance shall not be less than 10 per centum, subject to any reasonable limit or limits on the liability of the mortgagee that may be specified in the event of unusual or catastrophic losses that may be incurred by any one mortgagee; and

"(2) carry out (under a delegation or otherwise and with or without compensation but subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, commitment, property disposition, or other functions as the Secretary, pursuant to regulations, shall approve as consistent with the purposes of this Act. Any contract of co-insurance under this section shall contain such provisions relating to the sharing of premiums on a sound actuarial basis, establishment of mortgage reserves, manner of calculating insurance benefits, conditions with respect to foreclosure, handling and disposition of property prior to claim or settlement, rights of assignees (which may elect not to be subject to the loss sharing provisions), and other similar matters as the Secretary may prescribe pursuant to regulations.

"(b) No insurance shall be granted pursuant to this section with respect to dwellings or projects approved for insurance prior to the beginning of construction unless the inspection of such construction is conducted in accordance with at least the minimum standards and criteria used with respect to dwellings or projects approved for mortgage insurance pursuant to other provisions of this title.

"(c) No insurance shall be granted pursuant to this section unless the Secretary has, after due consultation with the mortgage lending industry, determined that the demonstration program of co-insurance authorized by this section will not disrupt the mortgage market or reduce the availability of mortgage credit to borrowers who depend upon mortgage insurance provided under this Act.

"(d) No mortgage, advance, or loan shall be insured pursuant to this section after June 30, 1977, except pursuant to a commitment to insure made before that date. The aggregate principal amount of mortgages and loans insured pursuant to this section in any fiscal year beginning on or after July 1, 1974, and ending prior to October 1, 1977, shall not exceed 20 per centum of the aggregate principal amount of all mortgages and loans insured under this title during such fiscal year. The overall percentage limitation specified in the preceding sentence shall also apply separately within each of the following categories—

"(1) mortgages and loans covering one- to four-family dwellings; and

"(2) mortgages and loans covering projects with five or more dwelling units.

"(e) The Secretary shall not withdraw, deny, or delay insurance otherwise authorized under any other provision of this Act by reason of the availability of insurance pursuant to this section. The Secretary shall exercise his authority under this section only to the extent that he finds that the continued exercise of such authority will not adversely affect the flow of mortgage credit to older and declining neighborhoods and to the purchasers of older and lower cost housing.

"(f) The Secretary shall submit to the Congress a report, not later than March 1, 1975, and annually thereafter, describing operations under this section, including the extent of mortgagee participation and any special problems encountered, particularly with respect to the flow of mortgage credit to older and declining neighborhoods and to purchasers of older and lower cost housing, and setting forth any recommendations he may deem appropriate with respect to the continuation or modification of the authority contained in this section. If the Secretary shall fail to submit any such report by the date due, his authority under this section shall terminate."

EXPERIMENTAL FINANCING

SEC. 308. Title II of the National Housing Act (as amended by section 307 of this Act) is amended by adding at the end thereof the following new section:

"EXPERIMENTAL FINANCING

"SEC. 245. The Secretary may insure on an experimental basis under any provision of this title mortgages and loans with provisions of varying rates of amortization corresponding to anticipated variations in family income to the extent he determines such mortgages or loans (1) have promise for expanding housing opportunities or meet special needs, (2) can be developed to include any safeguards for mortgagors or purchasers that may be necessary to offset special risks of such mortgages, and (3) have a potential for acceptance in the private market. The outstanding aggregate principle amount of mortgages which are insured pursuant to this section may not exceed 1 per centum of the outstanding aggregate principle amount of mortgages and loans estimated to be insured during any fiscal year under this title. A mortgage or loan may not be insured pursuant to this section after June 30, 1976, except pursuant to a commitment entered into prior to such date."

PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

SEC. 309. (a) Section 2(b) of the National Housing Act is amended—

(1) by striking out "$5,000" in clause (1) and inserting in lieu thereof "$10,000";

(2) by striking out "if such obligation" in clause (2) and all that follows down through "the general economy, and" and inserting in lieu thereof the following: "if such obligation has a maturity in excess of twelve years and thirty-two days, except that";

(3) by striking out "twelve years and thirty-two days (fifteen years and thirty-two days in the case of a mobile home composed of two or more modules)" in the proviso in clause (2) and inserting in lieu thereof "fifteen years and thirty-two days"; and

(4) by striking out "$15,000", "$2,500", and "seven years" in the third proviso in clause (3) and inserting in lieu thereof $25,000", "$5,000", and "twelve years", respectively.

(b) (1) Section 2(a) of such Act is amended by adding at the end thereof the following new paragraph:

"Alterations, repairs, and improvements upon or in connection with existing structures may include the provision of fire safety equipment, energy conserving improvements, or the installation of solar energy systems. As used in this section—

"(1) the term 'fire safety equipment' means any device or facility which is designed to reduce the risk of personal injury or property damage resulting from fire and is in conformity with such criteria and standards as shall be prescribed by the Secretary;

"(2) the term 'energy conserving improvements' means any addition, alteration, or improvement to an existing or new structure which is designed to reduce the total energy requirements of that structure, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the National Bureau of Standards; and

"(3) the term 'solar energy system' means any addition, alteration, or improvement to an existing or new structure which is designed to utilize solar energy to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the National Bureau of Standards."

(2) The first sentence of section 2(a) of such Act is amended by inserting before the period at the end thereof the following: "or financing the purchase of a lot on which to place such home and paying expenses reasonably necessary for the appropriate preparation of such lot, including the installation of utility connections, sanitary facilities, and paving, and the construction of a suitable pad, or financing only the acquisition of such a lot either with or without such preparation by an owner of a mobile home.".

(3) Section 2(b) of such Act is amended by adding at the end thereof the following new sentence: "Notwithstanding the foregoing limitations, any loan to finance fire safety equipment for a nursing home, extended health care facility, intermediate health care facility, or other comparable health care facility may involve such principal amount and have such maturity as the Secretary may prescribe.".

(c) Clause (1) in the first paragraph of section 2(a) of such Act is amended by inserting "or mobile homes" immediately after "in connection with existing structures".

(d) Section 2(b) of such Act (as amended by subsection (b)(3) of this section) is amended by adding at the end thereof the following new paragraphs:

"Notwithstanding the limitations contained in the first proviso to clause (2) of the preceding sentence, a loan financing the purchase of a mobile home and an undeveloped lot on which to place the home shall—

"(A) involve an amount not exceeding (i) the maximum amount under clause (1) of the first paragraph of this subsection, and (ii) such amount not to exceed $5,000 as may be necessary to cover the cost of purchasing the lot; and

"(B) have a maturity not exceeding fifteen years and thirty-two days (twenty years and thirty-two days in the case of a mobile home composed of two or more modules).

"A loan financing the purchase of a mobile home and a suitably developed lot on which to place the home shall—

"(A) involve an amount not exceeding (i) the maximum amount under clause (1) of the first paragraph of this subsection, and (ii) such amount not to exceed $7,500 as may be necessary to cover the cost of purchasing the lot; and

"(B) have a maturity not exceeding fifteen years and thirty-two days (twenty years and thirty-two days in the case of a mobile home composed of two or more modules).

"A loan financing the purchase, by an owner of a mobile home which is the principal residence of that owner, of only a lot on which to place that mobile home shall—

"(A) involve such an amount as may be necessary to cover the cost of purchasing the lot but not exceeding (i) $5,000 in the case of an undeveloped lot, or (ii) $7,500 in the case of a developed lot; and

"(B) have a maturity not exceeding ten years and thirty-two days.

A mobile home lot loan may be made only if the owner certifies that he will place his mobile home on the lot acquired with such loan within six months after the date of such loan."

(e) The last sentence of section 3(a) of the Act entitled "An Act to amend chapter 37 of title 38 of the United States Code with respect to the veterans' home loan program, to amend the National Housing Act with respect to interest rates on insured mortgages, and for other purposes," approved May 7, 1968, as amended (12 U.S.C. 1709–1), is amended by striking out ", and which represent loans and advances of credit made for the purpose of financing purchases of mobile homes,".

DOWNPAYMENT REQUIREMENTS FOR REGULAR FHA ONE- TO FOUR-FAMILY MORTGAGES

SEC. 310. (a) The first and second sentences of section 203(b)(2) of the National Housing Act are each amended—

(1) by striking out "$15,000"' in clause (i) and inserting in lieu thereof "$25,000".

(2) by striking out "$15,000"' and "$25,000" in clause (ii) and inserting in lieu thereof "$25,000" and "$35,000", respectively; and

(3) by striking out "$25,000" in clause (iii) and inserting in lieu thereof "$35,000".

(b) Section 220(d)(3)(A)(i) of such Act is amended by—

(1) by striking out "$15,000" in each clause numbered (1) and inserting in lieu thereof "$25,000";

(2) by striking out "$15,000" and "$25,000" in each clause numbered (2) and inserting in lieu thereof "$25,000" and "$35,000", respectively; and

(3) by striking out "$25,000" in each clause numbered (3) and inserting in lieu thereof "$35,000".

(c) Section 222(b)(3) of such Act is amended to read as follows:

"(3) have a principal obligation not in excess of the sum of (i) 97 per centum of $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, (ii) 90 per centum of such value in excess of $25,000 but not in excess of $35,000, and (iii) 80 per centum of such value in excess of $35,000; and".

(d) That part of clause (A) of the third sentence of section 234(c) of such Act which begins "and not to exceed" is amended to read as follows "and not to exceed the sum of (i) 97 per centum of $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, (ii) 90 per centum of such value in excess of $25,000 but not in excess of $35,000, (iii) 80 per centum of such value in excess of $35,000".

MULTIFAMILY MORTGAGES

SEC. 311. (a) Section 223 of the National Housing Act is amended by adding at the end thereof the following new subsections:

"(f) Notwithstanding any of the provisions of this Act, the Secretary is authorized, in his discretion, to insure under any section of this title a mortgage executed in connection with the purchase or refinancing of an existing multifamily housing project. In the case of refinancing under this subsection of property located in an older, declining urban area, the Secretary shall prescribe such terms and conditions as he deems necessary to assure that—

"(1) the refinancing is used to lower the monthly debt service only to the extent necessary to assure the continued economic viability of the project, taking into account any rent reductions to be implemented by the mortgagor; and

"(2) during the mortgage term no rental increases shall be made except those which are necessary to offset actual and reasonable operating expense increases or other necessary expense increases approved by the Secretary.

"(g) Notwithstanding any other provisions of this Act, the Secretary may, in his discretion, insure a mortgage covering a multifamily housing project including units which are not self-contained."

(b) Section 213(b)(2) of such Act is amended by striking out "97 per centum" and inserting in lieu thereof "98 per centum".

GROUP PRACTICE FACILITIES

SEC. 312. (a) Title XI of the National Housing Act is amended—

(1) by inserting after "unit or organization" in section 1101(b)(1) the following: "or other mortgagor";

(2) by inserting after "group practice facility" in section 1101(b)(3) the following: "or medical practice facility";

(3) by inserting after "group practice facility" in section 1101(e) the following: "or medical practice facility";

(4) by inserting after "group practice facility" in section 1101(f) the following: "or medical practice facility";

(5) by striking out in "(as defined in section 1106(1))" section 1105(a) and inserting in lieu thereof "or medical practice facility (as defined in section 1106)"; and

(6) by redesignating paragraphs (2) through (8) of section 1106 as paragraphs (3) through (9), respectively, and by inserting after paragraph (1) of such section the following:

"(2) The term 'medical practice facility' means an adequately equipped facility in which not more than four persons licensed to practice medicine in the State where the facility is located can provide, as may be appropriate, preventive, diagnostic, and treatment services, and which is situated in a rural area or small town, or in a low-income section of an urban area, in which there exists, as determined by the Secretary, a critical shortage of physicians. As used in this paragraph—

"(A) the term 'small town' means any town, village, or city having a population of not more than 10,000 inhabitants according to the most recent available data compiled by the Bureau of the Census; and

"(B) the term 'low-income section of an urban area' means a section of a larger urban area in which the median family income is substantially lower, as determined by the Secretary, than the median family income for the area as a whole."

(b) Section 1106 of such Act is amended as follows:

(1) Paragraph (1) is amended by inserting "or osteopathy" after "practice medicine" and by inserting after "State" where it last appears the following: ", or, in the case of podiatric care or treatment, is under the professional suspervision of persons licensed to practice podiatry in the State'.

(2) Paragraph (2) (as redesignated by subsection (a)(6) of this section) is amended by inserting ", osteopathy," after practice medicine", and by inserting after "dentistry in the State," the following: "or of persons licensed to practice podiatry in the State,".

(3) Paragraph (3)(A) (as so redesignated) is amended by inserting "osteopathic care," after "comprehensive medical care,", by striking out "or" after "optometric care,", and by inserting after "dental care," the following: "or podiatric care,".

(4) Paragraph (3)(B) (as so redesignated) is amended by inserting "osteopathic,", after "medical,", by striking out "or' after "optometric" and by inserting after "dental" the following: "or podiatric".

SUPPLEMENTAL LOANS

SEC. 313. Section 241 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding the foregoing, the Secretary may insure a loan for improvements or additions to a multifamily housing project, or a group practice or medical practice facility or hospital or other health facility approved by the Secretary, which is not covered by a mortgage insured under this Act, if he finds that such a loan would assist in preserving, expanding, or improving housing opportunities, or in providing protection against fire or other hazards. Such loans shall have a maturity satisfactory to the Secretary and shall meet such other conditions as the Secretary may prescribe. In no event shall such a loan be insured if it is for an amount in excess of the maximum amount which could be approved if the outstanding indebtedness, if any, covering the property were a mortgage insured under this Act."

MORTGAGE INSURANCE FOR LAND DEVELOPMENT

SEC. 314. The first sentence of section 1002(c) of the National Housing Act is amended to read as follows: "The principal obligation of the mortgage shall not exceed the sum of 80 per centum of the Secretary's estimate of the value of the land before development and 90 per centum of his estimate of the cost of such development.".

SALES TO COOPERATIVES

SEC. 315. Title II of the National Housing Act (as amended by sections 307 and 308 of this Act) is amended by adding at the end thereof the following:

"SALE OF ACQUIRED PROPERTY TO COOPERATIVES

"SEC. 246. In any case in which the Secretary sells a multifamily housing project acquired as the result of a default on a mortgage which was insured under this Act to a cooperative which will operate it on a nonprofit basis and restrict permanent occupancy of its dwellings to members, the Secretary may accept a purchase money mortgage in a principal amount equal to the sum of (1) the appraised value of the property at the time of purchase, which value shall be based upon a mortgage amount on which the debt service can be met from the income of the property when operated on a nonprofit basis after payment of all operating expenses, taxes, and required reserves, and (2) the amount of prepaid expenses and costs involved in achieving cooperative ownership. Prior to such disposition of a project, funds may be expended by the Secretary for necessary repairs and improvements."

EXTENSION OF REGULAR FHA INSURANCE PROGRAMS

SEC. 316. (a) Section 2(a) of the National Housing Act is amended by striking out "October 1, 1974" in the first sentence and inserting in lieu thereof "June 30, 1977".

(b) Section 217 of such Act is amended by striking out "October 1, 1974" and inserting in lieu thereof "June 30, 1977".

(c) Section 221(f) of such Act is amended by striking out "October 1, 1974" in the fifth sentence and inserting in lieu thereof "June 30, 1977".

(d) Section 809(f) of such Act is amended by striking out "October 1, 1974" in the second sentence and inserting in lieu thereof "June 30, 1977".

(e) Section 810(k) of such Act is amended by striking out "October 1, 1974" in the second sentence and inserting in lieu thereof "June 30, 1977".

(f) Section 1002(a) of such Act is amended by striking out "October 1, 1974" in the second sentence and inserting in lieu thereof "June 30, 1977".

(g) Section 1101(a) of such Act is amended by striking out "October 1, 1974" in the second sentence and inserting in lieu thereof "June 30, 1977".

EXTENSION OF FLEXIBLE INTEREST RATE AUTHORITY

SEC. 317. Section 3(a) of the Act entitled "An Act to amend chapter 37 of title 38 of the United States Code with respect to the veterans' home loan program, to amend the National Housing Act with respect to interest rates on insured mortgages, and for other purposes", approved May 7, 1968, as amended (12 U.S.C. 1709–1), is amended by striking out "October 1, 1974" and inserting in lieu thereof "June 30, 1977".

MORTGAGE INSURANCE IN MILITARY IMPACTED AREAS

SEC. 318. Section 238 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(c) The Special Risk Insurance Fund may be used by the Secretary for carrying out the mortgage insurance obligations of sections 203 and 207 to provide housing for military personnel, Federal civilian employees, and Federal contractor employees assigned to duty or employed at or in connection with any installation of the Armed Forces of the United States in federally impacted areas where, in the judgment of the Secretary (1) the residual housing requirements for persons not associated with such installations are insufficient to sustain the housing market in the event of substantial curtailment of employment of personnel assigned to such installations, and (2) the benefits to be derived from such use outweigh the risk of possible cost to the Government."

AMENDMENT TO MAKE PUBLIC HOUSING AGENCIES ELIGIBLE AS MORTGAGORS UNDER SECTION 221(d)(3) OF THE NATIONAL HOUSING ACT

SEC. 319. (a) Section 221(d)(3) of the National Housing Act is amended by striking out "(and which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937)" and inserting in lieu thereof "(and, except with respect to a project assisted or to be assisted pursuant to section 8 of the United States Housing Act of 1937, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to such Act)".

(b) With respect to any obligation secured by a mortgage which is insured under section 221(d)(3) of the National Housing Act and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8 of the United States Housing Act of 1937, the interest paid on such obligation shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954.

TITLE IV—COMPREHENSIVE PLANNING

COMPREHENSIVE PLANNING

SEC. 401. (a) Section 701(a) of the Housing Act of 1954 is amended—

(1) by striking out "State planning agencies" in paragraph (1) and inserting in lieu thereof "States";

(2) by striking out the numbered paragraphs following paragraph (1) and inserting in lieu thereof the following:

"(2) States for State, interstate, metropolitan, district, or regional activities which may be assisted under this section;

"(3) cities (including the District of Columbia) having populations of at least 50,000 according to the latest decennial census for local activities which may be assisted under this section;

"(4) urban counties as defined under title I of the Housing and Community Development Act of 1974;

"(5) the areawide organization in any metropolitan area which is formally charged with carrying out the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and section 401 of the Intergovernmental Cooperation Act of 1968: *Provided*, That any such areawide organization, to the extent practicable, shall be composed of or responsible to the elected officials of the unit or units of general local government for the jurisdictions of which they are empowered to carry out the provisions of such Acts;

"(6) Indian tribal groups or bodies; and

"(7) other governmental units or agencies having special planning needs related to the purposes of this section, including but not limited to interstate regional planning commissions, and units or agencies for disaster areas, federally impacted areas, and local development districts, to the extent these needs cannot otherwise be adequately met."; and

(3) by striking out the part which follows the numbered paragraphs and inserting in lieu thereof the following:

"Activities assisted under this section shall, to the maximum extent feasible, cover entire areas having common or related development problems. The Secretary shall encourage cooperation in preparing and carrying out plans among all interested municipalities, political subdivisions, public agencies, and other parties in order to achieve coordinated development of entire areas. To the maximum extent feasible, pertinent plans and studies already made for areas shall be utilized so as to avoid unnecessary repetition of effort and expense."

(b) Section 701 of such Act is further amended by striking out all that follows subsection (a) and inserting in lieu thereof the following:

"(b) Activities which may be assisted under this section include those necessary (1) to develop and carry out a comprehensive plan as part of an ongoing planning process, (2) to develop and improve the management capability to implement such plan or part thereof or related plans or planning, and (3) to develop a policy-planning-evaluation capacity so that the recipient may more rationally (A) determine its needs, (B) set long-term goals and short-term objectives, (C) devise programs and activities to meet these goals and objectives, and (D) evaluate the progress of such programs in accomplishing those goals and objectives. Activities assisted under this section shall be carried out by professionally competent persons.

"(c) Each recipient of assistance under this section shall carry out an ongoing comprehensive planning process which shall make provision for citizen participation pursuant to regulations of the Secretary where major plans, policies, priorities, or objectives are being determined. The process shall involve development and subsequent modifications of a comprehensive plan which shall be reviewed at least biennially for necessary or desirable amendments. Any such plan shall include, as a minimum, each of the following elements:

"(1) A housing element which shall take into account all available evidence of the assumptions and statistical bases upon which the projection of zoning, community facilities, and population growth is based, so that the housing needs of both the region and the local communities studied in the planning will be adequately covered in terms of existing and prospective population growth. The development and formulation of State and local goals pursuant to title XVI of the Housing and Urban Development Act of 1968 shall be a part of such a housing element.

"(2) A land-use element which shall include (A) studies, criteria, standards, and implementing procedures necessary for effectively guiding and controlling major decisions as to where growth shall take place within the recipient's boundaries, and (B) as a guide for governmental policies and activities, general plans with respect to the pattern and intensity of land use for residential, commercial, industrial, and other activities.

Each of the elements set forth above shall specify (i) broad goals and annual objectives (in measurable terms wherever possible), (ii) programs designed to accomplish these objectives, and (iii) procedures, including criteria set forth in advance, for evaluating programs and activities to determine whether they are meeting objectives. Such elements shall be consistent with each other and consistent with stated national growth policy.

"(d) After an initial application for assistance under this section has been approved, the Secretary may make grants on an annual basis, if—

"(1) the applicant submits to the Secretary annually a description of its work program designed to meet objectives for the next succeeding one-year period and setting forth any changes the applicant intends to undertake to achieve better progress; and

"(2) the applicant submits to the Secretary biennially (A) an evaluation of the progress made by it during the previous two years in meeting objectives set forth in its plan, and (B) a description of any changes in the plan's goals or objectives.

The Secretary shall make no grant after three years from the date of enactment of the Housing and Community Development Act of 1974, to any applicant (other than an applicant described in paragraph (6) or (7) of subsection (a)), unless the Secretary is satisfied that the comprehensive planning being carried out by the applicant includes the elements specified in paragraphs (1) and (2) of subsection (c).

"(e) A grant made under this section shall not exceed two-thirds of the estimated cost of the work for which the grant is made. There are authorized to be appropriated for the purposes of this section not to exceed $130,000,000 the fiscal year 1975, and not to exceed $150,000,000 for the fiscal year 1976. Of the funds appropriated under this section, not to exceed an aggregate of $10,000,000 plus 5 per centum of the funds so appropriated may be used by the Secretary for studies, research, and demonstration projects, undertaken independently or by contract, for the development and improvement of techniques and methods for comprehensive planning and for the advancement of the purposes of this section, and for grants to assist in the conduct of studies and research relating to needed revisions in State statutes which create, govern, or control local governments and local governmental operations.

"(f) It is the further intent of this section to encourage comprehensive planning on a unified basis for States, cities, counties, met-

ropolitan areas, districts, regions, and Indian reservations and the establishment and development of the organizational units needed therefor. In extending financial assistance under this section, the Secretary may require such assurances as he deems adequate that the appropriate State and local agencies are making reasonable progress in the development of the elements of comprehensive planning. The Secretary is authorized by contract, grant, or otherwise to provide technical assistance to State and local governments and interstate and regional combinations thereof, to Indian tribal bodies, and to governmental units or agencies described in subsection (a)(7), undertaking such planning and, by contract or otherwise, to make studies and publish information on comprehensive planning and related management problems.

"(g) The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, cooperative effort and mutual assistance in the comprehensive planning for the growth and development of interstate, metropolitan, or other urban areas, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts.

"(h) In addition to the planning grants authorized by subsection (a), the Secretary is further authorized to make grants to organizations composed of public officials representative of the political jurisdictions within the metropolitan area, region, or district involved for the purpose of assisting such organizations to undertake studies, collect data, develop metropolitan, regional and district plans and programs, and engage in such other activities, including implementation of such plans, as the Secretary finds necessary or desirable for the solution of the metropolitan, regional, or district problems in such areas, regions, or districts. To the maximum extent feasible, all grants under this subsection shall be for activities relating to all the developmental aspects of the total metropolitan area, region, or district including, but not limited to, land use, transportation, housing, economic development, natural resources development, community facilities and the general improvement of living environments.

"(i) In addition to the other grants authorized by this section, the Secretary is authorized to make grants to assist any city, other municipality, or county in making a survey of the structures and sites in the locality which are determined by its appropriate authorities to be of historic or architectural value. Any such survey shall be designed to identify the historic structures and sites in the locality, determine the cost of their rehabilitation or restoration, and provide such other information as may be necessary or appropriate to serve as a foundation for a balanced an effective program of historic preservation in such locality. The aspects of any such survey which relate to the identification of historic and architectural values shall be conducted in accordance with criteria found by the Secretary to be comparable to those used in establishing the national register maintained by the Secretary of the Interior under other provisions of law; and the results of each such survey shall be made available to the Secretary of the Interior. A grant under this subsection shall be made to the appropriate agency or entity specified in paragraphs (1) through (6) of subsection (a) or, if there is no such agency or entity which is qualified and willing to receive the grant and provide for its utilization in accordance with this subsection, directly to the city, other municipality, or county involved.

"(j) Grants made under this section may be used, subject to regulations and conditions prescribed by the Secretary, for any activities made eligible by the provisions of this section; but such regulations shall provide that grant assistance shall not be used to defray the cost of the acquisition, construction, repair, or rehabilitation of, or the prepartaion of engineering drawings or similar detailed specifications for, specific housing, capital facilities, or public works projects.

"(k) The Secretary shall consult with the agencies having responsibilities related to the purposes of this section, including responsibilities connected with the economic development of rural and depressed areas and the protection and enhancement of the Nation's natural environment, with respect to (1) general standards, policies, and procedures to be followed in the administration of this section, and (2) particular grant actions or approvals which the Secretary believes to be of special interest or concern to one or more of such departments and agencies.

"(l) Funds made available under any Federal assistance program for projects or activities, approved as part of or in furtherance of a planning program or related management activities assisted under this section, may be used jointly with funds made available for such projects or activities under any other Federal assistance program, subject to regulations prescribed by the President. Such regulations may include provisions for common technical or administrative requirements where varying or conflicting provisions of law or regulations would otherwise apply, for establishing joint management funds and common non-Federal shares, and for special agreements or delegations of authority, among different Federal agencies in connection with the supervision or administration of assistance. Such regulations shall in any case include appropriate criteria and procedures to assure that any special authorities conferred, which are not otherwise provided for by law, shall be employed only as necessary to promote effective and efficient administration and in a manner consistent with the protection of the Federal interest and program purposes or statutory requirements of a substantive nature. For purposes of this subsection, the term 'Federal assistance program' has the same meaning as in the Intergovernmental Cooperation Act of 1968.

"(m) As used in this section—

"(1) The term 'metropolitan area' means a standard metropolitan statistical area, as established by the Office of Management and Budget, subject, however, to such modifications or extensions as the Secretary deems to be appropriate for the purposes of this section.

"(2) The term 'region' includes (A) all or part of the area of jurisdiction of one or more units of general local government, and (B) one or more metropolitan areas.

"(3) The term 'district' includes all or part of the area of jurisdiction of (A) one or more counties, and (B) one or more other units of general local government, but does not include any portion of a metropolitan area.

"(4) The term 'comprehensive planning' includes the following:

"(A) preparation, as a guide for governmental policies and action, of general plans with respect to (i) the pattern and intensity of land use, (ii) the provision of public facilities (including transportation facilities) and other governmental services, and (iii) the effective development and utilization of human and natural resources;

"(B) identification and evaluation of area needs (including housing, employment, education, and health) and formulation of specific programs for meeting the needs so identified;

"(C) surveys of structures and sites which are determined by the appropriate authorities to be of historic or architectural value;

"(D) long-range physical and fiscal plans for such action;

"(E) programing of capital improvements and other major expenditures, based on a determination of relative urgency, together with definite financing plans for such expenditures in the earlier years of the program;

"(F) coordination of all related plans and activities of the State and local governments and agencies concerned; and

"(G) preparation of regulatory and administrative measures in support of the foregoing.

Comprehensive planning for the purpose of districts shall not include planning for or assistance to establishments in relocating from one area to another or assist contractors or subcontractors whose purpose is to divest, or whose economic success is dependent upon divesting, other contractors or subcontractors of contracts theretofore customarily performed by them. The limitation set forth in the preceding sentence shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity, if the Secretary finds that the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations, unless the Secretary has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

"(n) In carrying out the provisions of this section relating to planning for States, regions, or other multijurisdictional areas whose development has significance for purposes of national growth and urban development objectives, the Secretary shall encourage the formulation of plane and programs which will include the studies, criteria, standards, and implementing procedures necessary for effectively guiding and controlling major decisions as to where growth should take place within such States, regions, or areas. Such plans and programs shall take account of the availability of and need for conserving land and other irreplaceable natural resources; of projected changes in size, movement, and composition of population; of the necessity for expanding housing and employment opportunities; of the opportunities, requirements, and possible locations for new communities and large-scale projects for expanding or revitalizing existing communities; and of the need for methods of achieving modernization, simplification, and improvements in governmental structures, systems, and procedures related to growth objectives. If the Secretary determines that activities otherwise eligible for assistance under this section are necessary to the development or implementation of such plans and programs, he may make grants in support of such activities to any governmental agency or organization of public officials which he determines is capable of carrying out the planning work involved in an effective and efficient manner and may make such grants in an amount equal to not more than 80 per centum of the cost of such activities."

(c) Section 703 of such Act is amended by striking out "and" in clause (1), and by inserting ", and the Trust Territory of the Pacific Islands" immediately before the semicolon at the end of such clause.

TRAINING AND FELLOWSHIP PROGRAMS

SEC. 402. (a) Section 801(b) of the Housing and Urban Development Act of 1964 is amended to read as follows:

"(b) It is the purpose of this title to provide fellowships for the graduate training of professional city and regional planning, management, and housing specialists, and profes-

sionally trained personnel with a general capacity in urban affairs and problems; to make grants to and contracts with institutions of higher education (or combinations of such institutions) to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the preparation of graduate or professional students to enter the public service; and to assist and encourage the States and localities, in cooperation with public and private universities and colleges and urban centers and with business firms and associations, labor unions, and other interested associations and organizations, to (1) organize, initiate, develop, and expand programs which will provide special training in skills needed for economic and efficient community development to those technical, professional, and other persons with the capacity to master and employ such skills who are, or are training to be, employed by a governmental or public body which has responsibility for community development, or by a private nonprofit organization which is conducting or has responsibility for housing and community development programs, and (2) support State and local research that is needed in connection with housing programs and needs, public improvement programing, code problems, efficient land use, urban transportation, and similar community development problems."

(b) Section 802(a) of such Act is amended to read as follows:

"(a) The Secretary is authorized to provide fellowships for the graduate training of professional city planning, management, and housing specialists, and other persons who wish to develop a general capacity in urban affairs and problems as herein provided. Persons shall be selected for such fellowships solely on the basis of ability and upon the recommendation of the Urban Studies Fellowship Advisory Board established pursuant to subsection (b). Fellowships shall be solely for training in public and private nonprofit institutions of higher education having programs of graduate study in the field of city planning or in related fields (including architecture, civil engineering, economics, municipal finance, public administration, urban affairs, and sociology) which programs are oriented to training for careers in city and regional planning, housing, urban renewal, and community development."

(c) Title VIII of such Act is further amended (1) by redesignating sections 804 through 807 as sections 805 through 808, respectively, and (2) by inserting after section 803 a new section as follows:

"PROJECT GRANTS AND CONTRACTS

"SEC. 804. (a) The Secretary is authorized to make grants to or contracts with institutions of higher education, or combinations of such institutions, to assist them in planning, developing, strengthening, improving, or carrying out programs or projects (1) for the prepararation of graduate or professional students in the fields of city and regional planning and management, housing, and urban affairs, or (2) for research into, or development or demonstration of, improved methods of education for these professions. Such grants or contracts may include payment of all or part of the cost of programs or projects.

"(b) (1) A grant or contract authorized by this section shall be made only upon application to the Secretary at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it—

"(A) sets forth programs, activities, research, or development for which a grant is authorized under this section;

"(B) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this subsection; and

"(C) provides for making such reports, in such form and containing such information, as the Secretary may require to carry out his functions under this subsection, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

"(2) Payments under this section may be used, in accordance with regulations of the Secretary, and subject to the terms and conditions set forth in an application approved under paragraph (1), to pay part of the compensation of students employed in professions referred to in subsection (a) (1), except students employed in any branch of the Government of the United States, as part of a program for which a grant has been approved pursuant to this subsection."

(d) Section 807 of such Act (as redesignated by subsection (c) of this section) is amended by inserting before the period at the end of the first sentence a comma and the following: "which amount shall be increased by $3,500,000 on July 1, 1974, and by $3,500,000 on July 1, 1975".

## TITLE V—RURAL HOUSING

INCLUSION OF UNITED STATES TERRITORIES AND TRUST TERRITORY OF THE PACIFIC ISLANDS

SEC. 501. Section 501(a) (1) of the Housing Act of 1949 is amended by striking out "Puerto Rico and the Virgin Islands" and inserting in lieu thereof the following: "the Commonwealth of Puerto Rico, the Virgin Islands, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands".

REFINANCING OF INDEBTEDNESS FOR CERTAIN ELIGIBLE APPLICANTS

SEC. 502. Section 501(a) (4) of the Housing Act of 1949 is amended—

(1) by adding after the comma at the end of clause (B) the following: "or, if combined with a loan for improvement, rehabilitation, or repairs and not refinanced, is likely to cause a hardship for the applicant, and"; and

(2) by striking out clauses (C) and (D) and inserting in lieu thereof the following:

"(C) was incurred by the applicant at least five years prior to his applying for assistance under this title."

LOANS TO LEASEHOLD OWNERS UNDER ALL RURAL HOUSING PROGRAMS

SEC. 503. Section 501(b) (2) of the Housing Act of 1949 is amended by striking out "sections 502 and 504" and inserting in lieu thereof "this title".

REHABILITATION LOANS AND GRANTS

SEC. 504. Section 504(a) of the Housing Act of 1949 is amended to read as follows:

"(a) In the event the Secretary determines that an eligible applicant cannot qualify for a loan under the provisions of sections 502 and 503 and that repairs or improvements should be made to a rural dwelling occupied by him in order to make such dwelling safe and sanitary and remove hazards to the health of the occupant, his family, or the community, and that repairs should be made to farm buildings in order to remove hazards and make such buildings safe, the Secretary may make a grant or a combined loan and grant to the applicant to cover the cost of improvements or additions, such as repairing roofs, providing toilet facilities, providing a convenient and sanitary water supply, supplying screens, repairing or providing structural supports, or making similar repairs, additions, or improvements, including all preliminary and installation costs in obtaining central water and sewer service. No assistance shall be extended to any one individual under this subsection in the form of a loan, grant, or combined loan and grant in excess of $5,000. Any portion of the sums advanced to the borrower treated as a loan shall be secured and be repayable within twenty years in accordance with the principles and conditions set forth in this title, except that a loan for less than $2,500 need be evidenced only by a promissory note. Sums made available by grant may be made subject to the conditions set forth in this title for the protection of the Government with respect to contributions made on loans made by the Secretary.".

ESCROW ACCOUNTS FOR TAXES, INSURANCE, AND OTHER EXPENSES

SEC. 505. (a) Section 501 of the Housing Act of 1949 is amended by adding at the end thereof the following new subsection:

"(e) The Secretary may establish procedures whereby borrowers under this title may make periodic payments for the purpose of taxes, insurance, and such other necessary expenses as the Secretary may deem appropriate. Such payments shall be held in escrow by the Secretary and paid out by him at the appropriate time or times for the purposes for which such payments are made. The Secretary shall notify a borrower in writing when his loan payments are delinquent.".

(b) The second sentence of section 502(a) of such Act is amended by inserting before the period at the end thereof the following: "and on the borrower prepaying to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other expenses as the Secretary may require in accordance with section 501 (e)".

(c) Section 517 of such Act is amended—

(1) by striking out "as it becomes due" in the first sentence of subsection (d);

(2) by striking out "prepayment" and "prepayments" each place they appear in subsection (j) (1) and inserting in lieu thereof "payment" and "payments", respectively; and

(3) by inserting before the semicolon at the end of subsection (j) (1) the following: "or until the next agreed annual or semiannual remittance date".

RESEARCH AND STUDY PROGRAMS

SEC. 506. (a) Section 506(d) of the Housing Act of 1949 is amended to read as follows:

"(d) The Secretary may carry out the research and study programs authorized by subsections (b) and (c) through grants made by him, on such terms, conditions, and standards as he may prescribe, to land-grant colleges established pursuant to the Act of July 2, 1862 (7 U.S.C. 301–308), or (upon a finding by the Secretary that the research and study involved cannot feasibly be performed through the personnel and facilities of the Department of Agriculture or by land-grant colleges) to such other private or public organizations as he may select.".

(b) Section 506(e) of such Act is amended by striking out "farm housing" each place it appears and inserting in lieu thereof "rural housing".

VETERANS PREFERENCE

SEC. 507. Section 507 of the Housing Act of 1949 is amended—

(1) by inserting after "concurrent resolution of Congress" each place it appears a comma and the following: "or during the period beginning after January 31, 1955, and ending on August 4, 1964, or during the Vietnam era (as defined in section 101(29) of title 38, United States Code),"; and

(2) by inserting "or era" before the period at the end of the third sentence.

UTILIZATION OF COUNTY COMMITTEES

SEC. 508. Section 508(b) of the Housing Act of 1949 is amended to read as follows:

"(b) The committees utilized or appointed pursuant to this section may examine applications of persons desiring to obtain the benefits of section 501(a) (1) and (2) as they related to the successful operation of a farm, and may submit recommendations to the Secretary with respect to each applicant as to whether the applicant is eligible to receive such benefits, whether by reason of his char-

acter, ability, and experience he is likely successfully to carry out undertakings required of him under a loan under such section, and whether the farm with respect to which the application is made is of such character that there is a reasonable likelihood that the making of the loan requested will carry out the purposes of this title. The committees may also certify to the Secretary with respect to the amount of any loan."

ASSISTANCE AUTHORIZATION

SEC. 509. (a) Clauses (b), (c), and (d) of section 513 of the Housing Act of 1949 are amended to read as follows: "(b) not to exceed $80,000,000 for loans and grants pursuant to section 504 during the period beginning July 1, 1956, and ending June 30, 1977; (c) not to exceed $80,000,000 for financial assistance pursuant to section 516 for the period ending June 30, 1977; (d) not to exceed $250,000 per year for research and study programs pursuant to subsections (b), (c), and (d) of section 506 during the period beginning July 1, 1961, and ending June 30, 1974, and not to exceed $1,000,000 per year for such programs during the period beginning October 1, 1974, and ending June 30, 1977;".

(b) Sections 515(b) (5) and 517(a) (1) of such Act are amended by striking out "October 1, 1974" and inserting in lieu thereof "June 30, 1977".

DIRECT AND INSURED LOANS TO PROVIDE HOUSING AND RELATED FACILITIES FOR ELDERLY PERSONS AND LOWER INCOME FAMILIES IN RURAL AREAS

SEC. 510. (a) Section 515(b)(1) of the Housing Act of 1949 is amended—

(1) by striking out "$750,000 or"; and

(2) by striking out "least" and inserting in lieu thereof "less".

(b) Section 515(d)(4) of such Act is amended to read as follows:

"(4) the term 'development cost' means the costs of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities and purchasing and improving the necessary land, including necessary and appropriate fees and charges, and initial operating expenses up to 2 per centum of the aforementioned costs, approved by the Secretary. Such fees and charges may include payments of qualified consulting organizations or foundations which operate on a nonprofit basis and which render services or assistance to nonprofit corporations or consumer cooperatives who provide housing and related facilities for low or moderate income families."

DEFINITION OF RURAL AREA

SEC. 511. Section 520 of the Housing Act of 1949 is amended by inserting before the period at the end thereof a comma and the following "or (3) has a population in excess of 10,000 but not in excess of 20,000, and (A) is not contained within a standard metropolitan statistical area, and (B) has a serious lack of mortgage credit, as determined by the Secretary and the Secretary of Housing and Urban Development".

MUTUAL AND SELF-HELP HOUSING

SEC. 512. (a) Section 523(b)(1) of the Housing Act of 1949 is amended by inserting immediately before "; and" at the end thereof the following: ": Provided, That the Secretary may advance funds under this paragraph to organizations receiving assistance under clause (A) to enable them to establish revolving accounts for the purchase of land options and any such advances may bear interest at a rate determined by the Secretary and shall be repaid to the Secretary at the expiration of the period for which the grant to the organization involved was made".

(b) Section 523(f) of such Act is amended—

(1) by striking out "1974" each place it appears and inserting in lieu thereof "1977"; and

(2) by striking out "$5,000,000" and inserting in lieu thereof "$10,000,000".

(c) Section 523 of such Act is amended by adding at the end thereof the following new subsection:

"(h) The Secretary shall issue rules and regulations for the orderly processing and review of applications under this section and rules and regulations protecting the rights of grantees under this section in the event he determines to end grant assistance prior to the termination date of any grant agreement.".

SITE LOANS

SEC. 513. The first sentence of section 542 (a) of the Housing Act of 1949 is amended to read as follows: "The Secretary may make loans, on such terms and conditions and in such amounts he deems necessary, to public or private nonprofit organizations for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, public agencies, and cooperatives eligible for assistance under any section of this title or under any other law which provides financial assistance for housing low- and moderate-income families.".

RENTAL ASSISTANCE

SEC. 514. (a) Section 521(a) of the Housing Act of 1949 is amended by inserting "(1)" after "(a)", and by adding at the end thereof the following new paragraph:

"(2)(A) The Secretary may make and insure loans under this section and sections 514, 515, and 517 to provide rental or cooperative housing and related facilities for persons and families of low income in multifamily housing projects, and may make, and contract to make, assistance payments to the owners of such rental housing in order to make available to low-income occupants of such housing rentals at rates commensurate to income and not exceeding 25 per centum of income. Such assistance payments shall be made on a unit basis and shall not be made for more than 20 per centum of the units in any one project, except that (i) when the project is financed by a loan under section 515 for elderly housing or by a loan under section 514 and a grant under section 516, such assistance may be made for up to 100 per centum of the units, and (ii) when the Secretary determines such action is necessary or feasible, he may make such payments with respect to more than 20 per centum of the units.

"(B) The owner of any project assisted under this paragraph shall be required to provide at least annually a budget of operating expenses and record of tenants' income which shall be used to determine the amount of assistance for each project.

"(C) The project owner shall accumulate, safeguard, and periodically pay to the Secretary any rental charges collected in excess of basic rental charges as established by the Secretary in conformity with subparagraph (A). These funds may be credited to the appropriation and used by the Secretary for making such assistance payments through the end of the next fiscal year."

(b) Section 521(c) of such Act is amended to read as follows:

"(c) There shall be reimbursed to the Rural Housing Insurance Fund by annual appropriations (1) the amounts by which nonprincipal payments made from the fund during each fiscal year to the holders of insured loans described in subsection (a)(1) exceed interest due from the borrowers during each year, and (2) the amount of assistance payments described in subsection (a)(2). The Secretary may from time to time issue notes to the Secretary of the Treasury under section 517(h) to obtain amounts equal to such unreimbursed payments, pending the annual reimbursement by appropriation."

(c) Section 517(j) of such Act is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(4) to make assistance payments authorized by section 521(a)(2)."

TECHNICAL AND SUPERVISORY ASSISTANCE

SEC. 515. Title V of the Housing Act of 1949 is amended by adding at the end thereof of the following new section:

"PROGRAMS OF TECHNICAL AND SUPERVISORY ASSISTANCE FOR LOW-INCOME FAMILIES

"SEC. 525. (a) The Secretary may make grants to or enter into contracts with public or private nonprofit corporations, agencies, institutions, organizations, and other associations approved by him, to pay part or all of the cost of developing, conducting, administering or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, State, and local housing programs in rural areas. In processing applications for such grants or contracts made by private nonprofit corporations, agencies, institutions, organizations, and other associations, the Secretary shall give preference to those which are sponsored (including assistance to the applicant in processing the application, implementing the technical assistance program, and carrying out the obligations of the grant or contract) by a State, county, municipality, or other governmental entity or public body.

"(b) The Secretary is authorized to make loans to public or private nonprofit corporations, agencies, institutions, organizations, and other associations approved by him for the necessary expenses, prior to construction, of planning, and obtaining financing for, the rehabilitation or construction of housing for low-income individuals or families under any Federal, State, or local housing program which is or could be used in rural areas. Such loans shall be made without interest and shall be for the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing prior to the availability of financing, including but not limited to preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, and construction loan fees and discounts. The Secretary shall require repayment of loans made under this subsection, under such terms and conditions as he may require, upon completion of the housing or sooner, and may cancel any part or all of such loan if he determines that it cannot be recovered from the proceeds of any permanent loan made to finance the rehabilitation or construction of the housing.

"(c) There are authorized to be appropriated for the fiscal years ending June 30, 1975, and June 30, 1976, not to exceed $5,000,000 for the purposes of subsection (a) and not to exceed $5,000,000 for the purposes of subsection (b). Any amounts so appropriated shall remain available until expended, and any amounts authorized for any fiscal year under this subsection but not appropriated may be appropriated for any succeeding fiscal year.

"(d) All funds appropriated for the purpose of subsection (b) shall be deposited in a fund which shall be known as the low-income sponsor fund, and which shall be available without fiscal year limitation and be administered by the Secretary as a revolving fund for carrying out the purposes of that subsection. Sums received in repayment of loans made under subsection (b) shall be deposited in such fund.".

CONDOMINIUM HOUSING

SEC. 516. (a) Title V of the Housing Act of 1949 (as amended by section 515 of this Act) is amended by adding at the end thereof the following new section:

"CONDOMINIUM HOUSING

"SEC. 526. (a) The Secretary is authorized, in his discretion and upon such terms and conditions (substantially identical insofar as may be feasible with those specified in section 502) as he may prescribe, to make loans to persons and families of low or moderate income, and to insure and make commitments to insure loans made to persons and families of low or moderate income, to assist them in purchasing dwelling units in condominiums located in rural areas.

"(b) Any loan made or insured under subsection (a) shall cover a one-family dwelling unit in a condominium, and shall be subject to such provisions as the Secretary determines to be necessary for the maintenance of the common areas and facilities of the condominium project and to such additional requirements as the Secretary deems appropriate for the protection of the consumer.

"(c) In addition to individual loans made or insured under subsection (a) the Secretary is authorized, in his discretion and upon such terms and conditions (substantially identical insofar as may be feasible with those specified in section 515) as he may prescribe, to make or insure blanket loans to a borrower who shall certify to the Secretary, as a condition of obtaining such loan or insurance, that upon completion of the multifamily project the ownership of the project will be committed to a plan of family unit ownership under which (1) each family unit will be eligible for a loan or insurance under subsection (a), and (2) the individual dwelling units in the project will be sold only on a condominium basis and only to purchasers eligible for a loan or insurance under subsection (a). The principal obligation of any blanket loan made or insured under this subsection shall in no case exceed the sum of the individual amounts of the loans which could be made or insured with respect to the individual dwelling units in the project under subsection (a).

"(d) As used in this section, the term 'condominium' means a multiunit housing project which is subject to a plan of family unit ownership acceptable to the Secretary under which each dwelling unit is individually owned and each such owner holds an undivided interest in the common areas and facilities which serve the project."

(b) Section 517(b) of such Act is amended by striking out "and 524" and inserting in lieu thereof "524, and 526".

(c)(1) Section 521(a)(1) of such Act (as amended by section 514(a) of this Act) is amended—

(A) by striking out "and loans under section 515" and inserting in lieu thereof "loans under section 515"; and

(B) by inserting after "elderly families," the following: "and loans under section 526 to provide condominium housing for persons and families of low or moderate income,".

(2) Section 521(b) of such Act is amended—

(A) by striking out "or 517(a)(1)" and inserting in lieu thereof ", 517(a)(1), or 526(a)"; and

(B) by inserting "or 526(c)" after "under section 515".

(3) Section 521(c) of such Act (as amended by section 514(b) of this Act) is amended by inserting "and section 526" after "section 517(h)".

TRANSFER OF PRE-1965 INSURED HOUSING LOANS TO THE RURAL HOUSING INSURANCE FUND

SEC. 517. Section 517(b) of the Housing Act of 1949 is amended by adding at the end thereof the following new sentences: "The notes held in the Agricultural Credit Insurance Fund (7 U.S.C. 1929) which evidence loans made or insured by the Secretary under section 514 or 515(b), the rights and liabilities of that Fund under insurance contracts relating to such loans held by insured investors, the mortgages securing the obligations of the borrowers under such loans held in that Fund or by insured investors, and all rights to subsequent collections on and proceeds of such notes, contracts and mortgages, are hereby transferred to the Rural Housing Insurance Fund and for the purposes of this title and any other Act shall be subject to the provisions of this section as if created pursuant thereto. The Rural Housing Insurance Fund shall compensate the Agricultural Credit Insurance for the aggregate unpaid principal balance plus accrued interest of the notes so transferred.".

MOBILE HOMES

SEC. 518. Title V of the Housing Act of 1949 (as amended by sections 515 and 516(a) of this Act) is amended by adding at the end thereof the following new section:

"MOBILE HOMES

"SEC. 527. (a) As used in this title, the term 'housing' shall, notwithstanding any other provision of this title and to the extent deemed practicable by the Secretary, include mobile homes and mobile home sites.

"(b) With respect to mobile homes and mobile home sites financed under this title, the Secretary shall—

"(1) prescribe minimum property standards to assure the livability and durability of the mobile home and the suitability of the site on which it is to be located, and

"(2) obtain assurances from the borrower that the mobile home will be placed on a site which complies with standards prescribed by the Secretary and with applicable local requirements.

Loans under this title for the purchase of mobile homes and sites shall be made on the same terms and conditions as are applicable under section 2 of the National Housing Act to obligations financing the purchase of mobile homes and lots on which to place such homes."

CONTRACT SERVICES AND FEES

SEC. 519. (a) Section 506(a) of the Housing Act of 1949 is amended by striking out ", as may be required by the Secretary, by competent employees of the Secretary" and inserting in lieu thereof "as required by the Secretary".

(b) Section 517(j)(3) of such Act is amended by inserting after "borrowers," the following: "and other services customary in the industry, construction inspections, commercial appraisals, servicing of loans, and other related program services and expenses,".

STATE AND LOCAL AGENCIES

SEC. 520. Section 501(c) of the Housing Act of 1949 is amended by adding at the end thereof the following: "If an applicant is a State or local public agency—

"(A) the provisions of clause (3) shall not apply to its application; and

"(B) the applicant shall be eligible to participate in any program under this title if the persons or families to be served by the applicant with the assistance being sought would be eligible to participate in such program."

## TITLE VI—MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS

SHORT TITLE

SEC. 601. This title may be cited as the "National Mobile Home Construction and Safety Standards Act of 1974".

STATEMENT OF PURPOSE

SEC. 602. The Congress declares that the purposes of this title are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from mobile home accidents and to improve the quality and durability of mobile homes. Therefore, the Congress determines that it is necessary to establish Federal construction and safety standards for mobile homes and to authorize mobile home safety research and development.

DEFINITIONS

SEC. 603. As used in this title, the term—

(1) "mobile home construction" means all activities relating to the assembly and manufacture of a mobile home including but not limited to those relating to durability, quality, and safety;

(2) "dealer" means any person engaged in the sale, leasing, or distribution of new mobile homes primarily to persons who in good faith purchase or lease a mobile home for purposes other than resale;

(3) "defect" includes any defect in the performance, construction, components, or material of a mobile home that renders the home or any part thereof not fit for the ordinary use for which it was intended;

(4) "distributor" means any person engaged in the sale and distribution of mobile homes for resale;

(5) "manufacturer" means any person engaged in manufacturing or assembling mobile homes, including any person engaged in importing mobile homes for resale;

(6) "mobile home" means a structure, transportable in one or more sections, which is eight body feet or more in width and is thirty-two body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein;

(7) "Federal mobile home construction and safety standard" means a reasonable standard for the construction, design, and performance of a mobile home which meets the needs of the public including the need for quality, durability, and safety;

(8) "mobile home safety" means the performance of a mobile home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such mobile home, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;

(9) "imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury;

(10) "purchaser" means the first person purchasing a mobile home in good faith for purposes other than resale;

(11) "Secretary" means the Secretary of Housing and Urban Development;

(12) "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa; and

(13) "United States district courts" means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

FEDERAL MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS

SEC. 604. (a) The Secretary, after consultation with the Consumer Product Safety Commission, shall establish by order appropriate Federal mobile home construction and safety standards. Each such Federal mobile home standard shall be reasonable and shall meet the highest standards of protection, taking into account existing State and local laws relating to mobile home safety and construction.

(b) All orders issued under this section shall be issued after notice and an opportu-

nity for interested persons to participate are provided in accordance with the provisions of section 553 of title 5, United States Code.

(c) Each order establishing a Federal mobile home construction and safety standard shall specify the date such standard is to take effect, which shall not be sooner than one hundred and eighty days or later than one year after the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(d) Wherever a Federal mobile home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any mobile home covered, any standard regarding construction or safety applicable to the same aspect of performance of such mobile home which is not identical to the Federal mobile home construction and safety standard.

(e) The Secretary may by order amend or revoke any Federal mobile home construction or safety standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect, which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later date is in the public interest, and publishes his reasons for such finding.

(f) In establishing standards under this section, the Secretary shall—

(1) consider relevant available mobile home construction and safety data, including the results of the research, development, testing, and evaluation activities conducted pursuant to this title, and those activities conducted by private organizations and other governmental agencies to determine how to best protect the public;

(2) consult with such State or interstate agencies (including legislative committees) as he deems appropriate;

(3) consider whether any such proposed standard is reasonable for the particular type of mobile home or for the geographic region for which it is prescribed;

(4) consider the probable effect of such standard on the cost of the mobile home to the public; and

(5) consider the extent to which any such standard will contribute to carrying out the purposes of this title.

(g) The Secretary shall issue an order establishing initial Federal mobile home construction and safety standards not later than one year after the date of enactment of this Act.

NATIONAL MOBILE HOME ADVISORY COUNCIL

SEC. 605. (a) The Secretary shall appoint a National Mobile Home Advisory Council with the following composition: eight members selected from among consumer organizations, community organizations, and recognized consumer leaders; eight members from the mobile home industry and related groups including at least one representative of small business; and eight members selected from government agencies including Federal, State, and local governments. Appointments under this subsection shall be made without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service, classification, and General Schedule pay rates. The Secretary shall publish the names of the members of the Council annually and shall designate which members represent the general public.

(b) The Secretary shall, to the extent a National Mobile Home Advisory Council prior to establishing, amending, or revoking any mobile home construction or safety standard pursuant to the provisions of this title.

(c) Any member of the National Mobile Home Advisory Council who is appointed from outside the Federal Government may be compensated at a rate not to exceed $100 per diem (including traveltime) when engaged in the actual duties of the Advisory Council. Such members, while away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

JUDICIAL REVIEW OF ORDERS

SEC. 606. (a)(1) In a case of actual controversy as to the validity of any order under section 604, any person who may be adversely affected by such order when it is effective may at any time prior to the sixtieth day after such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28, United States Code.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the order in accordance with the provisions of sections 701 through 706 of title 5, United States Code, and to grant appropriate relief.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(b) A certified copy of the transcript of the record and proceedings under this section shall be furnished by the Secretary to any interested party at his request and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this title, irrespective of whether proceedings with respect to the order have previously been initiated or become final under subsection (a).

PUBLIC INFORMATION

SEC. 607. (a) Whenever any manufacturer is opposed to any action of the Secretary under section 604 or under any other provision of this title on the grounds of increased cost or for other reasons, the manufacturer shall submit such cost and other information (in such detail as the Secretary may by rule or order prescribe) as may be necessary in order to properly evaluate the manufacturer's statement.

(b) Such information shall be available to the public unless the manufacturer establishes that it contains a trade secret or that disclosure of any portion of such information would put the manufacturer at a substantial competitive disadvantage. Notice of the availability of such information shall be published promptly in the Federal Register. If the Secretary determines that any portion of such information contains a trade secret or that the disclosure of any portion of such information would put the manufacturer at a substantial competitive disadvantage, such portion may be disclosed to the public only in such manner as to preserve the confidentiality of such trade secret or in such combined or summary form so as not to disclose the identity of any individual manufacturer, except that any such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this subsection shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

(c) If the Secretary proposes to establish, amend, or revoke a Federal mobile home construction and safety standard under section 604 on the basis of information submitted pursuant to subsection (a), he shall publish a notice of such proposed action, together with the reasons therefor, in the Federal Register at least thirty days in advance of making a final determination, in order to allow interested parties an opportunity to comment.

(d) For purposes of this section, "cost information" means information with respect to alleged cost increases resulting from action but the Secretary, in such a form as to permit the public and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

(e) Nothing in this section shall be construed to restrict the authority of the Secretary to obtain or require submission of information under any other provision of this title.

RESEARCH, TESTING, DEVELOPMENT, AND TRAINING

SEC. 608. (a) The Secretary shall conduct research, testing, development, and training necessary to carry out the purposes of this title, including, but not limited to—

(1) collecting data from any source for the purpose of determining the relationship between mobile home performance characteristics and (A) accidents involving mobile homes, and (B) the occurrence of death, personal injury, or damage resulting from such accidents;

(2) procuring (by negotiation or otherwise) experimental and other mobile homes for research and testing purposes; and

(3) selling or otherwise disposing of test mobile homes and reimbursing the proceeds of such sale or disposal into the current appropriation available for the purpose of carrying out this title.

(b) The Secretary is authorized to conduct research, testing, development, and training as authorized to be carried out by subsection (a) of this section by contracting for or making grants for the conduct of such research, testing, development, and training to States, interstate agencies, and independent institutions.

COOPERATION WITH PUBLIC AND PRIVATE AGENCIES

SEC. 609. The Secretary is authorized to advise, assist, and cooperate with other Federal agencies and with State and other interested

public and private agencies, in the planning and development of—

(1) mobile homes construction and safety standards; and

(2) methods for inspecting and testing to determine compliance with mobile home standards.

PROHIBITED ACTS

SEC. 610. (a) No person shall—

(1) make use of any means of transportation or communication affecting interstate or foreign commerce or the mails to manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any mobile home which is manufactured on or after the effective date of any applicable Federal mobile home construction and safety standard under this title and which does not comply with such standard, except as provided in subsection (b), where such manufacture, lease, sale, offer for sale or lease, introduction, delivery, or importation affects commerce;

(2) fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 614;

(3) fail to furnish notification of any defect as required by section 615;

(4) fail to issue a certification required by section 616, or issue a certification to the effect that a mobile home conforms to all applicable Federal mobile home construction and safety standards, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect; or

(5) fail to comply with a final order issued by the Secretary under this title.

(b)(1) Paragraph (1) of subsection (a) shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any mobile home after the first purchase of it in good faith for purposes other than resale.

(2) For purposes of section 611, paragraph (1) of subsection (a) shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that such mobile home is not in conformity with applicable Federal mobile home construction and safety standards, or to any person who, prior to such first purchase, holds a certificate issued by the manufacturer or importer of such mobile home to the effect that such mobile home conforms to all applicable Federal mobile home contruction and safety standards, unless such person knows that such mobile home does not so conform.

(3) A mobile home offered for importation in violation of paragraph (1) of subsection (a) shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary, except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such mobile home into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such mobile home will be brought into conformity with any applicable Federal mobile home construction or safety standard prescribed under this title, or will be exported from, or forfeited to, the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the importation of any mobile home after the first purchase of it in good faith for purposes other than resale.

(5) Paragraph (1) of subsection (a) shall not apply in the case of a mobile home intended solely for export, and so labeled or tagged on the mobile home itself and on the outside of the container, if any, which if to be exported.

(c) Compliance with any Federal mobile home construction or safety standard issued under this title does not exempt any person from any liability under common law.

CIVIL AND CRIMINAL PENALTY

SEC. 611. (a) Whoever violates any provision of section 610, or any regulation or final order issued thereunder, shall be liable to the United States for a civil penalty of not to exceed $1,000 for each such violation. Each violation of a provision of section 610, or any regulation or order issued thereunder shall constitute, a separate violation with respect to each mobile home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed $1,000,000 for any related series of violations occurring within one year from the date of the first violation.

(b) An individual or a director, officer, or agent of a corporation who knowingly and willfully violates section 610 in a manner which threatens the health or safety of any purchaser shall be fined not more than $1,000 or imprisoned not more than one year, or both.

JURISDICTION AND VENUE

SEC. 612. (a) The United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this title, or to restrain the sale, offer for sale, or the importation into the United States, of any mobile home which is determined, prior to the first purchase of such mobile home in good faith for purposes other than resale, not to conform to applicable Federal mobile home construction and safety standards prescribed pursuant to this title or to contain a defect which constitutes an imminent safety hazard, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views and the failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this title, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Actions under subsection (a) of this section and section 611 may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

(d) In any action brought by the United States for (a) of this section or section 611, subpenas by the United States for witnesses who are required to attend at United States district court may run into any other district.

(e) It shall be the duty of every manufacturer offering a mobile home for importation into the United States to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made for and on behalf of such manufacturer, and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decision, and requirements may be made upon such manufacturer by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon such manufacturer, and in default of such designation of such agent, service of process or any notice, order, requirement, or decision in any proceeding before the Secretary or in any judicial proceeding pursuant to this title may be made by mailing such process, notice, order, requirement, or decision to the Secretary by registered or certified mail.

NONCOMPLIANCE WITH STANDARDS

SEC. 613. (a) If the Secretary or a court of appropriate jurisdiction determines that any mobile home does not conform to applicable Federal mobile home construction and safety standards, or that it contains a defect which constitutes an imminent safety hazard, after the sale of such mobile home by a manufacturer to a distributor or a dealer and prior to the sale of such mobile home by such distribtuor or dealer to a purchaser—

(1) the manufacturer shall immediately repurchase such mobile home from such distributor or dealer at the price paid by such distributor or dealer, plus all transportation charges involved and a reasonable reimbursement of not less than 1 per centum per month of such price paid prorated from the date of receipt by certified mail of notice of such nonconformance of the date of repurchase by the manufacturer; or

(2) the manufacturer, at his own expense, shall immediately furnish the purchasing distributor or dealer the required conforming part or parts or equipment for installation by the distributor or dealer on or in such mobile home, and for the installation involved the manufacturer shall reimburse such distributor or dealer for the reasonable value of such installation plus a reasonable reimbursement of not less than 1 per centum per month of the manufacturer's or distributor's selling price prorated from the date of receipt by certified mail of notice of such nonconformance to the date such vehicle is brought into conformance with applicable Federal standards, so long as the distributor or dealer proceeds with reasonable diligence with the installation after the required part or equipment is received.

The value of such reasonable reimbursements as specified in paragraphs (1) and (2) of this subsection shall be fixed by mutual agreement of the parties, or, failing such agreement, by the court pursuant to the provisions of subsection (b).

(b) If any manufacturer fails to comply with the requirements of subsection (a), then the distributor or dealer, as the case may be, to whom such mobile home has been sold may bring an action seeking a court injunction compelling compliance with such requirements on the part of such manufacturer. Such action may be brought in any district court in the United States in the district in which such manufacturer resides, or is found, or has an agent, without regard to the amount in controversy, and the person bringing the action shall also be entitled to recover any damage sustained by him, as well as all court costs plus reasonable attorneys' fees. Any action brought pursuant to this section shall be forever barred unless commenced within three years after the cause of action shall have accrued.

INSPECTION OF MOBILE HOMES AND RECORDS

SEC. 614. (a) The Secretary is authorized to conduct inspections and investigations as may be necessary to promulgate or enforce Federal mobile home construction and safety standards established under this title or otherwise to carry out his duties under this title. He shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information ob-

tained indicating noncompliance with such standards for appropriate action.

(b)(1) For purposes of enforcement of this title, persons duly designated by the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized—

(A) to enter, at reasonable times and without advance notice, any factory, warehouse, or establishment in which mobile homes are manufactured, stored, or held for sale; and

(B) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or establishment, and to inspect such books, papers, records, and documents as are set forth in subsection (c). Each such inspection shall be commenced and completed with reasonable promptness.

(2) The Secretary is authorized to contract with State and local governments and private inspection organizations to carry out his functions under this subsection.

(c) For the purpose of carrying out the provisions of this title, the Secretary is authorized—

(1) to hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records, as the Secretary or such officer or employee deems advisable. Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States;

(2) to examine and copy any documentary evidence of any person having materials or information relevant to any function of the Secretary under this title;

(3) to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this title. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe;

(4) to request from any Federal agency any information he deems necessary to carry out his functions under this title, and each such agency is authorized and directed to cooperate with the Secretary and to furnish such information upon request made by the Secretary, and the head of any Federal agency is authorized to detail, on a reimbursable basis, any personnel of such agency to assist in carrying out the duties of the Secretary under this title; and

(5) to make available to the public any information which may indicate the existence of a defect which relates to mobile home construction or safety or of the failure of a mobile home to comply with applicable mobile home construction and safety standards. The Secretary shall disclose so much of other information obtained under this subsection to the public as he determines will assist in carrying out this title; but he shall not (under the authority of this sentence) make available or disclose to the public any information which contains or relates to a trade secret or any information the disclosure of which would put the person furnishing such information at a substantial competitive disadvantage, unless he determines that it is necessary to carry out the purpose of this title.

(d) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary issued under paragraph (1) or paragraph (3) of subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Each manufacturer of mobile homes shall submit the building plans for every model of such mobile homes to the Secretary or his designee for the purpose of inspection under this section. The manufacturer must certify that each such building plan meets the Federal construction and safety standards in force at that time before the model involved is produced.

(f) Each manufacturer, distributor, and dealer of mobile homes shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such manufacturer, distributor, or dealer has acted or is acting in compliance with this title and Federal mobile home construction and safety standards prescribed pursuant to this title and shall, upon request of a person duly designated by the Secretary, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, distributor, or dealer has acted or is acting in compliance with this title and mobile home construction and safety standards prescribed pursuant to this title.

(g) Each manufacturer of mobile homes shall provide to the Secretary such performance data and other technical data related to performance and safety as may be required to carry out the purposes of this title. These shall include records of tests and test results which the Secretary may require to be performed. The Secretary is authorized to require the manufacturer to give notification of such performance and technical data to—

(1) each prospective purchaser of a mobile home before its first sale for purposes other than resale, at each location where any such manufacturer's mobile homes are offered for sale by a person with whom such manufacturer has a contractual, proprietary, or other legal relationship and in a manner determined by the Secretary to be appropriate, which may include but is not limited to, printed matter (A) available for retention by such prospective purchaser, and (B) sent by mail to such prospective purchaser upon his request; and

(2) the first person who purchases a mobile home for purposes other than resale, at the time of such purchase or in printed matter placed in the mobile home.

(h) All information reported to or otherwise obtained by the Secretary or his representative pursuant to subsection (b), (c), (f), or (g) which contains or relates to a trade secret, or which, if disclosed, would put the person furnishing such information at a substantial competitive disadvantage, shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

NOTIFICATION AND CORRECTION OF DEFECTS

SEC. 615. (a) Every manufacturer of mobile homes shall furnish notification of any defect in any mobile home produced by such manufacturer which he determines, in good faith, relates to a Federal mobile home construction or safety standard or contains a defect which constitutes an imminent safety hazard to the purchaser of such mobile home, within a reasonable time after such manufacturer has discovered such defect.

(b) The notification required by subsection (a) shall be accomplished—

(1) by mail to the first purchaser (not including any dealer or distributor of such manufacturer) of the mobile home containing the defect, and to any subsequent purchaser to whom any warranty on such mobile home has been transferred;

(2) by mail to any other person who is a registered owner of such mobile home and whose name and address has been ascertained pursuant to procedures established under subsection (f); and

(3) by mail or other more expeditious means to the dealer or dealers of such manufacturer to whom such mobile home was delivered.

(c) The notification required by subsection (a) shall contain a clear description of such defect or failure to comply, an evaluation of the risk to mobile home occupants' safety reasonably related to such defect, and a statement of the measures needed to repair the defect. The notification shall also inform the owner whether the defect is a construction or safety defect which the manufacturer will have corrected at no cost to the owner of the mobile home under subsection (g) or otherwise, or is a defect which must be corrected at the expense of the owner.

(d) Every manufacturer of mobile homes shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the dealers of such manufacturer or purchasers of mobile homes of such manufacturer regarding any defect in any such mobile home produced by such manufacturer. The Secretary shall disclose to the public so much of the information contained in such notices or other information obtained under section 614 as he deems will assist in carrying out the purposes of this title, but he shall not disclose any information which contains or relates to a trade secret, or which, if disclosed, would put such manufacturer at a substantial competitive disadvantage, unless he determines that it is necessary to carry out the purposes of this title.

(e) If the Secretary determines that any mobile home—

(1) does not comply with an applicable Federal mobile home construction and safety standard prescribed pursuant to section 604; or

(2) contains a defect which constitutes an imminent safety hazard.

then he shall immediately notify the manufacturer of such mobile home of such defect or failure to comply. The notice shall contain the findings of the Secretary and shall include all information upon which the findings are based. The Secretary shall afford such manufacturer an opportunity to present his views and evidence in support thereof, to establish that there is no failure of compliance. If after such presentation by the manufacturer the Secretary determines that such mobile home does not comply with applicable Federal mobile home construction or safety standards, or contains a defect which constitutes an imminent safety hazard, the Secretary shall direct the manufacturer to furnish the notification specified in subsections (a) and (b) of this section.

(f) Every manufacturer of mobile homes shall maintain a record of the name and address of the first purchaser of each mobile home (for purposes other than resale), and to the maximum extent feasible, shall maintain procedures for ascertaining the name and address of any subsequent purchaser thereof and shall maintain a record of names and addresses so ascertained. Such records shall be kept for each home produced by a manufacturer. The Secretary may establish by order procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this subsection. Such procedures shall be reasonable for the particular type of mobile home for which they are prescribed.

(g) A manufacturer required to furnish notification of a defect under subsection

(a) or (e) shall also bring the mobile home into compliance with applicable standards and correct the defect or have the defect corrected within a reasonable period of time at no expense to the owner, but only if—

(1) the defect presents an unreasonable risk of injury or death to occupants of the affected mobile home or homes;

(2) the defect can be related to an error in design or assembly of the mobile home by the manufacturer.

The Secretary may direct the manufacturer to make such corrections after providing an opportunity for oral and written presentation of views by interested persons. Nothing in this section shall limit the rights of the purchaser or any other person under any contract or applicable law.

(h) The manufacturer shall submit his plan for notifying owners of the defect and for repairing such defect (if required under subsection (g)) to the Secretary for his approval before implementing such plan. Whenever a manufacturer is required under subsection (g) to correct a defect, the Secretary shall approve with or without modification, after consultation with the manufacturer of the mobile home involved, such manufacturer's remedy plan including the date when, and the method by which, the notification and remedy required pursuant to this section shall be effectuated. Such date shall be the earliest practicable one but shall not be more than sixty days after the date of discovery or determination of the defect or failure to comply, unless the Secretary grants an extension of such period for good cause shown and publishes a notice of such extension in the Federal Register. Such manufacturer is bound to implement such remedy plan as approved by the Secretary.

(i) Where a defect or failure to comply in a mobile home cannot be adequately repaired within sixty days from the date of discovery or determination of the defect, the Secretary may require that the mobile home be replaced with a new or equivalent home without charge, or that the purchase price be refunded in full, less a reasonable allowance for depreciation based on actual use if the home has been in the possession of the owner for more than one year.

CERTIFICATION OF CONFORMITY WITH CONSTRUCTION AND SAFETY STANDARDS

SEC. 616. Every manufacturer of mobile homes shall furnish to the distributor or dealer at the time of delivery of each such mobile home produced by such manufacturer certification that such mobile home conforms to all applicable Federal construction and safety standards. Such certification shall be in the form of a label or tag permanently affixed to each such mobile home.

CONSUMER INFORMATION

SEC. 617. The Secretary shall develop guidelines for a consumer's manual to be provided to mobile home purchasers by the manufacturer. These manuals should identify and explain the purchasers' responsibilities for operation, maintenance, and repair of their mobile homes.

EFFECT UPON ANTITRUST LAWS

SEC. 618. Nothing contained in this title shall be deemed to exempt from the antitrust laws of the United States any conduct that would otherwise be unlawful under such laws, or to prohibit under the antitrust laws of the United States any conduct that would be lawful under such laws. As used in this section, the term "antitrust laws" includes, but is not limited to the Act of July 2, 1890, as amended; the Act of October 14, 1914, as amended; the Federal Trade Commission Act (15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894, as amended.

USE OF RESEARCH AND TESTING FACILITIES OF PUBLIC AGENCIES

SEC. 619. The Secretary, in exercising the authority under this title, shall utilize the services, research and testing facilities of public agencies and independent testing laboratories to the maximum extent practicable in order to avoid duplication.

INSPECTION FEES

SEC. 620. In carrying out the inspections required under this title, the Secretary may establish and impose on mobile home manufacturers, distributors, and dealers such reasonable fees as may be necessary to offset the expenses incurred by him in conducting such inspections, except that this section shall not apply in any State which has in effect a State plan under section 623.

PENALTIES OF INSPECTIONS

SEC. 621. Any person, other than an officer or employee of the United States, or a person exercising inspection functions under a State plan pursuant to section 623, who knowingly and willfully fails to report a violation of any construction or safety standard established under section 604 may be fined up to $1,000 or imprisoned for up to one year or both.

PROHIBITION ON WAIVER OF RIGHTS

SEC. 622. The rights afforded mobile home purchasers under this title may be waived, and any provision of a contract or agreement entered into after the enactment of this title to the contrary shall be void.

STATE JURISDICTION; STATE PLANS

SEC. 623. (a) Nothing in this title shall prevent any State agency or court from asserting jurisdiction under State law over any mobile home construction or safety issue with respect to which no Federal mobile home construction and safety standard has been established pursuant to the provisions of section 604.

(b) Any State which, at any time, desires to assume responsibility for enforcement of mobile home safety and construction standards relating to any issue with respect to which a Federal standard has been established under section 604, shall submit to the Secretary a State plan for enforcement of such standards.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State;

(2) provides for the enforcement of mobile home safety and construction standards promulgated under section 604;

(3) provides for a right of entry and inspection of all factories, warehouses, or establishments in such State in which mobile homes are manufactured and for the review of plans, in a manner which is identical to that provided in section 614;

(4) provides for the imposition of the civil and criminal penalties under section 611;

(5) provides for the notification and correction procedures under section 615;

(6) provides for the payment of inspection fees by manufacturers in amounts adequate to cover the costs of inspections;

(7) contains satisfactory assurances that the State agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards;

(8) give satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards;

(9) requires manufactures, distributors, and dealers in such State to make reports to the Secretary in the same manner and to the same extent as if the State plan were not in effect;

(10) provides that the State agency or agencies will make such reports to the Secretary in such form and containing such information as the Secretary shall from time to time require; and

(11) complies with such other requirements as the Secretary may by regulation prescribe for the enforcement of this title.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under this title with respect to enforcement of mobile home construction and safety standards in the State involved.

(f) The Secretary shall, on the basis of reports submitted by the designated State agency and his own inspections, make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Such evaluation shall be made by the Secretary at least annually for each State, and the results of such evaluation and the inspection reports on which it is based shall be promptly submitted to the appropriate committees of the Congress. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan or that the State plan has become inadequate, he shall notify the State agency or agencies of his withdrawal of approval of such plan. Upon receipt of such notice by such State agency or agencies such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce mobile home standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

GRANTS TO STATES

SEC. 624. (a) The Secretary is authorized to make grants to the States which have designated a State agency under section 623 to assist them—

(1) in identifying their needs and responsibilities in the area of mobile home construction and safety standards; or

(2) in developing State plans under section 623.

(b) The Governor of each State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(c) And State agency designed by the Governor of a State desiring a grant under this section shall submit an application therefor to the Secretary. The Secretary shall review and either accept or reject such application.

(d) The Federal share for each State grant under subsection (a) of this section may not exceed 90 per centum of the total cost to the State in identifying its needs and developing its plan. In the event the Federal share for all States under such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

RULES AND REGULATIONS

SEC. 625. The Secretary is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out this title.

ANNUAL REPORT TO CONGRESS

SEC. 626. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on March 1 of each year a comprehensive report on the administration of this title for the preceding calendar year. Such report shall include but not be restricted to (1) a thorough statistical compilation of the accidents, injuries, deaths and property losses occurring in or involving mobile homes in such year; (2) a list of Federal mobile home construction and safety standards prescribed or in effect in such year; (3) the level of compliance with all applicable Federal mobile home standards; (4)

a summary of all current research grants and contracts together with a description of the problems to be studied in such research; (5) an analysis and evaluation, including relevant policy recommendations, of research activities completed and technological progress achieved during such year; (6) a statement of enforcement actions including judicial decisions, settlements, defect notifications, and pending litigation commenced during the year; and (7) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to mobile home owners and prospective buyers.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional or revised legislation as the Secretary deems necessary to promote the improvement of mobile home construction and safety and to strengthen the national mobile home program.

(c) In order to assure a continuing and effective national mobile home construction and safety program, it is the policy of Congress to encourage the adoption of State inspection of used mobile homes. Therefore, to that end the Secretary shall conduct a thorough study and investigation to determine the adequacy of mobile home construction and safety standards and mobile home inspection requirements and procedures applicable to used mobile homes in each State, and the effect of programs authorized by this title upon such standards, requirements, and procedures for used mobile homes, and report to Congress as soon as practicable, but nto later than one year after the date of enactment of this Act, the results of such study, and recommendations for such additional legislation as he deems necessary to carry out the purposes of this title. Such report shall also include recommendations by the Secretary relating to the problems of disposal of used mobile homes.

AUTHORIZATION OF APPROPRIATIONS

SEC. 627. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

EFFECTIVE DATE

SEC. 628. The provisions of this title shall take effect upon the expiration of 180 days following the date of enactment of this title.

## TITLE VII—CONSUMER HOME MORTGAGE ASSISTANCE

SHORT TITLE

SEC. 701. This title may be cited as the "Consumer Home Mortgage Assistance Act of 1974".

### PART A—LENDING AND INVESTMENT POWERS, FEDERAL SAVINGS AND LOAN ASSOCIATIONS

CONSTRUCTION LOANS

SEC. 702. Section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)) is amended by adding at the end thereof the following new paragraph:

"Without regard to any other provision of this subsection, any such association is authorized to invest an amount, not exceeding the greater of (A) the sum of its surplus, undivided profits, and reserves or (B) 3 per centum of its assets, in loans or in interests therein the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate within one hundred miles of its home office or within the State in which such office is located, where (i) the association relies substantially for repayment on the borrower's general credit standing and forecast of income, with or without other security, or (ii) the association relies on other assurances for repayment, including but not limited to a guaranty or similar obligation of a third party, and, in either case described in clause (i) or (ii), regardless of whether or not the association takes security; and investments under this sentence shall not be included in any percentage of assets or other percentage referred to in this subsection."

SINGLE FAMILY DWELLING LIMITATIONS

SEC. 703. Section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)) is amended by striking out "$45,000" immediately before "for each single family dwelling" and inserting in lieu thereof "$55,000 (except that with respect to dwellings in Alaska, Guam, and Hawaii the foregoing limitation may, by regulation of the Board, be increased by not to exceed 50 per centum)".

LENDING AUTHORITY UNDER THE HOME OWNERS' LOAN ACT

SEC. 704. Section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)), as amended by section 702 of this Act, is amended by adding at the end thereof the following new paragraph:

"Subject to such prohibitions, limitations, and conditions as the Board may prescribe, any such association may invest in loans and advances of credit and interests therein upon the security of or respecting real property or interests therein used for primarily residential purposes (all of which may be defined by the Board) that do not comply with the limitations and restrictions in this subsection, but no investment shall be made by an association under this sentence if its aggregate outstanding investment under this sentence determined as prescribed by the Board, exclusive of any investment which is or at the time of its making was otherwise authorized, would thereupon exceed 5 per centum of its assets.".

AMENDMENT TO THE HOME OWNERS' LOAN ACT OF 1933 CONCERNING PROPERTY IMPROVEMENT LOANS

SEC. 705. The second and third undesignated paragraphs of section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)) are amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

ADVANCES FROM A STATE CHARTERED CENTRAL RESERVE INSTITUTION INCLUDING MORTGAGE FINANCE AGENCIES

SEC. 706. Section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)), as amended by sections 702 and 704 of this Act, is amended by adding at the end thereof the following new paragraph:

"Subject to regulation by the Board but without regard to any other provision of this subsection, any such association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to borrow funds from a State mortgage finance agency, of the State in which the head office of such association is situated to the same extent as State law authorizes a savings and loan association organized under the laws of such State to borrow from the State mortgage finance agency, except that such an association may not make any loans of such funds at an interest rate which exceeds by more than 1¾ per centum per annum the interest rate paid to the State mortgage finance agency on the obligations issued to obtain the funds so borrowed.".

### PART B—NATIONAL BANKS

REAL ESTATE LOANS BY NATIONAL BANKS

SEC. 711. Section 24 of the Federal Reserve Act (12 U.S.C. 371) is amended to read as follows:

"REAL ESTATE LOANS BY NATIONAL BANKS

"SEC. 24 (a)(1) Any national banking association may make real estate loans, secured by liens upon unimproved real estate, upon improved real estate, including improved farmland and improved business and residential properties, and upon real estate to be improved by a building or buildings to be constructed or in the process of construction, in an amount which when added to the amount unpaid upon prior mortgages, liens, encumbrances, if any, upon such real estate does not exceed the respective proportions of appraised value as provided in this section. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by a mortgage, trust deed, or other instrument, which shall constitute a lien on real estate in fee or, under such rules and regulations as may be prescribed by the Comptroller of the Currency, on a leasehold under a lease which does not expire for at least ten years beyond the maturity date of the loan, and any national banking association may purchase or sell any obligations so secured in whole or in part. The amount of any such loan hereafter made shall not exceed 66⅔ per centum of the appraised value if such real estate is unimproved, 75 per centum of the appraised value if such real estate is improved by offsite improvements such as streets, water, sewers, or other utilities, 75 per centum of the appraised value if such real estate is in the process of being improved by a building or buildings to be constructed or in the process of construction, or 90 per centum of the appraised value if such real estate is improved by a building or buildings. If any such loan exceeds 75 per centum of the appraised value of the real estate or if the real estate is improved with a one- to four-family dwelling, installment payments shall be required which are sufficient to amortize the entire principal of the loan within a period of not more than thirty years.

"(2) The limitations and restrictions set forth in paragraph (1) shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans (A) which are insured under the provisions of the National Housing Act, (B) which are insured by the Secretary of Agriculture pursuant to title I of the Bankhead-Jones Farm Tenant Act, or the Act of August 28, 1937, as amended, or title V of the Housing Act of 1949, as amended, or (C) which are guaranteed by the Secretary of Housing and Urban Development, for the payment of the obligations of which the full faith and credit of the United States is pledged, and such limitations and restrictions shall not apply to real estate loans which are fully guaranteed or insured by a State, or any agency or instrumentality thereof, or by a State authority for the payment of the obligations of which the faith and credit of the State is pledged, if under the terms of the guaranty or insurance agreement the association will be assured of repayment in accordance with the terms of the loan, or to any loan at least 20 per centum of which is guaranteed under chapter 37 of title 38, United States Code.

"(3) Loans which are guaranteed or insured as described in paragraph (2) shall not be taken into account in determining the amount of real estate loans which a national banking association may make in relation to its capital and surplus or its time and savings deposits or in determining the amount of real estate loans secured by other than first liens. Where the collateral for any loan consists partly of real estate security and partly of other security, including a guaranty or endorsement by or an obligation or commitment of a person other than the borrower, only the amount by which the loan exceeds the value as collateral of such other security shall be considered a loan upon the security of real estate, and in no event shall a loan be considered as a real estate loan where there is a valid and binding agreement which is entered into by a financially responsible lender or other party either directly with the association or which is for the benefit of or has been assigned to the association

and pursuant to which agreement the lender or other party is required to advance to the association within sixty months from the date of the making of such loan the full amount of the loan to be made by the association upon the security of real estate. Except as otherwise provided, no such association shall make real estate loans in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of the amount of its time and savings deposits, whichever is greater: *Provided,* That the amount unpaid upon real estate loans secured by other than first liens, when added to the amount unpaid upon prior mortgages, liens, and encumbrances, shall not exceed in an aggregate sum 20 per centum of the amount of the capital stock of such association paid in and unimpaired plus 20 per centum of the amount of its unimpaired surplus fund.

"(b) Any national banking association may make real estate loans secured by liens upon forest tracts which are properly managed in all respects. Such loans shall be in the form of an obligation or obligations secured by mortgage, trust deed, or other such instrument; and any national banking association may purchase or sell any obligations so secured in whole or in part. The amount of any such loan, when added to the amount unpaid upon prior mortgages, liens, and encumbrances, if any, shall not exceed 66⅔ per centum of the appraised fair market value of the growing timber, lands, and improvements thereon offered as security and the loan shall be made upon such terms and conditions as to assure that at no time shall the loan balance, when added to the amount unpaid upon prior mortgages, liens, and encumbrances, if any, exceed 66⅔ per centum of the original appraised total value of the property then remaining. No such loan shall be made for a longer term than three years; except that any such loan may be made for a term not longer than fifteen years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the principal of the loan within a period of not more than fifteen years and at a rate at least 6⅔ per centum per annum. All such loans secured by liens upon forest tracts shall be included in the permissible aggregate of all real estate loans and, when secured by other than first liens, in the permissible aggregate of all real estate loans secured by other than first liens, prescribed in subsection (a), but no national banking association shall make forest tract loans in an aggregate sum in excess of 50 per centum of its capital stock paid in and unimpaired plus 50 per centum of its unimpaired surplus fund.

"(c) Loans made to finance the construction of a building or buildings and having maturities of not to exceed sixty months where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building or buildings, and loans made to finance the construction of residential or farm buildings and having maturities of not to exceed sixty months, may be considered as real estate loans if the loans qualify under this section, or such loans may be classed as commercial loans whether or not secured by a mortgage or similar lien on the real estate upon which the building or buildings are being constructed, at the option of each national banking association that may have an interest in such loan: *Provided,* That no national banking association shall invest in, or be liable on, any such loans classed as commercial loans under this subsection in an aggregate amount in excess of 100 per centum of its actually paid-in and unimpaired capital plus 100 per centum of its unimpaired surplus fund.

"(d) Notes representing loans made under this section to finance the construction of residential or farm buildings and having maturities of not to exceed nine months shall be eligible for discount as commercial paper within the terms of the second paragraph of section 13 of this Act if accompanied by a valid and binding agreement to advance the full amount of the loan upon the completion of the building entered into by an individual, partnership, association, or corporation acceptable to the discounting bank.

"(e) Loans made to any borrower (i) where the association looks for repayment by relying primarily on the borrower's general credit standing and forecast of income, with or without other security, or (ii) secured by an assignment of rents under a lease, and where, in either case described in clause (i) or (ii) above, the association wishes to take a mortgage, deed of trust, or other instrument upon real estate (whether or not constituting a first lien) as a precaution against contingencies, and loans in which the Small Business Administration cooperates through agreements to participate on an immediate or deferred or guaranteed basis under the Small Business Act, shall not be considered as real estate loans within the meaning of this section but shall be classed as commercial loans.

"(f) Any national banking association may make loans upon the security of real estate that do not comply with the limitations and restrictions in this section, if the total unpaid amount loaned, exclusive of loans which subsequently comply with such limitations and restrictions, does not exceed 10 per centum of the amount that a national banking association may invest in real estate loans. The total unpaid amount so loaned shall be included in the aggregate sum that such association may invest in real estate loans.

"(g) Loans made pursuant to this section shall be subject to such conditions and limitations as the Comptroller of the Currency may prescribe by rule or regulation.".

PART C.—FEDERAL CREDIT UNIONS

LENDING AUTHORITY AND DEPOSITORY AUTHORITY

SEC. 721. (a) Paragraph (6) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757(6)) is amended to read as follows:

"(6) to make loans to its own directors and to members of its own supervisory credit committee provided that any such loan or aggregate of loans to one director or committee member which exceeds $2,500 plans pledged shares must be approved by the board of directors, and to permit directors and members of its own supervisory or credit commitee to act as guarantor or endorser of loans to other members, except that when such a loan standing alone or when added to any outstanding loan or loans of the guarantor exceeds $2,500, approved by the board of directors is required;".

(b) Paragraph (9) of such section is amended by inserting immediately before the semicolon at the end thereof the following: ", and for Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States to maintain demand deposit accounts in banks located in those countries or trust territories, subject to such regulations as may be issued by the Administrator and provided such banks are correspondents of banks described in this paragraph".

FEES

SEC. 722. The first sentence of section 109 of the Federal Credit Union Act (12 U.S.C. 1759) is amended by striking out "the entrance fee" and inserting in lieu thereof "a uniform entrance fee if required by the board of directors".

DIRECTORS

SEC. 723. (a) The third sentence of section 113 of the Federal Credit Union Act (12 U.S.C. 1761b) is amended by inserting ", except that the board may designate a committee of not less than two to act as an investment committee, such investment committee to have charge of making investments under rules and procedures established by the board of directors" immediately after "have charge of investments other than loans to members".

(b) The fourth sentence of such section is amended by striking out "act for it in the purchase and sale of securities, the borrowing of funds, and making of loans to other credit unions" and inserting in lieu thereof "exercise such authority as may be delegated to it subject to such conditions and limitations as may be prescribed by the board".

(c) The fifth sentence of such section is amended by striking out "a membership officer" and inserting in lieu thereof "one or more membership officers".

(d) Such section is amended by adding at the end thereof the following new sentence: "If a membership application is denied, the reasons therefor shall be furnished in writing to the person whose application is denied, upon written request.".

SUPERVISORY COMMITTEES

SEC. 725. Section 115 of the Federal Credit Union Act (12 U.S.C. 1761d) is amended by striking out "a semiannual" and inserting in lieu thereof "an annual".

DIVIDENDS

SEC. 725. (a) The first sentence of section 117 of the Federal Credit Union Act (12 U.S.C. 1763) is amended by striking out "Annually, semiannually, or quarterly, as the bylaws may provide" and inserting in lieu thereof "At such intervals as the board of directors may authorize".

(b) The last sentence of such section is amended by striking out "for a month", and by striking out "which are or become fully paid up during the first ten days of that month" and inserting in lieu thereof "as authorized by the board of directors".

APPLICABILITY

SEC. 726. Section 126 of the Federal Credit Union Act (12 U.S.C. 1772) is amended by inserting immediately after "the several territories" the following: ", including the trust territories,".

DEFINITION OF MEMBERS ACCOUNTS

SEC. 727. Section 202(h) of the Federal Credit Union Act (12 U.S.C. 1782(h)) is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and"; and

(3) by adding after paragraph (2) the following new paragraph:

"(3) the term 'members accounts' when applied to the premium charge for insurance of the accounts of federally insured credit unions shall not include amounts in excess of the insured account limit set forth in section 207(c).".

TERMINATION

SEC. 728. (a) Section 206(a) of the Federal Credit Union Act (12 U.S.C. 1786(a)) is amended to read as follows:

"(a)(1) Any insured credit union other than a Federal credit union may, upon not less than ninety days' written notice to the Administrator and upon the affirmative vote of a majority of its members within one year prior to the giving of such notice, terminate its status as an insured credit union.

"(2) Any insured credit union, other than a Federal credit union, which has obtained a

new certificate of insurance from a corporation authorized and duly licensed to insure member accounts may upon not less than ninety days' written notice to the Administrator convert from status as an insured credit union under this Act: *Provided,* That at the time of giving notice to the Administrator the provisions of paragraph (b)(1) of ths section are not being invoked against the credit union.".

(b) The first sentence of section 206(c) of such Act is amended by inserting "(1)" immediately after "(a)".

(c) Section 206(d) of such Act is amended by inserting "(1)" immediately after "(d)", and by adding at the end thereof the following new paragraphs:

"(2)" No credit union shall convert from status as an insured credit union under this Act as provided under subsection (a)(2) of this section until the proposition for such conversion has been approved by a majority of all the directors of the credit union, and by affirmative vote of a majority of the members of the credit union who vote on the proposition in a vote in which at least 20 per centum of the total membership of the credit union participates. Following approval by the directors, written notice of the proposition and the date set for the membership vote shall be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. The membership shall be given the opportunity to vote by mail ballot. If the proposition is approved by the membership, prompt and reasonable notice of insurance conversion shall be given to all members.

"(3) In the event of a conversion of a credit union from status as an insured credit union under this Act as provided under subsection (a)(2) of this section, premium charges payable under section 202(c) of this Act shall be reduced by an amount proportionate to the number of calendar months for which the converting credit union will no longer be insured under this Act. As long as converting credit union remains insured under this Act, it shall remain subject to all of the provisions of chapter II of this Act.".

LIQUIDATION

SEC. 729. Section 208(a)(1) of the Federal Credit Union Act (12 U.S.C. 1788(a)(1)) is amended to read as follows:

"(1) In order to reopen a closed insured credit union or in order to prevent the closing of an insured credit union which the Administrator has determined is in danger of closing or in order to assist in the voluntary liquidation of a solvent credit union, the Administrator, in his discretion, is authorized to make loans to, or purchase the assets of, or establish accounts in such insured credit union upon such terms and conditions as he may prescribe. Except with respect to the voluntary liquidation of a solvent credit union, such loans shall be made and such accounts shall be established only when in the opinion of the Administrator, such action is necessary to protect the fund or the interests of the members of the credit union."

## TITLE VIII—MISCELLANEOUS

NATIONAL HOUSING GOAL

SEC. 801. Title XVI of the Housing and Urban Development Act of 1968 is amended—

(1) by inserting "(a)" before "The Congress" in the first sentence of section 1601:

(2) by adding at the end of section 1601 the following new subsections:

"(b) The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

"(c) The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute."; and

(3) by redesignating clauses (3) through (6) of section 1603 as clauses (4) through (7), respectively, and by inserting after clause (2) the following new clause:

"(3) provide an assessment of developments and progress during the preceding fiscal year with respect to the preservation of deteriorating housing and neighborhoods and indicate the efforts to be undertaken in future years to encourage such action;".

STATE HOUSING FINANCE AND DEVELOPMENT AGENCIES

SEC. 802. (a) It is the purpose of this section to encourage the formation and effective operation of State housing finance agencies and State development agencies which have authority to finance, to assist in carrying out, or to carry out activities designed to (1) provide housing and related facilities through land acquisition, construction, or rehabilitation, for persons and families of low, moderate, and middle income, (2) promote the sound growth and development of neighborhoods through the revitalization of slum and blighted areas, (3) increase and improve employment opportunities for the unemployed and underemployed through the development and redevelopment of industrial, manufacturing, and commercial facilities, or (4) implement the development aspects of State land use and preservation policies, including the advance acquisition of land where it is consistent with such policies. The Secretary of Housing and Urban Development shall encourage maximum participation by private and nonprofit developers in activities assisted under this section.

(b)(1) A State housing finance or State development agency is eligible for assistance under this section only if the Secretary determines that it is fully empowered and has adequate authority to at least carry out or assist in carrying out the purposes specified in clause (1) of subsection (a).

(2) For the purpose of this section—

(A) the term "State housing finance or State development agency" means any public body or agency, publicly sponsored corporation, or instrumentality of one or more States which is designated by the Governor (or Governors in the case of an interstate development agency) for purposes of this section;

(B) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and

(C) the term "Secretary" means the Secretary of Housing and Urban Development.

(c)(1) The Secretary is authorized to guarantee, and enter into commitments to guarantee, the bonds, debentures, notes, and other obligations issued by State housing finance or State development agencies to finance development activities as determined by him to be in furtherance of the purpose of clause (1) or (2) of subsection (a), except that obligations issued to finance activities solely in furtherance of the purpose of clause (1) of subsection (a) may be guaranteed only if the activities are in connection with the revitalization of slum or blighted areas under title I of this Act or under any other program determined to be acceptable by the Secretary for this purpose.

(2) The Secretary is authorized to make, and to contract to make, grants to or on behalf of a State housing finance or State development agency to cover not to exceed 33⅓ per centum of the interest payable on bonds, debentures, notes, and other obligations issued by such agency to finance development activities in furtherance of the purposes of this section.

(3) No obligation shall be guaranteed or otherwise assisted under this section unless the interest income thereon is subject to Federal taxation as provided in subsection (h)(2), except that use of guarantees provided for in this subsection shall not be made a condition to nor preclude receipt of any other Federal assistance.

(4) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section with respect to principal, interest, and any redemption premiums. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation.

(5) The Secretary is authorized to establish and collect such fees and charges for and in connection with guarantees made under this section as he considers reasonable.

(6) There are authorized to be appropriated such sums as may be necessary to make payments as provided for, in contracts entered into by the Secretary under paragraph (2) of this subsection, and payments pursuant to such contracts shall not exceed $50,000,000 per annum prior to July 1, 1975, which maximum dollar amount shall be increased by $60,000,000 on July 1, 1975. The aggregate principal amount of the obligations which may be guaranteed under this section and outstanding at any one time shall not exceed $500,000,000.

(d) The Secretary shall take such steps as he considers reasonable to assure that bonds, debentures, notes, and other obligations which are guaranteed under subsection (c) will—

(1) be issued only to investors approved by, or meeting requirements prescribed by, the Secretary, or, if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary;

(2) bear interest at a rate satisfactory to the Secretary;

(3) contain or be subject to repayment, maturity, and other provisions satisfactory to the Secretary; and

(4) contain or be subject to provisions with respect to the protection of the security interests of the United States, including any provisions deemed appropriate by the Secretary relating to subrogation, liens, and releases of liens, payment of taxes, cost certification procedures, escrow or trusteeship requirements, or other matters.

(e)(1) The Secretary is authorized to establish a revolving fund to provide for the timely payment of any liabilities incurred as a result of guarantees under subsection (c) and for the payment of obligations issued to the Secretary of the Treasury under paragraph (2) of this subsection. Such revolving fund shall be comprised of (A) receipts from fees and charges; (B) recoveries under security, subrogation, and other rights; (C) repayments, interest income, and any other receipts obtained in connection with guarantees made under subsection (c); (D) proceeds of the obligations issued to the

Secretary of the Treasury pursuant to paragraph (2) of this subsection; and (E) such sums, which are hereby authorized to be appropriated, as may be required for such purposes. Money in the revolving fund not currently needed for the purpose of this section shall be kept on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds.

(2) The Secretary may issue obligations to the Secretary of the Treasury in an amount sufficient to enable the Secretary to carry out his functions with respect to the guarantees authorized by subsection (c). The obligations issued under this paragraph shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations so issued, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under that Act are extended to include purchases of the obligations hereunder.

(3) Notwithstanding any other provision of law relating to the acquisition, handling, improvement, or disposal of real and other property by the United States, the Secretary shall have power, for the protection of the interests of the fund authorized under this subsection, to pay out of such fund all expenses or charges in connection with the acquisition, handling, improvement, or disposal any property, real or personal, acquired by him as a result of recoveries under security, subrogation, or other rights.

(f) The Secretary is authorized to provide, either directly or by contract or other arrangements, technical assistance to State housing finance or State development agencies to assist them in connection with planning and carrying out development activities in furtherance of the purpose of this section.

(g) All laborers and mechanics employed by contractors or subcontractors in housing or development activities assisted under this section shall be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5): *Provided*, That this section shall apply to the construction of residential property only if such property is designed for residential use of eight or more families. No assistance shall be extended under this section with respect to any development activities without first obtaining adequate assurance that these labor standards will be maintained upon the work involved in such activities. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267), and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(h)(1) In the performance of and with respect to, the functions, powers, and duties rested in him by this section, the Secretary, in addition to any authority otherwise rested to him, shall—

(A) have the power, notwithstanding any other provision of law, in connection with any guarantee under this section, whether before or after default, to provide by contract for the extinguishment upon default any redemption, equitable, legal, or other right, title, or interest of a State housing finance or State development agency in any mortgage, deed, trust, or other instrument held by or on behalf of the Secretary for the protection of the security interests of the United States; and

(B) have the power to foreclose on any property or commence any action to protect or enforce any right conferred upon him by law, contract, or other agreement, and bid for and purchase at any foreclosure or other sale any property in connection with which he has provided a guarantee pursuant to this section. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease, and otherwise deal with, such property. Notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection by way of compromise or otherwise all claims acquired by him in connection with any security, subrogation, or other rights obtained by him in administering this section.

(2) With respect to any obligation issued by a State housing finance or State development agency for which the issuer has elected to receive the benefits of the assistance provided under this section, the interest paid on such obligation and received by the purchaser thereof (or his successor in interest) shall be included in gross income for the purposes of chapter 1 of the Internal Revenue Code of 54.

(1)(1) Section 24(a)(2) of the Federal Reserve Act (as amended by section 711 of this Act) is amended by inserting the following before the period at the end thereof: ", or to obligations guaranteed under section 802 of the Housing and Community Development Act of 1974".

(2) The twelfth paragraph of section 5(c) of the Homeowners' Loan Act of 1933 is amended by adding in the last sentence immediately after the words "or under part B of the Urban Growth and New Community Development Act of 1970" the following: "or under section 802 of the Housing and Community Development Act of 1974".

NEW COMMUNITY PROGRAM AMENDMENTS

SEC. 803. (a) (1) Part B of title VII of the Housing and Urban Development Act of 1970 is amended by striking out "Community Development Corporation" wherever it appears and inserting in lieu thereof "New Community Development Corporation".

(2) The heading of section 729 of such Act is amended by inserting "new" before "community".

(b) Section 729(b) of such Act is amended—

(1) by striking out "five members" in the matter preceding paragraph (1) and inserting in lieu thereof 'seven members"; and

(2) by striking out "three persons" in paragraph (3) and inserting in lieu thereof "five persons".

(c) The last sentence of section 713(a) of such Act is amended by striking out "in amounts" and all that follows and inserting in lieu thereof "in amounts equal to 30 per centum of the interest paid on such obligations."

(d) Section 718(c) of such Act is amended by inserting before the period at the end thereof the following: ", or a project or portion of a project consisting of the purchase, renovation, or construction of facilities, the purchase of land, or the acquisition of equipment or works of art assisted by contracts or grants under section 5 of the National Foundation on the Arts and the Humanities Act of 1965".

(c) Section 711(f) of such Act is amended—

(1) by striking out "sewage disposal" in the first and second sentences and inserting in lieu thereof "sewage or waste disposal";

(2) by inserting "community or neighborhood central heating or air-conditioning systems," after "storm drainage facilities," in the first sentence; and

(3) by inserting ", a communiy or neighborhood central heating or air-conditioning system," after "disposal installation" in the second sentence.

EXPANSION OF EXPERIMENTAL HOUSING ALLOWANCE PROGRAM

SEC. 804. Section 504 of the Housing and Urban Development Act of 1970 is amended to read as follows:

"HOUSING ALLOWANCES

"SEC. 504. (a) The Secretary is authorized to undertake on an experimental basis programs to demonstrate the feasibility of providing housing allowance payments to assist families in meeting rental or homeownership expenses.

"(b) For the purpose of carrying out this section, the Secretary is authorized to make, and to contract to make, housing allowance payments to or on behalf of participating families. No housing allowance payments shall be made after July 1, 1985. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make payments as provided for in contracts entered into under this section and such sums as may be necessary to cover administrative costs. The aggregate amount of contracts to make housing allowance payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed $40,000,000 per annum. After January 1, 1975, the Secretary shall not enter into contracts under the United States Housing Act of 1937 to carry out the purposes of this section. The Secretary may contract with public or private agencies for the performance of administrative functions in connection with the programs authorized by this section.

"(c) The Secretary shall report to the Congress on his findings pursuant to this section not later than eighteen months after the enactment of the Housing and Community Development Act of 1974."

FEDERAL HOME LOAN MORTGAGE CORPORATION AMENDMENTS

SEC. 805. (a) Section 305(a)(1) of the Federal Home Loan Mortgage Corporation Act is amended—

(1) by striking out ", and to hold" and inserting in lieu thereof the following: ". The Corporation may hold"; and

(2) by striking out the period after "therein" and inserting in lieu thereof the following: ", and the servicing on any such mortgage may be performed by the seller or by a financial institution qualified as a seller under the provisions of the preceding sentence, or by a mortgagee approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, with which institution or mortgagee the seller may contract."

(b) Section 305(a)(2) of such Act is amended—

(1) by striking out "75 per centum" each place it appears in the first sentence and inserting in lieu thereof "80 per centum";

(2) by striking out "private" in clause (C) of the first sentence;

(3 by striking out "10 per centum" in the third sentence and inserting in lieu thereof "20 per centum"; and

(4) by striking out "which are comparable to the limitations which would be applicable if the mortgage were insured by the Secreder section 203(b) or 207 of the National tary of Housing and Urban Development un-Housing Act" in the fourth sentence and inserting in lieu thereof the following: ", but such limitations shall not exceed the limitations contained in the first proviso to the first sentence of section 5(c) of the Home Owners' Loan Act of 1933".

(c)(1) Section 5136 of the Revised Statutes is amended by inserting immediately after "Government National Mortgage Association" in paragraph Seventh thereof the following: ", or mortgages, obligations, or

other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act".

(2) Section 11(h) of the Federal Home Loan Bank Act is amended by inserting immediately after "Government National Mortgage Association" the following: ", in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act".

(3) Section 16 of the Federal Home Loan Bank Act is amended by inserting immediately after "Government National Mortgage Association" the following: ", in mortgages, obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act".

(4) Section 5(c) of the Home Owners' Loan Act of 1933 is amended by inserting immediately after "Federal Home Loan Bank" in the first paragraph the following: ", or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act".

(5) Section 107(8)(E) of the Federal Credit Union Act is amended by inserting immediately after "Government National Mortgage Association" the following: "; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act;".

FEDERAL NATIONAL MORTGAGE ASSOCIATION AMENDMENTS

SEC. 208. (a) Section 302(a)(2) of the National Housing Act is amended—

(1) by striking out "the effective date established pursuant to section 808 of the Housing and Urban Development Act of 1968" in the matter preceding subparagraph (A) and inserting in lieu thereof "September 1, 1968"; and

(2) by striking out "effective" in subparagraphs (A) and (B).

(b) The third sentence of section 302(a)(2)(B) of such Act is amended—

(1) by inserting "or the metropolitan area thereof" immediately after "District of Columbia";

(2) by inserting "jurisdiction and" immediately before "venue"; and

(3) by striking out "resident thereof" and inserting in lieu thereof "District of Columbia corporation".

(c) Section 302(b)(2) of such Act is amended by striking out "75 per centum" each place it appears and inserting in lieu thereof "80 per centum."

(d) Clause (C) of the second sentence of section 302(b)(2) of such Act is amended by striking out "private".

(e) The fourth sentence of section 302(b)(2) of such Act is amended by striking out "10 per centum" and inserting in lieu thereof "20 per centum".

(f) The last sentence of section 302(b)(2) of such Act is amended by striking out "which are comparable to the limitations which would be applicable if the mortgage were insured by the Secretary of Housing and Urban Development under section 203(b) or 207 of the National Housing Act" and inserting in lieu thereof the following: ", but such limitations shall not exceed the limitations contained in the first proviso of the first sentence of section 5(c) of the Home Owners' Loan Act of 1933".

(g) Section 303(a) of such Act is amended—

(1) by striking out all of the first sentence which follows "directors" and inserting in lieu thereof a period; and

(2) by striking out everything after the second sentence.

(h) Section 303(c) of such Act is amended—

(1) by striking out "the effective date established pursuant to section 808 of the Housing and Urban Development Act of 1968" in the fourth sentence and inserting in lieu thereof "September 1, 1968,"; and

(2) by striking out the proviso in the last sentence.

(i) Subsections (d) and (e) of section 303 of such Act are repealed.

(j) The last sentence of section 304(a)(1) of such Act is amended by striking out "section 502 of the Emergency Home Finance Act of 1970" and inserting in lieu thereof "section 243 of the National Housing Act".

(k) Except with respect to any person receiving an annuity on the date of the enactment of this Act, section 309(d)(2) of such Act is amended—

(1) by striking out "the termination of the transitional period referred to in section 810(b) of the Housing and Urban Development Act of 1968" and inserting in lieu thereof "January 31, 1972,";

(2) by inserting "positions listed" immediately before "in section 5312"; and

(3) by inserting before the period at the end of the next to last sentence the following: ": Provided, That with respect to any person whose employment is made subject to the civil service retirement law by section 806 of the Housing and Community Development Act of 1974, there shall not be considered for the purposes of such law that portion of his basic pay in any one year which exceeds the basic pay provided for positions listed in section 5316 of such title 5 on the last day of such year".

(l) Subsections (b) and (c) of section 810 of the Housing and Urban Development Act of 1968 are repealed.

LIMITATION ON DOLLAR AMOUNT OF GNMA-PURCHASED MORTGAGES

SEC. 807. Clause (3) of the proviso in the first sentence of section 302(b)(1) of the National Housing Act is amended by striking out "$22,000" and inserting in lieu thereof the following: "$33,000 (or such higher amount not in excess of $38,000 as the Secretary may by regulation specify in any geographical area where he finds that cost levels so require)".

PROHIBITION AGAINST DISCRIMINATION ON ACCOUNT OF SEX IN EXTENSION OF MORTGAGE ASSISTANCE; FAIR HOUSING

SEC. 808. (a) Title V of the National Housing Act is (as amended by sections 301 and 305 of this Act) is amended by adding at the end thereof the following new section:

"PROHIBITION AGAINST DISCRIMINATION ON ACCOUNT OF SEX IN EXTENSION OF MORTGAGE ASSISTANCE

"SEC. 527. No federally related mortgage loan, or Federal insurance, guaranty, or other assistance in connection therewith (under this or any other Act), shall be denied to any person on account of sex; and every person engaged in making mortgage loans secured by residential real property shall consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit in the form of a federally related mortgage loan to a married couple or either member thereof.

"(b) For purposes of subsection (a), the term 'federally related mortgage loan' means any loan which—

"(1) is secured by residential real property designed principally for the occupancy of from one to four families; and

"(2)(A) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is itself regulated by any agency of the Federal Government; or

"(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary of Housing and Urban Development or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency; or

"(C) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

"(D) is made in whole or in part by any 'creditor', as defined in section 103(f) of the Consumer Credit Protection Act of 1968 (15 U.S.C. 1602(f)), who makes or invests in residential real estate loans aggregating more than $1,000,000 per year."

(b)(1) Subsections (a), (b), (c), (d), and (e) of section 804 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes", approved April 11, 1968 (42 U.S.C. 3604), are amended by inserting a comma and the word "sex" immediately after the word "religion" each time it appears.

(2) Section 805 of such Act is amended by inserting a comma and the word "sex" immediately after the word "religion".

(3) Section 806 of such Act is amended by inserting a comma and the word "sex" immediately after the word "religion".

(4) Subsection (a), paragraph (1) of subsection (b), and subsection (c) of section 901 of such Act are amended by inserting a comma and the word "sex" immediately after the word "religion" each time it appears.

NATIONAL INSTITUTE OF BUILDING SCIENCES

SEC. 809. (a)(1) The Congress finds (A) that the lack of an authoritative national source to make findings and to advise both the public and private sectors of the economy with respect to the use of building science and technology in achieving nationally acceptable standards and other technical provision for use in Federal, State, and local housing and building regulations is an obstacle to efforts by and imposes severe burdens upon all those who procure, design, construct, use, operate, maintain, and retire physical facilities, and frequently results in the failure to take full advantage of new and useful developments in technology which could improve our living environment; (B) that the establishment of model building codes or of a single national building code will not completely resolve the problem because of the difficulty at all levels of government in updating their housing and building regulations to reflect new developments in technology, as well as the irregularities and inconsistencies which arise in applying such requirements to particular localities or special local conditions; (C) that the lack of uniform housing and building regulatory provisions increases the costs of construction and thereby reduces the amount of housing and other community facilities which can be provided; and (D) that the existence of a single authoritative nationally recognized institution to provide for the evaluation of new technology could facilitate introduction of such innovations and their acceptance at the Federal, State, and local levels.

(2) The Congress further finds, however, that while an authoritative source of technical findings is needed, various private organizations and institutions, private industry, labor, and Federal and other governmental agencies and entities are presently engaged in building reesarch, technology de-

velopment, testing, and evaluation, standards and model code development and promulgation, and information dissemination. These existing activities should be encouraged and these capabilities effectively utilized wherever possible and appropriate to the purposes of this section.

(3) The Congress declares that an authoritative nongovernmental instrument needs to be created to address the problems and issues described in paragraph (1), that the creation of such an instrument should be initiated by the Government, with the advice and assistance of the National Academy of Sciences-National Academy of Engineering-National Research Council (hereinafter referred to as the "Academies-Research Council") and of the various sectors of the building community, including labor and management, technical experts in building science and technology, and the various levels of government.

(b)(1) There is authorized to be established, for the purposes described in subsection (a)(3), an appropriate nonprofit, nongovernmental instrument to be known as the National Institute of Building Sciences (hereinafter referred to as the "Institute"), which shall not be an agency or establishment of the United States Government. The Institute shall be subject to the provisions of this section and, to the extent consistent with this section, to a charter of the Congress if such a charter is requested and issued or to the District of Columbia Nonprofit Corporation Act if that is deemed preferable.

(2) The Academies-Research Council, along with other agencies and organizations which are knowledgeable in the field of building technology, shall advise and assist in (A) the establishment of the Institute; (B) the development of an organizational framework to encourage and provide for the maximum feasible participation of public and private scientific, technical, and financial organizations, institutions, and agencies now engaged in activities pertinent to the development, promulgation, and maintenance of performance criteria, standards, and other technical provisions for building codes and other regulations; and (C) the promulgation of appropriate organizational rules and procedures including those for the selection and operation of a technical staff, such rules and procedures to be based upon the primary object of promoting the public interest and insuring that the widest possible variety of interests and experience essential to the functions of the Institute are represented in the Institute's operations. Recommendations of the Academies-Research Council shall be used upon consultations with and recommendations from various private organizations and institutions, labor, private industry, and governmental agencies entities operating in the field, and the Consultative Council as provided for under subsection (c)(8).

(3) Nothing in this section shall be construed as expressing the intent of the Congress that the Academies-Research Council itself be required to assume any function or operation rested in the Institute by or under this section.

(c)(1) The Institute shall have a Board of Directors (hereinafter referred to as the "Board") consisting of not less than fifteen nor more than twenty-one members, appointed by the President of the United States by and with the advice and consent of the Senate. The Board shall be representative of the various segments of the building community, of the various regions of the country, and of the consumers who are or would be affected by actions taken in the exercise of the functions and responsibilities of the Institute, and shall include (A) representatives of the construction industry, including representatives of construction labor organizations, product manufacturers, and builders, housing management experts, and experts in building standards, codes, and fire safety, and (B) members representative of the public interest in such numbers as may be necessary to assure that a majority of the members of the Board represent the public interest and that there is adequate consideration by the Institute of consumer interests in the exercise of its functions and responsibilities. Those representing the public interest on the Board shall include architects, professional engineers, officials of Federal, State, and local agencies, and representatives of consumer organizations. Such members of the Board shall hold no financial interest or membership in, nor be employed by, or receive other compensation from, any company, association, or other group associated with the manufacture, distribution, installation, or maintenance of specialized building products, equipment, systems, subsystems, or other construction materials and techniques for which there are available substitutes.

(2) The members of the initial Board shall serve as incorporators and shall take whatever actions are necessary to establish the Institute as provided for under subsection (b)(1).

(3) The term of office of each member of the initial and succeeding Boards shall be three years; except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (B) the terms of office of members first taking office shall begin on the date of incorporation and shall expire, as designated at the time of their appointment, one-third at the end of one year, one-third at the end of two years, and one-third at the end of three years. No member shall be eligible to serve in excess of three consecutive terms of three years each. Notwithstanding the preceding provisions of this subsection, a member whose term has expired may serve until his successor has qualified.

(4) Any vacancy in the initial and succeeding Boards shall not affect its power, but shall be filled in the manner in which the original appointments were made, or, after the first five years of operation, as provided for by the organizational rules and procedures of the Institute.

(5) The President shall designate one of the members appointed to the initial Board as Chairman; thereafter, the members of the initial and succeeding Boards shall annually elect one of their number as Chairman. The members of the Board shall also elect one or more of their Members as Vice Chairman. Terms of the Chairman and Vice Chairman shall be for one year and no individual shall serve as Chairman or Vice Chairman for more than two consecutive terms.

(6) The members of the initial or succeeding Boards shall not, by reason of such membership, be deemed to be employees of the United States Government. They shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board pursuant to this section, be entitled to receive compensation at the rate of $100 per day including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, equal to that authorized under section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(7) The Institute shall have a president and such other executive officers and employees as may be appointed by the Board at rates of compensation fixed by the Board. No such executive officer or employee may receive any salary or other compensation from any source other than the Institute during the period of his employment by the Institute.

(8) The Institute shall establish, with the advice and assistance of the Academies-Research Council and other agencies and organizations which are knowledgeable in the field of building technology, a Consultative Council, membership in which shall be available to representatives of all appropriate private trade, professional, and labor organizations, private and public standards, code, and testing bodies, public regulatory agencies, and consumer groups, so as to insure a direct line of communication between such groups and the Institute and a vehicle for representative hearings on matters before the Institute.

(d)(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall inure to the benefit of any director, officer, employee or other individual except as salary or reasonable compensation for services.

(3) The Institute shall not contribute to or otherwise support any political party or candidate for elective public office.

(e)(1) The Institute shall exercise its functions and responsibilities in four general areas, relating to building regulations, as follows:

(A) Development, promulgation, and maintenance of nationally recognized performance criteria, standards, and other technical provisions for maintenance of life, safety, health, and public welfare suitable for adoption by building regulating jurisdictions and agencies, including test methods and other evaluative techniques relating to building systems, subsystems, components, products, and materials with due regard for consumer problems.

(B) Evaluation and prequalification of existing and new building technology in accordance with subparagraph (A).

(C) Conduct of needed investigations in direct support of subparagraphs (A) and (B).

(D) Assembly, storage, and dissemination of technical data and other information directly related to subparagraphs (A), (B), and (C).

(2) The Institute in exercising its functions and responsibilities described in paragraph (1) shall assign and delegate, to the maximum extent possible, responsibility for conducting each of the needed activities described in paragraph (1) to one or more of the private organizations, institutions, agencies, and Federal and other governmental entities with a capacity to exercise or contribute to the exercise of such responsibility, monitor the performance achieved through assignment and delegation, and, when deemed necessary, reassign and delegate such responsibility.

(3) The Institute in exercising its functions and responsibilities under paragraphs (1) and (2) shall (A) give particular attention to the development of methods for encouraging all sectors of the economy to cooperate with the Institute and to accept and use its technical findings and to accept and use the nationally recognized performance criteria, standards, and other technical provisions developed for use in Federal, State, and local building codes and other regulations which result from the program of the Institute; (B) seek to assure that its actions are coordinated with related requirements which are imposed in connection with community and environmental development generally; and (C) consult with the Department of Justice and other agencies of government to the extent necessary to insure that the national interest is protected and promoted in the exercise of its functions and responsibilities.

(f)(1) The Institute is authorized to accept contracts and grants from Federal, State, and local governmental agencies and other entities, and grants and donations from private organizations, institutions, and individuals.

(2) The Institute may, in accordance with rates and schedules established with guidance as provided under subsection (b)(2), establish fees and other charges for services provided by the Institute or under its authorization.

(3) Amounts received by the Institute under this section shall be in addition to any amounts which may be appropriated to provide its initial operating capital under subsection (h).

(g)(1) Every department, agency, and establishment of the Federal Government, in carrying out any building or construction, or any building- or construction-related programs, which involves direct expenditures, and in developing technical requirements for any such building or construction, shall be encouraged to accept the technical findings of the Institute, or any nationally recognized performance criteria, standards, and other technical provisions for building regulations brought about by the Institute, which may be applicable.

(2) All projects and programs involving Federal assistance in the form of loans, grants, guarantees, insurance, or technical aid, or in any other form, shall be encouraged to accept, use, and comply with any of the technical findings of the Institute, or any nationally recognized performance criteria, standards, and other technical provisions for building codes and other regulations brought about by the Institute, which may be applicable to the purposes for which the assistance is to be used.

(3) Every department, agency, and establishment of the Federal Government having responsibility for building or construction, or for building or construction-related programs, is authorized and encouraged to request authorization and appropriations for grants to the Institute for its general support, and is authorized to contract with and accept contracts from the Institute for specific services where deemed appropriate by the responsible Federal official involved.

(4) The Institute shall establish and carry on a specific and continuing program of cooperation with the States and their political subdivisions designed to encourage their acceptance and its technical findings and of nationally recognized performance criteria, standards, and other technical provisions for building regulations brought about by the Institute. Such program shall include (A) efforts to encourage any changes in existing State and local law to utilize or embody such findings and regulatory provisions; and (B) assistance to States in the development of inservice training programs for building officials, and in the establishment of fully staffed and qualified State technical agencies to advise local official on questions of technical interpretation.

(h) There is authorized to be appropriated to the Institute not to exceed $5,000,000 for the fiscal year 1975, and $5,000,000 for the fiscal year 1976 (with each appropriation to be available until expended), to provide the Institute with initial capital adequate for the exercise of its functions and responsibilities during such years; and thereafter the means described in subsection (f).

(i) The Institute shall submit an annual report for the preceding fiscal year to the President for transmittal to the Congress within sixty days of its receipt. The report shall include a comprehensive and detailed report of the Institute's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as the Institute deems appropriate.

URBAN HOMESTEADING

SEC. 810. (a) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to transfer without payment to a unit of general local government or a State, or a public agency designated by a unit of general local government or a State, any real property—

(1) which is improved by a one- to four-family residence;

(2) to which the Secretary holds title;

(3) which is not occupied;

(4) which is requested by such unit, State, or agency for use in an urban homestead program; and

(5) which the Secretary determines is suitable for use in an urban homestead program which meets the requirements of subsection (b). In determining the suitability of such property for use in an urban homestead program, the Secretary shall consider—

(A) the difficulties and delays which would be involved in the sale of the property;

(B) the value of any repairs and improvements required by the program;

(C) the benefits to the community and the reduced administrative costs to the Federal Government which would accrue from the expedited occupancy of the unoccupied property; and

(D) the possible financial loss to the Federal Government which may result from the transfer of the property without payment.

(b) For the purposes of subsections (a) and (c), the Secretary shall approve an urban homestead program carried out by a unit of general local government or a State or a public agency designated by a unit of general local government or a State, which provides for—

(1) the conditional conveyance of unoccupied residential property by the responsible administrative entity to an individual or a family without any substantial consideration;

(2) an equitable procedure for selecting the recipients of the unoccupied residential property, giving special consideration to the recipients' need for housing and capacity to make or cause to be made the repairs and improvements required under paragraph (3)(C) of this subsection;

(3) an agreement whereby the individual or family to whom such property is conveyed agrees to—

(A) occupy such property as a principal residence for a period of not less than three years;

(B) make repairs required to meet minimum health and safety standards for occupancy prior to occupying the property;

(C) make such repairs and improvements to the property as may be necessary to meet applicable local standards for decent, safe, and sanitary housing within eighteen months after occupying the property; and

(D) permit reasonable periodic inspections at reasonable times by employees of the unit of general local government or State or the public agency designated by the unit of general local government or State for the purpose of determining compliance with the agreement;

(4) the relocation of such conveyance upon any material breach of the agreement referred to in paragraph (3);

(5) the conveyance from the unit of general local government or State or the public agency designated by the unit of general local government or State of fee simple title to such property without consideration upon compliance with the agreement; and

(6) a coordinated approach toward neighborhood improvement through the homestead program and the upgrading of community services and facilities.

The Secretary may approve such other programs as he determines to reasonably fulfill these criteria.

(c) The Secretary is authorized to enter into agreements with units of general local government or States or public agencies designated by units of general local government or State to provide technical assistance for the administration of urban homestead programs which meet the requirements of subsection (b) and to individuals and families who are participants in such programs.

(d) The Secretary is authorized to issue such rules and regulations as may be necessary to carry out his functions under this section.

(e) The Secretary shall conduct a continuing evaluation of programs carried out pursuant to this section and, beginning with the third year commencing after the date of enactment of this section, shall transmit to the Congress an annual report containing a summary of his evaluation of such programs and his recommendations for future conduct of such programs.

(f) In order to facilitate planning for purposes of this section, the Secretary shall, upon request of a unit of general local government or a State or a public agency designated by a unit of general local government or a State, provide a listing of all unoccupied one- to four-family residences to which the Secretary holds title and which are located within the geographic jurisdiction of such unit, State, or agency.

(g) To reimburse the housing loan funds for properties transferred pursuant to this section, and to carry out the provisions of subsection (c), there are authorized to be appropriated not to exceed $5,000,000 for the fiscal year 1975, and not to exceed $5,000,000 for the fiscal year 1973. Any amounts so appropriated shall remain available until expended.

COUNSELING AND TECHNICAL ASSISTANCE

SEC. 811. (a) Section 106 of the Housing and Urban Development Act of 1968 is amended by rewriting the heading to read as follows: "Technical Assistance, Counseling to Tenants and Homeowners, and Loans to Sponsors of Low- and Moderate-income Housing".

(b)(1) Section 106(a)(1)(iii) of such Act is amended to read as follows:

"(iii) counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership; and".

(2) Section 106(a) of such Act is amended by redesignating paragraph (2) as paragraph (3) and inserting immediately after paragraph (1) the following new paragraph:

"(2) The Secretary shall provide the services described in clause (iii) of paragraph (1) for homeowners assisted under section 235 of the National Housing Act. For purposes of this paragraph and clause (iii) of paragraph (1), the Secretary may provide the services described in such clause directly or may enter into contracts with, make grants to, and provide other types of assistance to private or public organizations with special competence and knowledge in counseling low-income and moderate-income families to provide such services."

(c) Section 106(a)(1) of such Act is further amended by adding at the end of thereof the following new subparagraph:

"(iv) the provision of technical assistance to communities, particularly smaller communities, to assist such communities in planning, developing, and administering Community Development Programs pursuant to title I of the Housing and Community Development Act of 1974."

(d) Section 106(a)(3) of such Act (as redesignated by subsection (b)(2) of this section) is amended by striking out "not to exceed $5,000,000" and inserting in lieu thereof "such sums as may be necessary".

(e) Section 106(b)(1) of such Act is amended by inserting "or public housing agencies" immediately after "nonprofit organizations".

(f) Section 106(b)(2) of such Act is amended by inserting "or public housing agency" immediately after "nonprofit organization".

INTERSTATE LAND SALES

SEC. 812. (a) Section 1402 of the Housing and Urban Development Act of 1968 is amended—

(1) by inserting after "land" where it first appears in paragraph (3) the following: ", located in any State or in a foreign country,"; and

(2) by inserting before the semicolon at the end of paragraph (7) the following: "or between any foreign country and any State".

(b) Section 1403(a) of such Act is amended by striking out "or" at the end of paragraph (9), by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; or", and by adding after paragraph (10) the following new paragraph:

"(11) the sale or lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development, when—

"(A) local authorities have approved access from such real estate to a public street or highway;

"(B) the purchaser or lessee of such real estate is a duly organized corporation, partnership, trust, or business entity engaged in commercial or industrial business;

"(C) the purchaser or lessee of such real estate is represented in the transaction of sale or lease by a representative of its own selection;

"(D) the purchaser or lessee of such real estate affirms in writing to the seller that it either (i) is purchasing or leasing such real estate substantially for its own use or (ii) has a binding commitment to sell, lease, or sublease such real estate to an entity which meets the requirements of subparagraph (B), is engaged in commercial or industrial business, and is not affiliated with the seller or agent; and

"(E) a policy of title insurance or title opinion is issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as may be approved in writting by such purchaser or the lessee prior to recordation of the instrument of conveyance or execution of the lease, but (i) nothing herein shall be construed as requiring the recordation of a lease, and (ii) any purchaser or lessee may waive, in writing in a separate document, the requirement of this subparagraph that a policy of title insurance or title opinion be issued in connection with the transaction."

(e)(1) The second sentence of section 1404(b) of such Act is amended—

(A) by striking out "within forty-eight hours" where it first appears and inserting in lieu thereof "until midnight of the third business day following the consummation of the transaction"; and

(B) by striking out all after "provide" and inserting in lieu thereof a period.

(2) The amendments made by paragraph (1) shall be effective sixty days after the date of the enactment of this Act.

MASS TRANSPORTATION

SEC. 813. (a) Section 3 of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new subsection:

"(f) No Federal financial assistance under this Act may be provided for the purchase of buses unless the applicant or any public body receiving such assistance for the purchase of buses, or any publicly owned operator receiving such assistance, shall as a condition of such assistance enter into an agreement with the Secretary that such public body, or any operator of mass transportation for such public body, will not engage in charter bus operations outside the urban area within which it provides regularly scheduled mass transportation service, except as provided in the agreement authorized by this subsection. Such agreement shall provide for fair and equitable arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under this Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service. In addition to any other remedies specified in the agreement, the Secretary shall have the authority to bar a grantee or operator from the receipt of further financial assistance for mass transportation facilities and equipment where he determines that there has been a continuing pattern of violations of the terms of agreement. Upon receiving a complaint regarding an alleged violation, the Secretary shall investigate and shall determine whether a violation has occurred. Upon determination that a violation has occurred, he shall take appropriate action to correct the violation under the terms and conditions of the agreement.".

(b) Section 164(a) of the Federal-Aid Highway Act of 1973 is amended—

(1) by inserting "or" before "(2)" in the first sentence;

(2) by striking out "or (3) the Urban Mass Transportation Act of 1964," in the first sentence; and

(3) by striking out all after the word "operations" in the first sentence and all of the second sentence, and inserting in lieu thereof "outside of the urban area (or areas) within which it provides regularly scheduled mass transportation service, except as provided in an agreement authorized and required by section 3(f) of the Urban Mass Transportation Act of 1964, which section shall apply to Federal financial assistance for the purchase of buses under the provisions of title 23, United States Code, referred to in clauses (1) and (2) of this sentence."

(c) The Secretary shall amend any agreements entered into pursuant to section 164 (a) of the Federal-Aid Highway Act of 1973, to conform to the requirements of the amendments made by this section. The effective date of such conformed agreements shall by the effective date of the original agreements entered into pursuant to such section 164(a).

SOLAR ENERGY

SEC. 814. Title V of the Housing and Urban Development Act of 1970 is amended by adding at the end thereof the following new section:

SOLAR ENERGY

"SEC. 506. (a) In carrying out activities under section 501, the Secretary may, after consultation with the National Science Foundation, undertake demonstrations to determine the economic and technical feasibility of utilizing solar energy for heating or cooling residential housing (including demonstrations of new housing design or structure involving the use of solar energy). Demonstrations carried out under this section should involve both single family and multifamily housing located in areas having distinguishable climatic characteristics in urban as well as rural environments. To carry out the purpose of this section the Secretary is authorized—

"(1) to enter into contracts with, to make grants to, and to provide other types of assistance to individuals and entities with special competence and knowledge to contribute to the planning, design, development, and operation of such housing;

"(2) to utilize the contract, loan, or mortgage insurance authority of any federally assisted housing program in the actual planning, development, and occupancy of such housing; and

"(3) to set aside any development, construction, design, or occupancy requirements for the purpose of any demonstration under this section if he determines that such requirements inhibit such demonstration.

"(b) The Secretary shall include in any demonstration under this section an evaluation of the demonstration to cover the full experience involved in all stages of the demonstration.

"(c) The Secretary shall transmit to the Congress not later than 6 months following the close of any year in which he carries out a demonstration under this section a full report on such demonstration. Such report may include an evaluation of the economic and technological feasibility of the widespread application of solar energy to residential housing."

"ADDITIONAL RESEARCH AUTHORITY

SEC. 815. Title V of the Housing and Urban Development Act of 1970 (as amended by section 814 of this Act) is amended by adding at the end thereof the following new section:

"ADDITIONAL RESEARCH AUTHORITY

"SEC. 507. (a) In carrying out activities under section 501, the Secretary may undertake special demonstrations to determine the housing design, the housing structure, and the housing-related facilities, and amenities most effective or appropriate to meet the needs of groups with special housing needs including the elderly, the handicapped, the displaced, single individuals, broken families, and large households. For this purpose, the Secretary is authorized to enter into contracts with, to make grants to, and to provide other types of assistance to individuals and entities with special competence and knowledge to contribute to the planning, development, design, and management of such housing.

"(b) In carrying out his functions under this section, the Secretary shall give preferential attention to demonstrations which in his judgment involve areas of housing user needs most neglected in past and current research and demonstration efforts.

"(c) The Secretary is authorized to undertake demonstrations involving the actual planning, development, and occupancy of housing utilizing the contract and loan authority of any federally assisted housing program. He is also authorized to set aside any development, construction, design, and occupancy requirements, for the purposes of these demonstrations, if in his judgment they inhibit the testing of housing designed to meet the special housing needs.

"(d) In carrying out this section, the Secretary shall include, as part of any demonstration, an evaluation of the demonstration to cover the full experience involved in planning, development, and occupancy.

"(e) In addition to any other contract or loan authority which the Secretary may utilize under subsection (c), not more than $10,000,000 from amounts approved in appropriation Acts shall be available for research under this section."

FLOOD INSURANCE PROGRAM

SEC. 816. (a) Chapter III of title XIII of the Housing and Urban Development Act of 1968 is amended by adding at the end thereof the following new section:

"NOTICE OF FLOOD HAZARDS

"SEC. 1364. Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation require such institutions, as a condition of making, increasing, extending, or renewing (after the expiration of thirty days following the date of the enactment of this section) any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary under this title or Public Law 93-234 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) of such special flood hazards, in writing, a reasonable period in

advance of the signing of the purchase agreement, lease, or other documents involved in the transaction."

(b) Section 1307 of such Act is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of law, any community that has made adequate progress, acceptable to the Secretary, on the construction of a flood protection system which will afford flood protection for the one-hundred year frequency flood as determined by the Secretary, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions of this title) at premium rates not exceeding those which would be applicable under this section if such flood protection system had been completed. The Secretary shall find that adequate progress on the construction of a flood protection system as required herein has been only if (1) 100 percent of the project cost of the system has been authorized (2) at least 60 percent of the project cost of the system has been appropriated, (3) at least 50 percent of the project cost of the system has been expended, and (4) the system is at least 50 percent completed."

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

SEC. 817. Assistance provided for in this Act, the National Housing Act, the United States Housing Act of 1937, the Housing Act of 1949, the Demonstration Cities and Metropolitan Development Act of 1966, and the Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 shall not be withheld or made subject to conditions or preference by reason of the tax-exempt status of bonds or other obligations issued or to be issued to provide financing for use in connection with such assistance, except where otherwise expressly provided or authorized by law.

ADDITIONAL ASSISTANT SECRETARIES OF HOUSING AND URBAN DEVELOPMENT

SEC. 818. (a) Section 4 of the Department of Housing and Urban Development Act (Public Law 89–174, 79 Stat. 667) is amended—

(1) by striking out "six" in the first sentence of subsection (a) and inserting in lieu thereof "eight";

(2) by striking out subsection (b); and

(3) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(b) Section 5316 of title 5, United States Code, is amended by striking out paragraph (122).

(c) Paragraph (87) of section 5315 of title 5, United States Code, is amended by striking out "(6)" and inserting in lieu thereof "(8)".

MORTGAGE PROCEEDS FRAUDULENTLY MISAPPROPRIATED BY MORTGAGOR

SEC. 819. The Secretary of Housing and Urban Development shall take action to secure the payment of any deficiency after foreclosure on a mortgage insured or assisted under Federal law where the Secretary has reason to believe that mortgage proceeds have been fraudulently misappropriated by the mortgagor.

NEIGHBORHOOD DEVELOPMENT PROGRAM

SEC. 820. Notwithstanding the provisions of section 133(b) of the Housing Act of 1949 or of any other law, local expenditures made in connection with the Broad and Front Street Garage in Trenton, New Jersey, shall, to the extent otherwise eligible, be counted as a local grant-in-aid to the first two action years of the Trenton Neighborhood Development Program (N.J. A–1) in accordance with the provisions of title I of the Housing Act of 1949.

CONDOMINIUM AND COOPERATIVE STUDY

SEC. 821. The Secretary of Housing and Urban Development is authorized and directed to conduct a full and complete investigation and study, and report to Congress not later than one year after the date of enactment of this Act, with respect to condominiums and cooperatives, and the problems, difficulties, and abuses or potential abuses applicable to condominium and cooperative housing.

DIRECT FINANCING STUDY

SEC. 822. The Secretary of Housing and Urban Development and the Secretary of the Treasury shall study the feasibility of financing the programs authorized under section 236 of the National Housing Act and section 802 of this Act through various financing methods, including direct loans from the Federal Financing Bank, with a view to determining whether there is any such method that would result in net savings to the Federal Government (after taking into account the direct and indirect effects of such method). The Secretary of Housing and Urban Development and the Secretary of the Treasury shall transmit to the Congress a report on the study required by this section not later than one year after the date of enactment of this Act.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill, and agree to the same.

WRIGHT PATMAN,
WILLIAM A. BARRETT,
LEONOR K. SULLIVAN,
THOMAS L. ASHLEY,
WILLIAM S. MOORHEAD,
ROBERT G. STEPHENS, JR.,
FERNAND J. ST GERMAIN,
HENRY S. REUSS,
RICHARD T. HANNA,
WILLIAM B. WIDNALL,
GARRY BROWN,
J. WILLIAM STANTON,
BEN B. BLACKBURN,
MARGARET HECKLER,

*Managers on the Part of the House.*

JOHN SPARKMAN,
WILLIAM PROXMIRE,
HARRISON A. WILLIAMS,
ALAN CRANSTON,
THOMAS J. MCINTYRE,
JOHN TOWER,
EDWARD W. BROOKE,
BILL BROCK,
WALLACE F. BENNETT,

*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate on the disagreeing votes of the two Houses on the amendment of the House to the Senate bill (S. 3066) to consolidate, simplify, and improve laws relative to housing and housing assistance, to provide Federal assistance in support of community development activities, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect the action agreed upon by the managers and recommended in the accompanying conference report:

I—COMMUNITY DEVELOPMENT

*Findings and objectives*

The Senate bill contained findings that (1) the Nation's communities face critical problems resulting from urban population growth, concentration of lower income persons in central cities, and inadequate public and private investment; and (2) the Nation's welfare depends on establishing and maintaining viable urban communities. It also established as the title's primary objective the development of viable urban communities, by providing housing suitable living environments, and expansion of economic opportunities, principally for persons of low and moderate income; and stated that the objective was to be achieved through the elimination of slums and blight and conditions detrimental to health, safety, and welfare, conservation and expansion of housing and housing opportunities, increased public services, improved use of land, increased neighborhood diversity, and preservation of property with special values.

The House amendment set forth the purpose of the title as furthering the development of a national growth policy by consolidating certain programs into a system which (1) provides assistance annually—with maximum certainty and minimum delay, (2) encourages community development activities consistent with local and area-wide planning, (3) furthers achievement of national housing goals, and (4) provides for coordinated and mutually supportive housing and community development activities.

The conference report contains both the Senate and House provisions.

*Effective date*

The Senate bill provided that the new community development program would begin upon enactment of the bill. The House amendment provided that the new program would begin on January 1, 1975. The conference report contains the House provision.

*Authorizations*

Program Levels

The Senate bill authorized $6.1 billion in contract authority for two years, with annual disbursement limitations of $2.8 billion in FY 1975 and $3.3 billion in FY 1976. It also permitted unused funds previously appropriated for open space, water and sewer facilities, and model cities supplemental grants to be used during FY 1975 to liquidate contracts entered into pursuant to the $6.1 billion authorization. The House amendment authorized $8.05 billion in contract authority for three years, with annual disbursement limitations of $2.45 billion in FY 1975, $2.65 billion in FY 1976, and $2.95 billion in FY 1977.

The conference report contains the Senate provision with respect to the use of previously appropriated funds, and provides for the following authorizations: $2.5 billion in FY 1975, $2.95 billion in FY 1976, and $2.95 billion in FY 1977.

Future authorizations

The Senate bill required the Secretary of Housing and Urban Development to submit to Congress timely requests for increased authorizations for FY 1977 and succeeding fiscal years. The House amendment provided for such requests for Fiscal years 1978, 1979, and 1980 no later than February 1, 1976. The conference report contains the Senate provision with respect to timely authorizations requests, and also directs the HUD Secretary to report to Congress not later than March 31, 1977, setting forth recommendations for modifying or expanding the allocation and funding provisions of the new program, and to conduct a study to determine the measurement of community development needs, objectives, and capacities by objective standards. The conferees agreed that the formula and "holdharmless" provisions for distributing funds under this chapter should be subjected to systematic study and full review before additional funds are authorized.

It is expected that the required HUD study will give particular attention to identifying factors reflecting community needs and capacities, and methods for ensuring that the distribution of Federal assistance is made in accordance with the stated objectives of the program.

Special Transition Fund

The House amendment contained a provision not in the Senate bill authorizing up to $100 million for each of the fiscal years 1975, 1976, and 1977 for special transition

grants to communities with urgent community development needs which cannot be met through the bill's funding provisions. The conference report contains this House provision amended to authorize $50 million in FY 1975, and $50 million in FY 1976, rather than $100 million in each of those years, for special transition grants.

DEFINITION

"Community Development Agency"

The Senate bill contained a definition of this term which was not used in the House amendment. The conference report does not contain this term.

"Metropolitan City", "City", and "Housing Overcrowding"

The House amendment contained definitions of these terms which were not used in the Senate bill. The conference report contains these terms and the House amendment's definitions.

"Urban County"

The Senate bill defined this term to mean any county within a metropolitan area which has at least 75 percent of the population of a multi-county metropolitan area, or a population of 200,000 or over. The House amendment defined this term to mean any county within a metropolitan area which (A) is authorized to undertake essential community development and housing assistance activities in its unincorporated areas which are not units of general local government, and (B) has combined population of 200,000 or more (excluding the population of metropolitan cities) in such unincorporated areas and in its included units of general local government (i) in which it has authority to undertake essential activities and which do not elect to have their population excluded, or (ii) with which it has entered into cooperation agreements to undertake essential community development and housing assistance activities.

The conference report contains the House definition.

"Extent of Poverty"

The House amendment defined this term, which was not used in the Senate bill, to mean the number of persons whose incomes are below the poverty level, as determined by HUD pursuant to criteria set by the Office of Management and Budget, and taking account if feasible in the sole discretion of the HUD Secretary, regional variations in income and cost of living. The conference report contains this term, with the House amendment's definition. The conferees direct HUD to develop or obtain data with respect to the "extent of poverty" by metropolitan areas (SMSA's) and submit such data to the Congress as part of the March 31, 1977 report referred to above.

"Unit of general local government"

The Senate bill's definition of this term contained a provision not in the House amendment permitting the designation of one or more public agencies to carry out part or all of the community's development program. The conference report contains this Senate provision.

*Application and review requirements*

Frequency and required period of application

The Senate bill provided for a summary plan covering a four-year period and a two-year application for funds specifying activities to be carried on with community development funds. The House amendment, in effect, provided for a three-year summary plan with a one-year application for funds specifying activities to be carried on. The conference report contains the House provisions.

Time of application submission

The House amendment contained a provision not in the Senate bill requiring metropolitan cities and urban counties to submit applications to HUD no later than April 1, 1975, and November 1 of 1976 and 1977. The conference report contains the House provision with an amendment eliminating specific dates and directing the HUD Secretary to establish application submission dates.

Time of HUD Action

The Senate bill required the HUD Secretary to act on applications for community development assistance within 90 days, and provided that applications for on-going programs would be deemed approved after 90 days unless HUD notified communities otherwise. The House amendment contained a similar provision, except that applications would be deemed approved after 60 days rather than 90 days. The conference report contains the House provision with an amendment specifying 75 days.

Contents of Application

The Senate bill required each application for community development assistance to include activities to provide housing, eliminate or prevent slums and blight, upgrade community facilities and services, and provide employment opportunities for community development area residents; except that the HUD Secretary would be permitted to waive any of these requirements for communities of under 25,000 population applying for an initial single-purpose grant. The House amendment provided that each metropolitan city or urban county application must set out activities designed to eliminate or prevent slums and blight where such conditions or needs exist, provide housing for lower income persons, and improve community facilities and supporting services where necessary (requirements with respect to the elimination of slum and blight and improving community facilities and services were not applicable to other applicants).

The conference report provides that all applicants must propose activities to eliminate or prevent slums and blight where such conditions or needs exist, provide housing for low and moderate income persons, and improve and upgrade community facilities and services where necessary; except that the HUD Secretary may waive requirements relating to slums and blight and upgrading of community facilities and services for communities of under 25,000 population which initially apply for community development assistance for certain single-purpose activities.

Program requirements

(1) The Senate bill contained a provision not in the House amendment requiring applicants to hold *public hearings* prior to land acquisition. The conference report does not contain this Senate provision.

(2) The Senate bill contained a provision not in the House amendment requiring applicants to involve residents of community development areas in the *execution of community development activities* and to provide *adequate resources* for their participation. The conference report contains the Senate provision with an amendment making it clear that involving residents in the execution of community development activities providing resources for their participation is discretionary with the applicant.

(3) The Senate bill contained a provision not in the House amendment requiring applicants to provide *relocation housing* units equal in number to the units to be demolished in the course of the community development program. The conference report does not contain this Senate provision.

(4) The Senate bill contained a provision not in the House amendment requiring applicants to adopt and enforce adequate *building and safety code* in the community. The conference report does not contain this Senate provision.

(5) The Senate bill contained a provision not in the House amendment requiring applicants to hold a *public hearing on or partial application* at least 30 days prior to their submission to HUD. The conference report does not contain this Senate provision.

(6) The House amendment contained a provision not in the Senate bill requiring applicants to comply with the *Civil Rights Acts of 1964 and 1968*. The conference report contains this House provision.

(7) The House amendment contained a provision not in the Senate bill requiring *OMB Circular A–95 review* of community development applications. The conference report contains this House provision.

(8) The House amendment contained a provision not in the Senate bill requiring metropolitan cities and urban counties to adopt procedures for *period re-examination of community development program objectives and methods*. The conference report contains this House program.

(9) The House amendment contained special provisions authorizing the Secretary to release funds for particular projects to applicants who assume all responsibilities which would apply to the Secretary under the *National Environmental Policy Act of* 1969. The conference report contains these House provisions.

Limitations on use of funds

(1) The Senate bill contained a provision not in the House amendment permitting a community's application to reserve up to 10 percent of grant funds for *unspecified local option activities and contingency accounts*. The conference report contains the Senate provision with an amendment making clear that funds reserved must be utilized for eligible activities specified in the application.

(2) The Senate bill contained a provision not contained in the House amendment prohibiting more than 20 percent of an applicant's community development funds to be used for *activities which do not directly and significantly benefit low- and moderate-income families or blighted areas*. The conference report contains, in place of the Senate provision, a requirement that the applicant certify to the HUD Secretary's satisfaction that its program has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight. HUD may, however, approve an application describing activities which the applicant certifies and HUD determines are designed to meet other community development needs having a particular urgency as set out in the application.

Standards of HUD review

The Senate bill authorized the HUD Secretary to approve or disapprove an application in whole or in part on the basis of the program proposed in the application. The House amendment required the HUD Secretary to approve an application for metropolitan cities and urban counties unless he determines that the applicant's statement of community development needs is plainly inconsistent with available information or that its proposed activities are plainly inappropriate to meet its stated needs. The conference report contains the House provisions.

*Grant period and amount—local share—rehabilitation and relocation grants*

The Senate bill contained provisions not in the House amendment providing that grant contracts be made for 2-year periods (except for small communities) in an amount up to 90 percent of net program cost, or up to 100 percent in the case of extreme hardship, as determined by HUD; that the local share may be provided in cash or through local contributions previously permitted under the neighborhood development program; and that where a community

development program involved the making of rehabilitation grants or relocation payments, the HUD grant may include the full cost of such rehabilitation and relocation grants. The House amendment permitted grant contracts to be made for up to 3-year periods, but required no local contribution.

The conference report contains the House provisions only.

*Eligible activities*

(1) The Senate bill contained a provision not contained in the House amendment permitting the *acquisition of land for rehabilitation or conservation activities*. The conference report contains this Senate provision.

(2) The Senate bill contained a provision not in the House amendment requiring *disposition of land at "fair value"*. The conference report does not contain this Senate provision.

(3) The Senate bill contained provisions not in the House amendment permitting the construction of *fire-protection services and facilities* and *"similar and necessary" improvements* required in connection with a community development program; except that grants could not be used for the construction of certain facilities.

The conference report (1) permits the construction of senior centers and flood and drainage facilities (to the extent that other Federal assistance for such facilities is not available to the applicant); (2) permits the construction of fire-protection facilities, parking facilities, and solid waste disposal facilities if such facilities are undertaken in or serve areas where other community development activities are being carried on in a concentrated manner; and (3) eliminates the Senate bill's "similar and necessary" language and makes clear that construction of a particular facility is eligible only if previously eligible under any consolidated program, except the public facility loan program or the model cities program, or specifically mentioned in the conference report.

(4) The Senate bill contained a provision not in the House amendment permitting the use of grant fund for *designing and providing interim financing for public facilities*. The conference report does not contain this Senate provision.

(5) The Senate bill contained a provision not in the House amendment permitting the use of grant funds to *develop surplus real property*. The conference report does not contain this Senate provision.

(6) The Senate bill contained a provision permitting the use of grant funds to pay the cost of *completing existing urban renewal projects*. The House amendment authorized HUD to apply up to 20 percent of a community's grant funds toward the repayment of temporary loans entered into under the urban renewal program, if HUD determined (after consultation with the community) that the project required additional capital grants for completion; and authorized the use of surplus urban renewal capital grant funds under the provisions of the community development program. The conference report contains both the House and Senate provisions.

(7) The Senate bill contained a provision not in the House amendment providing *technical or financial assistance to other units of general local government* within the boundary of the applicant or to others providing services needed in planning and carrying out the community development program. The conference report does not contain this Senate provision.

(8) The Senate bill contained a provision permitting the use of community development funds to finance *public services not otherwise available* in areas of concentrated activities if such services were directed toward (a) improving certain public services, and (b) coordinating public and private development programs: except that not more than 20 percent of a community's grant funds could be spent on providing such public services. The House amendment permitted the use of grant funds to provide health, social, counseling, training, economic development, and similar services necessary to support other community development activities.

The conference report contains the Senate provision with amendments (1) eliminating the 20 percent limitation; (2) making clear that such services need not be available in areas of concentrated activities so long as they principally serve residents of such areas; and (3) permitting grant funds to be used for such services only to the extent that Federal assistance is not otherwise available to the applicant. While the 20 percent limitation is not contained in the conference report, the conferees expect that no more than 20 percent of any community's grant will be used to finance such services.

(9) The House amendment contained a provision not in the Senate bill permitting the use of grant funds for special projects directed toward *removal of architectural barriers* which restrict the mobility and accessibility of elderly and handicapped individuals. The conference report contains this House provision.

(10) The House amendment contained a provision not in the Senate bill permitting the use of grant funds to develop a *comprehensive plan and improved policy-planning-management capacity*. The conference report contains the House provision with a clarifying amendment that funds may be used to develop a comprehensive "community development" plan.

(11) The House amendment contained a provision not in the Senate bill providing for the *repayment of a rehabilitation grant* where property improved by the grant is sold within 4 years of receipt of the grant. The conference report does not contain this House provision. The conferees believe localities making such grants should take appropriate steps to prevent the kind of abuse at which the House provision was directed.

(12) The House amendment contained a provision not in the Senate bill authorizing HUD to perform *administrative services* for grant recipients *in connection with local rehabilitation loan or grant programs*. The conference report contains this House provision.

*Guarantee of loan for acquisition of property*

The Senate bill authorized HUD to make and guarantee tax-exempt loans to community development agencies to provide financing for community development activities (including interim financing of public facilities, land acquisition, and other eligible activities). The total amount of such guaranteed loans could not exceed $1.5 billion unless increased by the President.

The House amendment authorized HUD to guarantee obligations issued by grant recipients to finance the acquisition of real property (and related expenses) to be used in carrying out community development programs. HUD would (1) reserve out of grant funds 110 percent of the estimated difference between acquisition cost and disposition proceeds: (2) receive a local pledge of repayment of the excess of the obligation over the amount of grant funds reserved; and (3) receive a local pledge of future grant proceeds of any additional sums not otherwise repaid. Local obligations could be tax exempt or taxable, at the option of grant recipients, with a 30 percent interest subsidy payment by HUD if such obligations were taxable.

The conference report contains the provisions of the House amendment with amendments (1) clarifying the discretion of the HUD Secretary with respect to local credit requirements; and (2) permitting "property assembly" activities to be covered by guaranteed loans.

*Allocation and Distribution of Funds*

Urban-rural split

The Senate bill allocated 75 percent of community development funds to communities in metropolitan areas, 25 percent to communities in non-metropolitan areas. The House amendment provided an 80–20 allocation among metropolitan and non-metropolitan areas. The conference report contains the House provision.

"Entitlement" grants to communities

The Senate bill provided entitlement grants to communities based on their prior participation in existing major community development programs being consolidated into the new program. The entitlement for any qualifying community equals for the first two-year period an amount equal to past program experience, and for the second two-year period not less than 80 percent nor more than 120 percent of such amount. Communities which receive discretionary grants in the first contract period become entitlement communities in the following contract periods.

The House amendment provided for a dual system (until the sixth program year) for metropolitan cities and urban counties under which they would receive the higher of a percentage of their formula amounts or their "hold harmless" amounts. Beginning with the sixth year, all such communities would receive only a formula amount. Communities other than metropolitan cities and urban counties would receive "hold harmless" grants until the sixth year. The formula amount is determined on a 4-factor basis including population, extent of poverty counted twice, and housing overcrowding. The House amendment made all metropolitan cities and urban counties eligible for "hold harmless," but restricted such eligibility for other communities to those carrying on a major categorical grant program under a commitment received during the FY 1970–FY 1974 period.

The conference report contains the House provisions, with amendments (1) using the FY 1968–FY 1972 period to determine "hold harmless" eligibility for communities other than metropolitan cities and urban counties; and (2) extending eligibility to those communities carrying on code enforcement programs.

Discretionary Grants

The Senate bill provided for discretionary grants by HUD to communities which do not qualify for entitlements by virtue of past program experience and to communities whose past program entitlement grant is inadequate to meet urgent community development needs. The House amendment provided for discretionary grants to communities not eligible for formula or "hold harmless" entitlements, with such discretionary funds to be allocated by metropolitan area and by State for non-metropolitan areas pursuant to the same 4-factor formula. The conference report contains the House provisions.

Treatment of Model Cities Program Grants in Past Program Experience (or "Hold Harmless") Amount

The Senate bill included the average annual model cities grant in the computation of past program experience amount as a permanent component. The House amendment included the average annual model cities grant only so long as required to complete a community's fifth model cities action year.

The conference report includes in the computation of "hold harmless" amounts a declining percentage (80, 60, and 40 percent) of the average annual model cities grant for a three-year period following a community's fifth action year.

Treatment of one-time relocation payments in past program experience (or "hold harmless") amount

The Senate bill included in the computation of past program experience amount the total amount of one-time relocation payments made by HUD as a result of the Uniform Relocation Act of 1970. The House amendment permitted the HUD Secretary to exclude such amounts from the computation of "hold harmless" amounts. The conference report contains the House provisions.

Special discretionary fund

The House amendment authorized HUD to reserve 2 percent of the grant amounts available annually for (1) grants in new communities, (2) incentive grants to communities carrying on areawide programs, (3) grants in Guam, Virgin Islands, Samoa, and Trust Territory of Pacific, (4) demonstration of innovative development activities, (5) grants to meet emergency needs caused by Federally-recognized disasters, and (6) grants to communities where HUD deems necessary to correct inadequacies resulting from the bill's allocation and distribution provisions.

The Senate bill contained no such special discretionary fund but directed HUD to set aside community development funds for HUD approved new communities and to encourage applications from 2 or more communities one of which was an urban county).

The conference report contains the House provisions.

The conferees wish to direct the attention of the HUD Secretary to (6) above, which provides an additional source of grant funds (to that provided by the special transition fund) for communities which may not receive an adequate level of funding as a result of the bill's allocation and distribution provisions. Some communities, for example, will experience substantial cutbacks from their relatively high program levels in the latter years of the FY 1968–FY 1972 period; others, such as Cleveland, Ohio, and Cambridge, Massachusetts, will have reduced entitlements under the new program primarily as a result of unique local problems (decertification for HUD funding in one instance, and the failure of the Federal Government to complete its planned development in a renewal area in the other). The conferees expect the Secretary to give sympathetic consideration to funding requests from such communities in distributing both special transition grants and discretionary grants under (6) above.

*Reallocation of funds*

The Senate bill directed the HUD Secretary to reallocate unused funds in a timely manner. The House amendment contained a similar provision, except that funds unused by communities within a State would be reallocated first, to other communities in the same State, and second, to communities in other states. The conference report contains the House provision. The conferees wish to make clear that reallocated funds would be available to communities with urgent needs, including those with entitlements as well as others with special needs arising from urban renewal closeout activities.

*Report requirements*

The Senate bill contained a provision not in the House amendment requiring HUD to report to the Congress annually, concerning the progress made in accomplishing community development program objectives and specific uses of funds * * *. The conference report contains this Senate provision.

*Consultation*

The Senate bill contained a provision not in the House amendment requiring HUD to consult with other Federal agencies in carrying out the new community development program. The conference report contains this Senate provision.

*Labor standards*

The Senate bill applied the prevailing wage requirements of the Davis-Bacon Act to residential construction involving 12 or more units and to rehabilitation involving 8 or more units. The House amendment applied such requirements only to the construction of 8 or more units without reference to rehabilitation. The conference report contains the House provision with a technical amendment making it clear that the requirement applies only to rehabilitation, since construction of residential structures is not a permissible use of community development funds. It is intended that the area of consideration should be large enough to yield an adequate factual basis for each wage determination, yet be small enough to reflect only the wages and practices of the area surrounding the location of the proposed project.

*Interstate agreements*

The Senate bill contained a provision not in the House amendment giving Congressional consent to agreements by two or more States for cooperative efforts in planning and carrying out community development programs in interstate areas, and to localities in such States establishing agencies to carry out such agreements. The conference report contains this Senate provision.

*Termination of existing programs*

The Senate bill provided for the termination of the following HUD programs one year after enactment: public facility loans, open space grants, public works planning advances, water and sewer, neighborhood facilities, advance acquisition of land, urban renewal and NDP grants, and model cities supplemental grants. The House amendment provided for termination of the public facility loans, open space, water and sewer, neighborhood facilities, and advance acquisition of land programs on June 30, 1974; and urban renewal, NDP, and model cities programs on January 1, 1975.

The conference report provides for termination of all of the above programs on January 1, 1975.

*Transitional provisions*

Authorizations

The Senate bill authorized $300 million in Fiscal Year 1974 and $600 million upon enactment of the bill for grants under the urban renewal program, except that the $600 million would be available only for one year as needed for expenses incurred in completing urban renewal projects. The House amendment authorized "such sums as may be necessary" for urban renewal and model cities grants for Fiscal Year 1975, with the amounts received pursuant to these authorizations to be offset against first-year entitlements or "hold harmless" amounts received by communities out of Fiscal Year 1975 community development grants. The conference report contains the House provisions.

The House amendment contained a provision not in the Senate bill authorizing HUD to make advances to metropolitan cities and urban counties of up to 10 percent of their first-year entitlements for use in continuing urban renewal or model cities programs or preparing for the implementation of the new community development program. The conference report contains this House provision with an amendment permitting such advances to communities eligible for "hold harmless" grants, as well as metropolitan cities and urban counties.

*Nondiscrimination and remedies for noncompliance*

The House amendment contained provisions not in the Senate bill prohibiting discrimination on the basis of race, color, national origin, or sex in carrying out community development programs and provided for a procedure to terminate or reduce grant payments in the case of noncompliance. The conference report contains these House provisions.

*Code standards*

The House amendment contained a provision not in the Senate bill providing that no provision of Federal law shall prevent a community from having in effect building or safety codes with standards determined by the National Bureau of Standards to be at least as high as HUD minimum code standards previously required under the workable program provision of the urban renewal law. The conference report does not contain this House provision. The conferees wish to state that with the repeal of the workable program provisions of the urban renewal law, the HUD Secretary retains no authority to impose any particular model building or safety code, or any element of such a code, on any community, or to condition or withhold grant funds under any program by reason of the failure of any community to adopt such a code. The conferees believe that the development of more effective building standards should be encouraged primarily through the activities of a National Institute of Building Standards, which would be established for that purpose under other provisions of the conference report.

*Employment opportunities for lower income persons*

The Senate bill required applications for community development funds to provide for employment opportunities for community development area residents. The House amendment required that, to the greatest extent feasible, training, employment, and work opportunities available under the new community development program be given to lower income residents and business concerns located in areas of program activities. The conference report contains the House provision.

II. ASSISTED HOUSING

*Revision of the United States Housing Act of 1937*

The Senate bill revised the law governing the low-rent public housing program, and provided that provisions of the revised law would be effective at such date or dates as prescribed by the HUD Secretary but not later than 6 months after enactment of the bill. The House amendment contained no such revision of existing law, and instead amended that law.

The conference report contains the Senate revision of the 1937 Act, with an amendment providing that provisions contained in the Senate revision must be made effective at such dates as the HUD Secretary may prescribe but not later than 18 months after enactment; and makes the following amendments to existing law:

*Income limits for admission to public housing projects*

The Senate bill contained provisions not contained in the House amendment eliminating provisions of existing law providing for a 20 percent gap between incomes served under the public housing program and the income required to obtain private market housing; permitting public housing agencies to establish income limits; and providing that at least 20 percent of the units in new public housing projects must be rented to families whose incomes do not exceed 50 percent of median income in the area. The conference report contains these Senate provisions.

*Income limits for continued occupancy*

The Senate bill contained a provision not in the House amendment deleting requirements in existing law for income limits for continued occupancy in projects. The conference report contains this Senate provision.

*Income mix*

The House amendment contained a provision not in the Senate bill requiring the establishment of tenant selection criteria designed to assure that, within a reasonable period of time, public housing projects will include families with a broad range of incomes. The conference report contains this House provision.

*Definition of income*

The Senate bill revised the definition of income in the 1937 Act by eliminating certain double deductions; clarifying deductions for dependents; eliminating deductions for heads of households or their spouses; and adding a deduction for foster child care payments. The House amendment eliminated the general 5 percent deduction from gross income; and excluded from the definition of income increases in social security payments after June 1974. The conference report contains the Senate provisions.

*Definition of family*

The Senate bill contained a provision not in the House amendment amending the definition of "family" in the 1937 Act to include single persons at least 50 years of age. The conference report does not contain this Senate provision.

*Rent requirements*

The House amendment contained provisions not in the Senate bill (1) establishing a minimum rent for public housing occupants of the higher of 10 percent of gross income or that portion of a welfare payment specified to meet housing costs; and (2) providing that the aggregate rents charged in units under the jurisdiction of a local housing authority receiving operating subsidies must equal at least 20 percent of the aggregate income of tenants. The conference report contains the House provisions with an amendment changing 10 percent to 5 percent.

*Authorizations*

General

The Senate bill authorized an additional $172 million in annual contributions authority on July 1, 1973; $795 million on July 1, 1974; and $720 million on July 1, 1975. The House amendment authorized $260 million on July 1, 1973; and $960 million on July 1, 1974. The conference report contains the House provisions.

Low-Income Housing in Private Accommodations

The Senate bill contained a provision not in the House amendment limiting to $440 million on July 1, 1974, and to an additional $440 million on July 1, 1975, the amount of annual contributions authority that may be utilized for low-income housing in private accommodations. The conference report does not contain these Senate provisions. Instead, it requires HUD to enter into annual contributions contracts with public housing agencies in the amount of at least $150 million of the total amount authorized for housing exclusive of modernization of existing projects, to be owned by such agencies with at least 50 percent of such units for public housing other than leased housing.

The conferees believe it is desirable to continue the conventional low rent public housing program in tandem with the new section 23 program at least until this new 23 program has proven itself viable in all housing market areas. This allocation for low rent public housing assistance will give the Secretary of HUD the authority he will need to phase in the new program in a manner that will not be prejudicial to rural or urban areas where the concepts inherent in that program, such as "market rentals", may not be inadequately or easily applicable.

Housing for Indians

The Senate bill set aside at least $15 million of Fiscal Year 1975 and $15 million of Fiscal Year 1976 annual contributions authority for conventional public housing for Indians; and provided that the assistance to such housing would cover any *actual* operating cost deficit. The House amendment set aside $20 million for housing for Indians, with assistance to cover any approved operating cost deficits. The conference report contains the Senate provision with respect to the funding set-aside and the House provision with respect to the amount of operating assistance.

Modernization

The Senate bill contained a provision not in the House amendment limiting to $30 million in Fiscal Year 1975 and $30 million in Fiscal Year 1976 the amount of annual contributions authority that may be utilized for modernization of public housing projects. The conference report does not contain this Senate provision. The conferees expect approximately $40 million to be utilized for modernization during Fiscal Year 1975.

Operating subsidies

The Senate bill contained a provision not in the House amendment limiting to $500 million on or after July 1, 1974, and $560 million on or after July 1, 1975 the amount of annual contributions contracts that may be entered into for operating subsidies to public housing agencies. The conference report contains Senate provisions.

Large units and housing for the elderly

The Senate bill provided that at least 20 percent of all units assisted annually under the 1937 Act after enactment of the bill must have three or more bedrooms. The House amendment contained a similar provision with respect to units for the elderly.

The conference report contains neither the Senate nor House provision. In lieu thereof, provisions of the conference report in title I with respect to housing assistance plans contain language requiring communities submitting such plans to give special attention, in determining their housing assistance needs, to the needs of large families and elderly persons. The conferees wish to emphasize the urgent need to provide adequate housing for large families through the construction or substantial rehabilitation of units containing three or more bedrooms; and intend that the number of such units assisted each year be not less than 20 percent of the total number of additional units provided.

*Management practices*

The House amendment contained provisions not in the Senate bill requiring local housing authorities to establish (1) procedures for prompt rent payments and evictions for nonpayment; (2) effective tenant-management agreement relationships to assume tenant safety and adequate project maintenance; and (3) viable homeownership opportunities. The conference report contains these House provisions.

*Limitation on new construction and rehabilitation*

The Senate bill contained a provision not in the House amendment limiting construction and substantial rehabilitation of units under the 1937 Act to areas with a need for new units, where such units are necessary to enable persons to live near their employment, where units are essential to carry out a community development program, or under other circumstances determined by HUD. The conference report does not contain this Senate provision.

*Homeownership*

The Senate bill contains a provision not in the House amendment authorizing the sale of projects by local housing authorities to tenants and the computation of annual contributions up to the amount of debt service on bonds attributable to the units. The conference report contains this Senate provision.

*Operating subsidies*

The Senate bill contained a provision not in the House amendment establishing the amount of operating subsidies to a local housing authority as the difference between the authority's revenues and its "base level of operating services," as approved by HUD and updated with HUD's approval. The conference report contains this Senate provision in modified form; the HUD Secretary is directed to embody the provisions for annual contributions in a contract guaranteeing their payment, subject to the availability of funds. For purposes of making such payments, HUD would establish standards for the costs of operation and reasonable projections in income, taking into account the character and location of the project and characteristics of the families served, or the cost of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed project.

*New housing assistance program*

Existing Section 23 Leasing Program

The Senate bill did not retain a separate identity for the existing section 23 leasing program, and instead merged the existing program into a new housing assistance program. The House amendment retained the existing program without changes, and provided for a new housing assistance program applicable to new, rehabilitated, and existing housing. The conference report contains generally the Senate provisions, with an amendment permitting the retention of the existing section 23 program through December 31, 1974.

Administration of Program

The Senate bill placed maximum responsibility for administration of the new program in local housing authorities, but permitted HUD to assume local responsibilities where it determined that a local housing authority was unable to implement the program or where no authority existed. The House amendment placed primary responsibility for program administration in the Secretary of HUD. The conference report contains the House provisions.

Definition of Public Housing Agencies

The Senate bill contained a provision not in the House amendment permitting a State or local public body or agency authorized to assist in the development or operation of housing to enter into housing assistance contracts with HUD. The conference report contains this Senate provision.

Selection of Developer and Contracting To Make Assistance Payments

The Senate bill placed responsibility for selecting developers and contracting to make assistance payments in public housing agencies. The House amendment placed such responsibility in public housing agencies with respect to *existing units* and with respect to such *new or rehabilitated units* for which HUD authorized the agency to assume management responsibilities. The conference report contains the House provisions with amendments (1) permitting HUD to contract directly with respect to existing units where it finds that a public housing agency is unable to perform required functions; and (2) permitting a public housing agency to contract for new units without regard to the specific management of a project.

Local Governor Body Approval

The Senate bill required local governing body approval for each application for housing assistance unless State law empowers its public housing agency to carry out a housing assistance program without such approval. The House amendment provided for local review of housing assistance applications in connection with housing assistance plans described below. The conference report contains the House provisions.

Establishment of fair market rentals

The Senate bill required HUD to determine fair market rentals in each housing market area required to obtain adequately maintained and managed private existing and new rental housing: and on the basis of such determinations, public housing agencies or HUD would establish fair market rentals for assisted units. The House amendment required HUD to establish fair market rentals in each housing market area for new and existing units of various sizes and types suitable for occupancy for low-income families.

The conference report contains the House provisions. The conferees believe that the establishment of realistic fair market rentals will be a prime factor in the success or failure of the new housing assistance program. In establishing such rentals, the HUD Secretary is expected to take into account factual data, analyses, and recommendations from community sources familiar with prevailing rents and costs in various market areas; and he should take into account the need to provide housing with suitable amenities and sound architectural design.

*Maximum rent charged for any unit*

The Senate bill provided that the maximum rent for existing units may exceed fair market rentals for such units by up to 10 percent, and for new or rehabilitated units by up to 20 percent, where determined necessary by a public housing agency or HUD. The House amendment provided that maximum rents may exceed fair market rentals by up to 10 percent generally and by up to 20 percent where HUD determined that special circumstances warrant such increases or that such increases are necessary for the implementation of local housing assistance plans. The conference report contains the House provisions. The conferees wish to express their intent that in establishing fair market rentals for existing units HUD should use its authority to set rentals only in exceptional cases.

Amount of subsidy

The Senate bill provided that the amount of subsidy with respect to any tenant could not exceed the difference between the rent charged and 25 percent of a tenant's *adjusted income*, with tenant incomes to be recertified every 2 years. The House amendment provided that the amount of subsidy would be equal to the difference between the rent charged and 15 to 25 percent of a tenant's *gross income* as defined by HUD, with tenant incomes to be recertified annually. The conference report contains the House provisions with an amendment requiring large families and other families with exceptional expenses to pay only 15 percent of their incomes toward rent.

Income Limits

The Senate bill provided that income limits for assistance under the program would be set at gross income less than 4 times fair market rental for a dwelling unit of suitable size; and provided that at least 20 percent of the families assisted in any market area must have adjusted incomes not in excess of 50 percent of the median income for the area. The House amendment established income levels for the program at gross income less than 20 percent of median income for the area; and provided that at least 30 percent of the families assisted annually must have gross incomes not in excess of 50 percent of median income for the area at the time of the initial renting of units. The conference report contains the House provisions.

Adjustment of Rents

The Senate bill provided that rentals would be adjusted at least annually to reflect changes in fair market rentals in the area to the extent adjustments can be justified by actual changes in expenses; and permitted HUD to allow adjustments on the basis of a reasonable formula, taking into consideration the average expenses of owning units in the area. It also provided that rents could not be reduced below initial rent levels; and provided that rent adjustments would be applicable only to new or rehabilitated units. The House amendment provided that rents would be adjusted at least annually to reflect changes in fair market rentals in the area, and permitted HUD to adjust rents on the basis of a reasonable formula. It also provided that rents could be increased further to meet the increased costs of substantial general increases in property taxes, utility rates, or similar costs except that rents were not to be materially different from rents of comparable unassisted units. Such rental adjustments would be applicable to existing, new, and rehabilitated units. The conference report contains the House provisions.

Number of Units in Project Subsidied

The Senate bill provided that with respect to existing structures, 100 percent of the units could be subsidized in the case of the elderly, and the greater of 5 units or 25 percent of the units could be subsidized in other cases, with public housing agencies permitted to waive these limitations for any reason. With respect to new projects, up to 75 percent of the units could be subsidized generally, except that all units in the structure could be subsidized where the project was for the elderly, contained fewer than 50 units, or the agency or HUD determined necessary. The House amendment provided that up to 100 percent of the units in any project could be subsidized; and permitted HUD to give preference to applications involving assistance for not more than 20 percent of the units in projects in the case of projects containing more than 50 units and to projects not designed for the elderly and handicapped. The conference report contains the House provisions.

*Term of assistance contract*

The Senate bill provided that with respect to existing units, the term of the assistance contract could not exceed 60 months or longer, as provided by the public housing agency in accordance with HUD criteria; and for new or rehabilitated units, 240 months, and up to 480 months for units assisted by State housing finance agencies. The House amendment provided that with respect to existing units, the term of the assistance contract could not exceed 180 months; and for new or rehabilitated units, 240 months and up to 480 months for projects owned by or financed by a State or local public housing agency. The conference report contains the House provisions.

*Unoccupied units*

The Senate bill provided that with respect to new or rehabilitated units assistance payments could not be made with respect to vacant units except for up to 60 days after a lease is broken or where a public housing agency fails to certify an eligible family and the owner is making a good faith effort to fill the vacancy. The House amendment contained a similar provision, applicable to existing units as well, and providing that the 60-day period applies where the lease is broken *or* where the owner is making a good faith effort to fill vacancies. The conference report contains the House provisions.

*Management of units*

The Senate bill permitted the owner of a project assisted under the program to contract with a public housing agency to assume management and maintenance responsibility. The House amendment contained a similar provision with respect to existing units; and provided that with respect to new or rehabilitated units, the project owner may contract with any entity, including a public housing agency, approved by HUD, to assume management and maintenance responsibility. The conference report contains the House provisions.

*Financing*

The Senate bill made eligible for assistance payments any project financed under an FHA unsubsidized multi-family program. The House amendment contained no specific provision with respect to the financing of projects (intending to make eligible any type of project financing); and provided that assistance could not be withheld or made subject to preferences because of the availability of FHA coinsurance or because of the tax-exempt status of public financing of projects. The conference report contains the House provisions, with an amendment making clear that projects financed with FHA mortgage insurance are permitted.

Property Standards

The House amendment contained a provision not in the Senate bill exempting new or substantially rehabilitated housing assisted under the program from compliance with HUD minimum property standards if such housing meets applicable State and local building codes. The conference report does not contain this House provision.

Assistance to Homeowners

The Senate bill specifically authorized assistance payments under the program to existing homeowners; and permitted purchase by a public housing agency of an assisted project with one or more units for resale to tenants with a continuation of subsidy up to the amount of debt service on the agency's bonds. The House amendment contained no provision with respect to assistance to homeowners; and permitted purchase of assisted projects as *existing* projects, except that assistance was limited to the amount of interest payments (and not the full amount of debt service) for a temporary period only.

The conference report does not contain the Senate provision with respect to assistance to homeowners. Such assistance is being made available to a limited extent pursuant to existing law under the housing allowance demonstration expanded elsewhere in this conference report. The conferees intend that assistance to homeowners shall not be made available under this new housing assistance program, and that such assistance should be financed out of research and demonstration authority utilized to carry out the housing allowance demonstration. The conference report contains the Senate provision with respect to purchase of assisted projects by public housing authorities.

Davis-Bacon

The Senate bill exempted housing constructed or rehabilitated under the new housing assistance program from the prevailing wage requirements of the Davis-Bacon Act. The House amendment applied such requirements to housing constructed or rehabilitated under the new program. The conference report contains the House provision, with an amendment exempting developments of fewer than nine units. The conferees urge the Secretary of Labor, in administering the Davis-Bacon Act, to apply the prevailing wage requirements in a manner that recognizes the substantial differences in wage rates between built-up metropolitan areas and small towns or rural areas. It is intended that the area of consideration should be large enough to yield an adequate factual basis for each wage determination, yet be small enough to reflect only the wages and practices of the area surrounding the location of the proposed project.

*Elderly*

The House amendment contained a provision not in the Senate bill requiring assistance payments to be made with respect to some or all of the units in projects for the elderly or handicapped financed under the section 202 direct loan program; and permitted occupants with incomes up to 5 times market rentals to qualify for such assistance. The conference report contains the House provisions, with amendments permitting assistance payments to section 202 projects, and deleting the special income limits for such assistance.

*Miscellaneous*

The Senate bill contained the following provisions not in the House amendment;

(1) permitting local housing authority bonds with flexible maturities and balloon payments to finance public housing projects;

(2) repealing requirements of existing law with respect to the submission of construction specifications prior to the award of construction contracts and submission of data with respect to land acquisition prior to an authorization to acquire land;

(3) making retroactive to 1961 repeal of the requirement that the Federal Government share in the net proceeds of the sale or operation of projects after bonds have been retired;

(4) permitting annual contributions to be made with respect to war housing projects owned by local public housing agencies and permitting funds received from the sale of such projects to be used by local agencies to repair projects held by them;

(5) prohibiting HUD from applying new administrative policies to projects in derogation of rights of an owner under a lease entered into prior to the establishment of such policies; and

(6) clarifying existing law to make explicit the Secretary's authority to approve use of special schedules of required payments for participants in mutual-help housing projects.

The conference report contains these Senate provisions.

III—MORTGAGE CREDIT ASSISTANCE

Revision of the National Housing Act

The Senate bill revised the law governing FHA mortgage insurance programs, and provided that the provisions of the revised law would be effective at such date or dates as prescribed by the HUD Secretary but not later than one year after enactment of the bill. The House amendment contained no such revision of existing law, and instead amended that law. The conference report does not contain the Senate revision of the National Housing Act, but makes the following amendments to existing law:

*Insured advances*

The Senate bill contained a provision not in the House amendment authorizing insured advances on mortgage proceeds during construction to cover the cost of building components prior to their delivery to the construction site. The conference report contains this Senate provision.

*Prototype mortgage limits*

The Senate bill deleted per unit limitations applicable to mortgages insured under various FHA programs, and authorized HUD to establish such limits administratively for each market area by estimating costs through a prototype procedure. The House amendment increased per unit mortgage limits for nearly all of the various mortgage insurance programs. The conference report contains the House provisions.

*Project mortgage limits*

The Senate bill contained provisions not in the House amendment deleting overall dollar limits on the amount of project mortgages. The conference report does not contain this Senate provision.

*Mortgage maturities*

The Senate bill contained provisions not in the House amendment deleting specific limits on the maximum maturities of mortgages insured under various FHA programs and authorized HUD to set such maturities. The conference report does not contain these Senate provisions.

*Energy conservation*

The Senate bill contained a provision not in the House amendment prohibiting HUD insurance of mortgages financing new construction unless the mortgaged property makes use of energy conservation techniques, to the maximum extent feasible. The conference report does not contain this Senate provision. Instead, it contains an amendment to existing law directing HUD to encourage the use of energy conservation techniques through its regulations involving minimum property standards.

*Compensation for defects*

The Senate bill contained provisions not in the House amendment extending the compensation for defects provisions of existing law (under section 235) to cover mortgages insured under sections 203(b) and 221 (in older, declining areas) and making compensation retroactive to mortgages insured under sections 203(b) and 221 of the Act on or after August 1, 1968.

The confernce report contains these Senate provisions, with amendments—

(1) providing that determinations by the HUD Secretary are final and not judicially reviewable;

(2) providing that eligibility for compensation is limited to mortgages insured under sections 203(b) and 221 between August 1, 1968, and January 1, 1973, as well as to mortgages insured under section 235 as in existing law; and

(3) providing that compensation may not be paid unless HUD determines that the defect involved a serious danger to the life or safety of the occupant of the dwelling.

The conferees urge HUD to adopt regulations to assure that compensation or reimbursement is made only with respect to defects which are actually repaired.

*Allocation of housing subsidies*

Urban-Rural Split

The Senate bill provided that 75 percent of housing assistance funds available to HUD would be allocated to metropolitan areas, and 25 percent to nonmetropolitan areas. The House amendment provided that *at least* 20 percent was to be allocated to nonmetropolitan areas. The conference report contains a provision allocating "at least 20 percent but not more than 25 percent" to nonmetropolitan areas.

Basic Allocation Criteria

The Senate bill directed HUD to reserve housing assistance funds to meet the housing objectives contained in community development plans submitted under the community development program. The House amendment directed HUD to allocate housing assistance funds on the basis of objective criteria, with allocations modified as necessary to fulfill the requirements of approved local housing assistance plans submitted as part of community development program applications. The conference report contains the House provision.

Local Approval

The Senate bill required housing assistance funds to be used in general conformity with State and local housing assistance plans; and directed HUD to resolve conflicts between State and local plans. The House amendment required localities with approved housing assistance plans to review all applications for housing assistance to determine consistency with their plan. HUD could disregard a local objection to an application only where the objection was without merit and the application was plainly consistent with the plan. Localities without housing plans were given 60 days to submit objections to HUD. The conference report contains the House provisions in modified form.

Within 10 days of receipt of an application for housing assistance, HUD would notify the locality that an application is under consideration, and afford it 30 days to object on the grounds that the application is inconsistent with its housing assistance plan. If the locality makes such an objection, HUD may not approve the application unless it determines that the application is consistent with the plan. If HUD receives no objection during the 30-day period referred to above, it may approve the application unless it finds the application to be inconsistent with the plan. HUD determinations with respect to consistency or inconsistency with a particular plan must be made within 30 days after receipt of an objection or within 30 days after the close of the period afforded the locality to consider the application, whichever is earlier. These local approval provisions would not apply to—

(1) applications for housing assistance involving 12 or fewer units in a project or development;

(2) applications with respect to housing assistance in HUD-approved new community developments which HUD determines are necessary to meet the housing requirements of title IV of the 1968 Housing Act of title VII of the 1970 Housing Act; and

(3) applications with respect to housing to be financed by loans or loan guarantees from a State agency, except that the local approval provisions would apply where a locality in which housing assistance is to be provided objects in its housing assistance plan to the exemption of State-financed housing provided by this paragraph.

The conferees believe that a determination by the HUD Secretary overruling a locality's determination with respect to inconsistency with a housing assistance plan should be based upon substantial reasons.

*Co-insurance demonstration*

The Senate bill authorized HUD to conduct a demonstration of co-insurance through June 30, 1976, subject to the following conditions: not more than 20 percent of the *units* insured under the home mortgage provisions nor more than 20 percent of the *units* under the project mortgage provisions could be involved in the co-insurance demonstration; HUD could not delegate processing functions to lenders without assuring adequate consumer safeguards; and the demonstration was to be used only to the extent that the flow of mortgage credit was not unduly discouraged, and not to be used in older or declining areas where 100 percent insurance is needed.

The House amendment made clear that the use of co-insurance was optional with lenders, who are required to assume at least 10 percent of any loss, subject to a limitation on their overall liability for catastrophic losses; that co-insurance could be used only with respect to 20 percent of the *dollar amount* of home mortgages and 20 percent of the *dollar amount* of multifamily mortgages insured; that sharing the premiums between HUD and lenders must be on a sound actuarial basis; that inspection of new construction under the demonstration program must meet minimum standards applicable under the regular mortgage insurance programs; that HUD must consult with the mortgage lending industry to determine that the demonstration does not disrupt the mortgage market or make 100 percent mort-

gage insurance unavailable to those who need it; and that HUD could not withdraw, deny, or delay mortgage insurance under other programs because of the availability of co-insurance. The House amendment contained a June 30, 1977, expiration date for the co-insurance demonstration.

The conference report contains the House provisions, with amendments (1) prohibiting HUD from delegating processing functions to lenders without assuring adequate safeguards to consumers; and (2) providing that co-insurance is not to be used in older or declining areas where 100 percent mortgage insurance is needed.

*Demonstration of lender processing*

The Senate bill contained a provision not in the House amendment authorizing HUD to experiment generally with delegations of various processing tasks to mortgage lenders. The conference report does not contain this Senate provision.

*Experimental financing*

The Senate bill contained a provision not in the House amendment authorizing a demonstration through July 1, 1977, of experimental financing techniques (such as variable interest rates and uneven amortization), limited to one percent of the dollar amount of mortgages insured by the FHA. The conference report contains the Senate provision with amendments limiting the demonstration to uneven amortization mortgage financing and excluding demonstrations with respect to variable interest mortgages; and limiting the demonstration to the period through June 30, 1976.

*Counseling*

The Senate bill mandated counseling of homeowners assisted under the section 235 program and authorized tenant counseling for occupants of assisted unsubsidized multifamily programs; and permitted the financing of counseling activities out of various mortgage insurance funds. The House amendment authorized homeownership and tenant counseling, but financed out of appropriations. The conference report contains the House provisions, with an amendment mandating homeownership counseling for purchasers deemed to be special credit risks.

*Limitations on new construction and rehabilitation under sections 235 and 236 programs*

The Senate bill contained a provision not in the House amendment limiting construction and rehabilitation under the sections 235 and 236 programs to areas with a need for such units, where such units are necessary to enable persons to live near their employment, where such units are essential to a community development program, or under other circumstances determined by HUD. The conference report does not contain this Senate provision.

*Property improvement and mobile home loan program*

Increase in loan amounts

The Senate bill increased from $15,000 to $30,000 the amount of a property improvement loan for a payment structure. The House amendment increased the amount only to $17,500. The conference report contains the Senate provision, with an amendment increasing the amount to $25,000.

Increase in maturities for mobile home loans

The House amendment contained a provision not in the Senate bill increasing the term of a single module mobile home loan from 12 to 15 years. The conference report contains this House provision.

Fire safety equipment in health facilities

The Senate bill authorized HUD to determine the maximum amount and term of a loan financing fire safety equipment in health facilities. The House amendment provided for a maximum of $50,000 and a maximum term of 25 years. The conference report contains the Senate provision. However, the conferees intend HUD to administratively establish the maximum loan amount and term at the figures contained in the House amendment, except in exceptional cases.

Energy conservation

The Senate bill contained a provision not in the House amendment permitting the use of property improvement loans to finance the provision of energy conserving improvements or the installation of solar energy systems. The conference report contains this Senate provision.

Mobile home lot loans

The Senate bill contained a provision not in the House amendment authorizing loans to finance the purchase of mobile home lots and the preparation of such lots. The conference report contains this Senate provision.

State and local rehabilitation funds

The Senate bill contained a provision not in the House amendment authorizing coinsurance of rehabilitation loans (not to exceed $10 million) made by States or localities to persons who cannot obtain or afford private financing. The conference report does not contain this Senate provision.

*Unsubsidized home mortgages-downpayments*

The Senate bill contained a provision not in the House amendment providing that an insured loan could include 70 percent of the estimated value of a home over $45,000. The conference does not contain this Senate provision.

*Subsidized home mortgages—section 235*

Authorizations

The Senate bill contained a provision not in the House amendment authorizing an additional $120 million in contract authority for the section 235 program on July 1, 1975. The conference report does not contain this Senate provision, but instead extends to one year after enactment of this bill the authority to use existing appropriated contract authority, and provides for such sums as may be approved in appropriations acts for the balance of Fiscal Year 1976.

Use of existing units

The Senate bill contained a provision not in the House amendment making permanent HUD's authority to use up to 30 percent of authorized contract authority for existing units. The conference report contains this Senate provision.

Rehabilitation Requirements

The Senate bill contained a provision not in the House amendment increasing from 10 to 20 percent of authorized contract authority which may be utilized for substantial rehabilitation. The conference report contains this Senate provision.

Owner-Occupant Rehabilitation

The Senate bill contained a provision not in the House amendment authorizing assistance payments on mortgages financing rehabilitation and refinancing for owner-occupant homes. The conference report does not contain this Senate provision.

Income Limits

The Senate bill contained a provision not in the House amendment establishing 90 percent of median income for the housing market area as the income limit for the program. The conference report contains the Senate provision with an amendment setting the income limit at 80 percent, rather than 90 percent, of median income for the market area.

Insured Advances

The Senate bill contained a provision not in the House amendment authorizing insurance of advances of mortgage proceeds with respect to property constructed or rehabilitated pursuant to a self-help program. The conference report contains this Senate provision.

Downpayment Requirements

The Senate bill contained a provision not in the House amendment establishing a minimum downpayment of $200 for families below 70 percent of median income and 30 percent of acquisition cost for all other families. The conference report contains the Senate provision, with an amendment setting the minimum downpayment for all families at 3 percent of acquisition cost. The conferees believe the Secretary should require recertification of incomes of assisted home owners under the program at least annually.

UNSUBSIDIZED MULTIFAMILY MORTGAGES

Management cooperatives

The Senate bill contained a provision not in the House amendment increasing from 97 to 98 percent the loan-to-value ratio applicable to insured mortgages financing management-type cooperatives. The conference report contains this Senate provision.

Existing properties

The Senate bill contained provisions not in the House amendment (1) authorizing insurance of mortgages to finance the purchase of existing multifamily projects or the refinancing of mortgages on existing projects; and (2) authorizing 100 percent insured mortgages where refinancing is involved in older, declining areas. The conference report contains (1) above, with an amendment providing that in the case of refinancing of an existing project, HUD must prescribe such terms and conditions as determined necessary to assure that (1) refinancing is used to lower monthly debt service only to the extent needed to assure the continued economic viable of the project; and (2) during the mortgage term, no rental increases may be made except those necessary to offset actual and reasonable operating expenses or other increases approved by HUD.

The conference report does not contain the Senate provision with respect to 100 percent refinancing in older, declining areas, although it retains existing authority with report to such refinancing.

Dormitory-type housing

The Senate bill contained a provision not in the House amendment authorizing the insurance of unsubsidized multifamily mortgages involving "dormitory-type" housing. The conference report contains this Senate provision, and the conferees expect HUD to give special attention to the urgent need to develop such housing in urban areas.

Public housing agencies

The Senate bill permitted public housing agencies to receive 90 percent unsubsidized insured mortgages, the House amendment permitted such agencies to receive 100 percent unsubsidized insured mortgages under section 221(d)(3) if they waived tax exemption. The conference report contains the House provision.

*Multifamily Mortgages—Section 236*

Consolidation of rent supplement, program authority

The Senate bill contained a provision not in the House amendment authorizing a deep subsidy (below the assistance provided through a one percent mortgage) down to utility cost for 20 percent of the units in a section 236 project. The conference report contains the Senate provision.

Operating cost subsidies

The Senate bill contained a provision not in the House amendment authorizing increased subsidies to existing and new section 236 projects to meet higher operating costs

resulting from increased taxes, utility costs, and operating expenses. The conference report contains the Senate provision with an amendment authorizing the increased subsidies only with respect to higher operating costs resulting from increased taxes and utility costs. The conferees wish to point out that the specific amount of such increased subsidies should be determined by the Secretary taking into account the need to encourage reasonable economies in the operation of projects.

Housing for the elderly

The Senate bill contained a provision not in the House amendment requiring that 15 to 25 percent of authorized contract authority be allocated to projects for the elderly or handicapped, at least 5 percent of which is for "integrated" projects (10 to 50 percent elderly or handicapped). The conference report contains the Senate provision with an amendment eliminating the earmarking for "integrated" projects.

Rehabilitation

The Senate bill contained provisions not in the House amendment requiring that at least 10 percent of authorized contract authority be utilized for rehabilitation projects; and that tenants living in existing structures prior to rehabilitation be allowed to remain in occupancy after rehabilitation, with over-income tenants paying no more than 25 percent of their incomes toward rent. The conference report contains these Senate provisions.

Separate utility billing

The Senate bill contained a provision not in the House amendment providing for the reduction of tenant contributions toward rent from 25 percent of income to 20 percent of income where utilities are billed separately. The conference report contains this Senate provision.

Income limits

The Senate bill contained a provision not in the House amendment establishing the income limit for the program at 90 percent of median income in the housing market area. The conference report contains the Senate provision with an amendment setting the income limit at 80 percent, rather than 90 percent, of median income for the market area.

Single persons

The Senate bill contained a provision not in the House amendment eliminating the 10 percent limitation on the number of non-elderly single persons who may be assisted in any project. The conference report contains this Senate provision.

Management monitoring

The Senate bill contained a provision not in the House amendment authorizing HUD to contract with State or local agencies to monitor the management of section 236 projects. The conference report contains this Senate provision.

Authorizations

The Senate bill contained an amendment authorizing additional contract authority for the section 236 program in the amounts of $180 million in Fiscal Year 1975 and $200 million in Fiscal Year 1976. The House amendment contained an open-end authorization for the program for Fiscal Year 1975.

The conference report authorizes an additional $75 million in contract authority for the program for Fiscal Year 1975 and extends the program from October 1, 1974, to June 30, 1976. The Secretary is expected to approve commitment of available funds for new projects when the community has identified its special housing needs and demonstrated that these needs cannot be met through the new housing assistance program authorized under the 1973 Act.

*Group practice facilities*

The Senate bill contained a provision not in the House amendment authorizing mortgage insurance for group practice facilities with as few as one medical professional in rural areas, small towns, and lower income urban areas. The House amendment contained a provision not in the Senate bill extending the program of mortgage insurance for group practice facilities to cover the construction of facilities for the practice of osteopathy. The conference report contains both the House and Senate provisions.

Supplemental Project Loans

The Senate bill contained provisions not in the House amendment authorizing insured supplemental loans for repairs, improvements, or additions to multifamily projects or health facilities not covered by FHA-insured mortgages; and authorizing subsidized supplemental loans with respect to subsidized multifamily projects for the elderly in order to expand non-dwelling facilities needed to serve elderly individuals in the area of a project. The conference report contains the Senate provision with respect to unsubsidized supplemental loans for multifamily projects, but does not contain the Senate provision with respect to subsidized supplemental loans. The new housing assistance program authorized under the Housing Act of 1937 permits non-dwelling facilities serving elderly in the area of a project to be financed as part of a subsidized rental project serving the elderly.

Land development

The Senate bill contained a provision not in the House amendment increasing to 80 percent of the estimated value of land before development and 90 percent of the estimated cost of development the loan-to-value ratio on FHA land development mortgages. The conference report contains this Senate provision.

*Guarantee of State Housing and Development Agency obligations*

Purpose

The Senate bill contained a provision providing that the purpose of this new guarantee program was to assist in financing the acquisition of land and the construction or rehabilitation of housing and related facilities for low, moderate, and middle income persons, with development to be carried out by private profit or nonprofit entities unless HUD finds such entities are not available. The House amendment provided that the purpose of the program was to assist in (1) the provision of housing for low and moderate income persons; (2) the revitalization of slum and blighted areas; (3) the development of industrial and commercial facilities to improve employment opportunities; and (4) the advance acquisition of land and other development aspects of State land use plans; and that development could be carried out by State agencies or other entities.

The conference report contains the House provisions with amendments (1) making it clear that a purpose of the new program is to encourage the formation and effective operation of State housing finance agencies, as well as State development agencies; and (2) directing the HUD Secretary to encourage the maximum participation by private and nonprofit developers in activities assisted under the new program.

Eligibility of Agencies for Guarantee

The Senate bill provided that in order to be eligible for a guarantee., a State must have at least one market area with an inadequate housing supply and high costs of development; and the agency must be implementing a housing plan which meets the needs of low and moderate income and displaced persons, gives priority to State, area-wide, and local community development programs, and promotes housing opportunities. The House amendment provided that the agency must be empowered to provide housing; that its activities must involve the revitalization of slums; and that obligations financing only the provision of housing were not eligible for guarantee.

The conference report contains the House provisions with an amendment making clear that State housing obligations may be guaranteed only when they are incurred in connection with slum revitalization, when the revitalization is being carried on or assisted by the State agency or by a community using community development grants, or under any other program approved by HUD.

*Taxable Bonds and Interest Subsidies*

The Senate bill provided that guaranteed bonds must be taxable; that the interest subsidy with respect to such bonds could cover up to 33⅓ percent of interest costs; and that contract authority to make interest reduction payments was authorized in the amount of $50 million in fiscal year 1975, to be increased to $110 million in fiscal year 1976. The House amendment provided for 30 percent interest subsidy grants to be made with respect to any taxable bond issued to finance any of the purposes stated above, whether or not the bond was guaranteed.

The conference report contains the Senate provisions with an amendment making interest reduction grants available with respect to unguaranteed State bonds.

Limit on Amount Guaranteed

The House amendment contained a provision not in the Senate bill limiting to $500 million the amount of guaranted loans under the program. The conference report contains this House provision.

Davis-Bacon

The House amendment contained a provision not in the Senate bill applying the prevailing wage requirements of the Davis-Bacon Act to residential projects with fewer than 9 units. The conference report contains this House provision. The conferees urge the Secretary of Labor, in administering the Davis-Bacon Act, to establish wage rates in a manner that recognizes the substantial differences in such rates between built-up metropolitan areas and small towns or rural areas. It is intended that the area of consideration should be large enough to yield an adequate factual basis for each wage determination, yet be small enough to reflect only the wages and practices of the area surrounding the location of the proposed project.

Investment in Bonds by Financial Institutions

The Senate bill contained a provision not in the House amendment permitting investment in bonds guaranteed under the new program by national banks and Federal savings and loan associations. The conference report contains this Senate provision.

*Disposition of FHA-Acquired Properties to Cooperatives*

The Senate bill contained provisions not in the House amendment authorizing 100 percent purchase money mortgages from HUD to finance the disposition of FHA-acquired properties to cooperatives; and authorizing HUD to make necessary repairs and improvements to make such housing suitable for cooperative ownership. The conference report contains these Senate provisions, with an amendment striking out language in the Senate provision requiring that necessary repairs and improvements make such housing suitable for *cooperative* ownership. The conferees wish to point out that disposition of such properties to cooperatives is discretionary with the HUD Secretary.

*Dual Interest Rate System*

The Senate bill contained a provision not in the House amendment authorizing the experimental use, until July 1, 1977, as an alternative to HUD established maximum interest rates, of free market interest rates on FHA-insured mortgages if discounts are not charged on such mortgages. The conference report does not contain this Senate provision.

*Extension of FHA programs*

The Senate bill provided a transitional extension to June 30, 1975, the proposed effective date of the Revised National Housing Act, of various FHA mortgage insurance authorities. The House amendment extended FHA authorities throughout June 30, 1977, except that insurance authority with respect to sections 235 and 236 were extended only to June 30, 1975.

The conference report amends FHA authorities through June 30, 1977, except that with respect to the sections 235 and 236 programs, insurance authority is extended through June 30, 1976.

*Extension of flexible interest rate authority*

The Senate bill provided a transitional extension of the HUD Secreary's authrity to establish interest rates under various FHA programs to July 1, 1975. The House amendment extended such authority to June 30, 1977. The conference report contains the House provision.

*Social Security increases*

The House amendment contained a provision not in the Senate bill excluding from the definition of income in the sections 235, 236, and rent supplement programs social security benefit increases after June 1974. The conference report does not contain this House provision.

*Housing for military personnel*

The House amendment contained a provision not in the Senate bill authorizing the insurance of home and multifamily mortgages executed by military or other personnel assigned to military bases as risks of the Special Risk Insurance Fund where residual housing requirements were inadequate to sustain housing in the event of a substantial curtailment of base employment. The conference report contains this House provision.

IV—COMPREHENSIVE PLANNING

*Purpose*

The Senate bill contained a provision not contained in the House amendment which stated that the purpose of the Section 701 Comprehensive Planning Program was to provide assistance to general purpose units of government and regional combinations thereof for comprehensive planning and for developing management capacity to implement plans to solve planning problems; and to encourage development of a more rational process for setting policy objectives, designing and overseeing programs to meet these objectives, and evaluating the progress of such programs. The conference report does not contain this Senate provision.

*Eligible Grantees*

The Senate bill contained a provision not contained in the House amendment which designates as grantees eligible for comprehensive planning assistance (1) States for planning assistance to local governments, (2) States for State and intertsate activities, (3) cities of 50,000 or more, (4) counties of 50,000 or more, (5) areawide organizations, (6) Indian tribal groups or bodies, and (7) other governmental units or agencies having special planning needs. The conference report contains the Senate provisions with amendments (1) making counties eligible for direct assistance only if they meet the definition of "urban counties" contained in the new community development program; and (2) making only areawide organizations carrying out planning for metropolitan areas eligible for direct assistance.

*State Administration*

The Senate bill contained a provision not contained in the House amendment authorizing HUD to make grants to States for assistance to any unit or combinations of local government if there is mutual State-local agreement for State administration; however, no units of local government may be denied funding because of failure to join in such an agreement. The conference report does not contain this Senate provision.

The conferees agree that the law should continue to authorize the direct funding of cities over 50,000 population and metropolitan areawide agencies. They also agree that, while they did not wish to preclude the Secretary from encouraging greater coordination of planning efforts by providing assistance through the States, they expect him to provide direct funding to cities and metropolitan agencies without prejudice, when desired and authorized under State law.

*A–95 review*

The Senate bill contained a provision not contained in the House amendment specifically making assisted comprehensive planning activities subject to the OMB A–95 review process. The conference report does not contain this Senate provision.

*Eligible activities*

The Senate bill contained provisions not contained in the House amendment (1) providing that activities undertaken with grant assistance may include development of plans and improvement of the management capability to implement these plans, and the development of a policy-making-evaluation capacity which would enable the recipient to determine its needs more rationally, set goals and objectives, devise appropriate programs, and evaluate its programs; and (2) requiring grant recipients to employ professionally competent persons to carry out program activities. The conference report contains these Senate provisions.

*Required activities*

The Senate bill contained provisions not contained in the House amendment requiring each grant recipient to carry out an ongoing planning process with biennial review, including a provision for public hearings and other citizen participation; and requiring a comprehensive plan to include, at a minimum, (1) a housing element which takes into account all available data so that housing needs of both the region and the community studied will be adequately covered in terms of existing and prospective population growth, (2) a five-year capital programming element, and (3) a land use element which includes (a) criteria and implementing procedures guiding major decisions as to where growth shall take place, and (b) general plans with respect to the pattern and intensity of land use for residential, commercial, and other activities. For each of the above elements, annual objectives, programs, and evaluation procedures are required to be stated.

The conference report contains these Senate provisions, except that (1) the requirement that a planning process include a provision for public hearings and active citizen participation is deleted and replaced by a requirement that the planning process shall make provision for citizen participation when major plans, policies, priorities, or objectivse are being determined; and (2) the requirement that all plans contain a five-year capital programming element is deleted.

The conference report does not expressly require a capital programming element because the conferees have been informed that effective implementation of this requirement would require substantial funding from presently limited comprehensive planning assistance funds. This lack of an express statutory requirement should not be construed to mean that capital programming should be ignored in the comprehensive planning process. HUD is expected to encourage the development of such capital programming elements wherever appropriate and feasible.

*Annual grants and secretarial review*

The Senate bill contained provisions not contained in the House amendment (1) authorizing HUD to make annual grants after approval of an initial application if the applicant submits an annual description of its work program for the succeeding year, including proposed changes, and submits biennially an evaluation of progress in meeting its plan objectives during the previous two years, including proposed changes; and (2) prohibiting grants to applicants that have not made a good faith effort to implement their plan objectives, or, after three years, to applicants that are not carrying out required comprehensive planning activities. The conference report contains the first Senate provision only with an amendment deleting the "good faith effort" in implementation requirement.

*Grant amount and dollar authorizations*

The Senate bill provided that comprehensive planning grants could not exceed 80 percent of estimated program costs and authorized additional appropriations of $110 million in Fiscal Year 1974 and $220 million in Fiscal Year 1975, with 30 percent of the first $125 million appropriated and 25 percent of any funds thereafter appropriated to be available solely for grants to areawide planning organizations. The House amendment authorized appropriation of an additional $130 million for Fiscal Year 1975 for comprehensive planning assistance. The conference report authorizes appropriation of $130 million for Fiscal Year 1975 and $150 million for Fiscal Year 1976.

*Historic preservation*

The Senate bill contained a provision not contained in the House amendment authorizing the use of planning grants for the acquisition of structures or sites of historic or architectural value. The conference report does not contain this Senate provision.

*Consultation with Federal agencies*

The Senate bill contained a provision not contained in the House amendment directing the Secretary to consult with other Federal agencies with respect to general comprehensive planning standards and procedures and specific planning activities of interest to a particular agency. The conference report contains this Senate provision.

*Joint funding*

The Senate bill contained a provision not contained in the House amendment authorizing use of funds made available in furtherance of a comprehensive planning program to be used jointly with other Federal assistance funds, subject to regulations prescribed by the President. The conference report contains this Senate provision.

*Trust Territory of the Pacific Islands*

The House amendment contained a provision not contained in the Senate bill authorizing extension of the comprehensive planning assistance program to the Trust Territory of the Pacific Islands. The conference report contains this House provision.

*Delegation authority*

The Senate bill contained a provision not contained in the House amendment authorizing the HUD Secretary to delegate his administrative powers under section 701 to other Federal agencies, with the approval

of the President. The conference report does not contain this Senate provision.

*Comprehensive planning definition*

The Senate bill contained a provision not contained in the House amendment expanding the statutory definition of comprehensive planning to include (1) identification and evaluation of area needs and formulation of specific program to meet those needs, and (2) surveys of structures and sites of historic or architectural value. The conference report contains this Senate provision.

*A–95 review*

The Senate bill contained a provision not contained in the House amendment amending section 204(a) of the Demonstration Cities and Metropolitan Development Act of 1966 to include comprehensive planning as a covered activity and to redefine an A–06 review agency as an areawide agency which has prepared, or is in the process of preparing a metropolitan or regional plan for an area which (1) is predominantly composed of or responsible to elected officials of a unit or areawide government or the units of general local government in the area, or (2) is directly responsible to the citizens of the area, except where State laws provide otherwise. The conference report does not contain this Senate provision.

*Report on A–95 review procedure*

The Senate bill contained a provision not contained in the House bill requiring Federal agencies administering programs subject to the A–95 review procedure to report to the Congress by July 1, 1976, concerning administration of the areawide review and comment process. The report would include information on the number of applications governed by agency regulations, the number accompanied by appropriate comments, the action taken on each application, and the length of time after agency action before the applicant is notified. The report must also include an evaluation of the effectiveness of the review and comment process. The conference report does not contain this Senate provision.

*Training and fellowship programs*

The Senate bill contained provisions not contained in the House amendment adding "general urban studies" as an eligible activity for assistance under HUD's graduate fellowship programs; authorizing HUD to make grants for contracts directly with institutions of higher education, to assist them in planning, developing, or improving programs or projects for the preparation of graduate or professional students in city and regional planning and management, housing, and urban affairs, or research into improving methods of education for these professions; permitting the use of grant funds to pay part of the compensation of students employed in urban professions; and increasing the grant authorization for training and fellowship programs by $3,500,000 on July 1, 1974, and $3,500,000 on July 1, 1975. The conference report contains these Senate provisions.

V—RURAL HOUSING

*Extension of FMHA programs*

The Senate bill extended the FmHA rural housing programs to Guam. The House amendment extended these programs to territories and possessions of the United States (including Guam) and the Trust Territory of the Pacific Islands. The conference report contains the House provision.

*Refinancing*

The Senate bill eliminated a prohibition against FmHA refinancing debts that were held or insured by the United States or a Federal agency and removed a requirement that the refinanced debt must have been incurred prior to November 3, 1966. The House amendment was similar except that an applicant must have incurred the indebtedness at least five years prior to his application for refinancing. The conference report contains the House provision.

*Escrow accounts*

The Senate bill directed the Secretary of Agriculture to establish procedures under which he would administer escrow accounts at the option of FmHA borrowers. The House amendment is similar except that it authorizes rather than directs the Secretary to establish such procedures. The conference report contains the House provision.

*Section — leasing*

The Senate bill contained a provision not contained in the House amendment authorizing families with FmHA loans to lease their homes under the public housing law where such action would prevent a borrower from losing his home or help meet other necessary expenses. The conference report does not contain this Senate provision.

*Research*

The Senate bill contained a provision not contained in the House amendment authorizing the Secretary of Agriculture to contract for rural housing research with private and public organizations if he determines that the research work cannot feasibly be performed by the Department of Agriculture or land grant colleges. The conference report contains this Senate provision.

*Utilization of county committees*

The Senate bill contained a provision not contained in the House amendment limiting the use of county committees in rural housing programs to applicants involved in the operation of a farm. The conference report contains this provision.

*Assistance authorizations*

The Senate bill increased authorizations for Section 504 rehabilitation loans and grants by $25 million on October 1, 1974, and by $25 million on June 1, 1975; for farm labor housing grants by $25 million on October 1, 1974, and by $25 million on June 1, 1975; and for annual research grants from $250,000 annually to $5 million for the period beginning October 1, 1974, and ending October 1, 1975. The House amendment increased the Section 504 authorization by $25 million for the period ending June 30, 1977; for farm labor housing grants by $25 million for period ending June 30, 1977; and for annual research grants from $250,000 to $1 million annually for period ending June 30, 1977. It also extended the authorization period for Section 515 rental housing loans and Section 517 insured rural housing loans to June 30, 1977. The conference report contains the House provisions, except that the authorizations for Section 504 rehabilitation loans and grants and for farm labor housing grants are each increased by $30 million rather than by $25 million.

*Mutual and self-help housing*

The Senate bill permitted non-interest bearing advances from the self-help land development fund to recipients of self-help housing grants to be used for "contingency land revolving accounts"; and extended the basic self-help program authority to June 30, 1976, authorizing annual appropriations for the program of up to $10 million for each of fiscal years 1975 and 1976. The House amendment was similar, except that advances could be used to establish "revolving accounts for the purchase of land options" and bear interest at a rate determined by the Agriculture Secretary. The House amendment also provided for an extension of basic program authority to June 30, 1977, and authorized annual appropriations of up to $10 million for fiscal years 1975, 1976, and 1977. The conference report contains the House provisions.

*Site loans*

The Senate bill broadened the section 524 site loan program to permit the use of developed sites under any Federal or other assisted housing program, with the loan to bear an interest rate not to exceed 5 percent per annum. The House amendment contained a similar provision, except that the loan interest rate was set at the Treasury borrowing rate, as in existing law. The conference report contains the House provisions.

*Technical and supervisory assistance*

The Senate bill authorized the Secretary of Agriculture to make grants to or contract with non-profit corporations, agencies, institutions, and other groups to provide technical and supervisory assistance for needy low-income families to help them benefit from Federal, State or local housing programs in rural areas. The House amendment authorized the Secretary to provide, or contract with public or private non-profit organizations to provide information, advice and technical assistance on a variety of activities and services related to low- and moderate-income housing and families; any private non-profit organization providing services would be required to be sponsored by a non-Federal governmental entity or public body; and such sponsorship would include assisting the applicant in processing of the application, implementing any technical assistance program, and carrying out all obligations of the grant. The conference report contains the Senate provisions with a requirement that, in processing applications under this program, the Secretary shall give preference to those applicants which are sponsored by a non-Federal governmental entity or public body.

*Legal services*

The Senate bill contained a provision not contained in the House amendment requiring the Secretary of Agriculture to accord to all qualified attorneys an equal opportunity to participate in closing and other legal services as may be required in connection with settlements on properties being purchased with assistance under title V of the Housing Act of 1949. The conference report does not contain this Senate provision.

*Mobile homes*

The Senate bill contained provisions not in the House amendment broadening the term "housing" as used in title V of the Housing Act of 1949 to include mobile homes and mobile home sites; directing the Secretary of Agriculture to prescribe minimum property standards with respect to such mobile homes and sites; and providing that loans for mobile homes and sites be made under the same terms and conditions as are applicable under the Federal Housing Administration's mobile home program. The conference report contains these Senate provisions.

*Definition of rural areas*

The Senate bill expanded the definition of "rural" areas to include places of up to 25,000 population outside standard metropolitan statistical areas if determined by the Secretaries of Agriculture and HUD that a serious lack of mortgage credit exists. The House amendment expanded the definition of "rural" and "rural areas" to include places not part of or associated with an urban area which have a population of 10,000 to 15,000 and have a serious lack of mortgage credit as determined by the Secretaries of Agriculture and HUD. The conference report contains the Senate provisions, except that only places of up to 20,000 population are included, rather than 25,000 population.

*Social security benefit increases*

The House amendment contained a provision not contained in the Senate bill providing that social security benefit increases occurring after June 30, 1974, shall not be considered as income or otherwise taken into ac-

count for purposes of determining eligibility for, or the amount of, subsidy assistance available under title V of the Housing Act of 1949. The conference report does not contain the House provision.

*Contract services and fees*

The House amendment contained a provision not contained in the Senate bill permitting the use of the rural housing insurance fund to pay for services customary in the construction industry, construction inspections, commercial appraisals, servicing loans and other related program services and expenses. The conference report contains this House provision. The conferees expect that this new authority of the Secretary will be used sparingly, primarily in cases where EmHA staff shortages require, and will not be used as a substitute for available FmHA staff services as a device to even further reduce FmHA staff. The conferees also expect that only well-qualified contract personnel shall be utilized.

*Demonstration deep subsidy for home ownership*

The Senate bill contained provisions not contained in the House amendment authorizing the Secretary of Agriculture, with respect to 10 percent of the home loans made in any fiscal year, to make loans on terms which defer payments on up to 50 percent of the principal until (1) expiration of the amortization period, (2) full payment of the balance of the loan, (3) transfer of the property without the Secretary's consent, or (4) default by the mortgagor. The income of the mortgagor would be reviewed annually for purposes of making adjustments in the amount of principal which is currently amortized. On becoming due, the deferred principal would be amortized for payment of principal and interest in installments over a period not exceeding 33 years. The Secretary is to report to the Congress six and eighteen months after enactment on his implementation of this provision. The conference report does not contain these Senate provisions.

VI—MOBILE CONSTRUCTION AND SAFETY STANDARDS

The Senate bill contained provisions not in the House amendment requiring HUD to promulgate national standards with respect to the quality, durability, and safety of mobile homes through a National Mobile Home Administration headed by an Assistant Secretary. HUD would be authorized to enforce the standards directly, through injunctive actions by the Attorney General, or through grant agreements with States having approved enforcement plans. Manufacturers would be required to furnish consumers warranties against defects, and to take other actions to protect purchasers of defective mobile homes. Such sums as are necessary to carry out these provisions would be authorized.

The conference report contains these Senate provisions with the following major amendments:

(1) deleting the establishment of a National Mobile Home Administration headed by an Assistant Secretary and merely authorizing HUD to carry out this new authority;

(2) requiring HUD to consult with the Consumer Product Safety Commission prior to the establishment of safety standards;

(3) deleting the provisions relating to manufacturers warranties; and

(4) deleting the provisions requiring adversary-type administrative proceedings in connection with the issuance of standards.

*Housing cooperative finance association*

The Senate bill contained provisions not in the House amendment establishing a Housing Cooperative Finance Association to encourage and assist consumer-oriented groups to improve housing conditions through the establishment of nonprofit cooperatives; authorizing the Association to issue Federally-guaranteed bonds not exceeding $1 billion; and authorizing 40-year HUD-insured loans to cooperatives for the development or acquisition of housing. The conference report does not contain these Senate provisions.

VII—CONSUMER HOME MORTGAGE ASSISTANCE

*Federal savings and loan associations*

Construction Loans

The House amendment contained a provision not in the Senate bill permitting savings and loan associations to make line of credit construction loans on residential real estate relying on the borrower's general credit rating or other assurance, with such loans not to exceed the greater of surplus, undivided profits, and reserves or 5 percent of assets. The conference report contains the House provision with an amendment that such loans may not exceed the greater of surplus, undivided profits, and reserves or 3, rather than 5, percent of assets.

Single-Family Dwelling Limitations

The House amendment contained provisions not in the Senate bill increasing the limit on the amount of single-family dwelling loans from $15,000 to $55,000; permitting savings and loan associations to allocate only the excess over the $55,000 limit (rather than the full amount of the loan) to the twenty percent of assets requirements; and permitting the Federal Home Loan Bank Board to increase the loan limits on dwellings in Alaska, Guam, and Hawaii by up to fifty percent. The conference report contains the House provisions with an amendment deleting the provision permitting savings and loan associations to allocate only the excess over the $55,000 limit to the twenty percent of assets requirements.

Increasing Lending Authority

The House amendment contained provisions not in the Senate bill permitting savings and loan associations to invest, subject to conditions prescribed by the Federal Home Loan Bank Board, in various types of loans for primarily residential purposes without regard to the limitations in existing law, with such loans not to exceed 10 percent of an association's assets. The conference report contains the House provisions with an amendment limiting such investments to not exceeding 5, rather than 10, percent of the association's assets.

Property Improvement Loans

The House amendment contained a provision not in the Senate bill increasing the limit on property improvement loans from $5,000 to $10,000. The conference report contains the House provision.

Asset Requirements

The House bill contained a provision not in the Senate bill increasing from twenty to thirty years the period during which a savings and loan association must build up reserves to five percent of its insured accounts. The conference report does not contain this House provision.

In the Emergency Home Finance Act of 1970, the Congress provided that the Federal Home Loan Bank Board may extend the period for compliance to thirty years "if it determined such action to be necessary to meet mortgage needs." Since the Board already possesses discretion to extend the reserves requirement to thirty years, it is the opinion of the conferees that further legislation is not necessary.

However, the conferees recognize that the very difficult conditions which prevail in the savings and mortgage markets today present a special dilemma for younger associations. Unlike older associations, they do not have the cushion of significant reserves built up years ago when competition in the savings market was much less severe and when there was a considerably greater spread between what associations paid for savings and what they could earn as mortgage investments. The less favorable Federal income tax treatment afforded savings and loan associations since 1962 also has had an adverse effect on the ability of young associations to build up reserves.

In light of this historical record and the current savings and loan earnings squeeze, the most intense on record, the conferees believe it is desirable that younger associations be given additional time to reach the five percent reserve requirement. While the conferees agree with the Board's request that an extension from twenty to thirty years not be mandatory, they urge the Board to grant this extension by general regulatory action, reserving the discretion to deny such an extension in specific cases where the lending practices of a particular institution may be subject to supervisory question. The conferees believe this regulatory action by the Board will strengthen the ability of younger institutions to help meet mortgage needs in their communities and to provide the support essential to a recovery in housing.

Loans from Mortgage Finance Agencies

The Senate bill contained a provision not in the House amendment permitting savings and loan associations to borrow from State mortgage finance agencies and reloan such borrowings at not more than 1¾ percent above the rate paid to mortgage finance agencies. Such authority would be subject to Board regulations and to the same extent as State law permits State-chartered savings and loan associations to borrow from mortgage finance agencies. The conference report contains this Senate provision.

*National banks*

The House amendment contained provisions not in the Senate bill revising the real estate lending authority of national banks as follows:

(1) permitting various loan to value ratio loans secured by other first liens where the lien, when added to prior loans, does not exceed the applicable loan-to-value ratio for a particular type of loan;

(2) permitting the classification, as non-real estate loans, various loans insured, guaranteed, or backed by the full faith and credit of the Federal Government or a State;

(3) providing that loans secured by real estate be considered real estate loans only in the amount of excess over non-real estate security, and that loans secured by a lien on real property where a financially responsible party agrees to advance the full amount of the loan within sixty months would not be considered real estate loans;

(4) prohibiting the making of real estate loans in an amount in excess of the greater of unimpaired capital and surplus or time and savings deposits, except that real estate loans secured by other than first liens, when added to unpaid prior liens, would be limited to 20 percent of a bank's unimpaired capital and 20 percent of its unimpaired surplus;

(5) permitting real estate loans secured by other than first liens upon forest tracts;

(6) permitting loans with maturities of less than sixty months to be classified as commercial loans when made for the construction of a building and secured by a commitment to advance the full amount of the loan upon completion;

(7) permitting loans for the construction of residential or farm buildings and maturities of not more than nine months to be eligible for discount as commercial paper if accompanied by an agreement for firm takeout upon completion of a building;

(8) requiring loans made upon a borrower's general credit standing or assignment of rent and SBA participation loans to be classified as commercial loans; and

(9) permitting real estate loans in excess of seventy percent of time and savings deposits if the total unpaid amount loaned does not exceed ten percent of the maximum amount that may be invested in real estate loans.

The conference report contains these House provisions.

*Federal credit unions*

Lending and Depository Authority

The House amendment contained provisions not in the Senate bill permitting credit unions to make loans to their own directors and members of supervisory credit committees, subject to the approval of the board of directors where a loan exceeds $2,500, plus pledged shares; and permitting credit unions operating foreign sub-offices to maintain demand deposit accounts in foreign banks which are correspondents of United States banks, subject to the National Credit Union Administration regulations. The conference report contains these House provisions.

Fees

The House amendment contained a provision not in the Senate bill eliminating mandatory entrance fee requirements and providing for a uniform fee at the discretion of the credit union board of directors. The conference report contains this House provision.

Directors

The House amendment contains provisions not in the Senate bill making various changes in the rules governing credit union boards of directors; permitting the appointment of two-member investment committees; and permitting executive committees to exercise authority delegated by boards of directors. The conference report contains these House provisions.

Credit Committees

The House amendment contained provisions not in the Senate bill permitting credit unions to offer loans which would be replenished as loans are repaid: and removing the $2,500 limit on the amount of reserved loans to members. The conference report does not contain these House provisions.

Supervisory Committees

The House amendment contained a provision not in the Senate bill changing the semiannual audit requirement to an annual requirement. The conference report contains this House provision.

Dividends

The House amendment contained a provision not in the Senate bill permitting the declaration of dividends at intervals authorized by a credit union's board of directors. The conference report contains this House provision.

Applicability to Trust Territories

The House amendment contained a provision not in the Senate bill making the Federal Credit Union Act applicable to the Trust Territories of the Pacific. The conference report contains this House provision.

Definition of Members' Accounts

The House amendment contained a provision not in the Senate bill exempting credit union funds invested in a Federally insured credit union from Federal share insurance premium charges. The conference report contains this House provision.

Termination of Insurance Coverage

The House amendment contained a provision not in the Senate bill providing for the termination of Federal insurance coverage after ninety days notice to the Federal Credit Union Administration if a credit union has obtined a certificate of insurance from a corporation authorized and licensed to insure its accounts. Such terminations must be approved by a majority of the credit union's directors and a majority of its voting members. The conference report contains this House provision with an amendment providing that at least twenty percent of the total membership of the credit union must participate in the role on termination.

Liquidation

The House amendment contained provisions not in the Senate bill permitting the Federal Credit Union Administration to assist in the voluntary liquidation of solvent credit unions by loans, purchase of assets, or the establishment of accounts in such credit unions and removing a provision of existing law permitting such loans and accounts to be subordinated to the rights of members and creditors. The conference report contains these House provisions.

VIII—MISCELLANEOUS

*National housing goal*

The Senate bill contained provisions not in the House amendment expressing the sense of the Congress that achievement of the national housing goals requires greater efforts to preserve existing housing in neighborhoods, with greater concentration on housing in neighborhoods where deterioration is evident though not acute; requiring the annual housing report to include an assessment of these preservation efforts and future plans in this area. The conference report contains this Senate provision.

*Expansion of experimental housing allowance program*

The Senate bill contained provisions not in the House amendment directing HUD to carry on programs of cash assistance for rental housing and homeownership and to determine the feasibility of a national direct cash assistance policy. A report with recommendations to the Congress would be required within eighteen months. Appropriations of $43 million annually would be authorized for cash assistance payments. This authorization is to be reduced by any section 23 low-rent public housing funds being utilized in the demonstration program. No cash payments pursuant to this demonstration program would be permitted after July 1, 1985.

The conference report contains the Senate provisions with amendments (1) authorizing an additional $40 million annually for cash assistance payments; and (2) prohibiting use of section 23 funds after December 31, 1974. The conferees expect that HUD's recommendations with respect to the feasibility of a national direct cash assistance policy should address the full range of concerns outlined in the Senate bill.

*Direct financing study*

The Senate bill contained a provision not in the House amendment directing the Departments of HUD and Treasury to study the feasibility of direct loans and other methods of financing assisted multifamily housing, including direct loans from the Federal Financing Bank, with a report to be filed not later than one year after enactment of the bill. The conference report contains this Senate provision with an amendment striking out that portion of the Senate provision stating that it is the sense of Congress that direct funding methods should be adopted if they are found to be less costly than other methods.

*Housing for elderly and handicapped*

The Senate bill contained a provision amending section 202 of the Housing Act of 1959 to establish a trust fund for elderly and handicapped housing loans. HUD would be authorized to borrow from the Treasury a maximum of $100 million for making housing loans pursuant to an annual ceiling on such loans which would be established in Appropriations Acts. Appropriations of $3 million annually would be authorized to make up the difference between interest paid on Treasury borrowing and the interest received on housing loans.

The House amendment contained provisions amending section 202 to authorize HUD to borrow up to $1.5 billion from the Treasury for making elderly and handicapped housing loans. Interest on HUD borrowings and on the housing loans would be set at the current average market yield on outstanding U.S. obligations of comparable maturities (plus an amount to cover administrative costs on the housing loans). Assistance payments under section 23 of the U.S. Housing Act of 1937 would be available to both new and existing section 202 projects and HUD would take into account the availability of such payments in determining the feasibility and marketability of a project.

The conference report contains the House provisions with amendments (1) establishing HUD's total borrowing authority at $800 million; and (2) providing that the aggregate amount of loans made in any fiscal year shall not exceed limits established in appropriation acts.

*Low-rise construction*

The Senate bill contained a provision not in the House amendment authorizing HUD to finance assisted high-rise elderly housing only after a determination that such construction is appropriate, talking into account land costs, safety, and security factors. The conference report does not contain this Senate provision. However, the conferess urge the HUD Secretary to provide assistance to such high-rise projects only after making the determination contemplated in the Senate provision.

*Housing security*

The Senate bill contained a provision not in the House amendment establishing an Office of Security for Housing Management in HUD, and utilizing from public housing management funds up to $10 million annually for Fiscal Years 1975 and 1976 for grants to housing sponsors assisted under HUD programs to finance planning and development of programs to improve housing security. The conference report does not contain this Senate provision. Instead, the conference report contains an amendment making clear that operating subsidies to public housing agencies may be used, as needed, to cover the cost of security personnel.

*Housing location*

The Senate bill contained a provision not in the House amendment authorizing grants (up to $20 million in Fiscal Year 1975) out of HUD research authorities to local governments and regional bodies to demonstrate the feasibility of increasing housing locational opportunities for lower-income families. The conference report does not contain this Senate provision.

*Solar energy*

The Senate bill contained a provision not in the House amendment authorizing grants (up to $25 million for Fiscal Year 1975) out of HUD research authorities for demonstrations of the economic or technical feasibility of utilizing solar energy for heating or cooling residential housing. The conference report contains this Senate provision with an amendment striking out the specific dollar authorization.

*Housing design*

The Senate bill contained a provision not in the House amendment authorizing HUD to expand its research activities to include consideration of the social and economic consequences of housing design in relation to other housing and neighborhood facilities. The conference report does not contain this Senate provision. However, the conferees urge the HUD Secretary to conduct such research, and note that report language comparable to the Senate provision was contained in the report of the House Banking and Currency Committee on H.R. 15361.

*Fair housing with respect to sex*

The Senate bill amended the Civil Rights Act of 1968 to prohibit discrimination on the basis of sex in the financing, sale, or rental of housing, or the provisions of brokerage services. The House amendment amended the National Housing Act to prohibit discrimination on the basis of sex in the making of Federally-related mortgage loans, providing insurance guarantee, or related assistance; and required lenders to consider the combined incomes of husband and wife in extending mortgage credit. The conference report contains both the Senate and House provisions.

*National Institute of Building Sciences*

The Senate bill contained provisions not in the House amendment authorizing the establishment of a nonprofit, nongovernment institute to develop, promulgate, and evaluate criteria for housing and building regulations; and authorizing appropriations of $5 million annually in Fiscal Years 1975 and 1976 for the establishment and operation of the Institute. The conference report contains these Senate provisions.

*Federal Home Loan Mortgage Corporation*

The Senate bill contained provisions (1) removing the 10 percent limitation on Federal Home Loan Mortgage Corporation purchases of older mortgages, provided an equivalent dollar amount of such mortgages invested by the seller in residential mortgages within 180 days; (2) increasing the FHLMC mortgage ceilings for Alaska, Guam, and Hawaii to a level 25 percent above the regular Federal Home Loan Bank Board mortgage ceiling for savings and loan associations; and (3) clarifying the authority of national banks. Federal home loan banks, savings and loan associations, and credit unions to invest in FHLMC securities.

The House amendment contained provisions (1) increasing the FHLMC mortgage ceilings for Alaska, Guam, and Hawaii to a level 50 percent above the FHLBB's savings and loan ceiling; and (2) permitting the servicing of FHLMC mortgages by any HUD-approved mortgagee.

The conference report contains the Senate provisions, with amendments (1) providing for a 20 percent limitation on FHLMC purchases of older mortgages; (2) increasing the FHLMC mortgage ceilings for Alaska, Guam, and Hawaii to 50 percent above the FHLBB's savings and loan ceiling, and (3) providing for the servicing of FHLMC mortgages by any HUD-approved mortgagee.

The provision permitting the servicing of FHLMC mortgages by HUD-approved mortgagees clarifies Congressional intent concerning the servicing of mortgages by mortgagees which, by reason of their status as non-insured institutions, are not eligible to sell mortgages to the corporation. This provision does not expand in any way the existing categories of institutions eligible to sell mortgages the FHLMC. The conferees, however, are concerned that non-insured institutions might utilize eligible mortgage sellers as conduits to effect indirect sales to FHLMC. Since FHLMC now has the power to regulate the amount of mortgages purchased from any one eligible seller, the Corporation may, for example, limit to a reasonable percentage of an eligible seller's total annual volume of mortgage loans the amount of such loans for which the eligible seller has contracted servicing of mortgages to non-insured institutions.

*Federal National Mortgage Association*

The Senate bill contained provisions (1) removing the 10 percent limitation on FNMA purchases or purchases of older mortgages provided an equivalent dollar amount of such mortgages is invested in residential mortgages within 180 days; and (2) increasing FNMA mortgage ceilings for Alaska, Guam, and Hawaii to a level 25 percent above regular FHLBB savings and loan ceilings. The House amendment contained provisions increasing the mortgage ceilings for Alaska, Guam, and Hawaii to a level 50 percent above the FHLBB ceiling. The conference report contains the House provisions with an amendment providing for a 20 percent limitation on FNMA purchases of older mortgages.

*Urban homesteading*

The Senate bill contained a provision authorizing HUD to transfer, without payment, Secretary-held real property (deemed suitable by HUD) for use in an approved urban homestead program. The property could be transferred to a unit of general local government or its public agency designee and would be required to be improved by a one-to-four family dwelling, unoccupied, and requested by that governmental unit or agency for use in its urban homestead program. Appropriations of not to exceed $5 million annually for Fiscal Years 1975 and 1976 would be authorized to reimburse the housing insurance funds for the aggregate fair market value of the properties transferred and to provide technical assistance. The House amendment contained a provision directing HUD to compile a catalogue of all unoccupied single-family dwellings owned by him) (or owned by a State or local government which requests that they be placed in the catalogue) suitable for occupancy and rehabilitation by qualified low- and moderate-income families. HUD would transfer such dwellings for $1 to qualified families under certain specific conditions. Section 312 rehabilitation loans would be available to occupants of homestead dwellings and appropriation of such sums, as may be necessary to carry out this program, would be authorized.

The conference report contains the Senate provisions with an amendment directing HUD, upon request of a unit of general local government or a State, to provide a listing of all unoccupied one-to-four family residences to which the Secretary holds title and which are located within the geographic jurisdiction of such unit of government or State.

*Rehabilitation loans*

The Senate bill contained provisions not in the House amendment (1) broadening the geographical area of eligibility for section 312 rehabilitation loans to areas served by the community development and urban homesteading programs; (2) raising the eligibility requirements for owner applicants, who must be unable to secure other funds without paying more than 25 percent (previously 20 percent if refinancing was involved) of monthly income; (3) requiring multifamily rehabilitation loans to benefit lower-income tenants; and (4) limiting loans to $8,000 per family unit, except in high-cost areas. The conference report contains the Senate provisions with respect only to (1) above.

The Senate bill provided for extension of the section 312 rehabilitation loan program to July 1, 1976. The House amendment terminated this program on January 1, 1975. The conference report contains the Senate provision, with an amendment extending the program for one year after enactment of the bill.

*Waiver of GNMA mortgage limitations*

The Senate bill extended the current $33,000 temporary ceiling on mortgages GNMA may purchase to July 1, 1975. The House amendment increased the basic $22,000 GNMA mortgage limit in existing law to $38,000. The conference report contains the Senate provision, with amendments (1) making the $33,000 limit permanent/and (2) authorizing the HUD Secretary to increase that limit to $38,000 where he finds that cost levels so require.

*Interstate land sales*

The Senate bill contained a provision not in the House amendment (1) exempting from the requirements of the Interstate Land Sales Act the sale or lease of lots in bona fide industrial or commercial developments (stringent requirements must be met for such an exemption); (2) providing for a cooling off period of three business days (instead of the 48-hour period now in the law) and deleting the provision permitting a purchaser to waive his revocation right if he signs a statement that he has inspected his lot and read and understood the property report; and (3) making clear that the Interstate Land Sales Act applies to transactions involving communications by the parties in the United States and a foreign country. The conference report contains these Senate provisions.

*Program levels*

The Senate bill contained provisions not in the House amendment requiring the President to make available for obligation, in a timely manner, all funds appropriated under this act; barring delays in processing applications and requiring HUD to make available for commitment funds appropriated or otherwise made available by Congress for housing programs in proportion to appropriated dollar amounts. The conference report does not contain these Senate provisions.

*Transitional authorizations*

The Senate bill contained provisions not in the House amendment extending through Fiscal Year 1975 and providing interim authorizations for (1) basic water and sewer and neighborhood facilities (no additional dollar authorization) and (2) the rent supplements program ($50 million). The conference report does not contain these Senate provisions.

*Energy*

The Senate bill contained a provision not in the House amendment requiring the Secretary of HUD to include, in any environmental impact statements he is required to prepare, a statement concerning the impact upon energy resources of the proposed project. The conference report does not contain this Senate provision.

The conferees understand that the Council of Environmental Quality by regulation already encourages such energy impact statements and expects the Secretary to comply with these regulations both in cases where he himself is filing a statement and in cases where such statements are filed by States or local units of government.

*Tax incentives review*

The Senate bill contained a provision not in the House amendment requiring HUD and the Treasury to study and report, with recommendations for change, on the effects of tax incentives for investment in low- and moderate-income multifamily housing. The conference report does not contain this Senate provision.

*Mortgage proceeds*

The Senate bill contained a provision not in the House amendment requiring HUD to initiate action to secure the payment of any deficiency after foreclosure of a mortgage where the Secretary believes that proceeds have been fraudulently misappropriated. The conference report contains this Senate provision.

*Statistics*

The Senate bill contained a provision not in the House amendment requiring HUD to develop, maintain, and report annually detailed housing mortgage insurance and housing assistance program information. The conference report does not contain this Senate provision.

*New communities*

The House amendment contained a number of provisions relating to HUD's new communities program not contained in the Senate bill. These provisions (1) changed the name of HUD's Community Development Corporation to "New Community Development Corporation;" (2) increased the size of the Corporation's board of directors from five to seven members; (3) changed the amount of interest differential grants which HUD is authorized to make to State and local public agencies to an amount equal to 30 percent of the interest paid on agency obligations; (4) authorized HUD to make new community supplemental grants for projects assisted by the National Foundation on Arts and Humanities; and (5) permitted waste disposal installations and community or neighborhood central heating or air conditioning systems to be financed with the proceeds of guaranteed loans. The conference report contains these House provisions.

*Counseling and technical assistance program*

The House amendment contains provisions not in the Senate bill (1) authorizing "open end" dollar authorizations for HUD's section 106 counseling and technical assistance program: and (2) including local public housing agencies as sponsors eligible for section 106(b) loans for pre-construction expenses. The conference report contains these House provisions.

*Limitation on withholding or conditioning HUD assistance*

The House amendment contained a provision not in the Senate bill prohibiting administrative withholding or conditioning of Federal housing or community development assistance by reason of the fact that State or local governments use the proceeds of tax exempt borrowings to provide financing for use in connection with such Federal assistance. The conference report contains this House provision.

*Flood insurance*

The House amendment contained provisions not in the Senate bill (1) directing Federal agencies supervising lending institutions to require such institutions to notify the purchaser or the lessee of the party obtaining a loan secured by real property located in a designated flood prone area of such flood hazards in writing, within a reasonable period of time in advance of the signing of the purchase agreement, lease, or other documents; and (2) providing that any community that has made adequate progress on the construction of a flood protection system meeting the 100-year protection standard, as determined by HUD, shall be eligible for flood insurance under the Federal flood insurance program at subsidy premium rates if certain specific conditions were met. The conference report contains these House provisions.

*Additional HUD Assistant Secretaries*

The House amendment contained a provision not in the Senate bill increasing from six to eight the number of level IV Assistant Secretaries authorized for HUD. The conference report contains this House provision.

*Urban renewal—Trenton, N.J.*

The House amendment contained a provision not in the Senate bill making eligible as a grant-in-aid local expenditures for the Broad and Front Street Garage in Trenton, N.J., in accordance with provisions of title I of the Housing Act of 1949. The conference report contains this House provision.

*Condominium and cooperative study*

The House amendment contained a provision not in the Senate bill directing the Secretary of HUD to conduct a full and complete investigation and study with respect to problems, difficulties, and abuses or potential abuses which may be involved in condominium or cooperative housing, and to report to the Congress not later than one year after date of enactment. The conference report contains this House provision.

*Participation of local governments in regional planning organizations or COG's*

The House amendment contained a provision not in the Senate bill providing that participation of a unit of local government in any program authorized by this Act shall not be affected by such units, membership or non-membership in a regional planning organization or a council of governments. The conference report does not contain this House provision.

*House, of last report*

The House amendment contained a provision not in the Senate bill authorizing HUD to pick sponsors or act as a sponsor of housing in any community where no sponsors are available, with such designated sponsors to be approved by the Governor or State housing agency. The conference report does not contain this House provision.

*Materials, design and construction requirements for assisted housing*

The House amendment contained a provision not in the Senate bill directing the Secretary of HUD to take such steps as may be necessary to make certain all housing for low- and moderate-income families constructed with HUD assistance utilizes materials of high quality and durability regardless of any savings in cost which might otherwise be realized through the use of inferior design, construction or materials. The conference report does not contain this provision.

*Mass transportation*

The Senate bill contained a provision not in the House amendment prohibiting Federal aid for the purchase of buses to any public transit system which engages in charter bus operations outside the urban area it regularly serves. The conference report contains this Senate provision.

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## CONFERENCE REPORT ON S. 1769, FIRE PREVENTION AND CONTROL ACT OF 1974

Mr. TEAGUE submitted the following conference report and statement on the Senate bill (S. 1769) to reduce the burden on interstate commerce caused by avoidable fires and fire losses, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 93-1277)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1769) to reduce the burden on interstate commerce caused by avoidable fires and fire losses, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Federal Fire Prevention and Control Act of 1974".

FINDINGS

SEC. 2. The Congress finds that—

(1) The National Commission on Fire Prevention and Control, established pursuant to Public Law 90-259, has made an exhaustive and comprehensive examination of the Nation's fire problem, has made detailed findings as to the extent of this problem in terms of human suffering and loss of life and property, and has made ninety thoughtful recommendations.

(2) The United States today has the highest per capital rate of death and property loss from fire of all the major industrialized nations in the world.

(3) Fire is an undue burden affecting all Americans, and fire also constitutes a public health and safety problem of great dimensions. Fire kills 12,000 and scars and injures 300,000 Americans each year, including 50,000 individuals who require extended hospitalization. Almost $3 billion worth of property is destroyed annually by fire, and the total economic cost of destructive fire in the United States is estimated conservatively to be $11,000,000,000 per year. Firefighting is the Nation's most hazardous profession.

(4) Such losses of life and property from fire are unacceptable to the Congress.

(5) While fire prevention and control is and should remain a State and local responsibility, the Federal Government must help if a significant reduction in fire losses is to be achieved.

(6) The fire service and the civil defense program in each locality would both benefit from closer cooperation.

(7) The Nation's fire problem is exacerbated by (A) the indifference with which some Americans confront the subject; (B) the Nation's failure to undertake enough research and development into fire and fire-related problems; (C) the scarcity of reliable data and information; (D) the fact that designers and purchasers of buildings and products generally give insufficient attention to fire safety; (E) the fact that many communities lack adequate building and fire prevention codes; and (F) the fact that local fire departments spend about 95 cents of every dollar appropriated to the fire services on efforts to extinguish fires and only about 5 cents on fire prevention.

(8) There is a need for improved professional training and education oriented toward improving the effectiveness of the fire services, including an increased emphasis on preventing fires and on reducing injuries to firefighters.

(9) A national system for the collection, analysis, and dissemination of fire data is needed to help local fire services establish research and action priorities.

(10) The number of specialized medical centers which are properly equipped and staffed for the treatment of burns and the rehabilitation of victims of fires is inadequate.

(11) The unacceptably high rates of death, injury, and property loss from fire can be reduced if the Federal Government establishes a coordinated program to support and reinforce the fire prevention and control activities of State and local governments.

PURPOSES

SEC. 3. It is declared to be the purpose of Congress in this Act to—

(1) reduce the Nation's losses caused by fire through better fire prevention and control;

(2) supplement existing programs of research, training, and education, and to encourage new and improved programs and activities by State and local governments;

(3) establish the National Fire Prevention and Control Administration and the Fire Research Center within the Department of Commerce; and

(4) establish an intensified program of research into the treatment of burn and smoke injuries and the rehabilitation of victims of fires within the National Institutes of Health.

DEFINITIONS

SEC. 4. As used in this Act, the term—

(1) "Academy" means the National Academy for Fire Prevention and Control;

(2) "Administration" means the National Fire Prevention and Control Administration established pursuant to section 5 of this Act;

(3) "Administrator" means the Administrator of the National Fire Prevention and Control Administration;

(4) "fire service" means any organization in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private firefighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a Federal installation, a State, city, town, borough, parish, county, fire district, fire protection district, rural fire district, or other special district. The terms "fire prevention", "firefighting", and "firecontrol" relate to activities conducted by a fire service;

(5) "local" means of or pertaining to any city, town, county, special purpose district, unincorporated territory, or other political subdivision of a State;

(6) "Secretary" means the Secretary of Commerce; and

(7) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Trust Territory of the Pacific Islands and any other territory or possession of the United States.

ESTABLISHMENT OF THE NATIONAL FIRE PREVENTION AND CONTROL ADMINISTRATION

SEC. 5. (a) ESTABLISHMENT OF ADMINISTRATION.—There is hereby established in the Department of Commerce an agency which shall be known as the National Fire Prevention and Control Administration.

(b) ADMINISTRATOR.—There shall be at the head of the Administration the Administrator of the National Fire Prevention and Control Administration. The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule pay rates (5 U.S.C. 5315). The Administrator shall report and be responsible to the Secretary.

(c) DEPUTY ADMINISTRATOR.—There shall be in the Administration a Deputy Administrator of the National Fire Prevention and Control Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule pay rate (5 U.S.C. 5316). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

PUBLIC EDUCATION

SEC. 6. The Administrator is authorized to take all steps necessary to educate the public and to overcome public indifference as to fire and fire prevention. Such steps may include, but are not limited to, publications, audiovisual presentations, and demonstrations. Such public education efforts shall include programs to provide specialized information for those groups of individuals who are particularly vulnerable to fire hazards, such as the young and the elderly. The Administrator shall sponsor and encourage research, testing, and experimentation to determine the most effective means of such public education.

NATIONAL ACADEMY FOR FIRE PREVENTION AND CONTROL

SEC. 7. (a) ESTABLISHMENT.—The Secretary shall establish, at the earliest practicable date, a National Academy for Fire Prevention and Control. The purpose of the Academy shall be to advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities.

(b) SUPERINTENDENT.—The Academy shall be headed by a Superintendent, who shall be appointed by the Secretary. In exercising the powers and authority contained in this section the Superintendent shall be subject to the direction of the Administrator.

(c) POWERS OF SUPERINTENDENT.—The Superintendent is authorized to—

(1) develop and revise curricula, standards for admission and performance, and criteria for the awarding of degrees and certifications;

(2) appoint such teaching staff and other personnel as he determines to be necessary or appropriate;

(3) conduct courses and programs of training and education, as defined in subsection (d) of this section;

(4) appoint faculty members and consultants without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and, with respect to temporary and intermittent services, to make appointments to the same extent as is authorized by section 3109 of title 5, United States Code;

(5) establish fees and other charges for attendance at, and subscription to, courses and programs offered by the Academy. Such fees may be modified or waived as determined by the Superintendent;

(6) conduct short courses, seminars, workshops, conferences, and similar education and training activities in all parts and localities of the United States;

(7) enter into such contracts and take such other actions as may be necessary in carrying out the purposes of the Academy; and

(8) consult with officials of the fire services and other interested persons in the exercise of the foregoing powers.

(d) PROGRAM OF THE ACADEMY.—The Superintendent is authorized to—

(1) train fire service personnel in such skills and knowledge as may be useful to advance their ability to prevent and control fires, including, but not limited to—

(A) techniques of fire prevention, fire inspection, firefighting, and fire and arson investigation;

(B) tactics and command of firefighting for present and future fire chiefs and commanders;

(C) administration and management of fire services;

(D) tactical training in the specialized field of aircraft fire control and crash rescue;

(E) tactical training in the specialized field of fire control and rescue aboard waterborne vessels; and

(F) the training of present and future instructors in the aforementioned subjects;

(2) develop model curricula, training programs, and other educational materials suitable for use at other educational institutions, and to make such materials available without charge;

(3) develop and administer a program of correspondence courses to advance the knowledge and skills of fire service personnel;

(4) develop and distribute to appropriate officials model questions suitable for use in conducting entrance and promotional examinations for fire service personnel; and

(5) encourage the inclusion of fire prevention and detection technology and practices in the education and professional practice of architects, builders, city planners, and others engaged in design and planning affected by fire safety problems.

(e) TECHNICAL ASSISTANCE.—The Administrator is authorized, to the extent that he determines it necessary to meet the needs of the Nation, to encourage new programs and to strengthen existing programs of education and training by local fire services, units, and departments, State and local governments, and private institutions, by providing technical assistance and advice to—

(1) vocational training programs in techniques of fire prevention, fire inspection, firefighting, and fire and arson investigation;

(2) fire training courses and programs at junior colleges; and

(3) four-year degree programs in fire engineering at colleges and universities.

(f) ASSISTANCE.—The Administrator is authorized to provide assistance to State and local fire service training programs through grants, contracts, or otherwise. Such assistance shall not exceed 4 per centum of the amount authorized to be appropriated in each fiscal year pursuant to section 17 of this Act.

(g) SITE SELECTION.—The Academy shall be located on such site as the Secretary selects, subject to the following provisions:

(1) The Secretary is authorized to appoint a Site Selection Board consisting of the Academy Superintendent and two other members to survey the most suitable sites for the location of the Academy and to make recommendations to the Secretary.

(2) The Site Selection Board in making its recommendations and the Secretary in making his final selection, shall give consideration to the training and facility needs of the Academy, environmental effects, the possibility of using a surplus Government facility, and such other factors as are deemed important and relevant. The Secretary shall make a final site selection not later than 2 years after the date of enactment of this Act.

(h) CONSTRUCTION APPROVAL.—(1) No appropriations shall be made for the planning or construction of facilities for the Academy involving an expenditure in excess of $100,000 if such planning or construction has not been approved by resolutions adopted in substantially the same form by the Committee on Science and Astronautics of the House of Representatives and by the Committee on Commerce of the Senate. For the purpose of securing consideration of such approval, the Secretary shall transmit to the Congress a prospectus of the proposed facility including, but not limited to, a brief description of the facility to be planned or constructed, the location of the facility, and an estimate of the maximum cost of the facility.

(2) The estimated maximum cost of any facility approved under this subsection as set forth in the prospectus, may be increased by an amount equal to the percentage increase, if any, as determined by the Secretary, in construction costs, from

the date of transmittal of such prospectus to Congress, but in no event shall the increase authorized by this paragraph exceed 10 per centum of such estimated maximum cost.

(i) EDUCATIONAL AND PROFESSIONAL ASSISTANCE.—The Administrator is authorized to—

(1) provide stipends to students attending Academy courses and programs, in amounts up to 75 per centum of the expense of attendance, as established by the Superintendent;

(2) provide stipends to students attending courses and nondegree training programs approved by the Superintendent at universities, colleges, and junior colleges, in amounts up to 50 per centum of the cost of tuition;

(3) make or enter into contracts to make payments to institutions of higher education for loans, not to exceed $2,500 per academic year for any individual who is enrolled on a full-time basis in an undergraduate or graduate program of fire research or engineering which is certified by the Superintendent. Loans under this paragraph shall be made on such terms and subject to such conditions as the Superintendent and each institution involved may jointly determine; and

(4) establish and maintain a placement and promotion opportunities center in cooperation with the fire services, for firefighters who wish to learn and take advantage of different or better career opportunities. Such center shall not limit such assistance to students and graduates of the Academy, but shall undertake to assist all fire service personnel.

(j) BOARD OF VISITORS.—Upon establishment of the Academy, the Secretary shall establish a procedure for the selection of professionals in the field of fire safety, fire prevention, fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management to serve as members of a Board of Visitors for the Academy. Pursuant to such procedure, the Secretary shall select eight such persons to serve as members of such Board of Visitors to serve such terms as the Secretary may prescribe. The function of such Board shall be to review annually the program of the Academy and to make comments and recommendations to the Secretary regarding the operation of the Academy and any improvements therein which such Board deems appropriate. Each member of such Board shall be reimbursed for any expenses actually incurred by him in the performance of his duties as a member of such Board.

(k) ACCREDITATION.—The Superintendent is authorized to establish a Committee on Fire Training and Education which shall inquire into and make recommendations regarding the desirability of establishing a mechanism for accreditation of fire training and education programs and courses, and the role which the Academy should play if such a mechanism is recommended. The Committee shall consist of the Superintendent as Chairman and eighteen other members appointed by the Administrator from among individuals and organizations possessing special knowledge and experience in the field of fire training and education or related fields. The Committee shall submit to the Administrator within two years after its appointment, a full and complete report of its findings and recommendations. Upon the submission of such report, the Committee shall cease to exist. Each appointed member of the Committee shall be reimbursed for expenses actually incurred in the performance of his duties as a member.

(l) ADMISSION.—The Superintendent is authorized to admit to the courses and programs of the Academy individuals who are members of the firefighting, rescue, and civil defense forces of the Nation and such other individuals, including candidates for membership in these forces, as he determines can benefit from attendance. Students shall be admitted from any State, with due regard to adequate representation in the student body of all geographic regions of the Nation. In selecting students, the Superintendent may seek nominations and advice from the fire services and other organizations which wish to send students to the Academy.

FIRE TECHNOLOGY

SEC. 8. (a) TECHNOLOGY DEVELOPMENT PROGRAM.—The Administrator shall conduct a continuing program of development, testing, and evaluation of equipment for use by Nation's fire, rescue, and civil defense services with the aim of making available improved suppression, protective, auxiliary, and warning devices incorporating the latest technology. Attention shall be given to the standardization, compatability, and interchangeability of such equipment. Such development, testing, and evaluation activities shall include, but need not be limited to—

(1) safer, less cumbersome articles of protective clothing, including helmets, boots, and coats;

(2) breathing apparatus with the necessary duration of service, reliability, low weight, and ease of operation for practical use;

(3) safe and reliable auxiliary equipment for use in fire prevention detection, and control, such as fire location detectors, visual and audio communications equipment, and mobile equipment;

(4) special clothing and equipment needed for forest fires, brush fires, oil and gasoline fires, aircraft fires and crash rescue, fires occurring aboard waterborne vessels, and in other special firefighting situations;

(5) fire detectors and related equipment for residential use with high sensitivity and reliability, and which are sufficiently inexpensive to purchase, install, and maintain to insure wide acceptance and use;

(6) in-place fire prevention systems of low cost and of increased reliability and effectiveness;

(7) methods of testing fire alarms and fire protection devices and systems on a noninterference basis;

(8) the development of purchase specifications, standards, and acceptance and validation test procedures for all such equipment and devices; and

(9) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

(b) LIMITATION.—The Administration shall not engage in the manufacture or sale of any equipment or device developed pursuant to this section, except to the extent that it deems it necessary to adequately develop, test, or evaluate such equipment or device.

(c) MANAGEMENT STUDIES.—(1) The Administrator is authorized to conduct, directly or through contracts or grants, studies of the operations and management aspects of fire services, utilizing quantitative techniques, such as operations research, management economics, cost effectiveness studies, and such other techniques and methods as may be applicable and useful. Such studies shall include, but need not be limited to, the allocation of resources, the optimum location of fire stations, the optimum geographical area for an integrated fire service, the manner of responding to alarms, the operation of citywide and regional fire dispatch centers, firefighting under conditions of civil disturbance, and the effectiveness, frequency, and methods of building inspections.

(2) The Administrator is authorized to conduct, directly or through contracts or grants, research concerning the productivity and efficiency of fire service personnel, the job categories and skills required by fire services under varying conditions, the reduction of injuries to fire service personnel, the most effective fire prevention programs and activities, and techniques for accurately measuring and analyzing the foregoing.

(3) The Administrator is authorized to conduct, directly or through contracts, grants, or other forms of assistance, development, testing, and demonstration projects to the extent deemed necessary to introduce and to encourage the acceptance of new technology, standards, operating methods, command techniques, and management systems for utilization by the fire services.

(4) The Administrator is authorized to assist the Nation's fire services, directly or through contracts, grants, or other forms of assistance, to measure and evaluate, on a cost-benefit basis, the effectiveness of the programs and activities of each fire service and the predictable consequences on the applicable local fire services of coordination or combination, in whole or in part, in a regional, metropolitan, or statewide fire service.

(d) RURAL ASSISTANCE.—The Administrator is authorized to assist the Nation's fire services, directly or through contracts, grants, or other forms of assistance, to sponsor and encourage research into approaches, techniques, systems, and equipment to improve fire prevention and control in the rural and remote areas of the Nation.

(e) COORDINATION.—In establish and conducting programs under this section, the Administrator shall take full advantage of applicable technological developments made by other departments and agencies of the Federal Government, by State and local governments, and by business, industry, and nonprofit associations.

NATIONAL FIRE DATA CENTER

SEC. 9. (a) GENERAL.—The Administrator shall operate, directly or through contracts or grants, an integrated, comprehensive National Fire Data Center for the selection, analysis, publication, and dissemination of information related to the prevention, occurrence, control, and results of fires of all types. The program of such Data Center shall be designed to (1) provide an accurate nationwide analysis of the fire problem, (2) identify major problem areas, (3) assist in setting priorities, (4) determine possible solutions to problems, and (5) monitor the progress of programs to reduce fire losses. To carry out these functions, the Data Center shall gather and analyze—

(1) information on the frequency, causes, spread, and extinguishment of fires;

(2) information on the number of injuries and deaths resulting from fires, including the maximum available information on the specific causes and nature of such injuries and deaths, and information on property losses;

(3) information on the occupational hazards faced by firefighters, including the causes of deaths and injuries arising directly and indirectly, from firefighting activities;

(4) information on all types of firefighting activities, including inspection practices;

(5) technical information related to building construction, fire properties of materials, and similar information;

(6) information on fire prevention and control laws, systems, methods, techniques, and administrative structures used in foreign nations;

(7) information on the causes, behavior, and best method of control of other types of fires, including, but not limited to, forest fires, brush fires, fire underground, oil blowout fires, and waterborne fires; and

(8) such other information and data as is deemed useful and applicable.

(b) METHODS.—In carrying out the program of the Data Center, the Administrator is authorized to—

(1) develop standardized data reporting methods;

(2) encourage and assist State, local, and other agencies, public and private, in developing and reporting information; and

(3) make full use of existing data gathering and analysis organizations, both public and private.

(c) DISSEMINATION.—The Administrator shall insure dissemination to the maximum extent possible of fire data collected and developed by the Data Center, and shall make such data, information, and analysis available in appropriate form to Federal agencies, State and local governments, private organizations, industry, business, and other interested persons.

MASTER PLAN DEMONSTRATION PROJECTS

SEC. 10. (a) GENERAL.—The Administrator shall establish master plan demonstration projects, which shall commence not later than 2 years after the date of enactment of this Act. Not less than three nor more than eight such projects shall be so assisted. Any demonstration project under this section shall be conducted by, or under the supervision of, a State in accordance with an application submitted by such State under subsection (c) of this section. If such State includes a standard metropolitan statistical area, as defined by the Bureau of the Census, the geographical boundaries of which include two or more States, such State shall include the entire such standard metropolitan statistical area in its master plan demonstration project.

(b) ELIGIBILITY FOR GRANTS.—The Administrator shall establish criteria of eligibility for awarding master plan demonstration project grants. In awarding such project grants, he shall select projects which are unique in terms of—

(1) the characteristics of the State including, but not limited to, density and distribution of population; ratio of volunteer versus paid fire services; geographic location, topography, and climate; per capita rate of death and property loss from fire; size and characteristics of political subdivisions of the State; and socioeconomic composition; and

(2) the approach to development and implementation of the master plan which is proposed to be developed with Federal assistance under this section. Such approaches may include central planning by a State agency, regionalized planning within a State coordinated by a State agency, or local planning supplemented and coordinated by a State agency.

(c) PROCEDURE FOR AWARDING GRANTS.—A grant under this section may be obtained upon an application by a State at such time, in such manner, and containing such information as the Administrator shall require. Upon the approval of any such application, the Administrator may make a grant to the State to pay each fiscal year an amount not in excess of 80 per centum of the total cost of such project. Not more than 50 per centum of the amount of each grant shall be allocated to the planning and development of the master plan and the remainder to partial or total implementation. Payments under this subsection may be made in advance, in installments, or by way of reimbursement.

(d) MASTER PLAN.—(1) Each demonstration project established pursuant to this section shall result in the planning and implementation of a comprehensive master plan for fire protection for each State funded thereunder. Each such master plan shall contain—

(A) a survey of the resources and personnel of existing fire services and an analysis of the effectiveness of the fire and building codes in the State;

(B) an analysis of short- and long-term fire prevention and control needs in the State;

(C) a plan to meet the fire prevention and control needs of the State; and

(D) an estimate of costs and a realistic plan for financing implementation of the plan and operation on a continuing basis, and a summary of problems that are anticipated in implementing such plan.

(2) Four years after the date of enactment of this Act, the Secretary shall submit to Congress a summary and evaluation of the master plans prepared pursuant to this section. Such report shall also assess the costs and benefits of the master plan program and recommend to Congress whether Federal financial assistance should be authorized in order that master plans can be developed in all States.

(e) AUTHORIZATION FOR APPROPRIATION.—There is authorized to be appropriated to carry out the provisions of this section not to exceed $2,500,000. Not more than 35 per centum of the amount appropriated under this section for any fiscal year may be granted for projects in any one State.

REIMBURSEMENT FOR COSTS OF FIREFIGHTING ON FEDERAL PROPERTY

SEC. 11. (a) CLAIM.—Each fire service that engages in the fighting of a fire on property which is under the jurisdiction of the United States may file a claim with the Administrator for the amount of direct expenses and direct losses incurred by such fire service as a result of fighting such fire. The claim shall include such supporting information as the Administrator may prescribe.

(b) DETERMINATION.—Upon receipt of a claim filed under subsection (a) of this section, the Administrator shall determine—

(1) what payments, if any, to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question;

(2) the extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim; and

(3) the amount, if any, of the additional costs referred to in paragraph (2) of this subsection which were not adequately covered by the payments referred to in paragraph (1) of this subsection.

(c) PAYMENT.—The Secretary shall forward the claim and a copy of the Administrator's determination under subsection (b)(3) of this section to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination, pay such fire service or its parent jurisdiction, from any moneys in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred, a sum no greater than the amount determined with respect to the claim under subsection (b)(3) of this section.

(d) ADJUDICATION.—In the case of a dispute arising in connection with a claim under this section, the Court of Claims of the United States shall have jurisdiction to adjudicate the claim and enter judgment accordingly.

REVIEW OF CODES

SEC. 12. The Administrator is authorized to review, evaluate, and suggest improvements in State and local fire prevention codes, building codes, and any relevant Federal or private codes and regulations. In evaluating any such code or codes, the Administrator shall consider the human impact of all code requirements, standards, or provisions in terms of comfort and habitability for residents or employees, as well as the fire prevention and control value or potential of each such requirement, standard, or provision.

FIRE SAFETY EFFECTIVENESS STATEMENTS

SEC. 13. The Administrator is authorized to encourage owners and managers of residential multiple-unit, commercial, industrial, and transportation structures to prepare Fire Safety Effectiveness Statements, pursuant to standards, forms, rules, and regulations to be developed and issued by the Administrator.

ANNUAL CONFERENCE

SEC. 14. The Administrator is authorized to organize, or to participate in organizing, an annual conference on fire prevention and control. He may pay, in whole or in part, the cost of such conference and the expenses of some or all of the participants. All of the Nation's fire services shall be eligible to send representatives to each conference to discuss, exchange ideas on, and participate in educational programs on new techniques in fire prevention and control. Such conferences shall be open to the public.

PUBLIC SAFETY AWARDS

SEC. 15. (a) ESTABLISHMENT.—There are hereby established two classes of honorary awards for the recognition of outstanding and distinguished service by public safety officers—

(1) the President's Award For Outstanding Public Safety Service ("President's Award"); and

(2) the Secretary's Award For Distinguished Public Safety Service ("Secretary's Award").

(b) DESCRIPTION.—(1) The President's Award shall be presented by the President of the United States to public safety officers for extraordinary valor in the line of duty or for outstanding contribution to public safety.

(2) The Secretary's Award shall be presented by the Secretary, the Secretary of Defense, or by the Attorney General to public safety officers for distinguished service in the field of public safety.

(c) SELECTION.—The Secretary, the Secretary of Defense, and the Attorney General shall advise and assist the President in the selection of individuals to whom the President's Award shall be tendered and in the course of performing such duties they shall seek and review nominations for such awards which are submitted to them by Federal, State, county, and local government officials. They shall annually transmit to the President the names of those individuals determined by them to merit the award, together with the reasons therefor. Recipients of the President's Award shall be selected by the President.

(d) LIMITATION.—(1) There shall not be presented in any one calendar year in excess of twelve President's Awards.

(2) There shall be no limitation on the number of Secretary's Awards presented.

(e) AWARD.—(1) Each President's Award shall consist of—

(A) a medal suitably inscribed, bearing such devices and emblems, and struck from such material as the Secretary of the Treasury, after consultation with the Secretary, the Secretary of Defense, and the Attorney General deems appropriate. The Secretary of the Treasury shall cause the medal to be struck and furnished to the President; and

(B) an appropriate citation.

(2) Each Secretary's Award shall consist of an appropriate citation.

(f) REGULATIONS.—The Secretary, the Secretary of Defense, and the Attorney General are authorized and directed to issue jointly such regulations as may be necessary to carry out this section.

(g) DEFINITIONS.—As used in this section, the term "public safety officer" means a person serving a public agency, with or without compensation, as—

(1) a firefighter;

(2) a law enforcement officer, including a corrections or court officer; or

(3) a civil defense officer.

ANNUAL REPORT

SEC. 16. The Secretary shall report to the Congress and the President not later than June 30 of the year following the date of enactment of this Act and each year thereafter on all activities relating to fire prevention and control, and all measures taken to implement and carry out this Act during the preceding calendar year. Such report shall include, but need not be limited to—

(a) a thorough appraisal including statistical analysis, estimates and long-term projections of the human and economic losses due to fire;

(b) a survey and summary, in such detail as is deemed advisable, of the research and technology program undertaken or sponsored pursuant to this Act;

(c) a summary of the activities of the Academy for the preceding 12 months, including, but not limited to—

(1) an explanation of the curriculum of study,

(2) a description of the standards of admission and performance;

(3) the criteria for the awarding of degrees and certificates; and

(4) a statistical compilation of the number of students attending the Academy and receiving degrees or certificates;

(d) a summary of the activities undertaken to assist the Nation's fire services;

(e) a summary of the public education programs undertaken;

(f) an analysis of the extent of participation in preparing and submitting Fire Safety Effectiveness Statements;

(g) a summary of outstanding problems confronting the administration of this Act, in order of priority;

(h) such recommendations for additional legislation as are deemed necessary or appropriate; and

(i) a summary of reviews, evaluations, and suggested improvements in State and local fire prevention and building codes, fire services, and any relevant Federal or private codes, regulations, and fire services.

AUTHORIZATION OF APPROPRIATIONS

SEC. 17. There are authorized to be appropriated to carry out the foregoing provisions of this Act, except section 11 of this Act, such sums as are necessary, not to exceed $15,000,000 for the fiscal year ending June 30, 1975, and not to exceed $21,000,000 for the fiscal year ending June 30, 1976.

FIRE RESEARCH CENTER

SEC. 18. The Act of March 3, 1901 (15 United States Code 278), is amended by striking out sections 16 and 17 (as added by title I of the Fire Prevention and Control Act of 1968) and by inserting in lieu thereof the following new section:

"SEC. 16. (a) There is hereby established within the Department of Commerce a Fire Research Center which shall have the mission of performing and supporting research on all aspects of fire with the aim of providing scientific and technical knowledge applicable to the prevention and control of fires. The content and priorities of the research program shall be determined in consultation with the Administrator of the National Fire Prevention and Control Administration. In implementing this section, the Secretary is authorized to conduct, directly or through contracts or grants, a fire research program, including—

"(1) basic and applied fire research for the purpose of arriving at an understanding of the fundamental process underlying all aspects of fire. Such research shall include scientific investigations of—

"(A) the physics and chemistry of combustion processes;

"(B) the dynamics of flame ignition, flame spread, and flame extinguishment;

"(C) the composition of combustion products developed by various sources and under various environmental conditions;

"(D) the early stages of fires in buildings and other structures, structural subsystems and structural components in all other types of fires, including, but not limited to, forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires, with the aim of improving early detection capability;

"(E) the behavior of fires involving all types of buildings and other structures and their contents (including mobile homes and highrise buildings, construction materials, floor and wall coverings, coatings, furnishings, and other combustible materials), and all other types of fires, including forest fires, brush fires, fires undergound, oil blowout fires, and waterborne fires;

"(F) the unique fire hazards arising from the transportation and use, in industrial and professional practices, of combustible gases, fluids, and materials;

"(G) design concepts for providing increased fire safety consistent with habitability, comfort, and human impact in buildings and other structures; and

"(H) such other aspects of the fire process as may be deemed useful in pursuing the objectives of the fire research program;

"(2) research into the biological, physiological, and psychological factors affecting human victims of fire, and the performance of individual members of fire services, including—

"(A) the biological and physiological effects of toxic substances encountered in fires;

"(B) the trauma, cardiac conditions, and other hazards resulting from exposure to fire;

"(C) the development of simple and reliable tests for determining the cause of death from fires;

"(D) improved methods of providing first aid to victms of fires;

"(E) psychological and motivational characteristics of persons who engage in arson, and the prediction and cure of such behavior;

"(F) the conditions of stress encountered by firefighters, the effects of such stress, and the alleviation and reduction of such conditions; and

"(G) such other biological, psychological, and physiological effects of fire as have significance for purposes of control or prevention of fires; and

"(3) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

"The Secretary shall insure that the results and advances arising from the work of the research program are disseminated broadly. He shall encourage the incorporation, to the extent applicable and practicable of such results and advances in building codes, fire codes, and other relevant codes, test methods, fire service operations and training, and standards. The Secretary is authorized to encourage and assist in the development and adoption of uniform codes, test methods, and standards aimed at reducing fire losses and costs of fire protection.

"(b) For the purposes of this section there is authorized to be appropriated not to exceed $3,500,000 for the fiscal year ending June 30, 1975 and not to exceed $4,000,000 for the fiscal year ending June 30, 1976."

VICTIMS OF FIRE

SEC. 19. (a) PROGRAM.—The Secretary of Health, Education, and Welfare shall establish, within the National Institutes of Health and in cooperation with the Secretary, an expanded program of research on burns, treatment of burn injuries, and rehabilitation of victims of fires. The National Institutes of Health shall—

(1) sponsor and encourage the establishment throughout the Nation of twenty-five additional burn centers, which shall comprise separate hospital facilities providing specialized burn treatment and including research and teaching programs, and twenty-five additional burn units, which shall comprise specialized facilities in general hospitals used only for burn victims;

(2) provide training and continuing support of specialists to staff the new burn centers and burn units;

(3) sponsor and encourage the establishment of ninety burn programs in general hospitals which comprise staffs of burn injury specialists;

(4) provide special training in emergency care for burn victims;

(5) augment sponsorship of research on burns and burn treatment;

(6) administer and support a systematic program of research concerning smoke inhalation injuries; and

(7) sponsor and support other research and training programs in the treatment and rehabilitation of burn injury victims.

(b) AUTHORIZATION OF APPROPRIATION.—For purposes of this section, there are authorized to be appropriated not to exceed $5,000,000 for the fiscal year ending June 30, 1975 and not to exceed $8,000,000 for the fiscal year ending June 30, 1976.

PUBLIC ACCESS TO INFORMATION

SEC. 20. Copies of any document, report, statement, or information received or sent by the Secretary or the Administrator shall be made available to the public pursuant to the provisions of section 552 of title 5, United States Code: *Provided*, That, notwithstanding the provisions of subsection (b) of such section and of section 1905 of title 18, United States Code, the Secretary may disclose information which concerns or relates to a trade secret—

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public when he determines such disclosure to be necessary in order to protect health and safety after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

ADMINISTRATIVE PROVISIONS

SEC. 21. (a) ASSISTANCE.—Each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized and directed to furnish to the Administrator, upon written request, on a reimbursable basis or otherwise, such assistance as the Administrator deems necessary to carry out his functions and duties pursuant to this Act, including, but not limited to, transfer of personnel with their consent and without prejudice to their position and ratings.

(b) POWERS.—With respect to this Act, the Administrator is authorized to—

(1) enter into without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5) such contracts, grants, leases, cooperative agreements, or other transactions as may be necessary to carry out the provisions of this Act;

(2) accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes (31 U.S.C. 665(b));

(3) purchase, lease, or otherwise acquire, own, hold, improve, use, or deal in and with any property (real, personal, or mixed, tangible or intangible), or interest in property, wherever situated; and sell, convey, mort-

gage, pledge, lease, exchange, or otherwise dispose of property and assets;

(4) procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for qualified experts; and

(5) establish such rules, regulations, and procedures as are necessary to carry out the provisions of this Act.

(c) AUDIT.—The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipients of contracts, grants, or other forms of assistance that are pertinent to its activities under this Act for the purpose of audit or to determine if a proposed activity is in the public interest.

(d) INVENTIONS AND DISCOVERIES.—All property rights with respect to inventions and discoveries, which are made in the course of or under contract with any government agency pursuant to this Act, shall be subject to the basic policies set forth in the President's Statement of Government Patent Policy issued August 23, 1971, or such revisions of that statement of policy as may subsequently be promulgated and published in the Federal Register.

(e) COORDINATION.—To the extent practicable, the Administrator shall utilize existing programs, data, information, and facilities already available in other Federal government departments and agencies and, where appropriate, existing research organizations, centers, and universities. The Administrator shall provide liaison at an appropriate oganizational level to assure coordination of his activities with State and local government agencies, departments, bureaus, or offices concerned with any matter related to programs of fire prevention and control and with private and other Federal organizations and offices so concerned.

ASSISTANCE TO CONSUMER PRODUCT SAFETY COMMISSION

SEC. 22. Upon request, the Administrator shall assist the Consumer Product Safety Commission in the development of fire safety standards or codes for consumer products, as defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

CONFORMING AMENDMENTS

SEC. 23. Section 12, of the Act of February 14, 1903, as amended (15 U.S.C. 1511), is amended to read as follows:

"BUREAUS IN DEPARTMENT

"SEC. 12. The following named bureaus, administrations, services, offices, and programs of the public service, and all that pertains thereto, shall be under the jurisditcion and subject to the control of the Secretary of Commerce:

"(a) National Oceanic and Atmospheric Administration;

"(b) United States Travel Service;

"(c) Maritime Administration;

"(d) National Bureau of Standards;

"(e) Patent Office;

"(f) Bureau of the Census;

"(g) National Fire Prevention and Control Administration; and

"(h) such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law."

And the House agree to the same.

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

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the bill, insert the following: "An Act to reduce losses of life and property, through better fire prevention and control, and for other purposes."

And the House agree to the same.

OLIN E. TEAGUE,
JOHN W. DAVIS,
JAMES W. SYMINGTON,
CHARLES A. MOSHER,
ALPHONZO BELL,
*Managers on the Part of the House.*

WARREN G. MAGNUSON,
JOHN O. PASTORE,
FRANK E. MOSS,
TED STEVENS,
J. GLENN BEALL, JR.
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1769) to reduce the burden on interstate commerce caused by avoidable fires and fire losses, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendments struck out all of the Senate bill after the enacting clause and inserted a substitute text for the Senate bill, and the Senate disagreed to the House amendments. The House amendment amended the Senate title of the bill.

The committee of conference recommends that the Senate recede from its disagreement to the amendment of the House to the text of the Senate bill, with an amendment which is a substitute for both the text of the Senate bill and the House amendment to the text of the Senate bill. The committee of conference also recommends that the Senate recede from its disagreement to the amendment of the House to the title of the Senate bill, with an amendment which is a substitute for both the title of the Senate bill and the House amendment to the title of the Senate bill. The following statement explains the resolution of differences between the Senate bill and the House amendment thereto:

STRUCTURE OF THE NEW FIRE PROGRAM

Both the Senate bill and the House amendment established a comprehensive fire prevention and control program to be located primarily in the Department of Commerce. Both programs included, but were not limited to, a fire education program, a national fire academy, a fire research and development program and a national data gathering program.

The Senate bill created the new position of Assistant Secretary of Commerce for Fire Prevention and Control. The Assistant Secretary would have been responsible for carrying out the provisions of the Act under the direction of the Secretary. The Assistant Secretary would have been appointed by the President, by and with the advice and consent of the Senate and would have received compensation at a rate prescribed by law for Assistant Secretaries of Commerce (currently a level IV position).

Title I of the House amendment established in the Department of Commerce a National Bureau of Fire Safety which was to be headed by a Presidentially appointed Director. The Fire Bureau would have undertaken programs of technology development, training and education, data collection and analysis, and public education. Title II of the House amendment established a Fire Research Center in the Department of Commerce which was intended to carry on the fire program of the National Bureau of Standards. Specifically, it would have conducted basic and applied research on the phenomenon of fire. The Director of the Fire Bureau would have received compensation at a level V and would have implemented his duties under the general direction of the Secretary of Commerce.

The Conference Substitute includes a compromise position between the Senate bill and the House amendment. The committee of conference recognized the importance of a separate and distinct fire program within the Department of Commerce while at the same time utilizing the expertise and resources of the National Bureau of standards for implementing the fire research program. As a result, Section 5 of the Conference Substitute would establish, within the Department of Commerce, an agency which shall be known as the National Fire Prevention and Control Administration. The new Administration is modeled after the existing National Oceanic and Atmospheric Administration. The committee of conference agreed to propose a separate administration with an Administrator, who would report directly to the Secretary of Commerce to insure that the fire prevention and control program would be a highly visible program. In addition, the Administrator would be responsible only to the Secretary.

The conferees, after carefully considering the merits of the organizational arrangements in the two bills, unanimously agree that it would reduce the effectiveness of the program if it were to be located under the auspices of the Assistant Secretary for Science and Technology. Accordingly, the committee of conference has agreed that a new Fire Administration to implement all aspects of the fire program, with the exception of the research program, should be established. The research program, the conferees concluded, should be implemented by the National Bureau of Standards and Section 18 of the Conference Substitute amends the act of March 3, 1901 to reflect this intent.

The new Fire Administration shall be headed by an Administrator appointed by the President, by and with the advice and consent of the Senate. He shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule pay rates. The Conference Substitute also establishes the position of Deputy Administrator. The Deputy Administrator shall be appointed by the President by and with the advice and consent of the Senate and he shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule pay rates. The Deputy Administrator shall perform such functions as the Administrator shall assign or delegate and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the Office of the Administrator.

While the Conference Substitute structurally separates the research activities from the rest of the Fire Prevention and Control Program, the conferees intend that the Secretary of Commerce shall coordinate the two so that they are complementary. In view of the fact that the Administrator is to report directly to and be responsible to the Secretary of Commerce, the Secretary will be in a good position to coordinate research priorities for the research program with the Administrator.

PUBLIC EDUCATION PROGRAM

Both the Senate bill and the House amendment stressed the importance of a comprehensive fire education program.

The Senate bill would have authorized the Secretary to take all steps necessary to educate the public and to overcome public indifference as to fire safety and fire prevention.

The House amendment would have required the Director to undertake, in collaboration with existing public and private organizations, a continuing and extensive

program of public education in fire prevention and fire safety which would have included specialized information aimed at those particularly vulnerable to fire hazards. In addition, the education program would have included research into new methods of public education in fire prevention.

The committee of conference agrees on the importance of public education as a part of the effort to reduce fire losses. Section 6 of the Conference Substitute requires the Administrator to take all steps necessary and practicable to educate the public and to overcome public indifference as to fire and fire prevention. Such steps may include, but are not limited to publications, audio-visual presentations, and demonstrations. The public education efforts shall include programs to provide specialized information for those groups of individuals who are particularly vulnerable to fire hazards, and shall also include sponsorship and encouragement of research, testing, and experimentation to determine the most effective means of such public education.

NATIONAL ACADEMY FOR FIRE PREVENTION AND CONTROL

The Senate bill would establish a National Academy for Fire Prevention and Control, while the House amendment provided for the establishment of a United States Fire Academy.

The committee of conference agreed that a central training facility for the nation's fire fighting forces is of the highest priority if the effort to reduce the losses from fires is to succeed, and accordingly section 7 establishes a National Academy for Fire Prevention and Control. In arriving at this conclusion, and in reconciling the provisions contained in the two bills regarding the specific functions of the Academy, the committee of conference carefully considered the several objectives which the Academy is established to serve. The committee of conference wishes to emphasize that it is not the intent that the National Academy for Fire Prevention and Control become a large, degree granting institution on the model of the service academies, the Coast Guard Academy, or the Merchant Marine Academy. Rather, the Fire Academy is modeled on the highly successful F.B.I. Academy, and on a number of national fire academies abroad. The intent of the conferees is that the National Fire Academy, by establishing a small, but excellent campus with a first class staff and facilities, will serve as a focal point for the professional training of fire officers.

*Conduct of Short Courses and Conferences.*—The House amendment gave the Fire Academy Superintendent authority to conduct short courses, seminars, workshops, conferences, and similar activities in all parts of the United States. The Senate bill contained general authority for the Academy to implement similar programs.

The committee of conference agreed to include the House provision in the Conference Substitute.

*Fire Prevention Practices.*—The House amendment included a provision requiring the fire program to encourage the inclusion of fire prevention technology and practices in the education and professional practice of architects, builders, city planners and owners engaged in design and planning affected by fire safety problems. The Senate bill did not contain similar provisions.

The committee of conference agreed to include the House provision in the Conference Substitute.

*Assistance to Fire Training Programs.*—The House amendment authorized the Fire Academy to assist and support existing education and training programs conducted by State and local fire units, and by private institutions. The Senate bill authorized the Fire Academy to provide three special forms of assistance to existing fire training programs: educational materials such as model curricula, correspondence courses, and model promotion examinations.

The committee of conference agreed to include authority for such assistance, but with certain limitations. The authority for financial assistance would be authorized for all types of State, local, and private institutions, but would be limited to four percent of the total amount authorized for the program of the Fire Administration.

*Academy Site and Construction Approval.*—The Senate bill provided that the Department of Commerce must obtain the approval of the Committees of jurisdiction in the House and the Senate before funds exceeding $100,000 are expended for planning or construction. The House bill contained no corresponding provision, but provided that the Secretary of Commerce shall appoint a Site Selection Board to advise him on the selection of a site for the Academy. The Board shall observe certain criteria including the possible use of a facility declared surplus by the Federal Government.

The committee of conference agreed to include both the construction approval provision from the Senate bill and the site selection provision from the House amendment.

*Student Financial Assistance.*—The House amendment provided that the Academy would be authorized to give financial assistance to students engaged in a number of different fire training and education activities. Such financial assistance would be provided to students attending the Fire Academy and to students attending Fire Engineering Programs at colleges and universities. It also included provisions for loans to individuals attending college undergraduate fire research or engineering programs. The Senate bill did not include provisions for direct financial assistance to students.

The committee of conference agreed to include the provisions of the House amendment which would authorize partial financial support for students attending the Academy and for students attending non-degree training programs at junior colleges, colleges, and universities. The loan program for undergraduate and graduate students is also included in the Conference Substitute.

*Placement Service.*—The Senate bill provided that the Academy would operate a placement assistance program for the fire services. The House amendment contained no comparable provision.

The committee of conference agreed to include this provision in the Conference Substitute.

*Board of Visitors.*—The Senate bill provided for a Board of Advisors for the Fire Academy, to be selected by the Secretary, but the size of the Board was not specified. The House amendment provided for the establishment of a Board of Visitors to the Fire Academy, made up of eight members selected by the Secretary.

The committee of conference agreed to include a Board of Visitors composed of eight members selected by the Secretary of Commerce in the Conference Substitute.

*Accreditation.*—The House amendment included provisions for the establishment by the Academy of a Committee on Fire Training and Education. The purpose of this Committee would be to inquire into and make recommendations regarding the desirability of establishing a mechanism for accreditation of fire training and education programs on a nationwide basis. This Committee would complete its report and submit its recommendations within 1 year of its appointment. The Senate bill did not include provisions for such a Committee.

The committee of conference agreed to include this section from the House amendment after changing the life of the Committee from 1 to 2 years.

*Admissions.*—The House amendment included a section providing that admission to the Academy shall be open to members of the firefighting, rescue, and civil defense forces of the Nation, and that adequate representation of all geographic regions of the Nation shall be included in the student body. The Senate bill did not include a comparable provision.

The committee of conference agreed to include the section on admissions from the House bill in the Conference Substitute.

*Continuing Study of Educational Needs.*—The House amendment included a section providing that the Fire Academy shall conduct a continuing study of the needs and content of the education and training programs both at the Academy and elsewhere. The studies would be coordinated with the Civil Defense Staff College. The Senate bill did not include a comparable section.

The committee of conference agreed to omit this provision from the Conference Substitute.

TECHNOLOGY PROGRAM

The Senate bill included provisions for a program of development, testing, and evaluation of equipment for the use of the Nation's fire services. The House amendment included similar provisions aimed at the same goal of making available to the Nation's fire, rescue, and civil defense services improved equipment for fire suppression, detection, and prevention.

The committee of conference agreed to include the fire technology program as section 8 of the Conference Substitute. The provision in the House bill providing for research on productivity measurement related to the fire services, and the provisions specifying the types of fire technology to be developed were incorporated into this section of the Conference Substitute.

NATIONAL FIRE DATA CENTER

Both the Senate bill and the House amendment provided for the operation of a comprehensive, integrated National Fire Data Information System. The language in each bill describing the type of data to be collected was identical. Both bills would have encouraged without compelling uniform reporting of fire data by local departments, utilization of existing data gathering activities, and the wide dissemination of the data collected.

The Senate bill authorized the Secretary of Commerce to establish a data center or information bank on all aspects of fire prevention and control. The Secretary was mandated to "insure dissemination to the maximum possible extent of fire data collected and developed under this section." He was also authorized to make "full use of existing data, data gathering and analysis organizations. . . ."

The House amendment authorized the Director of the National Bureau of Fire Safety to operate an integrated comprehensive national program of collecting, analyzing, and publishing fire data. Three kinds of data and information were to be collected under the comprehensive system: statistical, practical, and technical.

The Conference Substitute adopts the language of the Senate bill and the House amendment which were identical, describing the nature of the information to be gathered and analyzed. Under section 9 of the Conference Substitute, the Administrator of the National Fire Prevention and Control Administration shall operate directly, or through contracts or grants, an integrated, comprehensive National Fire Data Center for the selection, analysis, publication, and dissemination of information related to the prevention, occurrence, control, and results of fires of all types. The Data Center is designed to fulfill five needs: (1) provide an

accurate nationwide analysis of the fire problem; (2) identify major problem areas; (3) assist in setting priorities; (4) determine possible solutions to problems; and monitor the progress of programs to reduce fire losess.

The Conference Substitute also adopts much of the House language describing how the program of the Data Center is to be carried out. Specifically, the Administrator is authorized to develop standardized data reporting methods, encourage and assist state, local, and other agencies, public and private, in developing and reporting information and make full use of existing data gathering and analysis organizations, both public and private. Additionally, the Conference Substitute adopts the House language which requires the Administrator to insure dissemination to the maximum extent possible of fire data collected and developed by the Data Center. The Administrator is also directed to make such data, information and analysis available in appropriate form to Federal agencies, State and local governments, private organizations, industry, business, and other interested persons.

MASTER PLAN DEMONSTRATION PROJECTS

The Senate bill authorized and directed the Secretary of Commerce to establish master plan demonstration projects. Specifically, the Senate bill included an authorization of appropriations ($10 million total) for grants to at least five, but not more than eight States to prepare a master plan for fire prevention and control in their area. The master plan concept is designed to insure that each local fire jurisdiction sets goals and priorities for the fire services to meet the changing needs of the community. The master plan should seek to allocate resources for the maximum payoff in fire protection, and it should provide for data systems for continual monitoring for cost effectiveness.

The Senate bill outlined criteria for eligibility for master plan grants. It also established a procedure for obtaining a grant and declared that the Federal share may not exceed 80 percent of the total cost of the master plan demonstration project approved. Of the Federal funds, 50 percent shall go to planning and 50 percent to implementation of the plan. It further set forth the basic ingredients in an acceptable state master plan which is financially assisted under the act, such as the following: survey of existing systems; needs; plan for meeting the need; and estimated cost of problems in implementation of the plan. Three and one half years after enactment of the act, the Secretary was to have reported to Congress his evaluation of the master plan demonstration project program and shall have advised the Congress whether master plan grants should be authorized in order that master plans can be developed in all the States. Under the Senate bill, no more than 20 percent of the funds appropriated under the master plan program may be spent in any one State.

The House amendment contained no similar provision.

Section 10 of the Conference Substitute includes the provisions of the Senate bill with several modifications. First, whereas the Senate bill provided that the master plan projects were to have commenced not later than 18 months after the date of enactment of the act, the Conference Substitute extends the period of time to 2 years. Second, the Senate bill required the establishment of 5–8 master plan demonstration projects. The Conference Substitute reduces this to 3–8 such projects. Third, the Conference Substitute reduces the level of authorization for implementing the master plan program to $2.5 million and provides that not more than 35 percent of the amount appropriated under this section for any fiscal year may be granted for projects in any one state.

REIMBURSEMENT FOR COSTS OF FIREFIGHTING ON FEDERAL PROPERTY

The House amendment included a section providing that a fire department or fire district may be reimbursed for the direct losses and direct costs it incurs in fighting fires on Federal property. Claims for such reimbursement would be made to the Federal agency provided in the bill and would be reduced by an amount equal to any payments in lieu of taxes made for fire protection services to the local government. The Senate bill did not contain a corresponding provision.

The committee of conference agreed to include this provision with certain minor changes affecting the administrative aspects of the submission, evaluation, and payments of such claims. These changes give the Administrator of the Fire Administration the responsibility for evaluating and making determinations on claims, give the Secretary of the Treasury the responsibility for paying claims in amounts not to exceed the sum determined by the Administrator, and provides that the adjudication of any disputes arising under any such claim shall be under the jurisdiction of the United States Court of Claims.

REVIEW OF CODES

The Senate bill authorized the Secretary of Commerce to review, evaluate, and suggest improvements in State and local fire prevention building codes, fire services, and any relevant Federal and private codes, regulations, and fire services. In evaluating such a code or codes, the Secretary was to consider the human impact of all code requirements, standards, and provisions in terms of comfort and habitability for residents or employees as well as the fire prevention and control value or potential of each such requirement, standard, and provision. The Secretary was required to annually submit to Congress a summary of such reviews, evaluations, and suggestions.

The House amendment contained no similar provision.

Section 11 of the Conference Substitute adopts the Senate provision with one minor change. While the Senate provision would have required the Secretary to report to Congress annually on his review, evaluation, and suggestions for improvements in codes, the Conference Substitute requires such review, evaluation, and suggestion to be included in the Secretary's annual report to Congress, required pursuant to section 16 of the Conference Substitute.

FIRE SAFETY EFFECTIVENESS STATEMENTS

The Senate bill authorized the Secretary of Commerce to encourage owners and managers of residential multiple unit, commercial, and industrial, and transportation structures to prepare and submit to him for evaluation and certification a Fire Safety Effectiveness Statement, pursuant to standards, forms, rules, and regulations to be developed and issued by the Secretary. Any person who submitted such a statement and received certification, was entitled to attach the following statement to any contract of sale or lease or any advertisement or notice which pertains to the structure as to which such statement has been submitted: "A Fire Safety Effectiveness Statement has been prepared regarding this structure and this structure has been certified as meeting the requirements of the United States Department of Commerce."

The House amendment contained no similar provision.

Section 13 of the Conference Substitute adopts the Senate provision with modifications.

The committee of conference agreed to include the provision encouraging owners of buildings to prepare Fire Safety Effectiveness Statements. However, it deletes the procedure of submitting the Fire Safety Effectiveness Statement to the Secretary of Commerce for his evaluation and certification. While this deletion no longer requires the Secretary to evaluate and certify a Fire Safety Effectiveness Statement, it is not intended to preclude him from doing so if he determines that such a procedure is desirable. In addition, the Conference Substitute deletes the provision allowing for a Fire Safety Effectiveness Statement to be included in contracts of sale, leases, advertisements or notices pertaining to the structure. Once again, the Secretary is not precluded from administratively establishing a similar procedure.

ANNUAL CONFERENCE

The Senate bill authorized the Secretary to organize or participate in organizing an annual conference of fire prevention and control. In addition, he was authorized to pay in whole or in part the expenses of participants and all of the Nation's fire services were eligible to send representatives to each such conference.

The House amendment contained no similar provision.

Section 14 of the Conference Substitute adopts the Senate provision.

PUBLIC SAFETY AWARDS

The Senate bill established two classes of honorary awards for recognition of outstanding and distinguished service by public safety officers. These two classes of awards were the President's Award for Outstanding Public Safety Service and the Secretary's Award for Distinguished Public Safety Service. The program was designed to recognize achievement by outstanding firefighters and law enforcement officers, and was to be administered jointly by the Secretary of Commerce and the Attorney General. The Secretary and the Attorney General were to select candidates for the President's Award and the Secretary's Award and submit them to the President for decision and awarding of the conferred distinctions. Not more than 12 President's Awards were to be conferred each year, but there was no limit on the number of Secretary's Awards.

The House amendment contained no similar provision.

Section 15 of the Conference Substitute adopts the Senate provision and also provides for similar awards to be made to civil defense officers. The Secretary of Defense as well as the Secretary of Commerce and the Attorney General are to jointly administer the program of public safety awards.

ANNUAL REPORT

The Senate bill provided for the submission of an annual report to the Congress. The House amendment contained no similar provision.

The committee of conference agreed to the inclusion of this provision as section 16 with minor changes to conform with the Conference Substitute.

FIRE RESEARCH CENTER

The Senate bill included provisions for the conduct of a program of basic and applied research aimed at developing an understanding of the fundamental processes underlying all aspects of fire. The research program would have been placed under the Assistant Secretary for Fire Prevention and Control rather than in a Fire Research Center in the National Bureau of Standards.

The House amendment provided for the establishment of a Fire Research Center to perform basic and applied research related to fire. The Fire Research Center would have been established by amending the organic act of the National Bureau of Standards to include this Fire Research Center in the Bureau. The research work of the Fire Research Center would include research on all aspects of fire with the aim of providing scientific and technical knowledge applicable to the prevention and control of fires.

The committee of conference concluded that the continuation of the existing fire research program at the National Bureau of Standards would best serve the intent of the legislation. By basing the expanded fire research program on the existing staff and facilities, the research program will be able to take full advantage of the expertise and capabilities built up over the years. The committee of conference therefore included, as section 18 in the Conference Substitute, the provisions of the House amendment which establishes the Fire Research Center in the National Bureau of Standards by amending the organic act of the National Bureau of Standards.

VICTIMS OF FIRE

Both the Senate bill and the House amendment included identical provisions for the establishment of an expanded program of research on burns, the treatment of burn injuries, and the rehabilitation of the victims of fire within the National Institutes of Health. However, the Senate bill included authorization for appropriations for this program in the amounts of $7,500,000 for fiscal year 1974, $10,000,000 for fiscal year 1975, and $10,000,000 for fiscal year 1976, totaling $27,000,000 while no funds were authorized for this program in the House amendment.

The committee of conference agreed to include, as section 19, the Victims of Fire provision in the Conference Substitute, and to authorize funding for 2 rather than 3 years. The authorized funding included in the bill is in the amount of $5,000,000 for fiscal year 1975, and in the amount of $8,000,000 for fiscal year 1976.

The House conferees note that in the House of Representatives jurisdiction over the National Institutes of Health is not within the purview of the Committee on Science and Astronautics, and that agreement to restore these funds was reached only in view of the importance attached by the committee of conference to the burn research and treatment program, and with the understanding that in the House of Representatives the appropriate legislative Committee will further review and authorize this program.

PUBLIC ACCESS TO INFORMATION

The Senate bill provided that any information received by the Program for Fire Prevention and Control shall be made available to the public upon identifiable request and at reasonable cost, subject to limited exceptions.

The House amendment contained no similar provision.

Section 20 of the Conference Substitute includes a provision similar in intent to the Senate provision but with minor style alterations. The provision makes clear that this section is in addition to, and not in lieu of, the provisions of the Freedom of Information Act.

CIVIL DEFENSE

The Senate bill included no provisions specifically stating that the civil defense activities and personnel throughout the United States would be eligible to participate in the fire prevention and control activities provided for in the bill. The House amendment provided that the civil defense activities and personnel would be eligible to participate in the activities contemplated under the amendment.

The committee of conference agreed to include in the Conference Substitute those specific provisions from the House amendments which include civil defense activities most directly related to fire prevention and control activities. The Conference Substitute authorizes civil defense personnel to be admitted to the Fire Academy (section 7); the Fire Technology program to include civil defense related technology for use in fire prevention and control (section 8); and civil defense personnel to be eligible for the Public Safety Awards (section 15).

FIRE PROTECTION ASSISTANCE

The Senate bill amended the National Housing Act's section on mortgage insurance assistance by providing that the Secretary of Housing and Urban Development may guarantee loans made to nursing homes and intermediate care facilities to pay for fire safety equipment which is needed to bring the facility into compliance with the latest "Life Safety Code".

The House amendment contained no similar provision.

The Senate provision was deleted in the Conference Substitute because this section has been enacted into law as Public Law 93-204.

STUDIES

The Senate bill authorized and directed the Comptroller General of the United States to study the financing of the Nation's fire services to determine whether moneys available through State and local taxation and Federal-State revenue sharing is adequate. In addition, the bill authorized and directed the Secretary to prepare a comprehensive study of the organization and operation of the Nation's fire services.

The House amendment contained no similar provision.

The Conference Substitute deletes both studies. While the conferees believe both are important, the Administrator, under his general powers to implement the Fire Prevention and Control Program, is already authorized to conduct such studies if he deems it appropriate.

AUTHORIZATION

In the Senate bill, funding was authorized for 3 years in the total amount of $127,500,000. For fiscal year 1975, $25,000,000 was authorized for the Fire Program, and $7,500,000 for the Victims of Fires activities. For fiscal year 1976, $30,000,000 was authorized for the Fire Program, and $10,000,000 for the Victims of Fires activities. For fiscal year 1977, $35,000,000 was authorized for the Fire Program, and $10,000,000 for the Victims of Fires activities. In addition, $10,000,000 was authorized for Master Plan Demonstration Projects.

In the House amendment the authorization was for 1 year. It provided, for fiscal year 1975, $2,000,000 for the Fire Bureau, and $3,500,000 for the Fire Research Center. No funds were authorized for the Victims of Fire (burn treatment) activities or for the Master Plan Demonstration Projects. Thus the House amendment authorized a total of $5,500,000 for fiscal year 1975.

The committee of conference agreed to authorize funding for 2 years in the total amount of $59,000,000. For fiscal year 1975, $15,000,000 would be authorized for the Fire Administration (section 17). $3,500,000 for the Fire Research Center (section 18), and $5,000,000 for the Victims of Fire activities (section 19), for a total of $23,500,000. For fiscal year 1976, $21,000,000 would be authorized for the Fire Administration (section 17), $4,000,000 for the Fire Research Center (section 18), and $8,000,000 for the Victims of Fire Activities (section 19), for a total of $33,000,000. For Master Plan Demonstration Projects $2,500,000 is authorized (section 10).

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## CONFERENCE REPORT ON H.R. 11864, SOLAR HEATING AND COOLING DEMONSTRATION ACT OF 1974

Mr. TEAGUE submitted the following conference report and statement on the bill (H.R. 11864) to provide for the early commercial demonstration of the technology of solar heating by the National Aeronautics and Space Administration and the Department of Housing and Urban Development, in cooperation with the National Bureau of Standards, the National Science Foundation, the General Services Administration, and other Federal agencies, and for the early development and commercial demonstration of technology for combined solar heating and cooling:

CONFERENCE REPORT (H. REPT. No. 93-1278)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11864 to provide for the early development and commercial demonstration of the technology of solar heating and combined solar heating and cooling systems, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Solar Heating and Cooling Demonstration Act of 1974".

FINDINGS AND POLICY

SEC. 2. (a) The Congress hereby finds that—

(1) the current imbalance between supply and demand for fuels and energy is likely to persist for some time;

(2) the early demonstration of the feasibility of using solar energy for the heating and cooling of buildings could help to relieve the demand upon present fuel and energy supplies;

(3) the technologies for solar heating are close to the point of commercial application in the United States;

(4) the technologies for combined solar heating and cooling still require research, development, testing and demonstration, but no insoluble technical problem is now foreseen in achieving commercial use of such technologies;

(5) the early development and export of viable solar heating equipment and combined solar heating and cooling equipment, consistent with the established preeminence of the United States in the field of high technology products, can make a valuable contribution to our balance of trade;

(6) the widespread use of solar energy in place of conventional methods for the heating and cooling of buildings would have a significantly beneficial effect upon the environment;

(7) the mass production and use of solar heating and cooling equipment will help to eliminate the dependence of the United States upon foreign energy sources and promote the national defense;

(8) the widespread introduction of low-cost solar energy will be beneficial to consumers in a period of rapidly rising fuel cost;

(9) innovation and creativity in the development of solar heating and combined solar heating and cooling components and systems can be fostered through encouraging direct contact between the manufacturers of such systems and the architects, engineers, developers, contractors, and other persons

interested in installing such systems in buildings;

(10) evaluation of the performance and reliability of solar heating and combined solar heating and cooling technologies can be expedited by testing under carefully controlled conditions; and

(11) commercial applications of solar heating and combined solar heating and cooling technologies can be expedited by early commercial demonstration under practical conditions.

(b) It is therefore declared to be the policy of the United States and the purpose of this Act to provide for the demonstration within a three-year period of the practical use of solar heating technology, and to provide for the development and demonstration within a five-year period of the practical use of combined heating and cooling technology.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "solar heating", with respect to any building, means the use of solar energy to meet such portion of the total heating needs of such building (including hot water), or such portion of the needs of such building for hot water (where its remaining heating needs are met by other methods), as may be required under performance criteria prescribed by the Secretary of Housing and Urban Development utilizing the services of the Director of the National Bureau of Standards, and in consultation with the Director of the National Science Foundation, and the Administrator of the National Aeronautics and Space Administration;

(2) the terms "solar heating and cooling" and "combined solar heating and cooling", with respect to any building, mean the use of solar energy to provide both such portion of the total heating needs of such building (including hot water) and such portion of the total cooling needs of such building, or such portion of the needs of such building for hot water (where its remaining heating needs are met by other methods) and such portion of the total cooling needs of a building, as may be required under performance criteria prescribed by the Secretary of Housing and Urban Development utilizing the services of the Director of the National Bureau of Standards, and in consultation with the Director of the National Science Foundation, and the Administrator of the National Aeronautics and Space Administration, and such term includes cooling by means of nocturnal heat radiation, by evaporation, or by other methods of meeting peakload energy requirements at nonpeakload times;

(3) the term "residential dwellings" includes previously occupied and new single family and multifamily dwellings, mobile homes, and publicly assisted housing owned by a private sponsor or a State or local housing authority not covered by section 17;

(4) the term "Administrator" means the Administrator of the National Aeronautics and Space Administration;

(5) the term "Secretary" means the Secretary of Housing and Urban Development; and

(6) the term "Director" means the Director of the National Science Foundation.

CONDUCT OF ACTIVITIES IN SOLAR HEATING AND COOLING TECHNOLOGIES BY NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEC. 4. Section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473) is amended by redesignating subsection (b) as subsection (c), and by inserting immediately after subsection (a) the following new subsection:

"(b) The Administration shall initiate, support, and carry out such research, development, demonstrations, and other related activities in solar heating and cooling technologies (to the extent that funds are appropriated therefor) as are provided for in sections 5, 6, and 9 of the Solar Heating and Cooling Demonstration Act of 1974.".

DEVELOPMENT AND DEMONSTRATION OF SOLAR HEATING SYSTEMS TO BE USED IN RESIDENTIAL DWELLINGS

SEC. 5. (a) The Administrator and the Secretary shall promptly initiate and carry out a program, as provided in this section, for the development and demonstration of solar heating systems (including collectors, controls, and thermal storage) for use in residential dwellings.

(b)(1) Within 120 days after the date of the enactment of this Act, the Secretary, utilizing the services of the Director of the National Bureau of Standards and in consultation with the Administrator and the Director, shall determine, prescribe, and publish—

(A) interim performance criteria for solar heating components and systems to be used in residential dwellings, and

(B) interim performance criteria (relating to suitability for solar heating) for such dwellings themselves,

taking into account in each instance climatic variations existing between different geographic areas.

(2) As soon as possible after the publication of the performance criteria prescribed under paragraph (1), the Secretary, in consultation with the Director of the National Bureau of Standards and the Administrator, will select on the basis of open competition a number of designs for various types of residential dwellings suitable for and adapted to the installation of solar heating systems meeting the performance criteria prescribed under paragraph (1)(A).

(c) The Administrator, in accordance with the applicable provisions of title II of the National Aeronautics and Space Act of 1958 and under program guidelines established jointly by the Administrator and the Secretary, shall, after consultation with the Secretary—

(1) enter into such contracts and grants as may be necessary or appropriate for the development (for commercial production and residential use) of solar heating systems meeting the performance criteria prescribed under subsection (b)(1)(A) (including any further planning and design which may be required to conform with the specifications set forth in such criteria); and

(2) enter into contracts with a number of persons or firms for the procurement of solar heating components and systems meeting such performance criteria (including adequate numbers of spare and replacement parts for such systems).

(d) The Secretary shall (1) arrange for the installation of solar heating systems procured by the Administrator under subsection (c)(2) in a substantial number of residential dwellings and (2) provide for the satisfactory operation of such installations during the demonstration period. Title to and ownership of any dwellings constructed hereunder and of solar heating systems installed hereunder may be conveyed to purchasers or owners of such dwellings under terms and conditions prescribed by the Secretary, including an express agreement that any such purchaser or owner shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such system for a period of five years, and that such purchaser or owner (including any subsequent owner and occupant of the property who also makes such an agreement) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(e) The Secretary of Defense shall arrange for the installation of solar heating systems procured by the Administrator under subsection (c)(2) in a substantial number of residential dwellings which are located on Federal or federally administered property where the performance and operation of such systems can be regularly and effectively observed and monitored by designated Federal personnel.

(f) The Secretary and the Secretary of Defense, and officials responsible for administering Federal or federally administered property, shall coordinate their activities under this section to assure that solar heating systems are installed in a substantial number of residential dwellings and in a sufficient number of different geographic areas under varying climatic conditions to constitute a realistic and effective demonstration in support of the objectives of this Act.

DEVELOPMENT AND DEMONSTRATION OF COMBINED SOLAR HEATING AND COOLING SYSTEMS TO BE USED IN RESIDENTIAL DWELLINGS

SEC. 6. (a) The Administrator and the Secretary shall promptly initiate and carry out a program, as provided in this section, for the development and demonstration of combined solar heating and cooling systems (including collectors, controls, and thermal storage) for use in residential dwellings.

(b)(1) As soon as possible after the date of the enactment of this Act, the Secretary, utilizing the services of the Director of the National Bureau of Standards and in consultation with the Administrator and the Director, shall determine, prescribe, and publish—

(A) interim performance criteria for combined solar heating and cooling components and systems to be used in residential dwellings, and

(B) interim performance criteria (relating to suitability for solar heating and cooling) for such dwellings themselves,

taking into account in each instance climatic variations existing between different geographic areas.

(2) As soon as possible after the publication of the performance criteria prescribed under paragraph (1) (and if possible before the completion of the research and development provided for in subsection (c)), the Secretary, in consultation with the Director of the National Bureau of Standards and the Administrator, will select on the basis of open competition a number of designs for various types of residential dwellings suitable for and adapted to the installation of combined solar heating and cooling systems meeting the performance criteria prescribed under paragraph (1)(A).

(c) During the period immediately following the publication of performance criteria under subsection (b)(1), the Administrator, in coordination with the Director, shall undertake and conduct with respect to solar heating and cooling a program of research, development, and testing designed to provide the additional technological resources necessary for the development and commercial application of combined solar heating and cooling systems as contemplated by the program under this section.

(d) The Administrator, in accordance with the applicable provisions of title II of the National Aeronautics and Space Act of 1958 and under program guidelines established jointly by the Administrator and the Secretary, and at the earliest possible time during or immediately after the period specified in subsection (c), shall, after consultation with the Secretary—

(1) enter into such contracts and grants as may be necessary or appropriate for the development (for commercial production and residential use) of combined solar heating and cooling systems meeting the performance criteria prescribed under subsection (b)(1)(A) (including any further planning and design which may be required to conform with the specifications set forth in such criteria or to reflect the results of the activities conducted under subsection (c)); and

(2) enter into contracts with a number of persons or firms for the procurement of

combined solar heating and cooling systems meeting such performance criteria (including adequate numbers of spare and replacement parts for such systems).

(c) The Secretary shall (1) arrange for the installation of combined solar heating and cooling systems procured by the Administrator under subsection (d) (2) in a substantial number of residential dwellings and (2) provide for the satisfactory operation of such installations during the demonstration period. Title to and ownership of any dwellings constructed hereunder and of combined solar heating and cooling systems installed hereunder may be conveyed to purchasers or owners of such dwellings under terms and conditions prescribed by the Secretary, including an express agreement that any such purchaser or owner shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such system for a period of five years, and that such purchaser or owner (including any subsequent owner and occupant of the property who also makes such an agreement) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(f) The Secretary of Defense shall arrange for the installation of combined solar heating and cooling systems procured by the Administrator under subsection (d) (2) in a substantial number of residential dwellings which are located on Federal or federally administered property where the performance and operation of such systems can be regularly and effectively observed and monitored by designated Federal personnel.

(g) The Secretary and the Secretary of Defense, and officials responsible for administering Federal or federally administered property, shall coordinate their activities under this section to assure that combined solar heating and cooling systems are installed in a substantial number of residential dwellings and in a sufficient number of geographic areas under varying climatic conditions to constitute a realistic and effective demonstration in support of the objectives of this Act.

COMPREHENSIVE PROGRAM DEFINITION

SEC. 7. (a) The Administrator and the Secretary are authorized and directed to prepare a comprehensive plan for the conduct of the development and demonstration activities under section 5 and 6. In the preparation of such plan, the Administrator and Secretary shall consult with the Director of the National Bureau of Standards, the Director, the Secretary of Defense, and other Federal agencies and private organizations as appropriate.

(b) The Administrator and the Secretary shall transmit such comprehensive program plan to the President and to each House of the Congress. The plan shall be transmitted within 120 days after the date of the enactment of this Act.

TEST PROCEDURES AND DEFINITIVE PERFORMANCE CRITERIA

SEC. 8. As soon as feasible, and utilizing data available from the demonstration programs under section 5 and 6, the Secretary, utilizing the services of the Director of the National Bureau of Standards and in consultation with the Administrator and the Director shall determine, prescribe, and publish in the Federal Register in accordance with the applicable provisions regarding rulemaking prescribed by section 553 of title 5, United States Code—

(1) definitive performance criteria for solar heating and combined solar heating and cooling components and systems to be used in residential dwellings, taking into account climatic variations existing between different geographic areas;

(2) definitive performance criteria (relating to suitability for solar heating and for combined solar heating and cooling) for such dwellings, taking into account climatic variations existing between different geographic areas; and

(3) procedures whereby manufacturers of solar heating and combined solar heating and cooling components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under paragraph (1).

DEVELOPMENT AND DEMONSTRATION OF SOLAR HEATING AND COMBINED SOLAR HEATING AND COOLING SYSTEMS FOR COMMERCIAL BUILDINGS

SEC. 9. The Administrator, in consultation with the Secretary, the Director, the Administrator of General Services, and the Director of the National Bureau of Standards and concurrently with the conduct of the programs under sections 5 and 6, shall enter into arrangements with appropriate Federal agencies to carry out such projects and activities (including demonstration projects) with respect to apartment buildings, office buildings, factories, crop-drying facilities and other agricultural structures, public buildings (including schools and colleges), and other nonresidential, commercial, or industrial buildings, taking into account the special needs of and individual differences in such buildings based upon size, function, and other relevant factors, as may be appropriate for the early development and demonstration of solar heating and combined solar heating and cooling systems suitable and effective for use in such buildings.

SOLAR HEATING AND COOLING RESEARCH BY NATIONAL SCIENCE FOUNDATION

SEC. 10. (a) The Director shall conduct a program of applied research relevant to (1) the improvement of solar heating components and systems and (2) the development and commercial application of combined solar heating and cooling components and systems as contemplated by the programs under this Act.

(b) The Director shall apprise the Secretary and the Administrator on a continuing basis of the results of the program being conducted in accordance with subsection (a), and the Secretary and the Administrator shall insure that such results, where appropriate, are incorporated into the development and demonstration programs established by this Act.

COORDINATION, MONITORING, AND LIAISON

SEC. 11. (a) The Secretary, utilizing the services of the Director of the National Bureau of Standards and in coordination with such other Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of solar heating and combined solar heating and cooling systems installed in residential dwellings under this Act;

(2) collect and evaluate data and information on the performance and operation of solar heating and combined solar heating and cooling systems installed in residential dwellings under this Act; and

(3) from time to time, carry out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is responsible under this Act effectively carry out the policy of this Act.

(b) In the development of the performance criteria and test procedures required under sections 5, 6, and 8, the Secretary shall work closely with the appropriate scientific, technical, and professional societies and industry representatives to insure the best possible use of available expertise in this area.

(c) The Secretary shall also maintain continuing liaison with the building industry and related industries and interests, and with the scientific and technical community during and after the period of the programs carried out under this Act, in order to assure that the projected benefits of such programs are and will continue to be realized.

DISSEMINATION OF INFORMATION AND OTHER ACTIONS TO PROMOTE PRACTICAL USE OF SOLAR HEATING AND COOLING TECHNOLOGIES

SEC. 12. (a) The Secretary shall take all possible steps to assure that full and complete information with respect to the demonstrations and other activities conducted under this Act is made available to Federal, State, and local authorities, the building industry and related segments of the economy, the scientific and technical community, and the public at large, both during and after the close of the programs under this Act, with the objective of promoting and facilitating to the maximum extent feasible the early and widespread practical use of solar energy for the heating and cooling of buildings throughout the United States. In accordance with regulations prescribed under section 16 such information shall be disseminated on a coordinated basis by the Secretary, the Administrator, the Director of the National Bureau of Standards, the Director, the Commissioner of the Patent Office, and other appropriate Federal offices and agencies.

(b) In addition, the Secretary shall—

(1) study and investigate the effect of building codes, zoning ordinances, tax regulations, and other laws, codes, ordinances, and practices upon the practical use of solar energy for the heating and cooling of buildings:

(2) determine the extent to which such laws, codes, ordinances, and practices should be changed to permit or facilitate such use, and the methods by which any such changes may best be brought about; and

(3) study the necessity of a program of incentives to accelerate the commercial application of solar heating and cooling technology.

(c) (1) In carrying out his functions under subsections (a) and (b) the Secretary, utilizing the capabilities of the National Aeronautics and Space Administration, the Department of Commerce, and the National Science Foundation to the maximum extent possible, shall establish and operate a Solar Heating and Cooling Information Data Bank (hereinafter in this subsection referred to as the "bank") for the purpose of collecting, reviewing, processing, and disseminating solar heating and cooling information and data in a timely and accurate manner in support of the objectives of this Act.

(2) Information and data compiled in the bank shall include—

(A) technical information (including reports, journal articles, dissertations, monographs, and project descriptions) on solar energy research, development, and applications;

(B) technical information on the design, construction, and maintenance of buildings compatible with solar heating and cooling concepts;

(C) physical and chemical properties of the materials required for solar heating and cooling;

(D) climatic conditions in appropriate areas of the United States, including those areas where the demonstrations are to be located; and

(E) engineering performance of devices utilized in solar heating and cooling or to be employed in the demonstrations.

(3) In accordance with regulations prescribed under section 16, the Secretary shall provide retrieval and dissemination services to cover the solar heating and cooling information described under paragraph (2) for—

(A) Federal, State, and local government organizations that are active in the area of energy resources (and their contractors);

(B) universities, colleges, and other nonprofit organizations; and

(C) private persons, upon request, in appropriate cases.

(4) In carrying out his functions under this subsection, the Secretary shall utilize, when feasible, the existing data base of scientific and technical information in Federal agencies, adding to such data base any information described in paragraph (2) which does not already reside in such base.

(d) Each Federal officer and agency having functions under this Act shall include in his or its annual report to the President and the Congress a full and complete description of his or its activities (current and projected) under this Act, along with his or its recommendations for legislative, administrative, or other action to improve the programs under this Act or to achieve the objectives of this Act more promptly and effectively. In addition, the Secretary shall submit annually to the President and the Congress a special report summarizing in appropriate detail all of the activities (current and projected) of the various Federal officers and agencies having functions under this Act, with the objective of presenting a comprehensive overall view of such programs.

LIMITATIONS ON FEDERALLY ASSISTED OR FEDERALLY CONSTRUCTED HOUSING

SEC. 13. (a)(1) In determining the maximum dollar amount of any federally assisted mortgage loan (as defined in subsection (b)) or the maximum per unit or other cost or floor area limitation of any federally constructed housing (as defined in subsection (c)), where the law establishing the program under which the loan is made or the housing is constructed specifies such maximum per unit or other cost on floor area limitation and the structure involved is furnished with solar heating or combined solar heating and cooling equipment under the demonstration program established by section 5, 6, or 9, the maximum amount or cost or floor area limitation so specified which is applicable to such structure shall be deemed to be increased by the amount by which (as determined by the Secretary or the Secretary of Defense, as appropriate) the price or cost or floor area limitation of the structure including such solar heating or combined solar heating and cooling equipment exceeds the price or cost or floor area limitation of the structure with such equipment replaced by conventional heating equipment or conventional heating and cooling equipment (as the case may be).

(2) In addition, in the case of a federally assisted mortgage loan, the cost excess specified in subsection (a) shall be fully taken into account in determining the value or cost of the structure involved for purposes of applying any statutory provision specifying the maximum loan-to-value or -cost ratio; except that, if the law specifies different rates of downpayment for successive increments of such value or cost, the lowest such rate shall apply to the additional cost attributable to the solar heating or combined solar heating and cooling equipment, and such equipment shall otherwise be excluded in determining the total value or cost of the structure.

(b) As used in subsection (a), the term "mortgage loan" means a loan which is made to finance the purchase or construction of a residence or any other building or structure; and the term "federally assisted mortgage loan" means a mortgage loan which—

(1) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is itself regulated by any agency of the Federal Government; or

(2) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing, urban development, or related program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(3) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(4) is made in whole or in part by any "creditor," as defined in section 103(f) of the Consumer Credit Protection Act of 1968 (15 U.S.C. 1602(f)), who makes or invests in residential real estate loans aggregating more than $1,000,000 per year.

(c) As used in subsection (a), the term "federally constructed housing" means (1) residential or multifamily housing which is constructed by agencies of the Federal Government to provide dwelling accommodations for particular types or classes of persons under programs administered by such Federal agencies (including all housing constructed by the Department of Defense to provide dwelling accommodations for personnel of the armed services or for such personnel and their families), and (2) residential or multifamily housing which is constructed by agencies of State or local government, with financial assistance in any form from the Federal Government, to provide dwelling accommodations for particular types or classes of persons under programs administered by such State or local agencies.

ENCOURAGEMENT AND PROTECTION OF SMALL BUSINESS

SEC. 14. In carrying out their functions under this Act, all Federal officers and agencies shall take steps to assure that small business concerns will have realistic and adequate opportunities to participate in the programs under this Act to the maximum extent possible.

PRIORITIES

SEC. 15. The Secretary shall set priorities as far as possible consistent with the intent and operation of this Act in accordance with the following criteria:

(a) The residential dwellings and other buildings which will be part of the demonstration programs referred to in sections 5, 6, and 9 shall be located in a sufficient number of different geographic areas in the United States to assure a realistic and effective demonstration of the solar heating systems and combined solar heating and cooling systems involved, and of the dwellings and other buildings themselves, in both rural and urban locations and under climatic conditions which vary as much as possible.

(b) Consideration shall be given to projected costs of commercial production and maintenance of the solar heating systems and combined solar heating and cooling systems utilized in the demonstration programs.

(c) Encouragement should be given in the conduct of programs under this Act to those projects in which funds, appropriated by any State or political subdivision thereof for the purpose of sharing costs with the Federal Government for the purchase and installation of solar heating or combined solar heating and cooling components and systems, are committed before or after the date of the enactment of this Act.

REGULATIONS

SEC. 16. The Administrator and the Secretary in consultation with the Director of the National Bureau of Standards, the Director, the Administrator of the General Services Administration, the Secretary of Defense, and other appropriate officers and agencies, shall prescribe such regulations as may be necessary or appropriate to carry out this Act promptly and efficiently. Each such officer or agency, in consultation with the Administrator and the Secretary, may prescribe such regulations as may be necessary or appropriate to carry out his or its particular functions under this Act promptly and efficiently.

USE OF PUBLICLY ASSISTED HOUSING

SEC. 17. The Secretary shall make appropriate use of publicly assisted housing and particularly low-rent housing assisted under the United States Housing Act of 1937 in demonstrating solar heating systems and combined solar heating and cooling systems under this Act.

TRANSFER OF FUNCTIONS

SEC. 18. Within sixty days after the effective date of the law creating the Energy Research and Development Administration or any other law creating a permanent Federal organization or agency having jurisdiction over the energy research and development functions of the United States (or within sixty days after the enactment of this Act if the effective date of such law occurs prior to the enactment of this Act), the energy research and development functions vested in the National Aeronautics and Space Administration and the National Science Foundation under this Act and any funds which may have been appropriated pursuant to section 19 of this Act, to the extent necessary or appropriate, may, in accordance with regulations prescribed by the Office of Management and Budget, be transferred to and vested in the Energy Research and Development Administration or such other organization or agency.

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. (a) There is hereby authorized to be appropriated to the National Aeronautics and Space Administration for the fiscal year ending June 30, 1975, $5,000,000, to remain available until expended, to carry out the functions vested in the Administrator by this Act.

(b) There is hereby authorized to be appropriated to the Department of Housing and Urban Development for the fiscal year ending June 30, 1975, $5,000,000, to remain available until expended. Any sums so appropriated shall be available (1) to carry out the functions vested in the Secretary of Housing and Urban Development by this Act, and (2) for transfer to the Department of Defense, the National Bureau of Standards, and the General Services Administration to enable them to carry out their respective functions under this Act.

(c) There is hereby authorized to be appropriated for the fiscal years ending June 30, 1976, 1977, 1978, and 1979, $50,000,000 in the aggregate to carry out the programs established by this Act.

And the Senate agree to the same.

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

In lieu of the matter proposed to be inserted by the amendment of the Senate to the title of the bill, insert the following: "An Act to provide for the early development and commercial demonstration of the technology of solar heating and combined solar heating and cooling systems."

And the Senate agree to the same.

OLIN E. TEAGUE,
MIKE MCCORMACK,
DON FUQUA,
JAMES W. SYMINGTON,
CHARLES A. MOSHER,
BARRY GOLDWATER, JR.,
JOHN W. WYDLER,
*Managers on the Part of the House.*

FRANK E. MOSS,
EDWARD M. KENNEDY,
ALAN CRANSTON,
JOHN V. TUNNEY,
FLOYD K. HASKELL,
BARRY GOLDWATER,
PETER H. DOMINICK,
LOWELL P. WEICKER, JR.,
PAUL J. FANNIN,
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11864) to provide for the early development and demonstration of the technology of solar heating and cooling and combined solar heating and cooling systems submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

SECTION 1. SHORT TITLE

The House bill and the Senate amendment agree that this Act may be cited as the "Solar Heating and Cooling Demonstration Act of 1974".

SECTION 2. FINDINGS AND POLICY

*Subsection (a) Findings*—the House bill contained eight findings. The Senate amendment included three additional findings: that wide-spread introduction of low-cost solar energy would be beneficial to consumers, that development of solar heating and cooling systems would be fostered by direct contact with manufacturers, architects, engineers, developers and other interested persons, and that evaluation of the performance and reliability of solar systems would be expedited by carefully controlled testing.

The conference substitute adopts the Senate amendment deleting reference to prototype consistent with other provisions of the bill.

*Subsection (b) Policy*—The House bill declared it to be the policy of the United States to provide for a demonstration of solar heating technology using current technology and for the development and demonstration of combined heating and cooling technology. The Senate amendment provided for the earliest possible demonstration of solar heating and cooling technologies. Both bills specified identical time periods.

The conference substitute deletes the House reference to the use of "current technology" so as not to inhibit the application of technology advancements, and deletes the Senate reference to "earliest possible" as redundant in view of the time frames set forth.

SECTION 3. DEFINITIONS

The House bill provided definitions of "solar heating", "solar heating and cooling", and "residential dwellings". The Senate amendment added the definitions of "Administrator", "Secretary", and "Director" for the Administrator of the National Aeronautics and Space Administration (NASA), the Secretary of Housing and Urban Development (HUD), and the Director of the National Science Foundation (NSF), respectively; expanded the definition of residential dwellings to include previously occupied and new single family and multifamily dwellings and publicly-assisted housing owned by a private sponsor or a state or local housing authority; and substituted the Secretary of HUD for the Secretary of Commerce as responsible for prescribing performance criteria and specified consultation with the Director and the Administrator in the development of such criteria consistent with responsibility assignments in the Senate amendment.

The conference substitute adopts the substance of the Senate amendment specifying, however, that the services of the National Bureau of Standards (NBS) are to be utilized in the development of performance criteria conforming with other sections of the bill.

The conferees agree that the phrase "not covered by Section 17" in the definition of residential dwellings in no way contravenes the intent of Section 17 regarding appropriate use of public housing.

SECTION 4. CONDUCT OF ACTIVITIES IN SOLAR HEATING AND COOLING TECHNOLOGIES BY NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The House bill provided for amending the National Aeronautics and Space Act of 1958 specifically authorizing NASA to carry out basic and applied research, development, demonstrations and other activities in solar heating and cooling technologies. No similar provision was included in the Senate amendment.

The conference substitute adopts the House provision deleting the words "basic and applied" and substituting the word "such" in lieu thereof with respect to research activities, and deleting the words "including" and "activities" to define the work to be undertaken by NASA as provided for in Sections 5, 6, and 9 of this Act.

SECTION 5. DEVELOPMENT AND DEMONSTRATION OF SOLAR HEATING SYSTEMS TO BE USED IN RESIDENTIAL DWELLINGS

The House bill provided for the Administrator of NASA, in consultation with the Secretary of HUD, to carry out a program for the development and demonstration of solar heating systems for residential dwellings; for determination and publication by the Secretary of Commerce, in consultation with NASA and HUD, within 120 days, of performance criteria, for such systems and for dwellings utilizing such systems; for selection by the Secretary of Commerce in consultation with the Administrator and the Secretary of HUD a number of designs of dwellings meeting the criteria and suitable for the installation of solar heating systems; for the Administrator to contract for the development, manufacture and production of solar heating systems and for the installation of such systems in conjunction with and under arrangements made by the Secretary of Defense on Federal properties and in conjunction with the Secretary of HUD in privately-owned and operated dwellings. The House bill proposed installations "in substantial numbers of residential dwellings" to be defined administratively, but specifying that one thousand or more installations would in any case meet the requirement for each of the two categories of the residential dwelling demonstration. The House bill provided for monitoring and liaison activities. The Senate amendment provided for a joint program to be carried out by the Administrator of NASA and the Secretary of HUD with the Secretary, in consultation with the Director of NBS, the Director of the National Science Foundation and the Administrator, to determine and publish performance criteria for solar heating components and systems, for solar heated dwellings, and for test procedures for solar heating components and systems and to conduct a competition and select a number of solar systems and dwelling designs utilizing such systems.

The Administrator was responsible for contracting for development, as necessary, and procurement of such systems, in accordance with guidelines established by the Secretary, and the Secretary would contract for design integration and construction of prototype dwellings and the installation of solar heating systems procured by NASA. The Secretary of Defense would contract for construction of and installation of such systems in military residential dwellings. The Senate amendment, in Section 7, provided for large scale demonstrations in addition to the prototype demonstrations, and as a part of such large scale demonstration provided that the Secretary was authorized to establish procedures whereby any person wishing to install solar heating components and systems could receive up to 75% of the purchase and installation costs of such components and systems. The Senate amendment required working closely with appropriate technical societies and industry representatives.

The conference substitute provides for a joint fully-integrated program to be carried out by the Administrator of NASA and the Secretary of HUD. The Secretary is responsible for the determination and publication, utilizing the services of the Director of NBS, within 120 days, of interim performance criteria for solar heating components and systems and for dwellings utilizing such systems, and for the selection, in consultation with the Director of NBS, of a number of designs of residential dwellings meeting the performance criteria and suitable for the installation of solar heating systems. The substitute also provides that the Administrator, in accordance with guidelines established jointly with and after full consultation with the Secretary, will contract for the development and procurement of solar heating components and systems. Subsequent to such activity, the Secretary shall arrange for the installation of such systems in a substantial number of residential dwellings. The conference substitute similarly provides for installation of systems procured by the Administrator on Federal or federally-administered property. The installation activities of the Secretary and the Secretary of Defense are to be fully coordinated to provide a realistic and effective demonstration.

SECTION 6. DEVELOPMENT AND DEMONSTRATION OF COMBINED SOLAR HEATING AND COOLING SYSTEMS TO BE USED IN RESIDENTIAL DWELLINGS

The House bill provided for a program for the development and demonstration of combined solar heating and cooling systems for use in residential dwellings identical to the program for solar heating except that no time was established for the determination and publication of performance criteria and a subsection was included directing NASA to undertake to provide the additional technology necessary for combined heating and cooling systems. The Senate amendment also provided for a program identical to its solar heating program for the development and demonstration of combined solar heating and cooling, with the same exceptions. The Senate amendment, however, with respect to additional technology, directed NASA to undertake "development and testing" while the House bill specified "research, development, testing and demonstration."

The conference substitute for this Section adopts the provisions of the conference substitute for Section 5 except that more time is permitted for the publication of performance criteria and subsection (c) is added providing for the conduct of a program of research, development and testing by the Administrator, in coordination with the Director of NSF, to provide the additional technology for combined solar heating and cooling systems.

SECTION 7. COMPREHENSIVE PROGRAM DEFINITION

The House bill, in Sections 5 and 6, proposed installations "in substantial numbers of residential dwellings" to be defined administratively, but specifying that one thousand or more installations would in any case meet the requirement for each of the four categories of the residential dwelling demonstration. The Senate amendment, in Sections 4 and 5, authorized the construction of prototype dwellings and in Section 7, authorized the Secretary of HUD to undertake large-scale demonstrations including the establishment of procedures whereby persons could obtain up to 75% of the purchase and installation costs of solar heating and combined solar heating and cooling components and systems.

The conference substitute, in Sections 5 and 6, adopts programs for the demonstration of solar heating and combined solar heating and cooling technology, respectively. The Committee of Conference also adopts

a new section requiring the joint submission by the Administrator and the Secretary of a comprehensive program plan for implementing and carrying out the programs anticipated by Sections 5 and 6.

The conferees agree that complete and continuous coordination must be effected by all agencies with responsibilities under this act, and that the solar heating and cooling equipment is developed in a manner which ensures appropriate consideration is given to factors such as cost, commercial marketability, aesthetics, design integration, and consumer preferences.

The conferees agree that it is the intent to have a wide variety of concepts and systems investigated and demonstrated under this program, and that nothing in this act should preclude the use of "package" systems for heating equipment which include a dwelling design that incorporates a specific solar system.

The conferees agree that in carrying out those functions NASA shall give small businesses engaged in solar heating and cooling developmental activities full opportunity to participate in the program authorized by this act and that innovation and development work accomplished by such firms shall be utilized in the program to the maximum extent feasible.

The conferees agree that the requirement in Section 5(d) and Section 6(e) that the Secretary install only those units procured by NASA does not preclude HUD from procuring and installing and/or otherwise conducting solar heating and cooling demonstration activities under other legislative authority available to HUD.

The conferees agree that "in a substantial number" means that number of demonstrations utilizing a variety of systems and approaches in a number of diverse geographic areas sufficient to provide realistic performance data to achieve the objectives of the act. Furthermore, the equipment is not to be "one of a kind", but is to be replicated in adequate numbers so that data can be generated on manufacturing methods and costs. This does not mean that the manufacturing methods used to produce equipment for this demonstration program have to be those which will necessarily be associated with large-scale production for the commercial market. The conferees further agree, however, that a massive program is not required. What is necessary is a program that is adequate to assure sufficient numbers of demonstration units, but at the same time to avoid the risk of mass failures which could cause a serious setback to the acceptance of solar energy systems.

SECTION 8. TEST PROCEDURES AND DEFINITIVE PERFORMANCE CRITERIA

The House bill, in Section 5, provided for the determination and publication, within 120 days, of performance criteria for solar heating equipment and systems and dwellings using such systems, and for similar action, in Section 6, with respect to combined solar heating and cooling activities as soon as possible. The Senate amendment, in Section 4, provided for the determination and publication of performance criteria, within nine months, for solar heating components and systems, dwellings utilizing such systems, and test procedures for such systems, and for similar action, in Section 5, with respect to combined solar heating and cooling activities as soon as possible.

The Conference substitute adopts, in Sections 5 and 6, the concept of interim criteria to serve the immediate need of the controlled NASA–HUD program. The Committee of Conference also adopts Section 8 providing for the establishment of test procedures and definitive performance criteria for general use utilizing the experience and data from the initial phases of the controlled program to assure the adequacy of such procedures and criteria.

SECTION 9. DEVELOPMENT AND DEMONSTRATION OF SOLAR HEATING AND COMBINED SOLAR HEATING AND COOLING SYSTEMS FOR COMMERCIAL BUILDINGS

The House bill provided for a joint program, by the Administrator of NASA and the Secretary of HUD, for the development of solar heating and cooling systems for commercial buildings including apartment buildings, office buildings, factories, agricultural structures, and other facilities. The Senate amendment provided for the conduct of such a program, excluding apartment buildings, by the Administrator of NASA in consultation with the heads of other federal agencies.

The conference substitute adopts the Senate amendment with an amendment including high-rise apartment buildings as a development and demonstration activity that may be addressed under this section in lieu of inclusion solely in Sections 5 and 6 as multifamily dwellings.

The conferees agree that multifamily housing may involve high-rise apartment buildings, as well as low-rise garden apartments and similar structures, and further recognize that solar heating and cooling system requirements of high-rise buildings may have more commonality to commercial structures than to single family dwellings. Therefore, the Conferees agree that the Administrator and the Secretary, in developing the program plan, can organize the activities involving apartment buildings and assign responsibilities therefor in a manner best suited to expeditiously and efficiently achieving the objectives of the Act.

SECTION 10. SOLAR HEATING AND COOLING RESEARCH BY NATIONAL SCIENCE FOUNDATION

The House bill provided for an amendment to the National Science Foundation Act of 1950 requiring the Director of the NSF to initiate and support basic and applied research relating to solar energy development as provided for in this act. The Senate amendment provided that the Director should conduct a program of research relevant to the improvement of solar heating components and systems and to the development and commercial application of such systems without amending the basic Act. The Senate amendment also required the Director to apprise the Secretary of HUD of the results of such research.

The conference substitute adopts the Senate provision with an amendment providing for the conduct of "applied" research and providing for apprising the Administrator as well as the Secretary of results.

SECTION 11. COORDINATION, MONITORING, AND LIAISON

The House bill provided for various coordination, monitoring, and liaison functions in several sections of the bill. The Senate amendment consolidated many of these same functions in its Section 9.

The conference substitute adopts the Senate provision with an amendment integrating the requirement for coordination with appropriate technical and professional societies and industry representatives in the development of performance criteria and test procedures, and specifying the role of the Director of NBS in the monitoring of and data collection and evaluation from installed systems.

SECTION 12. DISSEMINATION OF INFORMATION AND OTHER ACTIONS TO PROMOTE PRACTICAL USE OF SOLAR HEATING AND COOLING TECHNOLOGIES

The House bill and the Senate amendment provided for the Secretary of HUD to assure the greatest possible dissemination of information on the activities under this Act and required the establishment of a Solar Heating and Cooling Information Data Bank.

The conference substitute incorporates the strengths of the very similar House and Senate bills making conforming changes as necessary.

SECTION 13. LIMITATIONS ON FEDERALLY ASSISTED OR FEDERALLY CONSTRUCTED HOUSING

The House bill, in Section 10, provided a financing alternative to be available to the public, for buildings involved in the demonstration program, which would exempt from any mortgage limitations on any federally assisted mortgage loan or the maximum per unit or other cost of any federally constructed housing, the cost of solar heating or combined solar heating and cooling equipment. The Senate amendment had no comparable provision.

The conference substitute adopts the House provision with an amendment to except any floor area limitations which might inhibit the demonstration program.

SECTION 14. ENCOURAGEMENT AND PROTECTION OF SMALL BUSINESS

The House bill and the Senate amendment included essentially similar provisions with respect to the encouragement and protection of small business.

The conference substitute adopts the Senate amendment, virtually identical with the House bill.

SECTION 15. PRIORITIES

The House bill provided that the Administrator would set priorities as far as possible with consideration given to the following criteria: locatior of dwellings in a sufficient number of different geographic areas to realize an effective demonstration, the need for assistance in areas with high density of population and prospects for future growth which might impact regular fuel supplies now in short supply, and the desirability of encouraging projects in which funds appropriated by any state or political subdivision were provided on a cost-sharing basis with the federal government for the procurement of solar heating and cooling equipment. The Senate amendment provided that the Secretary of HUD should, as far as possible, set priorities in accordance with the following criteria: residential dwellings shall be located in a sufficient number of different geographic areas to assure a realistic and effective demonstration in both urban and rural locations, projected costs of commercial production and maintenance of solar heating and cooling systems, and encouragement of projects in which funds appropriated by any state or political subdivision were provided on a cost-sharing basis with the federal government for the procurement of solar heating and cooling equipment.

The conference substitute adopts the Senate provision with a non-substantive amendment to Subsection (b).

SECTION 16. REGULATIONS

The House bill provided that the Administrator, in consultation with the heads of other appropriate government agencies, should prescribe regulations as necessary to carry out provisions of the Act and that each other such officer or agency might also prescribe such regulations as necessary to carry out his or its functions under the Act. The Senate amendment contained no comparable provision.

The conference substitute adopts the House provision with minor changes to conform to definitions and assignment of responsibilities in the bill.

SECTION 17. USE OF PUBLICLY ASSISTED HOUSING

The Senate amendment provided for the Secretary of HUD to make appropriate use of publicly assisted housing in the demonstrations. The House bill did not contain a comparable provision.

The conference substitute adopts the Senate amendment.

SECTION 18. TRANSFER OF FUNCTIONS

The House bill, in anticipation of the creation of the Energy Research and Devel-

opment Administration (ERDA), provided for the transfer, within 60 days, of all the research and development functions vested in NASA and NSF under this Act, to such agency in accordance with regulations prescribed by the Office of Management and Budget. The Senate amendment provided for a similar transfer; however, it excluded the National Science Foundation and made the transfer of functions permissive by use of the word "may" in lieu of "shall" as stated in the House bill.

The conference substitute provides for the transfer of the "energy research and development" functions vested in NASA and NSF under this Act to ERDA on a permissive basis in accordance with regulations prescribed by the Office of Management and Budget.

The conferees agree that, notwithstanding the 60-day time limit prescribed by Section 18, in the event it is determined that a transfer of functions should be made but that rigid adherence to the 60-day limitation would be inimical to orderly progress of the programs established by this Act, the period may be extended because of the permissive nature of the transfer authority.

SECTION 19. AUTHORIZATION OF APPROPRIATIONS

The House bill authorized appropriations to the Administrator of NASA, for the first five fiscal years after the date of enactment of this Act, such sums not exceeding $50 million as necessary to carry out functions vested in NASA and to reimburse the National Bureau of Standards, the National Science Foundation, the Secretary of HUD, the Secretary of Defense, the General Services Administration, and other agencies for expenses incurred by them in carrying out programs in the Act. The Senate amendment authorized appropriations to the National Aeronautics and Space Administration for Fiscal Year 1975 of $5 million to carry out the NASA functions, and authorized to be appropriated to the Department of HUD for Fiscal Year 1975 $5 million and for each of the subsequent four fiscal years, $10 million each to carry out the functions vested in HUD and for transfer to the Department of Defense, the National Bureau of Standards, and the General Services Administration to carry out functions vested in them by the Act.

The conference substitute authorizes $5 million for NASA for FY 1975 to remain available until expended, authorizes $5 million to HUD for Fiscal Year 1975 to remain available to be expended to carry out the functions vested in HUD and for reimbursing the Department of Defense, the National Bureau of Standards and the General Services Administration for expenses incurred by them in carrying out responsibilities under the Act. The conference substitute also authorizes an additional $50 million for the fiscal years ending June 30, 1976, 1977, 1978 and 1979, to carry out programs established by this Act.

OLIN E. TEAGUE,
MIKE MCCORMACK,
DON FUQUA,
JAMES W. SYMINGTON,
CHARLES A. MOSHER,
BARRY GOLDWATER, JR.,
JOHN W. WYDLER,
*Managers on the Part of the House.*

FRANK E. MOSS,
EDWARD M. KENNEDY,
ALAN CRANSTON,
JOHN V. TUNNEY,
FLOYD K. HASKELL
BARRY GOLDWATER,
PETER H. DOMINICK,
LOWELL P. WEICKER, JR.,
PAUL J. FANNIN,
*Managers on the Part of the Senate*

## MOTOR VEHICLE AND SCHOOLBUS SAFETY AMENDMENTS OF 1974

Mr. STAGGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5529) to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations for the fiscal years 1974, 1975, and 1976, to provide for the recall of certain defective motor vehicles without charge to the owners thereof, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from West Virginia.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 5529, with Mr. CHARLES H. WILSON of California in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from West Virginia (Mr. STAGGERS) will be recognized for 30 minutes, and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 30 minutes.

The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 5529, the Motor Vehicle and Schoolbus Safety Amendments of 1974.

This bill amends the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations of $55 million for fiscal year 1975, $60 million for fiscal year 1976, and $65 million for fiscal year 1977; to provide for the remedy of defective motor vehicles without charge to the owners; to require that schoolbus safety standards be prescribed; and to amend the Motor Vehicle Information and Cost Savings Act to provide for a special demonstration project.

This bill is based on extensive hearings and incorporates legislative proposals submitted by the administration.

In the area of motor vehicle recall campaigns, improved mechanisms for the discovery, notification, and remedy of defective or noncomplying motor vehicles or items of their equipment are needed. Since 1966 more than 1,500 recall campaigns involving over 45 million automobiles have been initiated. These amendments are designed to increase the number of vehicles actually repaired and to provide timely and adequate repair.

On school bus safety, many bills were introduced in this session requiring the Secretary of Transportation to promulgate Federal safety standards for school buses. The committee decided that requiring these standards within a 2-year time period was essential to protect the 19 million schoolchildren who travel daily on school buses.

The bill also provides that purchasers of new motor vehicles can choose safety belts with a sequential warning system instead of safety belts with the ignition interlock system to provide crash protection.

The bill amends the Motor Vehicle Information and Cost Savings Act to establish a special inspection project to help develop automotive repair diagnostic equipment for use by small repair garages.

Since the passage of the 1966 act, the motor vehicle death rate has gradually declined in spite of increased vehicle mileage, registration, and population. Following the nationwide gasoline shortage in November 1973, traffic fatalities steadily decreased as the energy crisis provided a safety benefit; however, the peak of that crisis is apparently past. Improvements in motor vehicle safety must continue in order to reduce the tremendous human and economic cost to society resulting from motor vehicle accidents and deaths.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Texas.

Mr. KAZEN. Mr. Chairman, let me say to the gentleman from West Virginia that I agree that we should do everything we can to improve safety and save lives, particularly in the motor vehicle field, but I am a little disturbed as to what the main results in this bill will be.

The gentleman undoubtedly heard a lot of discussion in the committee about the interlocking system. I believe the majority of the people of the United States do not like it, yet they are having to comply with the regulations, because the manufacturer has to comply with the regulations and install it. So where does the general public have any input as to what the cost of safety will be, and how much it will cost an individual owner of an automobile?

It seems the more we look into the safety business the higher the costs go, and I am sure the gentleman will agree that we cannot mandate a safety law on this thing. In my opinion, this should be left up to the discretion of the individual.

Mr. STAGGERS. Mr. Chairman, I would like to say to the gentleman from Texas that the matter concerning the safety belt interlock is covered in the report, and that this is optional to the purchaser. We will have an amendment that will clarify the matter so that when you buy a car, if you wish a safety belt interlock such as we have now, you can have it, or you can choose a sequential warning device with safety belts.

Mr. KAZEN. I agree with the gentleman from West Virginia that these things are provided for. The only thing that worries me is how many more such items as the interlocking system will we be faced with in the future as a consequence of this law?

Mr. STAGGERS. Let me say to the gentleman from Texas that this safety standard did not originate in the committee. We did authorize the Department of Transportation to issue Federal motor vehicle safety standards in order to save lives in America. We did this, because we knew we were not experts in this field. The Department of Transportation issued the standard requiring the interlock system. The committee adopted an amendment to this bill to make it optional. The Department had made it

mandatory. We know there are difficulties with it, and we have modified the amendment further which will be offered at the proper opportunity.

Mr. KAZEN. The only thing I worry about is that whenever we give a commission or an agency this tremendous power, and then do not have any way of overruling it, I think presents a pretty bad problem.

We are making it optional for the purchaser of a car so that he can choose safety belts with either the ignition interlock system or a sequential warning device.

Mr. KAZEN. Would we also direct the Safety Commission that they leave a lot of things in addition to this optional with the price or with the purchaser? In other words, when we start doing something mandatory, this mean that the individual purchaser must abide by that decision, and we in the Congress are encouraging this type of thing instead of going in the other direction.

Mr. STAGGERS. This is true. I would like to say to the gentleman from Texas, let us reason together. The reason that we have not given them any leeway is that we were trying to create safer driving in the land by enacting the National Traffic and Motor Vehicle Safety Act of 1966. If we did not have laws, if we did not have stop lights and require everybody to stop, there would be all kinds of crashes. For example, experience has shown that by slowing down cars to 55 miles per hour—and now they are back up to 65 and 70—we have in the past 6 months saved 6,000 lives more than we did last year. One of those lives is worth saving—every one of them—especially if they are in our family or if they involve us.

The Department of Transportation first required the installation of safety belts several years ago, but most people refused to use them, so they required the belts to be connected to the ignition system to increase their use.

Mr. KAZEN. That is wrong. That is wrong to tell the individual what is good for him, because they are going to rebel. I know that they have. My mail is affected by it. I do not know whether the gentleman's is or not. But these are some of the things that the American people want to judge for themselves. Give them the equipment if they so desire, and if they do not, let them do whatever they want.

Mr. STAGGERS. The gentleman is right, to a great degree. But I will say, too, that the use of safety belts increases the ability of a driver to control his car and to protect other occupants and pedestrians in a crash situation. When we do affect somebody else's safety, then we do have a right to legislate.

Mr. KAZEN. This is true, I will say to the chairman, but I thought that the underlying purpose of this bill was to protect the driver's own safety, too, and he ought to have some say as to comfort and cost and everything else. There is an overriding consideration beyond that, and that is public safety.

Mr. ICHORD. Mr. Chairman, will the distinguished chairman yield?

Mr. STAGGERS. I yield to the gentleman from Missouri.

Mr. ICHORD. I thank the gentleman for yielding.

I understood that he was going to offer an amendment that would take away the right of DOT to issue a regulation making it mandatory to have an interlock ignition system or to have a buzzer system.

Mr. STAGGERS. No; the bill provides that the purchaser of a new car can choose safety belts with either the ignition interlock system or a sequential warning device. I realize this still annoys a lot of people.

Mr. ICHORD. What amendment is the gentleman referring to?

Mr. STAGGERS. Page 48 of the bill, "Safety belt interlock optional with purchaser." It is printed in the bill.

Mr. ICHORD. Then that will remove the mandate. At the present time, as I understand it, all new automobiles coming out of Detroit have to be equipped with the interlock system, and this amendment will remove the mandate.

Mr. STAGGERS. At the option of the purchaser, if he wants the sequential warning system put in instead, he may have it.

Mr. WYMAN. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from New Hampshire.

Mr. WYMAN. I thank the gentleman for yielding.

General Motors announced that it is going to increase its 1975 models some $450. I should like to ask the gentleman how much of that increase is due and will be due to such things as the add-on catalytic converter and the sequential warning system which is referred to in the alternative, which the committee is reporting to the House today, and in the half dozen other gadgetries that are required in this so-called requirement?

Mr. STAGGERS. I might say to the gentleman that to the best of my knowledge there is no additional increase for the safety devices, the interlock or the buzzing system. It is all due to the labor costs, the catalytic converter, and the other additions. The price of steel has gone up many, many times in the last year.

Mr. WYMAN. If the gentleman will yield further, the price of the interlock costs more for a car with it than a car without it.

Mr. STAGGERS. It might be an infinitesimal amount of money. I do not know what it would be.

Mr. WYMAN. There are electronic sensors under the seats and wires and so on. Would it be at least $50 a copy?

Mr. STAGGERS. No, I do not think so. It is the same principle as putting the key in and having a buzzer sound, and that does not cost a significant amount.

Mr. WYMAN. The units that go into the 1975 models are going to be $72 a copy. And then there is the inflatable bag which is going to add to the cost. Does the gentleman know how much that will cost?

Mr. STAGGERS. The gentleman did not mention that. I would say to the gentleman that with the present prices, it would run in the neighborhood of $200, but they ought to come down in my opinion to $10 or $15 or $20. There is no sense in the $250 for a plastic bag that goes in front of the passenger and the sensor to activate it.

Mr. WYMAN. With all due respect for the gentleman, I doubt the price will ever get down that far.

Then take the catalytic converter. If it gets loaded with leaded gasoline, then it is all through. Is that true?

Mr. STAGGERS. Not quite. The best information they have now is it would be the best device we have to protect against damage from the automobiles.

Mr. WYMAN. I have just one more question of the gentleman. We have been through that debate before and I do not want to go through it again in this bill, but how much more will the cost be for a car with the sequential warning system than for a car equipped with the plain seat belts?

Mr. STAGGERS. I do not have that but it should not cost much more.

Mr. WYMAN. Do they not have to be built in under the seats?

Mr. STAGGERS. Wiring must be installed for all these systems.

Mr. WYMAN. And then there are lights on the dash and a buzzer?

Mr. STAGGERS. That is right.

Mr. WYMAN. I thank the gentleman.

Mr. BROYHILL of North Carolina. Mr. Chairman, I think we all knew what the situation was a few years ago when this program was first enacted by the Congress. I was serving on the committee in 1966 when this program was first written in the committee. I know it stirred a great deal of debate at that time, but when it came to the floor of the House, as I recall, it passed virtually unanimously in 1966.

I do remember some of the statistics that were used in the debate at that time. I recall in 1966 that the death toll on the highways from highway accidents for the first time went above 50,000. In the 7 years prior to 1966, highway fatalities had increased by 40 percent in that 7-year period of time.

So what the Congress was trying to do in establishing this program was to deal with a real concern, a real problem that we had in America. For the first time in 1966 the Federal Government got into this motor vehicle safety business and also the highway safety program, which of course came out of another committee. What we were doing was providing the basic tools to deal with this tragedy of growing havoc and maiming of people on the highways.

Now, what has happened in the intervening 7 years since the program has been operating? Remember, I said deaths on the highway had increased by 40 percent in the 7 years prior to the establishment of this bill.

Well, total fatalities last year were only 3,000 greater than the total for 1966. I think we can say we have at least stopped the growth and the increase in the number of fatalities on the highway. We are still not doing enough.

This has occurred despite a growth in the number of registered automobiles of over 34 percent and the number of licensed drivers has increased by 21 percent. I cite these figures only as some evidence to show that the program has been effective. I think the program must be doing something right.

We intended through the program that we develop new techniques, new initiatives and come up with new type devices. We develop them and we try them. That is exactly what has happened.

I am not going to go into the details of the bill. We are recommending some changes in the program this year. Since 1966 there have been over 1,500 recall campaigns. The Department of Transportation requires automobile manufacturers to notify the owners that a safety-related defect is present in the automobile. Now these 1,500 recall campaigns have involved over 45 million automobiles. In many of the instances, we have found that the manufacturer has not paid the entire cost of repairs and that the consumer has had to bear a great deal of the cost of this. There have also been problems in the notification procedure.

It is for these reasons that we are making some changes in the modification section of the law. We are requiring for the first time that when notification of a safety-related defect is made, that the manufacturer is obligated to remedy that defect without charge to the consumer. There are other changes which the chairman has already enumerated. I will not go into those.

I do urge the Members to support the bill, as I do.

Mr. WYMAN. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL of North Carolina. Yes. I will be glad to yield to the gentleman from New Hampshire.

Mr. WYMAN. I take this time to ask the gentleman this question. Is there any present provision of law that the gentleman is familiar with that makes it unlawful for a car owner in America to disconnect the warning buzzer when the door is open or to disconnect an ignition interlock or a seatbelt interlock; is there any prohibition on disconnection at this time?

Mr. BROYHILL of North Carolina. No; there is no prohibition on the individual.

Mr. WYMAN. The prohibition is on the dealer?

Mr. BROYHILL of North Carolina. That is correct.

Mr. WYMAN. So that as the law now stands anybody in the country that wants to get rid of the gadgetry he had to pay for when he bought the car with this kind of equipment is at liberty to disconnect it with mechanical assistance but cannot use the assistance of the dealer, who is the best one that can do it? This is ridiculous.

Mr. BROYHILL of North Carolina. That is correct; the dealer is prohibited from doing it.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman for yielding. I would like to rise in support of this measure and compliment the distinguished chairman from West Virginia and the ranking minority Member, the gentleman from North Carolina (Mr. BROYHILL) for bringing this matter to the floor of the House.

I particularly rise in support of the long overdue school bus safety standards that are being fostered by this measure and incorporate provisions of a school bus safety bill I introduced in May of 1973.

Over 20 million students ride buses to and from school each day in vehicles which are for the most part structurally unsound. In reviewing several of the accident reports of the National Transportation Safety Board which are prepared after each school bus accident, it becomes obvious that the safety performance of school buses involved in accidents is highly inadequate. Anyone riding recently in a school bus cannot help but be aware of the flimsy, unstable construction of most of those vehicles.

Accordingly the bill before us requires the Secretary of Transportation to promulgate and enforce minimum structural standards for school buses in the areas of: emergency exits, interior protection for occupants, floor strength, seating systems, crash worthiness of body and frame, vehicle operating systems, windows and windshields and fuel systems. All of these performance regulations were proposed in the bill I introduced and I am extremely pleased that the committee saw fit to adopt these worthy provisions, including them in H.R. 5529.

In 1971 alone over 150 children were killed in school bus accidents. In that same year, 3,600 other children suffered serious injuries in accidents. In March of 1972, in Congers, N.Y., which is in my congressional district, the lives of five children en route to school came to an untimely end when their school bus collided with a Penn Central freight train. The report of that accident underscored the poor performance of that school bus following the impact of the accident when the floor buckled, window columns collapsed, side panels separated and seats were torn from their positions. Of the 24 morbid conclusions of the NTSB, following the Congers crash, the 17th best sums up the urgent need for implementing rigid performance standards for school buses:

> Conclusion: No. 17. Some of the fatal injuries to passengers were the result of abnormal dynamics and contracts which occurred when the bus structure disintegrated.

Mr. Chairman, the "disintegration" of a school bus under any impact is not something we can further tolerate in the transportation of students.

While the structural efficiency of the school bus is of major importance, there are also several other areas of school bus safety which deserve our prompt attention. My bill proposed specific standards for school bus drivers, maintenance of buses, and pupil safety instruction. All of these proposals, I am pleased to note, have been incorporated under Standard 17 of the highway safety program and are scheduled to be implemented in full by September 1977.

State compliance with the provisions of these rules are most important and should be strictly enforced. The penalty for failure to comply with the provisions of regulatory standards in this area is loss of 10 percent of Federal highway funding to the State in error. To date, this penalty has only been enforced once when the State of Vermont was penalized for not vigorously implementing the Highway Beautification Act. Accordingly I will continue to urge the Department of Transportation for strict adherence and surveillance of State compliance with standard No. 17.

Mr. Chairman, while the safety statistics for school bus accidents show only 0.05 fatalities per 100 million passenger miles compared to 2.1 deaths for the same distance driven in an auto, there are factors which must be taken into account in considering these statistics: school buses are generally driven at slower speeds than automobiles, there are strict rules concerning the conduct of other vehicles when around school buses and school buses are usually distinctly marked and professionally driven. These statistics, therefore, do not tell the whole tale of school bus safety. Instead, I would concur with the thoughts of former Secretary of Transportation, John A. Volpe, who said that—

> The death of even one child in a school bus accident is one too many.

Accordingly I urge my colleagues to wholeheartedly support this measure now before us which is a significant step forward in providing school bus safety.

Mr. BROYHILL of North Carolina. Mr. Chairman, I reserve the balance of my time.

Mr. STAGGERS. Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. ECKHARDT), a member of the committee.

Mr. ECKHARDT. Mr. Chairman, at the proper time in the amendment period I intend to offer an amendment which would restore the original language of this bill, as it passed out of the subcommittee, with respect to citizens' suits.

I understand that when one talks about citizens, suits, it frequently raises the hackles of many who immediately envision some kind of interference by the public generally with the processes of Government. But, all my amendment will do is put into effect what, it seems to me, is the law anyway; but after the change that took place in the committee, that result may be shaken by the removal of certain paragraphs in the portion having to do with citizens' participation.

It has been held in Nader, et al., versus Volpe, that a citizen has standing to go into court, into Federal court. That case had to do with a defect in certain GM

three-quarter ton trucks, something having to do with the safety of that vehicle, in the wheels of the vehicle. The court held that the citizen had standing and required the agency to address itself to the problem. The agency did address itself to the problem and ultimately issued an order against General Motors. General Motors contested this in civil action No. 3298–70, and the courts upheld the order of the Secretary with respect to the unsafe condition and the requirement of warning of injury to individuals.

This is no new type of procedure. It exists in the Consumer Protection Safety Act, the Toxic Substances Control Act, which is now in conference, and the Strip Mining Act passed just the other day.

Mind you, this provision does not say that the court can go in and second-guess the agency. All it says is that when an individual contends that the agency has not addressed a matter which the law requires the agency to address, the court may order the agency to look into that point and make a ruling. The agency may decide that the individual is wrong and that no action is needed. But, it seems to me to be most wholesome language in a Federal bill to permit individuals to come in and say, "The agency has not acted for us as Congress has told the agency to act."

Then, the result is simply that the agency must do what the statute told it to do; that is, consider the matter. It does not say that the court or the individual can compel the agency to do anything except consider the matter.

So, Mr. Chairman, that will be the amendment which I shall offer at the proper time.

Mr. STAGGERS. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Mr. Chairman, I would like to ask a couple of questions. Returning to what the gentleman from New Hampshire (Mr. WYMAN) was asking about, as I read the proposed bill, it says:

> No manufacturer, distributor, dealer, or motor vehicle repair business shall knowingly render inoperative in whole or in part, any device or element of design installed on or in a motor vehicle or item of motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard, . . .

That means—as we know a lot of people do not use these things nowadays—and while the gentleman from North Carolina (Mr. BROYHILL) says that one can still disconnect these devices himself, that effectively means, I take it, that one cannot get anybody, including any automobile mechanic who is in the business, to do it for him any more, is that correct?

Mr. STAGGERS. That is what the language says.

Mr. DENNIS. That is what it seemed to me to say. I wanted an authoritative interpretation.

Mr. STAGGERS. Yes.

Mr. DENNIS. If I may ask the Chairman a couple of other questions, it also makes it an offense to fail to obey any order, rule, or regulation issued under section 112 or 114, according to the report. What are the provisions of those sections?

Mr. STAGGERS. Those are as to inspections, recordkeeping, and certification.

Mr. DENNIS. Therefore, failure to obey any of those regulations about inspection, recordkeeping, and so on would constitute an offense; is that right?

Mr. STAGGERS. Yes.

Mr. DENNIS. Is that a criminal offense?

Mr. STAGGERS. No, it is a civil offense.

Mr. DENNIS. It is a civil offense?

Mr. STAGGERS. A civil offense.

Mr. DENNIS. If I may ask the gentleman another question, I see here in the report that it says that the temporary impoundment of motor vehicles with reasonable compensation to the owners is permitted. Under what circumstances is that authorized, and how does the owner get compensated if his vehicle is impounded?

Mr. STAGGERS. I think it would simply be because of accidents and investigations.

Mr. DENNIS. I beg the gentleman's pardon?

Mr. STAGGERS. Accidents and investigations, I believe.

Mr. DENNIS. Does the gentleman mean that if there is an accident, one's vehicle may be impounded?

Mr. STAGGERS. I will yield to the chairman of the subcommittee (Mr. Moss) to answer that.

Mr. MOSS. If the gentleman will yield, it is intended to permit the temporary impoundment where it is felt essential that the vehicle be examined to determine whether or not there was a defect in the vehicle, to afford an opportunity for the kind of inspection or examination that we routinely require in all aircraft crashes.

Mr. DENNIS. Mr. Chairman, will the gentleman yield further?

Mr. STAGGERS. I will be happy to yield to the gentleman from Indiana.

Mr. DENNIS. If I may inquire further, and I will yield, of course, is there any limitation on the length of the impoundment, and how is it arranged that a man gets compensation, and where does the compensation come from?

Mr. MOSS. The impoundment is for a period of not more than 72 hours, and a standard of reasonableness would have to apply in fixing the amount that they would be reimbursed for the impounded vehicle.

Mr. DENNIS. If the gentleman can tell me, who fixes it?

Mr. MOSS. The administrator.

Mr. DENNIS. Does the gentleman mean through the administrator of the act?

Mr. MOSS. Through the administrator of the act.

Mr. DENNIS. Is there some local representative to take care of that?

Mr. MOSS. I believe we have local representatives throughout the Nation.

Mr. DENNIS. I can see that one might have quite a bit of trouble down here in Washington in getting that arranged in that situation.

Mr. Chairman, I thank the gentleman.

Mr. BROYHILL of North Carolina. Mr. Chairman, I have no further requests for time.

Mr. STAGGERS. Mr. Chairman, I will be happy to yield to the gentleman from Texas (Mr. WHITE).

Mr. WHITE. Mr. Chairman, I have a question for the chairman. This probably is self-evident, but I want to be certain in section 201 it speaks of bus safety devices to be prescribed by regulation, and it defines buses as those that are to be used for transporting students to and from preprimary, primary, and secondary schools.

Does this language contemplate buses used by summer camps for transporting children to and from summer camps, and not just primary or secondary schools?

Mr. STAGGERS. Mr. Chairman, if the gentleman will yield, I would say to the gentleman that the section he is talking about has to do with the transportation of children primarily to school affairs or anything relating to school affairs.

Mr. WHITE. Mr. Chairman, did the committee have in contemplation also that this would encompass summer camps?

Mr. STAGGERS. Anything connected with the schools in any way, that is right. If the affair is connected with the schools in any way, that is a part of it.

Mr. WHITE. Some of these summer camps are not connected with the schools.

Mr. STAGGERS. Then, Mr. Chairman, if the gentleman will yield further, they are just like any other bus which is hired out. This would not have anything to do with it in that event. If they go on a public bus or something like that, then they would not be covered under this.

Mr. WHITE. Mr. Chairman, these summer camps would be covered then if they are related to school activities?

Mr. STAGGERS. If they are and they have something to do with the school and with the schoolchildren who are being transported, then they are covered under this act.

Mr. WHITE. Mr. Chairman, I thank the gentleman.

Mr. BROYHILL of North Carolina. Mr. Chairman, I yield myself 3 minutes.

I would like to take this opportunity to ask the chairman of the committee a question, if I may.

On page 25, at lines 7 and 8 of the bill, there is a provision which deals with how notification is accomplished in the case of a tire.

I want to make sure I understand this. I know the intent, of course, was that on the receipt of notification of a safety-related defect concerning a tire, the recipient has 60 days within which to bring the tire in in order to have it remedied without charge. The notification procedure for tires permits the use of certified mail to the owners and/or first purchasers of the tires, and the use of certified mail is at the manufacturer's option, in order that the commencement of this 60-day period can be easily determined.

If the tire is an original-equipment tire, under the bill the vehicle manufacturer has an obligation to notify the registered owner of the vehicle involved. He may do this by certified mail if he wishes.

However, if the tire is not an original-equipment tire, then the tire manufacturer has an obligation to notify the first purchaser or the most recent purchaser

known to the manufacturer, and he may do this by certified mail if he wishes.

What I am asking is this: Is my interpretation of this provision the same as that of the Members on the majority side?

Mr. MOSS. Mr. Chairman, if the gentleman will yield, the gentleman's interpretation is exactly the same as that on the majority side and in complete conformity with our discussions throughout the framing of this legislation.

Mr. BROYHILL of North Carolina. Mr. Chairman, I yield myself 2 additional minutes for the purpose of asking another question.

There is a new definition of "manufacturer" which has been added to this bill. Apparently what it does is to make the vehicle manufacturer responsible for everything on the vehicle at the time of delivery to the first purchaser at retail. That definition, of course, is rather broad. It appears to extend to items of equipment and installation over which the manufacturer could not have any control or could not be expected to have any control. The same section contemplates that the Secretary can provide exceptions to the adoption of regulations.

Mr. Chairman, what I am asking for is some expression from the managers on the part of the majority side as to the committee's intent in order to instruct the Secretary on the adoption of regulations.

Mr. MOSS. Mr. Chairman, if the gentleman will yield, I have carefully reviewed this matter with my colleagues. I shall now summarize the intent of the majority.

That intent is that the manufacturer be responsible if the manufacturer provided the equipment or if it was installed in keeping with the manufacturer's instructions or authorization. It was not the committee's intent that the vehicle manufacturer be responsible if the equipment, component, or accessory is not manufactured, authorized, or supplied by the manufacturer of the automobile or installed according to the manufacturer's instructions to his dealers.

In short, the vehicle manufacturer should have no responsibility for safety-related defects resulting from alterations or conversions of completed vehicles unless, of course, it is done in accordance with that manufacturer's instructions, or authorization.

The committee would expect regulations adopted by the Secretary to reflect this distinction.

Mr. BROYHILL of North Carolina. Mr. Chairman, I thank the gentleman.

Mr. FRENZEL. Mr. Chairman, I support the Wyman amendment to H.R. 5529 which would allow consumers free choice as to whether they want the seat interlock mechanism on their autos.

In my district there have been innumerable complaints about the mandatory interlock. The tales of honor range from not being able to adjust in pregnant women to not being able to start a car in a remote area due to interlock failure.

Federal law or rule can legitimately provide interlocks or air bags as optional features, but forcing people to pay for devices they do not want, and will not maintain, and which cannot work is an exercise in big brotherism which the people of my district do not want.

Mr. BRINKLEY. Mr. Chairman, I would like to comment briefly on the requirements under title II, schoolbus safety. I do so because of my special interest in this field in association with my friend from Columbus, Ga., Mr. Guy Wilkes, who is in charge of our schoolbus transportation system there. Over the weekend we discussed the desirability of highest standards of safety from practical viewpoints. Should there be safety belts for each child and could they be completely utilized if buses are used for varying ages of children on different runs? Should high-backed seats be required and how would that affect visibility of passengers, and otherwise? Both of us want safety which will not be counterproductive and caution against doing things in the name of safety which may not achieve any greater degree of it, but which could increase problems and cost.

For the record, on schoolbus construction, I point with pride to the truly outstanding safety record which has been compiled by the Blue Bird Body Co., with home offices in Fort Valley, Ga., manufacturers of the Blue Bird All American School Bus. This record has resulted from voluntary good business practices which encompass the pursuit of excellence in a competitive environment.

There has never been a student or driver fatality in a Blue Bird All American Schoolbus during the 25 years it has been built by the Blue Bird Body Co.

What makes this safety record all the more impressive is the fact that Blue Bird schoolbuses have been sold and operated in all 50 States, in every Canadian province and territory, in the Caribbean, Guam, the Virgin Islands, and in Central and South America.

Mr. MURPHY of New York. Mr. Chairman, Americans are often reluctant to take the initiative and solve many of the pressing problems that confront them unless those problems are broached in sensational or imperative terms. The problem I am concerned with today most certainly could be clothed in the robes of sensationalism; however its urgency is so great as to need no embellishments.

If the threat of an epidemic that promised to kill 60,000 Americans and injure numerous others was forecast for 1975 all possible preventive means would be employed to reduce the intensity of such a potentially enormous tragedy. Yet, such an epidemic exists right now and has existed for years. Indeed, possessing no unusual talent for prophecy I can safely predict that, unless we as a Nation take immediate steps to stop it, this epidemic will continue to grow and multiply like a cancer on our land. The epidemic of which I speak kills 150 Americans daily and injures 5,000 more. It cannot be alleviated by our doctors and so it appears that it is the lawmakers of this country who must find a cure; for this disease is not cancer or heart trouble—although it kills more than either—it is traffic accidents.

Since the invention of the automobile over 2 million Americans have been killed in traffic accidents. More Americans have died in this way than in all of this Nation's wars. Indeed, a traffic accident death occurs on the average of once every 9 minutes—24 hours a day. For every fatality in this 9 minute period there are 40 drivers, passengers, and pedestrians who suffer serious injuries and disabilities.

A former Surgeon General of the United States Public Health Service has estimated that 70 percent of all American drivers will either have, or be involved in an accident in the next 5-year period. Based on this estimation we are confronted with a grim forecast for the future. By 1980 the annual traffic death rate will exceed 75,000.

When we consider that a full 90 percent of all accidents are ultimately caused by the driver it is not long before we come to the realization that the greatest contributor to accidents is not hazardous cars but hazardous drivers. Indeed, as Fraydun Manocherian stresses in his book "Flesh, Metal and Glass," comprehensive driver education programs will contribute to a drastic reduction in the number of traffic accidents that result from careless driving.

Although I do not believe in panaceas it should be apparent that the key to checking and of eventually eradicating this epidemic of accidents lies in the development of a comprehensive driver education and safety program. All of our efforts to improve the safety standards of our motor vehicles will amount to very little if we continue to allow those who drive these vehicles to blatantly abuse them.

The need to strike at this problem through the deployment of a massive educational program is illustrated by the tragic fact that the leading cause of death to people in the 15- to 25-year age group is motor vehicle accidents. In 1970 alone, while 1,500 youngsters in this age group died from drug overdoses, 3,400 were murder victims and 4,200 died in Vietnam, nearly twice the combined total of all the above died in traffic accidents. There is no doubt in my mind that it will be the youth of our country who will benefit the most from a deep-seated and intense educational campaign.

The amendment to the Motor Vehicle Safety Act that I am introducing today provides for the institution of a national educational campaign which is designed explicitly to educate drivers, pedestrians, and others with respect to the dangers incurred when driving on our highways. Under the provisions of this amendment the driver safety program will be administered by the Secretary of the Department of Transportation. The amendment further provides for a comprehensive research and training program to supplement the educational campaign. It is my belief that these two provisions, when taken together, will insure that the driver is not only educated to avoid accidents but also that in the case of an accident he will be prepared to act rationally and calmly.

My amendment authorizes $85,000,000 for the fiscal year ending June 30, 1975, and for each of the two succeeding fiscal years. While some people may object to this sum, when it is considered that

automobile injuries and accidents in the United States cost over $15 billion a year in lost wages, medical expenses, cost of insurance and property damages, my appropriation seems small enough. Indeed, the sum I am requesting is less than 1 percent of the 15 billion that we are squandering each year.

The act we are debating today will, if passed, raise both the quality and the standards of our motor vehicles. This is an act which is direly needed and whose importance I do not, for a moment, underestimate. The fact of the matter is however, that if we do not improve our driver education program at the same time that we upgrade our motor vehicle safety standards the effects of this act will not be as comprehensive as intended. I appeal to you therefore, as both the lawmakers of this country and as humanitarians, to pass this amendment and thus stem the epidemic through the endorsement of a thorough and conscientious driver education program.

At this point I would like to insert into the RECORD the amendment to H.R. 5529 I offer:

Page 5, insert after line 8 the following:

SEC. 112. MOTOR VEHICLE SAFETY EDUCATIONAL CAMPAIGN.

(a) Part A of title I of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by adding at the end thereof the following new section:

"SEC. 125. (a) The Secretary, acting through such officers and agencies of the Department of Transportation as he deems appropriate, shall carry on a national educational campaign designed to educate drivers, pedestrians, and others with respect to (1) the dangers incurred when driving on, crossing, or otherwise using the highways, and (2) improving safety on the highways by improving driver skills, driver attitudes, and driver knowledge of highway regulations.

"(b) In carrying out his functions under subsection (a), the Secretary may engage in research, provide training, and engage in any other activity which will effectuate the purposes of this section.

"(c) There are authorized to be appropriated not to exceed $85,000,000 for the fiscal year ending June 30, 1975, and for each of the two succeeding fiscal years, for carrying out the provisions of this section."

(b) Section 121 of such Act (as amended by section 101 of this Act) is further amended by inserting "(other than section 125)" after "this Act".

Redesignate the following section accordingly.

Ms. HOLTZMAN. Mr. Chairman, I wholeheartedly support the elimination of safety hazards from motor vehicles. I support this bill—the Motor Vehicle and Schoolbus Safety Amendments of 1974—because it will help improve schoolbus safety. Many parents in my district have complained about the lack of safety in schoolbuses and the unwillingness of the State of New York to address the problem of safety hazards more vigorously.

This bill sets national safety standards in eight designated aspects of schoolbus safety, including the protection of children from injury caused by objects within the bus. These standards are to be implemented on all new schoolbuses within 2 years. Unfortunately, the bill does not go far enough to insure safety.

First, the bill does not apply to any buses presently in use. It applies only to new buses built after 1976. Why should we ignore the safety of those children who will be riding on existing buses which have a lifespan of 8 to 9 years, and which may still continue to operate well in excess of 20 years? Under this bill it may take almost 30 years before all schoolbuses on U.S. roads comply with the safety standards. We should not permit our children to ride old buses at their peril.

Certainly we should provide for the fullest possible safety of our Nation's school-age children as soon as possible. Therefore, we should require that present schoolbuses comply with the safety standards instead of exempting them. Simple hazards could be eliminated almost immediately. For instance, the bar on the back of each seat could be removed or padded to avoid injury to a child's teeth—as well as enormous orthodontists' bills—in the event of a sudden stop by the driver.

Second, the bill does not deal with communications systems in schoolbuses. If an injury should occur, there is no means of communicating a call for help.

Each year over 20 million schoolchildren ride in schoolbuses. Between 75 and 100 students die yearly in schoolbus-related accidents. About one-third of these deaths are bus occupants, the rest are pedestrian related. Additionally, 5,100 students are injured in schoolbus accidents, two-thirds of them inside the bus.

I can appreciate that these statistics are not staggering compared to automobile deaths and injuries. But our intent should be not to lower schoolbus accidents but to eliminate them. This will take many years—too many years—under the provisions of this bill.

The CHAIRMAN. If there are no further requests for time, pursuant to the rule, the Clerk will now read, by title, the committee amendment in the nature of a substitute printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Motor Vehicle and Schoolbus Safety Amendments of 1974".

TITLE I—MOTOR VEHICLE SAFETY

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended to read as follows:

"SEC. 121. There are authorized to be appropriated for the purpose of carrying out this Act, not to exceed $55,000,000 for the fiscal year ending June 30, 1975; $60,000,000 for the fiscal year ending June 30, 1976; and $65,000,000 for the fiscal year ending June 30, 1972."

SEC. 102. NOTIFICATION AND REMEDY.

(a) REQUIREMENT OF NOTIFICATION AND REMEDY.—Title I of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391, et seq.) is amended by striking out section 113 and by adding at the end of such title the following new part:

"PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS

"NOTIFICATION RESPECTING MANUFACTURER'S FINDING OF DEFECT OR FAILURE TO COMPLY

"SEC. 151. If a manufacturer of motor vehicles or tires—

"(1) obtains knowledge that any motor vehicle or item of motor vehicle equipment manufactured by him contains a defect and determines in good faith that such defect relates to motor vehicle safety; or

"(2) determines in good faith that such vehicle or item of equipment does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 103 of this Act;

he shall furnish notification to the Secretary and to owners, purchasers, and dealers, in accordance with section 153, and he shall remedy the defect or failure to comply in accordance with section 154.

"NOTIFICATION RESPECTING SECRETARY'S FINDING OF DEFECT OR FAILURE TO COMPLY

"SEC. 152. (a) If through testing, inspection, investigation, or research carried out pursuant to this Act, or examination of communications under section 158(a), or otherwise, the Secretary determines that any motor vehicle or item of motor vehicle equipment—

"(1) does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 103 of this Act; or

"(2) contains a defect which relates to motor vehicle safety;

he shall immediately notify the manufacturer of such motor vehicle or item of motor vehicle equipment of such defect or failure to comply. The notice shall contain the findings of the Secretary and shall include all information upon which the findings are based. The Secretary shall afford such manufacturer an opportunity to present his views and evidence in support thereof, to establish that there is no failure of compliance or that the alleged defect does not affect motor vehicle safety.

"(b) If after such presentation by the manufacturer the Secretary determines that such vehicle or item of equipment does not comply with an applicable Federal motor vehicle safety standards, or contains a defect which relates to motor vehicle safety, the Secretary shall order the manufacturer (1) to furnish notification respecting such vehicle or item of equipment to owners, purchasers, and dealers in accordance with section 153, and (2) to remedy such defect or failure to comply in accordance with section 154.

"CONTENTS, TIME, AND FORM OF NOTICE

"SEC. 153. (a) The notification required by section 151 or 152 respecting a defect in or failure to comply of a motor vehicle or item of motor vehicle equipment shall contain, in addition to such other matters as the Secretary may prescribe by regulation—

"(1) a clear description of such defect or failure to comply;

"(2) an evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply;

"(3) a statement of the measures to be taken to obtain remedy of such defect or failure to comply;

"(4) a statement that the manufacturer furnishing the notification will cause such defect or failure to comply to be remedied without charge pursuant to section 154;

"(5) the earliest date (specified in accordance with section 154(b)(2)) on which such defect or failure to comply will be remedied without charge and, in the case of tires, the length of the period during which such defect or failure to comply will be remedied without charge pursuant to section 154; and

"(6) a description of the procedure to be followed in informing the Secretary whenever a manufacturer, distributor, or dealer fails or is unable to remedy without charge such defect or failure to comply.

"(b) The notification required by section 151 or 152 shall be furnished—

"(1) within a reasonable time after the manufacturer first makes a determination with respect to a defect or failure to comply under section 151; or

"(2) within a reasonable time (prescribed by the Secretary) after the manufacturer's receipt of notice of the Secretary's determi-

nation pursuant to section 152 that there is a defect or failure to comply.

"(c) The notification required by section 151 or 152 with respect to a motor vehicle or item of motor vehicle equipment shall be accomplished—

"(1) in the case of a motor vehicle, by first-class mail to each person who is registered under State law as the owner of such vehicle and whose name and address is reasonably ascertainable by the manufacturer through State records or other sources available to him;

"(2) by first class mail to the first purchaser (or if a more recent purchaser is known to the manufacturer, to the most recent purchaser known to the manufacturer) of each motor vehicle or item of motor vehicle equipment containing such defect or failure to comply, unless the registered owner (if any) of such vehicle or item of equipment was notified under paragraph (1);

"(3) by certified mail or other more expeditious means to the dealer or dealers of such manufacturer to whom such motor vehicle or motor vehicle equipment was delivered; and

"(4) by certified mail to the Secretary, if section 151 applies.

In the case of a tire, the manufacturer may elect to provide notification under paragraphs (1) and (2) by certified mail.

"REMEDY OF DEFECT OR FAILURE TO COMPLY

"SEC. 154. (a)(1) If notification is required under section 151 or by an order under section 152(b) with respect to any motor vehicle or item of motor vehicle equipment which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, then the manufacturer of each such motor vehicle or item of motor vehicle equipment presented for remedy pursuant to such notification shall cause such defect or failure to comply in such motor vehicle or such item of motor vehicle equipment to be remedied without charge. In the case of notification pursuant to an order under section 152(b), the preceding sentence shall not apply during any period during which enforcement of the order has been restrained in an action to which section 155(a) applies or if such order has been set aside in such an action.

"(2)(A) In the case of a tire presented for remedy pursuant to such notification, the manufacturer of each such tire shall repair or replace such tire without charge during the 60-day period beginning on the later of (i) the date on which the owner or purchaser receives such notification or (ii) the date on which he receives notice that replacement tires are available.

"(B) In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer (subject to subsection (b) of this section) shall take whichever of the following actions he elects:

"(i) To repair such vehicle.

"(ii) To replace such motor vehicle without charge with a new or equivalent vehicle.

"(iii) To refund the purchase price of such motor vehicle in full, less a reasonable allowance for depreciation.

Replacement or refund may be subject to such conditions imposed by the manufacturer as the Secretary may permit by regulation.

"(C) In the case of an item of motor vehicle equipment, the manufacturer shall (at his election) either repair such item of equipment, or replace such item of equipment without charge with a new or equivalent item of equipment.

"(3) The dealer or retailer who provides remedy (other than replacement of a motor vehicle) pursuant to this section without charge shall receive fair and equitable reimbursement for such remedy from the manufacturer.

"(4) The requirement of this section that remedy be provided without charge shall not apply if the motor vehicle or item of motor vehicle equipment was purchased by the first purchaser more than 8 calendar years (3 calendar years in the case of a tire) before (A) notification respecting the defect or failure to comply is issued pursuant to section 151 or 152, or (B) the Secretary orders such notification, whichever is earlier.

"(b)(1) Whenever a manufacturer has elected under subsection (a) to repair a defect in a motor vehicle or item of motor vehicle equipment or a failure of such vehicle or item of equipment to comply with a motor vehicle safety standard, and he has failed to adequately repair such defect or failure to comply within a reasonable time, (A) the motor vehicle or item of equipment shall be replaced by the manufacturer with a new or equivalent vehicle or item of equipment without charge, or (B) (in the case of a motor vehicle and if the manufacturer so elects) the purchase price shall be refunded in full by the manufacturer, less a reasonable allowance for depreciation. Failure to adequately repair a motor vehicle or item of motor vehicle equipment within sixty days after tender of the motor vehicle or item of equipment for repair shall be prima facie evidence of failure to repair within a reasonable time; unless prior to the expiration of such sixty-day period the Secretary, by order, extends such sixty-day period for good cause shown and published in the Federal Register.

"(2) For purposes of this subsection, the term 'tender' does not include any tender of a motor vehicle or item of equipment for repair prior to the earliest date specified in the notification pursuant to section 153(a) on which such defect or failure to comply will be remedied without charge, or (if notification was not afforded pursuant to section 153(a)) prior to the date specified in any notice required to be given under section 155(d). In either case, such date shall be specified by the manufacturer and shall be the earliest date on which parts and facilities can reasonably be expected to be available. Such date shall be subject to disapproval by the Secretary.

"(c) The manufacturer shall file with the Secretary a copy of his program pursuant to this section for remedying any defect or failure to comply, and the program shall be available to the public.

"ENFORCEMENT OF NOTIFICATION AND REMEDY ORDERS

"SEC. 155. (a)(1) An action under section 110(a) to restrain a violation of an order issued under section 152(b), or under section 109 to collect a civil penalty with respect to a violation of such an order, or any civil action with respect to such an order, may be brought only in the United States district court for the District of Columbia or the United States district court for a judicial district in the State of incorporation of the manufacturer to which the order applies. All actions (including enforcement actions) brought with respect to the same order under section 152(b) shall be consolidated in an action in a single judicial district, in accordance with an order of the court in which the first such action is brought.

"(2) The court shall expedite the disposition of any civil action to which this subsection applies.

"(b) If a civil action which relates to an order under section 152(b), and to which subsection (a) of this section applies, has been commenced, the Secretary may order the manufacturer to issue a notification in addition to the notification required by section 151 or 152. Such additional notification shall contain—

"(A) a statement that the Secretary has determined that a defect which relates to motor vehicle safety or failure to comply with a Federal motor vehicle safety standard exists, and that the manufacturer is contesting such determination in a proceeding in a United States district court.

"(B) a clear description of the Secretary's stated basis for his determination that there is such a defect or failure,

"(C) the Secretary's evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply,

"(D) any measures which in the judgment of the Secretary are necessary to avoid an unreasonable hazard resulting from the defect or failure to comply,

"(E) a statement that the manufacturer will cause such defect or failure to comply to be remedied without charge pursuant to section 154, but that this obligation of the manufacturer is conditioned on the outcome of the court proceeding, and

"(F) such other matters as the Secretary may prescribe by regulation.

"(c) A manufacturer who fails to notify owners or purchasers in accordance with section 153(c) within the period specified under section 153(b) may be assessed a civil penalty with respect to such failure to notify, unless the manufacturer prevails in an action described in subsection (a) of this section or unless the court in such an action restrains the enforcement of such order throughout the pendency of such action. A manufacturer who fails to notify owners or purchasers as required by an order under subsection (b) of this section may be assessed a civil penalty without regard to whether or not he prevails in an action described in subsection (a) of this section with respect to the validity of the order issued under section 152(b).

"(d) If (i) a manufacturer fails within the period specified in section 153(b) to comply with an order under section 152(b) to afford notification to owners and purchasers, (ii) a proceeding to which subsection (a) applies is commenced with respect to such order, and (iii) the Secretary prevails in such proceeding, then the Secretary shall order the manufacturer—

"(1) to afford notice (which notice may be combined with any notice required by an order under section 152(b)) to each owner and purchaser described in section 153(c) of the outcome of the proceeding and containing such other information as the Secretary may require;

"(2) to specify (in accordance with section 154(b)) the earliest date on which such defect or failure will be remedied without charge; and

"(3) if notification was required under subsection (b) of this section, to reimburse such owner or purchaser for any reasonable and necessary expenses (not in excess of any amount specified in the order of the Secretary) which are incurred (A) by such owner or purchaser; (B) for the purpose of repairing the defect or failure to comply to which the order relates; and (C) during the period beginning on the date such notification under subsection (b) was required to be issued and ending on the date such owner or purchaser receives notification pursuant to this subsection.

"REASONABLENESS OF REMEDY

"SEC. 156. Upon petition of any interested person or on his own motion, the Secretary may hold a hearing in which any interested person (including a manufacturer) may make oral (as well as written) presentations of data, views, and arguments on the question of whether a manufacturer has reasonably met his obligation to remedy a defect or failure to comply under section 154. If the Secretary determines the manufacturer has not reasonably met such obligation, he shall order the manufacturer to take specified action to comply with such obligation.

"EXEMPTION FOR INCONSEQUENTIAL DEFECT OR FAILURE TO COMPLY

"SEC. 157. Upon application of a manufacturer, the Secretary shall exempt such manufacturer from giving notice with respect to, or remedying, a defect or failure to comply, if he determines, after public notice and opportunity for presentation of data, views,

and arguments, that such defect or failure to comply is inconsequential as it relates to motor vehicle safety.

"INFORMATION, DISCLOSURE, AND RECORDKEEPING

"SEC. 158. (a) Every manufacturer of motor vehicles or tires shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the dealers of such manufacturer or to owners or purchasers of motor vehicle or motor vehicle equipment produced by such manufacturer regarding any defect or failure to comply in such vehicle or equipment which is sold or serviced. The Secretary shall disclose to the public so much of any information which is obtained under this Act and which relates to a defect which relates to motor vehicle safety or to a failure to comply with an applicable Federal motor vehicle safety standard, as he determines will assist in carrying out the purposes of this part; but any information which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential for purposes of that section and shall not be disclosed; unless he determines that disclosure of such information is necessary to carry out the purposes of this part.

"(b) Every manufacturer of motor vehicles or tires shall cause the establishment and maintenance of records of the name and address of the first purchaser of each motor vehicle and tire (and to the extent required by regulations of the Secretary, each item of motor vehicle equipment other than a tire) produced by such manufacturer. The Secretary may, by rule, specify the records to be established and maintained, and reasonable procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this subsection; except that the availability or not of such assistance shall not affect the obligation of manufacturers under this subsection. Such procedures shall be reasonable for the particular type of motor vehicle or tires for which they are prescribed, and shall provide reasonable assurance that customer lists of any dealer and distributor, and similar information, will not be made available to any person other than the dealer or distributor, except where necessary to carry out the purpose of this part.

"DEFINITIONS

"SEC. 159. For purposes of this part:

"(1) The retreader of tires shall be deemed the manufacturer of tires which have been retreaded, and the brand name owner of tires marketed under a brand name not owned by the manufacturer of the tire shall be deemed the manufacturer of tires marketed under such brand name.

"(2) Except as otherwise provided in regulations of the Secretary, (A) the manufacturer of a motor vehicle shall be deemed to be the manufacturer of any motor vehicle equipment with which such vehicle is equipped at the time of its delivery to the first purchaser, and (B) any defect or failure to comply in such equipment shall be deemed to be a defect or failure to comply in such vehicle.

"(3) The term 'first purchaser' means first purchaser for purposes other than resale.

"(4) The term 'adequate repair' does not include any repair which results in substantially impaired operation of a motor vehicle or item of motor vehicle equipment."

(b) CONFORMING AMENDMENTS.—

(1) Title I of such Act is amended by inserting after section 101 the following:

"PART A—GENERAL PROVISIONS".

(2) Section 110(c) of such Act is amended by striking out "Actions" and inserting in lieu thereof "Except as provided in section 155(a), actions".

(c) EFFECTIVE DATE.—The amendments made by this section shall not apply to any defect or failure to comply with respect to which before the effective date of this title notification was issued under section 113(a) of such Act or was required to be issued under section 113(e).

SEC. 103. ENFORCEMENT

(a) PROHIBITED ACTS.—

(1)(A) Section 108(a) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by inserting "(1)" after "SEC. 108. (a)", by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively, and by adding at the end of such subsection the following new paragraph:

"(2) No manufacturer, distributor, dealer, or motor vehicle repair business shall knowingly render inoperative in whole or part, any device or element of design installed on or in a motor vehicle or item of motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard, unless such manufacturer, distributor, dealer, or repair business reasonably believes that such vehicle or item of equipment will not be used (other than for testing or similar purposes in the course of maintenance or repair) during the time such device or element of design is rendered inoperative. For purposes of this paragraph, the term 'motor vehicle repair business' means any person who holds himself out to the public as in the business of repairing motor vehicles or motor vehicle equipment for compensation. The Secretary may by rule exempt any person from this paragraph if he determines that such exemption is consistent with motor vehicle safety and the purposes of this Act. The Secretary may prescribe regulations defining the term 'render inoperative'."

(B) Subsection (b) of section 108 of such Act is amended by inserting "(A)" after "Paragraph (1)" in paragraphs (1), (2), and (5) of such subsection and by inserting "(A)" after "paragraph (1)" in paragraph (3) of such subsection.

(2) Section 108(a) of such Act (15 U.S.C. 1397) (as amended by paragraph (1) of this subsection) is amended—

(A) by inserting after the semicolon in paragraph (1)(B) the following: "fail to keep specified records in accordance with such section; or fail or refuse to permit impounding, as required under section 112(b);" and

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

"(E) fail to comply with any rule, regulation, or order issued under section 112 or 114; and"

(3) Section 108(a)(1)(D) of such Act is amended to read as follows:

"(D) fail to furnish notification, fail to remedy any defect or failure to comply, fail to maintain records, or fail to comply with any order or other requirement applicable to any manufacturer, distributor, or dealer pursuant to part B of this title;"

(b) PENALTIES.—Section 109 of such Act (15 U.S.C. 1398) is amended by striking out "$400,000" in the second sentence of such subsection (a) and inserting in lieu thereof "$800,000".

(c) INJUNCTIONS.—

(1) The first sentence of section 110(a) of such Act (15 U.S.C. 1399) is amended (1) by inserting "(or rules, regulations or orders thereunder)" after "violations of this title", and (2) by inserting immediately after "pursuant to this title," the following: "or to contain a defect (A) which relates to motor vehicle safety and (B) with respect to which notification has been given under section 151 or has been required to be given under section 152(b),".

(2) The next to the last sentence of section 110(a) of such Act is amended by inserting before the period at the end thereof the following: "or to remedy the defect".

SEC. 104. INSPECTION AND RECORDKEEPING.

(a) Subsections (a), (b), and (c) of section 112 of the National Traffic and Motor Vehicle Safety Act of 1966 are amended to read as follows:

"(a)(1) The Secretary is authorized to conduct any inspection or investigation—

"(A) which may be necessary to enforce this title and any rules, regulations, or orders issued thereunder, or

"(B) which relates to the facts, circumstances, conditions, and causes of any motor vehicle accident and which is for the purposes of carrying out his functions under this Act.

The Secretary shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information obtained indicating noncompliance with this title or any rules, regulations, or orders issued thereunder, for appropriate action. In making investigations under subparagraph (B), the Secretary shall cooperate with appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection.

"(2) For purposes of carrying out paragraph (1), officers or employees duly designated by the Secretary, upon presenting appropriate credentials and written notice to the owner, operator, or agent in charge, are authorized at reasonable times and in a reasonable manner—

"(A) to enter (i) any factory, warehouse, or establishment in which motor vehicles or items of motor vehicle equipment are manufactured, or held for introduction into interstate commerce or are held for sale after such introduction, or (ii) any premises where a motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident is located;

"(B) to impound for a period not to exceed seventy-two hours, any motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident; and

"(C) to inspect any factory, warehouse, establishment, vehicle, or equipment referred to in subparagraph (A) or (B).

Each inspection under this paragraph shall be commenced and completed with reasonable promptness.

"(3)(A) Whenever, under the authority of paragraph (2)(B), the Secretary inspects or temporarily impounds for the purpose of inspection any motor vehicle (other than a vehicle subject to part II of the Interstate Commerce Act), he shall pay reasonable compensation to the owner of such vehicle to the extent that such inspection or impounding results in the denial of the use of the vehicle to its owner or in the reduction in value of the vehicle.

"(B) As used in this subsection, 'motor vehicle accident' means an occurrence associated with the maintenance, use, or operation of a motor vehicle or item of motor vehicle equipment in or as a result of which any person suffers death or personal injury, or in which there is property damage.

"(b) Every manufacturer of motor vehicles and motor vehicle equipment shall establish and maintain such records and every manufacturer, dealer, or distributor shall make such reports, as the Secretary may reasonably require to enable him to determine whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder. Nothing in this subsection shall be construed as imposing recordkeeping requirements on distributors or dealers, except those requirements im-

posed under section 158 and orders promulgated thereunder.

"(c)(1) For the purpose of carrying out the provisions of this title, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

"(2) In order to carry out the provisions of this title, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this title.

"(3) The Secretary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this title. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

"(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under paragraph (1) or paragraph (3) of this subsection, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(6)(A) The Secretary is authorized to request from any department, agency or instrumentality of the Government such statistics, data, program reports, and other materials as he deems necessary to carry out his functions under this title; and each such department, agency, or instrumentality is authorized and directed to cooperate with the Secretary and to furnish such statistics, data, program reports, and other materials to the Department of Transportation upon request made by the Secretary. Nothing in this subparagraph shall be deemed to affect any provision of law limiting the authority of an agency, department, or instrumentality of the Government to provide information to another agency, department, or instrumentality of the Government.

"(B) The head of any Federal department, agency, or instrumentality is authorized to detail, on a reimbursable basis, any personnel of such department, agency, or instrumentality to assist in carrying out the duties of the Secretary under this title."

(b) Section 112(e) of such Act is amended by striking out "All" and inserting in lieu thereof "Except as otherwise provided in section 158(a) and section 113(b), all"; and striking out "subsection (b) or (c)" and inserting in lieu thereof "this title".

SEC. 105. COST INFORMATION

The National Traffic and Motor Vehicle Safety Act of 1966 (as amended by section 102) is further amended by inserting after section 112 the following:

"SEC. 113. (a) Whenever any manufacturer opposes an action of the Secretary under section 103, or under any other provision of this Act, on the ground of increased cost, the manufacturer shall submit such cost information (in such detail as the Secretary may by rule or order prescribe) as may be necessary in order to properly evaluate the manufacturer's statement. The Secretary shall thereafter promptly prepare an evaluation of such cost information.

"(b) Such cost information together with the Secretary's evaluation thereof, shall be available to the public unless the manufacturer establishes that it contains a trade secret. Notice of the availability of such information shall be published in the Federal Register. If the Secretary determines that any portion of such information contains a trade secret, such portion may be disclosed to the public only in such manner as to preserve the confidentiality of such trade secret, except that any such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this subsection shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

"(c) For purposes of this section 'cost information' means information with respect to alleged cost increases resulting from action by the Secretary, in such form as to permit the public and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

"(d) The Secretary is authorized to establish rules and regulations prescribing forms and procedures for the submission of cost information under this section.

"(e) Nothing in this section shall be construed to restrict the authority of the Secretary to obtain or require submission of information under any other provision of this Act."

SEC. 106. AGENCY RESPONSIBILITY

The National Traffic and Motor Vehicle Safety Act of 1966 (as amended by section 103 of this Act) is amended by adding at the end thereof the following new section:

"SEC. 124. (a) Any interested person may file with the Secretary a petition requesting him (1) to commence a proceeding respecting the issuance of an order pursuant to section 103 or to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of this Act.

"(b) Such petition shall set forth (1) facts which it is claimed establish that an order is necessary, and (2) a brief description of the substance of the order which it is claimed should be issued by the Secretary.

"(c) The Secretary may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not such petition should be granted.

"(d) Within one hundred and twenty days after filing of a petition described in subsection (b), the Secretary shall either grant or deny the petition. If the Secretary grants such petition, he shall promptly commence the proceeding requested in the petition. If the Secretary denies such petition he shall publish in the Federal Register his reasons for such denial.

"(e) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law."

SEC. 107 NATIONAL MOTOR VEHICLE SAFETY ADVISORY COUNCIL

Section 104 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1393) is amended by inserting "(1)" after "SEC. 104. (a)", and by adding the following new paragraph at the end of subsection (a):

"(2) For the purposes of this section, the term 'representative of the general public' means an individual who (A) is not in the employ of, or holding any official relation to any person who is (i) a manufacturer, dealer, or distributor, or (ii) a supplier of any manufacturer, dealer, or distributor, (B) does not own stock or bonds of substantial value in any person described in subparagraph (A) (i) or i(i), and (C) is not in any other manner directly or indirectly pecuniarily interested in such a person. The Secretary shall publish the names of the members of the Council annually and shall designate which members represent the general public. The Chairman of the Council shall be chosen by the Council from among the members representing the general public."

SEC. 108. FUEL SYSTEM INTEGRITY STANDARD

(a) REQUIREMENT FOR STANDARD.—Within ninety days after the effective date of this title, the Secretary of Transportation shall promulgate a motor vehicle safety standard for fuel system integrity applicable to four-wheeled motor vehicles designed to carry ten or fewer passengers in addition to the driver (including all vehicles designated on the date of enactment of this Act as passenger cars or multipurpose passenger vehicles in regulations of the Secretary of Transportation under the National Traffic and Motor Vehicle Safety Act of 1966), in order to protect occupants of such vehicles, and other persons, from fuel-fed fires. Such standard shall be effective with respect to all motor vehicles produced on or after September 1, 1974. In prescribing the initial standard required by this subsection, the Secretary shall give consideration to the need to reduce the spread of fire and to limit the escape of fuel.

(b) AMENDMENT OR REPEAL OF STANDARD.—The Secretary may amend or repeal a standard required to be prescribed under subsection (a) if he determines such amendment or repeal will not diminish the level of motor vehicle safety.

SEC. 109. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITION OF SECRETARY.—Section 102(10) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended to read as follows:

"(10) 'Secretary' means the Secretary of Transportation.".

(b) DATE OF ANNUAL REPORT.—The first sentence of section 120(a) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by striking out "March 1" and inserting in lieu thereof "July 1".

SEC. 110. SAFETY BELT INTERLOCK OPTIONAL WITH PURCHASER

Section 103(a) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by inserting "(1)" after "SEC. 103. (a)" and by adding at the end thereof the following new paragraph:

"(2)(A) In any model year in which a motor vehicle manufacturer is permitted to comply with a Federal motor vehicle safety standard relating to occupant restraint systems by installing safety belt interlocks in new motor vehicles manufactured by him—

"(i) such manufacturer shall be permitted to comply with such standard in such model year by equipping new motor vehicles with a sequential warning device.

"(ii) motor vehicles equipped with a safety belt interlock shall not be deemed to have complied with such standard for occupant restraint systems unless the manufacturer of such vehicles also makes available to purchasers motor vehicles equipped with a sequential warning system.

"(B) For purposes of this paragraph the term 'sequential warning system' means a system (meeting the requirements of standards under this section) comprised of an integrated lap and shoulder safety belts, and a sequential warning device.

"(C) The Federal motor vehicle safety standard for occupant restraint systems shall be amended so as to be consistent with this paragraph. Such amendment shall take effect not later than 90 days after the date of enactment of this paragraph."

SEC. 111. REDUCTION OF MOTOR VEHICLE AND COST.

In carrying out responsibilities under the National Traffic and Motor Vehicle Safety Act of 1966, and the Motor Vehicle Information and Cost Savings Act, the Secretary

of Transportation shall take all steps, consistent with his responsibilities under those Acts, to encourage reduction of weight and cost of motor vehicles.

SEC. 112. EFFECTIVE DATE.

The amendments made by this title (other than section 110) shall take effect on the sixtieth day after the date of enactment of this Act.

TITLE II—SCHOOLBUS SAFETY

SEC. 201. DEFINITIONS.

Section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by adding at the end thereof the following:

"(14) 'schoolbus' means a passenger motor vehicle which is designed to carry more than ten passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools; and

"(15) 'schoolbus equipment' means equipment designed primarily as a system, part, or component of a schoolbus, or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as an accessory or addition to a schoolbus."

SEC. 202. MANDATORY SCHOOLBUS STANDARDS.

Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by adding at the end thereof the following:

"(i) (1) (A) Not later than six months after the date of enactment of this subsection, the Secretary shall publish proposed Federal motor vehicle safety standards to be applicable to schoolbuses and schoolbus equipment. Such proposed standards shall include minimum standards for the following aspects of performance:

"(i) Emergency exits.

"(ii) Interior protection for occupants.

"(iii) Floor strength.

"(iv) Seating systems.

"(v) Crash worthiness of body and frame (including protection against rollover hazards).

"(vi) Vehicle operating systems.

"(vii) Windows and windshields.

"(viii) Fuel systems.

"(B) Not later than fifteen months after the date of enactment of this subsection, the Secretary shall promulgate Federal motor vehicle safety standards which shall provide minimum standards for those aspects of performance set out in clauses (i) through (VIII) of subparagraph (A) of this paragraph, and which shall apply to each schoolbus and item of schoolbus equipment which is manufactured in or imported into the United States on or after the expiration of the nine-month period which begins on the date of promulgation of such safety standards.

"(2) The Secretary may prescribe regulations requiring that any schoolbus be test-driven by the manufacturer before introduction into commerce."

SEC. 203. ENFORCEMENT

Section 108(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by adding at the end thereof the following:

"(F) to fail to comply with regulations of the Secretary under section 103(1)(2)."

TITLE III—MOTOR VEHICLE DEMONSTRATION PROJECTS

Section 301. (a) Title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1961 et seq.) is amended—

(1) by redesignating sections 302 through 304 (and references thereto) as sections 303 through 305, respectively; and

(2) by inserting after section 301 the following new section:

"SPECIAL DEMONSTRATION PROJECTS

"SEC. 302. The Secretary shall establish a special motor vehicle diagnostic inspection demonstration project to assist in the rapid development and evaluation of advanced inspection, analysis, and diagnostic equipment suitable for use by the States in standardized high volume inspection facilities and to evaluate the repair characteristics of motor vehicles. Such project shall be designed to facilitate evaluation of repair characteristics by small automatic repair garages."

Mr. STAGGERS (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

AMENDMENT OFFERED BY MR. MOSS

Mr. MOSS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Moss: Page 50, after line 8, add the following new section and renumber the succeeding section:

SEC. 112. Section 204(a) of Public Law 89–563 is amended to read as follows:

"(a) No person shall sell, offer for sale, or introduction for sale, or deliver for introduction in interstate commerce, any tire or motor vehicle equipped with any tire which has been regrooved, except that the Secretary may by order permit the sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of regrooved tires and motor vehicles equipped with regrooved tires which he finds are designed and constructed in a manner consistent with the purposes of this Act."

Mr. MOSS. Mr. Chairman, what this amendment is intended to do is to clarify an inadvertent omission in this legislation.

It is a fact that tires are not only sold in this country, but they are also leased, and frequently there may be fleet operations, leasing tires and leasing mileage. The language of the act as originally drafted was too restrictive and did not therefore permit the use of regrooves under a leasing arrangement, and yet it is one of the more common occurences. It is also a fact that many tires are manufactured with a sufficient tread depth thickness to take two or more regrooves without impairing in connection with that structural integrity of the tire carcass.

So it is in an effort to accommodate a reasonable request and to recognize an inadvertent omission by the original draftman of the act that this amendment is offered.

Mr. BROYHILL of North Carolina. Mr. Chairman, if the gentleman will yield, I am somewhat familiar with the problem the gentleman from California just mentioned, and I do feel that this language is necessary in order to clear up this ambiguity.

Mr. STAGGERS. Mr. Chairman, if the gentleman will yield, I wish to say to the gentleman from California that this was an omission, and I am in full agreement with the amendment offered by the gentleman from California.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Moss).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MOSS

Mr. MOSS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Moss: Page 48, line 3. After "all" insert "passenger", strike "1974" and insert "1976".

Page 48, line 3, after the period add the following new sentence: "With respect to all other four-wheeled motor vehicles designed to carry ten or fewer passengers in addition to the driver, such standard shall be effective on or after September 1, 1977."

Page 48, line 4, strike "initial".

Page 48, line 6, after the period insert the following new sentence: "Such standard shall provide as a minimum that fuel spillage shall not exceed one ounce per minute as a result of (1) front fixed barrier impacts at speeds up to 30 mph; (2) rear moving barrier impacts at speeds up to 30 mph; (3) front corner fixed barrier impacts at speeds up to 30 mph; (4) lateral moving barrier impacts at speeds up to 20 mph; and (5) static rollovers."

Mr. MOSS. Mr. Chairman, this deals with what I consider to be one of the most important features of automobile safety. Seven years ago, when the initial act was adopted, one of the first items discussed during the deliberations of the committee was the need to improve the integrity of fuel systems in passenger automobiles. During the intervening 7 years there have been several proposed standards promulgated by the Department of Transportation, but up to this moment there has not been a fuel system integrity standard effected. All this amendment does is to take the currently proposed rule, which the Department of Transportation has developed after considerable research and order it to become effective by law. It does not block the Secretary from modifying standards in the future, but it will move us, finally, to the day when we can look forward to an automobile able to sustain a rear-end impact of about 25 miles an hour without the danger which occurs in one out of six of such rear-end impacts, that of fire, and normally a fire which leads to the incineration of the occupants of the automobile.

There are between 2,000 and 3,000 deaths each year directly attributable to the lack of a safe fuel system. It is not that difficult to manufacture. It is not that difficult to engineer or design, and I believe that it will move us a long way toward assuring people that the vehicle in which they ride is built with attention to the safety of the occupants.

Mr. BROYHILL of North Carolina. Mr. Chairman, I move to strike the last word.

Mr. Chairman, could I have the attention of the gentleman from California who is the author of this amendment?

As I understand, what the gentleman is proposing is that we write into law a standard relating to gasoline tanks.

Mr. MOSS. That is correct.

Mr. BROYHILL of North Carolina. And that this standard would become effective on September 1, 1976, for passenger vehicles. Is that correct?

Mr. MOSS. If the gentleman will yield, that is correct.

Mr. BROYHILL of North Carolina. Let me ask one other question. The standard which the gentleman is writing in here, as I read it, is exactly the same standard that has been proposed by the Department of Transportation in the last few months.

Mr. MOSS. If the gentleman will yield

further, that is correct. And if the gentleman will yield for an additional comment, one important reason for doing this is to permit the Department to get on with its standard without having it held up. I understand one manufacturer would like to continue to see further delay in the implementation of the standard.

I thank the gentleman.

Mr. BROYHILL of North Carolina. But if the gentleman would let me ask him another question, I do not see where it does anything that the DOT is not already doing. The Department of Transportation has already proposed a regulation for protection of fuel tanks and what this does is to write that standard into the law and say that it is not effective until September 1, 1976.

I want to ask this question. The gentleman is in no way amending this language on page 48, lines 7 through 11, which would provide the flexibility to the Secretary to amend that standard as it may become necessary.

Mr. MOSS. If the gentleman will yield, the gentleman's statement is correct. I would also point out that the Department of Transportation issued its proposal only after the Subcommittee on Commerce and Finance disclosed this problem in its hearings last year.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from Nebraska.

Mr. McCOLLISTER. Mr. Chairman, do I understand as new information becomes available and it would be considered necessary or desirable to adopt new standards, that the new standards will then have the force and effect of law?

Mr. BROYHILL of North Carolina. I yield to the gentleman from California.

Mr. MOSS. That is correct.

Mr. McCOLLISTER. Mr. Chairman, if the gentleman from North Carolina will yield further, would it not be easier, I would ask the gentleman from North Carolina, to appeal a standard set by the secretary than it would be to appeal this question of what now becomes law? Assume for example that some manufacturer may not agree with the standard, if we made it the law rather than a standard, does it not become almost impossible for the manufacturer to appeal that?

Mr. MOSS. I believe it would depend upon the basis for the manufacturer's objection. Under certain conditions of course it would make that more difficult.

I pointed out we have been waiting for 7 years to achieve what we hoped in 1966 would be achieved within about 18 months. Under other conditions only the court could render a decision and that is where any constitutional question might be involved.

Mr. McCOLLISTER. I thank the gentleman.

If the gentleman from North Carolina would yield once more, it seems to me we are unable to predict what might come in the future and by casting this into law we may be creating something that would be quite difficult to deal with in the future. I think leaving it as it is would be the better course of action.

Mr. BROYHILL of North Carolina. I thank the gentleman.

Let me ask the gentleman from California one other question. Any penalties for violation of this provision in the law would be no greater or no less than if it were a regulation of the Secretary?

Mr. MOSS. If the gentleman will yield, the gentleman again has stated the facts precisely as they are. This would not in any manner increase nor diminish the penalties.

Mr. BROYHILL of North Carolina. For a violation of the standard or noncompliance with the standards?

Mr. MOSS. That is correct.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Moss).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MOSS

Mr. MOSS. Mr. Chairman, on behalf of the gentleman from Michigan (Mr. DINGELL) who is unavoidably absent today in his district, I offer an additional amendment.

The Clerk read as follows:

Amendment offered by Mr. Moss: Page 49, strike out lines 3 through 16, and insert in lieu thereof the following:

"(2) (A) Subject to subparagraph (B)—

"(i) In any model year in which a motor vehicle manufacturer is required or permitted to comply with a Federal motor vehicle safety standard relating to occupant restraint systems by installing a safety belt interlock in a new motor vehicle manufactured by him, such manufacturer shall be permitted to comply with such standard in such model year by equipping such new motor vehicle with a sequential warning system.

"(ii) In any model year in which a motor vehicle manufacturer is required or permitted to comply with such standard by installing a sequential warning system in a new motor vehicle manufactured by him, such manufacturer shall be permitted to comply with such standard in such model year by equipping such new motor vehicle with a safety belt interlock.

"(B) A motor vehicle shall not be deemed to have complied with the Federal motor vehicle safety standard for occupant restraint systems in a model year to which subparagraph (A) applies unless the manufacturer of such vehicle makes available to purchasers the option of purchasing such vehicle (or a similar vehicle) equipped either with a sequential warning system or with a safety belt interlock.

Page 49, line 17, strike out "(B)" and insert "(C)".

Page 49, line 19, strike out "an".

Page 49, line 20, insert "for front outboard occupants (and lap belts for other occupants)" after "belts".

Page 49, line 21, strike out "(C)" and insert "(D)".

Mr. MOSS. Mr. Chairman, this amendment is not really as significant as its length would indicate. It really is designed to do what we thought we were doing in the committee when we adopted the amendment of the gentleman from Michigan (Mr. DINGELL); but through an inadvertence in drafting, it made it appear that the option rested with the manufacturer or supplier, rather than the purchaser.

This amendment is offered to make it very clear that the option is with the purchaser. The manufacturer shall have available the two systems and the purchaser will determine whether he buys the ignition interlock or the sequential light and buzzer warning system. That is the only purpose of this amendment.

Mr. Chairman, I would urge adoption of the amendment.

AMENDMENT OFFERED BY MR. WYMAN AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. MOSS

Mr. WYMAN. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. WYMAN as a substitute for the amendment offered by Mr. Moss: Page 48, strike out lines 22 and 23 and insert in lieu thereof the following:

SEC. 110. OCCUPANT RESTRAINT SYSTEMS

Page 49, strike out lines 3 through 25 and insert in lieu thereof the following:

"(2) (A) Effective with respect to motor vehicels manufactured after the date of enactment of this paragraph, Federal motor vehicle safety standards may not (except as otherwise provided in subparagraph (B)) require that any such vehicle be equipped (i) with a safety belt interlock system, (ii) with any warning device other than a warning light designed to indicate that safety belts are not fastened, or (iii) with any occupant restraint system other than integrated lap and shoulder safety belts for front outboard occupants and lap belts for other occupants.

"(B) Effective with respect to passenger cars manufactured on of after August 15, 1976, Federal motor vehicle safety standards shall require that each motor vehicle manufacturer offer purchasers the option of purchasing either (i) passenger motor vehicles which are equipped with passive restraint systems which meet standards prescribed under this section or (ii) passenger motor vehicles equipped with integrated lap and shoulder belts for front outboard occupants and lap belts for other occupants."

(b) Section 108(a)(1)(A) of such Act (as so redesignated by section 103 of this Act) is amended by inserting "(i)" after "(A)", and by adding at the end thereof the following:

"(i) fail to offer purchasers the option required by section 103(a)(2)(B);".

Mr. WYMAN. Mr. Chairman, this is a citizens' rights amendment. All this amendment does—and we have to put it in the kind of language just read in order to conform with the sections of the bill—is to provide that in the future automobiles can have seatbelts and harnesses, but they are not going to be tied to any sequential warning system with lights and buzzers triggered by electronic sensors under the seats—a lot of expensive equipment. They can have a red warning light on the dash which says, "Seatbelts are not fastened," but that is all they can have.

Anyone who wants to buy a car in America can buy a car with seatbelts and harnesses. That is his privilege. He will not have to buy the interlock. Later on, after models manufactured in 1976, if they have a passenger restraint system which has come to provide such a thing as a workable airbag, they can have the option of taking a car with seatbelts such as we are talking about, or the airbag. That is up to them. But no interlock with the ignition and no sequential warning system.

Mr. Chairman, implicit in what is involved in the proposal of the gentleman from Michigan (Mr. DINGELL), as a substitute to which this amendment is offered, is the view of some that the Federal Government should become "Big Brother" to the automobile drivers of

this Nation. It will say, "Doggone it, you are going to have to have a buckle-up system even if it is not going to be an ignition interlock and if you don't buckle up the lights will flash and the buzzers sound. You have to have it because it is good for you."

This is a most extraordinary, most unfounded, most unreasonable, and most irrational position. Actually it is un-American.

Claims have been made about people being killed on the highways of this country if they do not have their seatbelts fastened. Let me say this: It is not up to the Federal Government to impose on the whole Nation a mandatory seatbelt law. That is up to the State legislatures. If the States want to have mandatory wearing of seatbelts in the States, that is up to each State legislature.

But, more importantly, what the amendment of the gentleman from California (Mr. Moss) would say is: "All right, you do not have to have the ignition interlock." That is a grudging concession. "But, you still have to have sequential warning system so that when a driver gets in or a passenger gets in, things have got to be all fastened up and fastened up in sequence or you are going to have buzzers, lights, and every other kind of inconvenience; and you must pay for it whether you use it or disconnect it or not."

As the gentleman from North Carolina said in the discussion, there is no penalty under the law on the part of a private citizen who wishes to disconnect such gadgetry on his car—and believe me, a number of people in this country are disconnecting expensive equipment which they had to pay for in the first instance.

I hope that the Members will be very clear that this substitute offers an improvement. It is something that people want. It will provide protection. We want to have people wear seatbelts, but whether they do or not is up to them. It is their choice.

I have no intention or desire to transgress upon the prerogatives of the learned and competent members of the subcommittee and of the full committee but this is a citizens' protest I represent here. One out of every three fatalities in this country is a pedestrian fatality, so we have got to take the total fatalities and roll them back down to two-thirds, as having nothing whatever to do with seatbelt wearing.

It is impossible to assess, in a particular accident, whether it would have been better on or better off. Vehicles hit from the rear and catching fire or vehicles falling into water—such situations present a positive danger to seatbelt wearers.

If a person wants to buy a car in this country, he can go ahead and buy one but all he should be required to buy is the seatbelt and shoulder harness, not the under the seat electronic sensors that are required for either the ignition interlock or a squential warning system. There can be a warning light, but we should not require of the automobile industry and of the purchasing public anything more than that. It is not justified.

Mr. SHIPLEY. Mr. Chairman, will the gentleman yield?

Mr. WYMAN. I yield to the gentleman from Illinois.

Mr. SHIPLEY. Mr. Chairman, I thank the gentleman for yielding to me, and I would like to associate myself with his remarks. I think it is a good substitute, and certainly the Congress should pay attention to the feelings and sense of the people in this case.

Certainly, there is no question in my mind that the people resent very much, just as the gentleman has explained, having these items qualified by all the ridiculous safety items that are placed on automobiles today.

Mr. WYMAN. Mr. Chairman, I thank the gentleman for his comment. Of relevance to the pending question is the cost factor. General Motors and other main line manufacturers are increasing their prices to reflect the cost of additions of some of these things. Air bags will cost $200 or $300 per car more. Catalytic converters another $150 or so.

When they get air bags to that degree of sophistication and work ability they can become an option, but only an option to do more by a Government regulatory agency without any express authorization from this Congress, to impose such a thing as a sequential warning system, would be expensive, inadvisable, and wrong. I urge the adoption of my substitute.

Mr. MOSS. Mr. Chairman, I rise in opposition to the substitute amendment.

Mr. Chairman, not from some Government bureaucrat, but from a carefully considered speech by Edward M. Cole, president of General Motors Corp., on July 11, 1974, do I point this out.

He states:

As you know, there have been data indicating an increased use of belts. But I think as professional safety people who are concentrating energy more today on the future of occupant restraint systems, you must not take too much comfort from such indications and place all of our faith on motorists' willingness to buckle up.

That has a great deal of meaning to every one of us in buying insurance for an automobile because the failure to buckle up frequently leads to extremely magnified claims for damages, as well as to death and to disability, and increases an insurance rate which is already escalating out of sight in many areas of this Nation.

Then he goes on and addresses himself to the future:

But I think that if there is any way technology can accomplish it, we must continue to try to find a way to protect those drivers or occupants who will not make any overt move to protect themselves.

Now he is talking about passive restraint. Passive restraint is being sold as an option in Buicks this year, costing $225, of which $50 goes to the dealer; therefore, $175 is roughly the cost. That is not on a mass-produced basis.

Mr. Chairman, I point out that the vinyl roof that so many people put on their car is at least $125 in additional cost as an option.

The major research in this field has been carried on by one of the largest insurers of automobiles in this Nation, Allstate. They have spent a great deal of money. They have had several thousand automobiles with passive restraint systems, and they find that it probably is the only system that will ultimately offer protection to that motorist who does not want to take action to protect himself.

Remember, that might be all right if that act of freedom on his part did not impact very heavily upon the pocketbook of every other automobile driver through the increased rate for insurance.

That warning by Allstate, which has done such a tremendous job of research in this field, is echoed again by the American Insurance Association. They strongly urge that we continue to push for something more than volunteerism in order to cut down the rapidly escalating costs of insurance.

I also have a letter under date of August 12 from the Secretary of Transportation, strongly urging that we continue along the paths we are presently traveling.

We have had better than a 50-percent increase in the use of the belt system as a result of the interlock.

The gentleman from New Hampshire has indicated that all he wants to do is to go into the matter of ending these sensors which he says are so costly, these systems, these wiring harnesses designed and engineered today. I hope the Members will not get any idea that there will be any significant saving in eliminating them. There will not.

The option of having the ignition interlock system or the sequential warning system is a rational and a reasonable one. This was carefully considered by the committee, and in consonance with the technology and the point where we find ourselves, it is a viable alternative.

On the other hand, with all due deference to the gentleman who has proposed the amendment, his suggestion is not a viable alternative. It does not make effective use of the technological advances.

The CHAIRMAN. The time of the gentleman from California (Mr. Moss) has expired.

(By unanimous consent, Mr. Moss was allowed to proceed for 2 additional minutes.)

Mr. MOSS. Mr. Chairman, the gentleman's amendment would insure that we cannot look ahead to the day when we can bring down significantly the cost of the passive restraint system through mass production. Mass production is the great miracle of our system in lowering costs. As it has been miraculous in other areas, it will be equally so in the field of passive restraints.

I remember when we had proposals before the committee to require the first auto lap seatbelts only in automobiles sold to the Federal Government, and the same kind of alarm was sounded then that is being sounded now.

Mr. WYMAN. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from New Hampshire.

Mr. WYMAN. Mr. Chairman, I wish the gentleman would explain so we can better understand it, just what is a "sequential warning system?" What does the word, "sequential," mean in what the gentleman proposes?

Mr. MOSS. Mr. Chairman, that means

in sequence, one following the other, there would be a light and a signal of a different type to take one through the stages which a prudent man would give heed to and fasten his belt, and an imprudent man could ignore it and still take off.

Mr. WYMAN. Mr. Chairman, if the gentleman will yield further, suppose one has his wife and his child with him, suppose they have three people in the front seat; under the gentleman's proposal, is it not a fact that the wife and the child must also fasten their seatbelts or the warning system would go on and the lights would go on?

Mr. MOSS. Of course.

Mr. WYMAN. And if one does not hook the buckle, the lights come on and the buzzer comes on, and if the dog jumps in and out of the front seat, the lights and the buzzers come on.

Mr. MOSS. Mr. Chairman, hopefully the intelligent human being is going to act then in defense of his own life.

Mr. DEVINE. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the substitute amendment.

Mr. KING. Mr. Chairman, will the gentleman yield?

Mr. DEVINE. I yield to the gentleman from New York.

Mr. KING. Mr. Chairman, I would like to join in the support for the amendment offered by the gentleman from New Hampshire (Mr. WYMAN) and ask the Members of the House to support his amendment. I join with the gentleman and his remarks, Mr. DEVINE, in the well in his support of the amendment.

During last fall I asked a question in my questionnaire which I sent to my constituents about seatbelts, and 85 percent of the people in my district voted that they did not want compulsory seatbelts. I hope Mr. WYMAN'S substitute is adopted.

Mr. DEVINE. Mr. Chairman, I thank the gentleman for his contribution.

Mr. Chairman, in listening to the debate on the subject about the ignition interlock system and about seatbelts generally, I am reminded of the saying of an old-timer around here, Charlie Halleck, of Indiana, when he told us about getting letters from his constituents saying, "Please, Congressman, stop helping me to death."

That is just what we are doing in this legislation. We are becoming one of the most over-regulated societies in the world.

Mr. Chairman, if we want to get to the prime cause of highway deaths—and they exceed 50,000 per year—we should attack the problem of the nut behind the wheel, the driver who has the compulsion to use alcohol. The statistics by the National Safety Foundation show that at least 50 percent of the accidents resulting in fatalities have alcohol involved in them one way or another. We do not seem to meet this problem head on because perhaps too many drivers who use alcohol also vote.

However, let me tell the Members this: This ignition interlock is an inconvenience. If people want to buckle up, they can do so. We in my State have a slogan on all of our license plates: "Are Your Seatbelts Fastened?"

That is up to the driver. But when you make people who get in a car buckle up here and buckle up over there, or the car will not start unless this is done, is an inconvenience, and it does not have a lot to do with saving lives. Because, if people want to save their own lives they will buckle if they think that will do it.

A lot of this, of course, is counterproductive. We have too many factors involved here. For instance, if you put your car in a parking lot and the parking lot attendant has to move the car, before he can do so, he must buckle himself in the car, almost like a parachutist, before he can move that car.

Also, if you happen to be driving along and you have complied with all these things, and the family's pet dog is in the back seat, and he jumps over the front seat and hits the device that activates the ignition interlock, the entire system stops.

Take the situation if your wife goes to the grocery store and puts a bag of groceries in the front seat, and she buckles herself up but still the car will not move because the bag of groceries has activated the safety device over there on the passenger side.

Mr. Chairman, I believe that we are simply overregulating everybody, and I do not think it is necessary. Therefore I certainly support the substitute offered by the gentleman from New Hampshire (Mr. WYMAN) for the amendment offered by the gentleman from California (Mr. Moss).

Mr. MIZELL. Mr. Chairman, will the gentleman yield?

Mr. DEVINE. I yield to the gentleman from North Carolina.

Mr. MIZELL. Mr. Chairman, I want to associate myself with the remarks of the gentleman from Ohio, and would add further that the people of our country are fed up with regulations by the Federal Government in all aspects of their lives. So I associate myself with the gentleman's remarks, and hope the substitute amendment will prevail.

Mr. DON H. CLAUSEN. Mr. Chairman, will the gentleman yield?

Mr. DEVINE. I yield to the gentleman from California.

Mr. DON H. CLAUSEN. Mr. Chairman, the points that the distinguished gentleman from Ohio (Mr. DEVINE) has made are comments very similar to those I have been receiving from constituents in my congressional district.

I think he reflects the point of view that should become the policy of this body and I rise in strong support of this amendment.

I am sincerely interested in the safety of my constituents but do not believe that it is the job of the Congress to impose mandatory requirements for safety control devices in our automobiles. The ignition interlock seatbelt system has proven to be a nuisance, but what is worse is that it forces the consumer to pay for the added cost of these devices.

During my 12 years in Congress, I have consistently opposed attempts to increase the control of Government over the individual and I urge my colleagues to join me in doing so by supporting this amendment, offered by the gentleman from New Hampshire (Mr. WYMAN).

Mr. BAKER. Mr. Chairman, will the gentleman yield?

Mr. DEVINE. I yield to the gentleman from Tennessee.

Mr. BAKER. Mr. Chairman, I would like to associate myself with the remarks made by the gentleman from Ohio. I think every day people are becoming more and more concerned about the body of regulations at the Federal level. I hope the substitute amendment is agreed to.

Mr. MYERS. Mr. Chairman, will the gentleman yield?

Mr. DEVINE. I yield to the gentleman from Indiana.

Mr. MYERS. Mr. Chairman, I thank the gentleman from Ohio for yielding to me.

I wonder if the gentleman would yield to the gentleman from New Hampshire, the author of the substitute amendment, so that he might answer a question?

As I understand, the purpose of the substitute amendment, it does not amend the basic legislation which still provides that seat belts and shoulder harnesses shall be in the automobile, it just returns the right of the option to the purchaser of the automobile, the operator, that he or she may not use them if they so desire?

Mr. WYMAN. If the gentleman will yield, that is correct. My amendment is a substitute for the amendment offered by the gentleman from California (Mr. Moss) that would have required a complete sequential warning system instead of an ignition interlock. All the substitute would do, is provide that if you do not buckle up your safety belt there would be a light on the dashboard, a red light saying that the seat belt is not fastened, but no sequential warning system.

Mr. DEVINE. Mr. Chairman, if I may retrieve back part of my time, I do not think that the American people want bells ringing, whistles blowing, and sirens going every time they sit down in a car.

Mr. MYERS. Mr. Chairman, if the gentleman will yield further, I ask the gentleman from Ohio this: The basic devices for saving lives are still in the automobile, but if the family pet dog gets in the car and jumps into the front seat, you do not have to harness him up, is that right?

Mr. DEVINE. That is right.

Mr. WYMAN. If the gentleman will yield, supposing that you are driving along and your seat belt is buckled up, and the dog jumps over into the front seat, and sets off the sequential warning system, you then immediately have lights going on and the noise of buzzers ringing and this in itself could mean a considerable distraction to the driver, and could for this reason be dangerous to public safety.

Beyond this hazard a sequential warning system is an extra added cost for the car. Prices are high enough without adding gadgetry that is both unnecessary and offensive.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the substitute amendment.

Mr. Chairman, I would like to make clear what we have before us. Originally the bill permitted the Secretary to man-

date the interlock. Under those provisions the situation the gentleman from Ohio describes would have occurred. That is, your wife gets in the car and puts the grocery bag beside her, puts the key in the ignition, and the car will not start. We recognized that, and the gentleman from Michigan (Mr. DINGELL) offered the amendment that went into the bill, and which is perfected by the amendment now being offered by the distinguished chairman of the subcommittee, the gentleman from California (Mr. Moss).

The amendment offered by the gentleman from New Hampshire (Mr. WYMAN), as a substitute goes much further. It removes all of these devices except the seatbelt itself, and a light on the dashboard which shines if the seatbelt is not buckled. There is neither the interlock nor is there the buzzing system.

What is this sequential system?

I understand some Member is saying back there, great, that is what we want. But I wish some of these Members who say that is great had been sitting on the subcommittee when we heard the testimony on auto insurance when we considered the no-fault insurance bills.

We have had a tough problem of trying to decide on that committee whether or not to adopt some Federal or State standards for no-fault insurance. We must in some way face the problem of rising costs of auto insurance. It seems to me that it is a small enough thing for a man to listen for a short period of time to the buzz. If he does not want to pay any attention to it, he can just keep seated, buckle the seatbelt behind him and drive imprudently into the wild blue yonder. He can do that. The only thing is, if he rises again, he will get the buzz; that is all that will happen.

I would suggest to the Members that constituents are going to be a whole lot less worried by a buzz than by the shocking size of his insurance premium because accidents are so persistent, and so expensive.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from California.

Mr. MOSS. I thank the gentleman for yielding.

This massive outpouring of complaints has totaled up to less than 1,000 complaints to the Department of Transportation for the model year 1974.

Mr. ECKHARDT. It seems to me that what we ought to do is establish this compromise position, this compromise position that we accepted on the committee with Mr. DINGELL's amendment, that we go farther, perfect the Moss amendment, and that we should reject the amendment to the amendment offered by Mr. WYMAN.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from California.

Mr. ROUSSELOT. I appreciate the gentleman's yielding.

He mentioned the insurance cost. Since we have had this system in effect about a year, have the insurance premiums come down?

Mr. ECKHARDT. The insurance premiums have not come down.

Mr. ROUSSELOT. I appreciate the gentleman's answer.

Mr. ECKHARDT. For other reasons.

Mr. ROUSSELOT. If the gentleman will yield further, he was making a major point that it would help reduce insurance premiums or at least modify them.

Mr. ECKHARDT. May I say this, that insurance premiums have gone down in some areas and not in others, but there is no question but that the seatbelts have lessened the extent of injury in accidents.

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Texas.

Mr. WHITE. I thank the gentleman for yielding.

By the terms of the amendment offered by the gentleman from California (Mr. Moss) I understand that the option lies with the purchaser as to whether or not he will have an interlock or not have an interlock system on his seatbelt.

Mr. ECKHARDT. That is correct.

Mr. WHITE. So, therefore, it is safe to assume that the manufacturer will have to produce most automobiles with a safety interlock to send them out to the general public, and then at these dealers disconnect the interlock; am I correct?

Mr. ECKHARDT. No, no. The provision of the bill, as Mr. DINGELL corrected it in his amendment, and which is further corrected by the Moss amendment, is that the manufacturer will have to give the purchaser the choice between the interlock and the sequential warning system.

Mr. WHITE. All right, but that is when the automobile is at the dealer where it is to be purchased normally; is that not correct?

Mr. ECKHARDT. That is right.

Mr. WHITE. But in another provision of the bill it provides a penalty for any repairman or dealer to disconnect any of these safety devices.

Mr. ECKHARDT. Either one of the systems.

The CHAIRMAN. The time of the gentleman has expired.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in this discussion that has been brought out on this amendment by our colleague, the gentleman from New Hampshire, I want to talk about some of the mechanical problems. It has already been estimated that there will be 300,000 cars in every year's manufacture that will have a buzzer problem. In other words, in 10 years 3 million cars are going to have this electrical problem.

Here is a letter which I received from a man in Richardson, Tex.

> Last Saturday, 3 November 1973, I drove out of the garage with a 1974 model car with all of the unnecessary interlocks related to the seat belts and ignition system. Last night on my way home from work, I was unable to start the car. After following all the instructions in the instruction manual, with the car still failing to start, two other engineers and myself worked for one hour to finally get the car to start.

That is going to happen all of the time. It happened to me once in Miami. It is going to happen to all of us.

We have heard the story about the woman about to be raped and how she was going to escape. How can she get the car started with the seat belt and shoulder harness plus the full buckles before the ignition will start?

This thing is a serious mechanical problem. Let me give you comments that people have written to me about. I have a comment from a businessman who lives in Irving:

> "Through the years, I have personally talked with hundreds of professional drivers particularly in the Petroleum Industry who refuse to wear safety belts because they've seen their own peers burned to death because they couldn't escape after an accident.

In other words, sometimes drivers do not want to wear the safety belt.

Then from Wisconsin I have a comment from a man who says this:

> An amendment of the law is vitally necessary to protect the right of the people. A former employee of ours, a truck driver, has only one leg as a result of being pinned in by a seat belt when a tire exploded on his Semi. Seat belts will not stop accidents, a lower speed limit and a severe crackdown on drunks will.

Then I have another letter from home:

> While unpacking my car at a motel in Florida last winter I heard a screech and looked up to see a car coming at me at about fifty miles an hour. I ducked and the car swerved off and hit a fence. What happened? The poor old man that was in the car said he tried to reach down and pull back the gas pedal that was stuck but he couldn't reach it on account of his damn seat belt, as he put it. He could have been killed and I know I came close.

In my hometown in Dallas a man wrote in to the Dallas News saying this:

> A personal experience further convinced me of the potential danger of such devices. Through no fault of mine, a speed demon hit my car broadside. Fortunately, my seat belt was not fastened. Had it been, I would have been pinned to the seat. Under the circumstances, the violence of the impact literally threw me out of my shoes and into the back seat. My forehead was cut and the impact caused other damage but a fastened seat belt, much less a harness would have meant irreparable disfigurement or instant death.

Here is another letter from a fine young lady 20 years old in Fort Worth. She says this:

> I wholeheartedly support your stand concerning the "big brother" attitude the government has taken. I was in a rather serious automobile wreck a year and a half ago. Had I been wearing my seat belt at the time, I probably would be severely crippled today or even dead. The seat of my 1965 Volkswagen was jammed within 3 inches of the steering wheel. Fortunately, I was flung into the other seat. I realize that this law will apply to American made cars, but I feel that should I buy a car in the future that has this feature, I should have the right to determine whether or not to wear the seat belt.

Mr. Chairman, under this excellent amendment offered by my friend, the gentleman from New Hampshire, we are going to give people a choice and we are not going to force this sequential buzzer system on them. This buzzer is something carried over from the Chinese torture system.

Mr. WYMAN. Mr. Chairman, the points made in the examples given by the gentleman add up to this, that it is up to the driver of the car as to whether or not he should wear a seat belt.

Mr. COLLINS of Texas. That is correct.

Mr. WYMAN. Is that not typically American?

Mr. COLLINS of Texas. That is correct.

Mr. WYMAN. Just as wearing the seat belt by duress is not really American?

Mr. COLLINS of Texas. That is completely right, and not only that but also many of these people would have been killed had we forced them to wear the belt and harness.

Mrs. GREEN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentlewoman from Oregon.

Mrs. GREEN of Oregon. Mr. Chairman, I rise in support of the amendment which has been offered by the gentleman from New Hampshire.

I think it is highly desirable that the Federal Government advise the American people that they probably will live longer if they wear the seat belts; there is no question but that the seat belts have reduced injuries. I think also it is highly desirable that the Federal Government advise people that if they smoke cigarettes they will not live as long, and perhaps the people around them will be injured if they are forced to inhale the cigarette smoke. The same point is involved in both instances. But there is nothing that irritates me more than when I pick up a rental car and have to fasten that seat belt. After the Government has advised me my chance of survival in an accident is better if I fasten my seat belt, then I think the Federal Government has no right to intrude any further; any more than the Government has the right to use compulsion and take cigarettes away from people who smoke on the grounds that they will live longer if they do not smoke. It seems to me whether people are going to live longer by not smoking or live longer by using seat belts is up to the individual after the Federal Government has advised them of the possibilities in each instance; compulsion-coercion has never been successful nor desirable in regulating such individual decisions on a day-to-day basis.

Mr. ICHORD. Mr. Chairman, I move to strike the last word.

I strongly concur in the remarks of the gentlewoman from Oregon.

I rise in favor of the amendment offered by the gentleman from New Hampshire, as one who wears a seatbelt and who recognizes the value of the seatbelt, as a safety device.

Here we are dealing with a matter of choice by the American public. The distinguished gentleman from Texas has attempted to put the matter in proper perspective and has come to the conclusion that the proper compromise is the amendment of the gentleman from Michigan (Mr. DINGELL), offered by the gentleman from California (Mr. Moss).

Let me put the matter in proper perspective and come up with a different conclusion. As I understand the situation, under the present DOT regulation a manufacturer can comply with the DOT regulation only by an interlock device. Under the committee bill and the amendment of the gentleman from Michigan, the manufacturer can only comply with the regulation if he comes up with a sequential system or an interlock system.

Under the substitute amendment, the amendment of the gentleman from New Hampshire, the manufacturer can comply with the regulation if he comes up with either a sequential system, an interlock system, or a seatbelt with a lighting system, or after 1976 with an airbag system.

It apears to me, members of the committee, that this is the proper compromise.

I called early this morning an official from the Hertz Rental Car System, because I had heard that Hertz was having considerable difficulty with the interlock system. This is what the official from the Hertz System advised me: that they were experiencing so much difficulty that it was almost impossible for them to obtain sufficient towing service to tow a certain make of automobile back into the shop because the automobile would not start due to a shorting of the interlock system; that between 6 and 7 out of 10 of their automobiles now no longer had the buzzer system because dissatisfied customers had disconnected the same. And if the gentleman from California does not believe that the American people are discontented with the present system and will still be discontented under the Dingell amendment, I was advised that a majority of the customers coming into Hertz were asking for 1973 cars with 25,000 or 30,000 miles on them, rather than taking the 1974 cars with the interlock system.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. ICHORD. I yield to the gentleman from Texas first.

Mr. ECKHARDT. One point the gentleman made may not be important, but I think he is slightly incorrect with respect to the effect of the Wyman amendment on the airbag. After 1977 under the present law that is mandatory; the Wyman amendment would make that also optional.

Mr. ICHORD. That would also be optional. If I am in error, I stand corrected.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. ICHORD. I yield to the gentleman from California.

Mr. MOSS. I do not question that Hertz told the gentleman what he just related; but I would point out that one of the very ardent and enthusiastic witnesses before my subcommittee in support of a Federal no-fault, because of the escalating costs——

Mr. ICHORD. The Federal what?

Mr. MOSS. For Hertz, because of the high cost of insurance.

Mr. ICHORD. I do not see where that has any relevancy.

Mr. MOSS. The relevancy, if the gentleman will yield further——

Mr. ICHORD. I yield.

Mr. MOSS. This is designed to lower the cost of insurance through lowering the number of accidents. Now, Hertz cannot have it two ways. They cannot have the costs dropped down with the safety features being built in, unless they are magicians.

Mr. ICHORD. I do not question the belief of the gentleman from California, but I would point out that insurance rates have not been lowered since the interlock system was mandated.

Mr. BROYHILL of North Carolina. Mr. Chairman, I move to strike the last word.

Mr. Chairman, if I could have the attention of the members of the committee, first I want to explain that the amendment which has been offered by the gentleman from California (Mr. Moss) is the committee amendment. There were some technical difficulties with the amendment that was adopted by the committee, and all that the gentleman from California is attempting to do is reoffer the amendment that was adopted by a clear majority of the committee to make sure that it will do the job that it was intended to do.

I am going to speak in favor of the committee amendment—and in committee we refer to that amendment as the Dingell amendment, because the gentleman from Michigan was the author of this amendment in committee.

There is no question that the interlock has irritated many people. I know that all the Members have received letters from people complaining about the inability to drive even short distances, perhaps to shop or what not, without having to buckle up first. But, I plead with the members of the committee, let us not jump to a simple solution by outlawing completely the interlock.

Let me tell the members this: For all of its shortcomings, the interlock is doing the job that it was designed to do. The use of lap and shoulder belts in 1974 cars is 10 times higher than in the 1973 cars. What do these figures mean? They mean more lives saved; they mean more injuries prevented. Over the 10-year span or lifetime of, say 1973 cars as compared to 1974 cars, 3,000 more people are going to be saved by the safety belts which are used in the 1974 cars than in the 1973 cars.

I believe that there is some other way of accomplishing the purpose of the interlock without causing so much inconvenience. We should certainly offer that alternative, and it is being offered in the committee amendment offered by the gentleman from Michigan (Mr. DINGELL) in committee. I believe that the committee amendment is the reasonable compromise between the interests of consumer safety and consumer convenience.

Mr. Chairman, let me read a letter from the Secretary of Transportation, which I will put in the RECORD at this time.

The letter follows:

THE SECRETARY OF TRANSPORTATION,
*Washington, D.C., August 12, 1974.*

Hon. JOHN E. MOSS,
*Chairman, Subcommittee on Commerce and Finance, Washington, D.C.*

DEAR MR. CHAIRMAN: In response to your request, this is to advise the Committee of the Department of Transportation's view on two amendments that I understand may be

offered to H.R. 5529 during its consideration by the full House.

Both amendments relate to Federal Motor Vehicle Safety Standard 208, *Occupant Crash Protection*, that was issued by the Department pursuant to the National Traffic and Motor Vehicle Safety Act of 1966. One amendment would require the Department to amend the standard so that consumers could, at their option, buy new safety belt-equipped cars with or without devices for encouraging safety belt use, such as reminder lights, audible warning systems, and ignition interlocks. The other amendment would prohibit the Department from amending Standard 208 to require the future installation of passive restraints.

The Department opposes both amendments. We have good evidence that the added human cost in automobile deaths and injuries from adopting these amendments is potentially quite large. Further, both are objectionable because they eliminate some of the administrative flexibility necessary to carry out an effective crash survivability program.

Of the 56,000 people killed in highway crashes during 1973, 40,000 were occupants of motor vehicles. At least 30,000 of these vehicle occupants died as a result of being hurled against their dashboards or ejected onto the roadway. Our analyses indicate that as many as half of these 30,000 people could have been saved had they used a proper restraint system.

Unfortunately, the use of occupant restraints has traditionally been low in this country. Even now, the average use rate for cars of all model years is about 5 percent for lap and shoulder belts and 25 percent for lap belts alone.

The warning systems in 1972 and 1973 cars, and the belt-starter interlock in 1974 cars, have brought about a dramatic increase in the usage of current belt systems. Our studies show about 50% of the 1974 model car users wearing their lap and shoulder belts.

We recognize that there has been much public opposition to the belt-starter interlock, and the Department has stated its acceptance of the amendment that is now included in H.R. 5529 that would provide the public with a choice between the interlock and a simple sequential warning system.

In the years since NHTSA was established, substantial advances have been made in various occupant restraint technology. There are now available passive restraint systems that deploy automatically in a crash and provide a large measure of protection for all occupants. These systems do not interfere with the freedom of the driver and his passengers in their use of the vehicle, and therefore have eliminated most of the disadvantages that have caused the public opposition to the seat belt use-inducing systems.

The costs and benefits associated with vehicle passive protection are still being assessed by NHTSA, and no final decision has been made on either the desirability of a mandatory rule or its effective date. However, it is vital that we retain the option to make the proper decision.

I must also express my misgivings about Congress' legislating specific safety standards which we believe are more appropriately the subject of traditional regulatory action.

I appreciate this opportunity to offer these comments.

Sincerely,

CLAUDE S. BRINEGAR.

Mr. Chairman and members of the committee, I stated a few moments ago in general debate that with the beginning of this program in 1966, a number of findings and increases in technology have been made. It seems inconsistent that we are proposing to say now that this program has done too good a job. It has done a good job; it is a program that has saved lives.

The Congress has issued to the people who run this a mandate to accomplish the purpose of saving lives, and now we are going to come along and severely limit their ability to do this and restrict the capability of this program to carry out the mandate we have given to them.

We must not write into this legislation language that is going to put these severe limitations on the development of new devices and new approaches. To do so would be to stifle this attempt.

Mr. ROUSSELOT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from New Hampshire because I think it is the more reasonable approach to a real consumer problem. I have been one of its cosponsors. I think the committee made a mistake originally in not making the language clear enough so that the Department of Transportation could not in any way misinterpret what we meant by "safety devices."

Let me comment on the statement of the gentleman from North Carolina.

Mr. MOSS. Mr. Chairman, will the gentleman yield to correct an error, a misstatement he just made?

Mr. ROUSSELOT. I will yield briefly to my colleague from California.

Mr. MOSS. Yes. We did not at any time, directly or indirectly, mandate, suggest, or request that the Department put in this kind of system.

Mr. ROUSSELOT. That is exactly my point. The Department misinterpreted the language. That is what I am saying. When we give a bureaucracy any kind of broad language, they will always assume that they know better than anyone in the Congress what to do, and will inevitably expand their powers.

I think this interlock system is the best example of that administrative "overkill," if you will pardon the expression, in so-called safety, when, in fact, it is not real safety, in my opinion.

The gentleman from North Carolina (Mr. BROYHILL) said that according to the Department of Transportation and the Secretary, roughly 30,000 persons in 1973 were killed because safety devices were lacking. About half of that, 15,000, resulted because they did not have specific restraints. I assume the gentleman from North Carolina refers to safety belts. Furthermore, if the gentleman from Ohio (Mr. DEVINE) is correct in saying that half of the accidents in this country are caused by alcoholism, then we can assume that half of that 15,000 was caused as a result of alcoholism. Therefore, we are down to 7,500 people who did not buckle up.

My colleagues, no matter how many lives we put on the books, we cannot make people do what is right to protect themselves. I think in this country we believe that we cannot make laws so strict that we can make everybody do just what the gentleman from North Carolina thinks they should do or just what the gentleman from California thinks they should do. Safety belts will be used when people understand their value to safety, not before.

Let me comment on the argument of the gentleman from North Carolina that this should not be a simple solution. I agree. I believe that is the problem that the Department has come up with, what it thought was a simple solution in an interlock system and it has turned out to be a nightmare for the driver, not a simple solution.

I would like to follow through with the point that the gentleman from Missouri (Mr. ICHORD), and others have made. If you have had the experience of renting a car lately, you find strange things happening! I had to switch three cars a month ago because the interlock system was jammed. The buzzers were going, and there were only two of us in the car. We could not get the car started because this stupid interlock system did not work.

That has not just happened to a few people. If one talks to any of the rental people at the airports, they will tell you that this is the most impossible system that the Department of Transportation has imposed upon anybody. It really does not help contribute that much to safety.

The gentleman from California comments that the Department has only had 1,000 letters. I can tell the Members why that is. We, as Congressmen, have gotten all the letters. The people think that Congress enacted this strange regulation. We did not but the public thinks we did. What I am saying is that we allowed that language to be too broad in the original legislation. Allow language that is too broad and any agency in this Government will assume more power. If anyone does not think so, he should just look at what they have already done in the name of safety.

Mr. WYMAN. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from New Hampshire.

Mr. WYMAN. I thank the gentleman for yielding.

Mr. Chairman, the gentleman from North Carolina obviously has not read my amendment. Somehow or other, he suggests that we support the committee amendment because then we will have seat belts. All my amendment says is that if seat belts are required and there is a requirement to buckle up, that there be a red light on the dashboard which will go on if anyone does not buckle up, instead of having all this electronic stuff under the seat.

Mr. ROUSSELOT. Mr. Chairman, I thank the gentleman for his comment. What our colleague, the gentleman from North Carolina, tried to imply was that we were outlawing the interlock system. No, we are not. It will still be optional, if an individual buyer wishes to pay for the system as an extra feature—at about $75 per car.

We are merely saying in this amendment that it is voluntary. What is wrong with that? That is what our whole country is supposed to be about, a matter of free choice.

Mr. MYERS. Mr. Chairman, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Indiana.

Mr. MYERS. Mr. Chairman, it has been stated this afternoon that the seatbelts and harnesses prevent accidents. They cannot. There is no way by which they can do that. They might prevent the seriousness of accidents or they might reduce the seriousness of accidents.

There is one other thing which the gentleman from Texas (Mr. ECKHARDT) commented about, and that is insurance rates. Of course, they are tied to mortality rates.

If I remember correctly, the mortality rates did not go down with the passage of the mandatory interlock system; they came down when we reduced the speed limit on the highway. That is when they came down, not when these devices were approved.

Mr. ROUSSELOT. Mr. Chairman, the gentleman is correct. I rise in support of the amendment of the gentleman from New Hampshire. I have been one of its consponsors.

Mr. STAGGERS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

I would like to make a preliminary statement, and then I will yield to my colleague, the gentleman from California (Mr. Moss).

Mr. Chairman, I think we have strayed from the issue of the debate completely. I do not think all of the debate is going to change one vote in the House. We have debated this subject for years.

I would just like to correct the statement made by the last speaker when he said that the gentleman from North Carolina stated 50 percent of accidents were caused by certain things and then 50 percent were caused by alcohol.

These things do cause accidents, but not deaths or injuries. It has been proven before our committee that it is the second impact of the occupant with the interior of the car that kills and maims. If one is not buckled up, this is when he gets slammed into something or he is killed when he is thrown out of the car.

Mr. Chairman, I can remember when I played football in high school, I played without a helmet. I told the coach that I would not play if I had to wear a helmet. Finally the regulations came along in our league, and these regulations said: "You will play with a helmet or you will not play at all."

That regulation came along because injuries and deaths had occurred to boys who got kicked in the head.

Then I had to wear a helmet. I did not want to, but I did.

Mr. Chairman, the gentleman knows that if he goes over here to the National Airport and gets on a plane, he is going to have to buckle his seatbelt. If he does not, he will not go.

I noticed recently—this was a month or perhaps a year ago—a couple got on at the airport and said they would not buckle their seatbelts. The airline personnel held the plane and brought the guards on who removed them, because they would have been a danger to the rest of the passengers on the plane if they had been hurtled through space and hurt somebody.

That is the reason we have seatbelts. It is the second collision and not the first collision that hurts and kills and maims. That is what we are trying to get away from.

I believe, just as the gentleman does, that this ought not to be connected to the ignition system. I will agree with that.

I will say this: If it is just a buzzing system and one wants to listen to that, he can go ahead and listen to it if he wants to, or he can buckle the seatbelt and get away from that, under the sequential system, as suggested by the gentleman from California.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from California.

Mr. MOSS. Mr. Chairman, I would just like to make a correction in the statement of my good friend, the gentleman from California (Mr. ROUSSELOT), who implied that this was some bureaucratic conspiracy which brought about the interlock.

The interlock was brought about over the objections of the Department of Transportation as a result of the visit of the presidents of two of the major manufacturers of automobiles with the President of the United States, and at a subsequent meeting attended by Mr. John Ehrlichman, Mr. Robert Flanagan, and another White House aide, the order was issued to the Department of Transportation to go along with the interlock rather than the alternative system which the Department of Transportation had under study as an intermediate device.

Now, Mr. Chairman, that is the fact.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I will yield briefly to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I would say that that is another example of abuse of power.

Mr. MOSS. Mr. Chairman, I quite agree.

Mr. MYERS. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Indiana.

Mr. MYERS. Mr. Chairman, I will agree with the gentleman that probably the seatbelts and interlocking devices sometimes help people who drive and prevent them from being injured in accidents, and sometimes they can be saved by these devices.

But why do we not keep the discretion with the insurance companies to give proportionate rates to people who have an automobile with an interlocking device?

I do not know of one insurance company that ever offered such a rate. They offer special rates for nondrinking drivers.

So why do we not just leave the discretion to the insurance company and to the insured?

AMENDMENT OFFERED BY MR. MOSS TO THE AMENDMENT OFFERED BY MR. WYMAN AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. MOSS

Mr. MOSS. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Moss to the amendment offered by Mr. WYMAN as a substitute for the amendment offered by Mr. Moss: In the Wyman substitute, strike out the amendment beginning on line 3 of page 49 and insert in lieu thereof the following:

"(2)(A) Effective with respect to motor vehicles manufactured after the date of enactment of this paragraph and before August 15, 1976, Federal motor vehicle safety standards may not require that any such vehicle be equipped (i) with a safety belt interlock system, (ii) with any warning device other than a warning light designed to indicate that safety belts are not fastened, or (iii) with any occupant restraint system other than integrated lap and shoulder safety belts for front outboard occupants and lap belts for other occupants."

Mr. MOSS. Mr. Chairman, this amendment does exactly what the gentleman from New Hampshire (Mr. WYNN) says he wants to do, excepting that we leave to a later time the question of air bags.

Mr. WYMAN. Mr. Chairman, if the gentleman will yield, if the gentleman's language means what I think it means——

Mr. MOSS. I believe that it does.

Mr. WYMAN. I have no objection to the perfection of my substitute. It will do exactly what we want to do. The technology on air bags is down the road ahead, and that should be deferred.

Mr. MOSS. I thank the gentleman.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I would ask the gentleman from California, does it remove the penalties?

Mr. MOSS. The provisions relating to penalties are not involved in this language in any way that is now before us.

Mr. ROUSSELOT. No penalty if a dealer disconnects?

Mr. MOSS. Mr. Chairman, I must say to the gentleman from California (Mr. ROUSSELOT) that the penalty provisions are in an entirely different section of the Motor Vehicle Safety Act not touched upon at all by the bill now before the House.

Mr. ROUSSELOT. Is this effective immediately?

Mr. MOSS. This is effective immediately.

Mr. WYMAN. Mr. Chairman, if the gentleman will yield further, the gentleman has language that says on or after August 15, 1976. Why is that date in the gentleman's amended version? Why would there be any date if the gentleman is removing, as I understand, the option which my substitute provided that for cars manufactured after August 15, 1976, buyers would have the option of buying whatever passive restraint is then approved by the agency, that of a car with seat belts with red warning lights.

Mr. MOSS. That is the date the agency has approved for the implementation of the passive restraint system and the doing away with the sequential interlock system.

Mr. WYMAN. I understand, but under the substitute which I have proposed and which the gentleman is amending, the requirements of seat belts and interlock systems would go off tomorrow

morning, or whenever the effective date is on passage.

Mr. MOSS. I only dealt with the portion of the amendment which dealt with the air bags; I did not deal with the portion of it which dealt with the interlock system and sequential lights.

Mrs. MINK. Mr. Chairman, if the gentleman will yield, as I understand his amendment—and I commend the gentleman for offering it—it would render, upon passage, a nullity the requirement of an interlock system, instead we would simply have the requirement of seat, lap, and shoulder straps, and the warning lights, but no interlock system; is that correct?

Mr. MOSS. That I believe is correct. Yes, that is correct.

Mrs. MINK. If the gentleman will yield still further, in section 103, paragraph 2, you have a prohibition on a dealer from knowingly rendering inoperative in whole or in part any device.

Mr. MOSS. Yes, indeed. If the gentlewoman from Hawaii had listened to the previous colloquy, I stated that the matter of penalties is taken care of in another section of the act.

Mrs. MINK. Yes. That is my concern, since we are doing away with this device and the requirement of this device.

Mr. MOSS. That continues in the limited device that would be permitted under the Wyman amendment.

Mrs. MINK. Therefore, in the automobiles that currently have those interlock systems, would they not be restrained from altering in any way the vehicles in order to conform?

Mr. MOSS. That is correct, in automobiles already having the interlock. Both under my language and under the language of the gentleman from New Hampshire, they would be restrained from rendering the device inoperable.

Mrs. MINK. If the gentleman will yield further, I would suggest that that would be most unfair, if we are lessening the requirement and that it should be possible for the dealers that now have these automobiles to make the same adjustments, to be incompliance with the law.

Mr. MOSS. Will the gentlewoman let me comment that we are not here attempting to be fair; we are attempting to do the possible. That is all we are trying to do.

Mrs. MINK. I would simply like to state that I would like to offer an amendment to make it possible that the dealers would not have to comply with the law.

Mr. MOSS. I believe that would be an amendment not permitted under the rule.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from West Virginia.

Mr. STAGGERS. I thank the gentleman for yielding.

In answer to the gentlewoman from Hawaii, individuals can have this made inoperative.

Mr. MOSS. An individual may disconnect.

Mr. STAGGERS. There would be no law against it.

Mr. MOSS. That is correct. There is none now; there would be none under this, either the Wyman amendment or the modification proposed by the Moss amendment. The individual may disconnect it, and he may do so without penalty.

The CHAIRMAN. The time of the gentleman has expired.

Mr. WYMAN. Mr. Chairman, I move to strike the necessary number of words.

Mr. Chairman, I will not consume the 5 minutes. I just want to make this one point with the gentleman from California. The gentleman has proposed to strike from my substitute an option that was to apply to passenger cars manufactured after August 15, 1976, for buyers to take either the passive restraints that might then be approved or integrated lap and shoulder seatbelts, front and rear seats. The gentleman struck that out. It must be for a reason.

Mr. MOSS. Yes.

Mr. WYMAN. The first part of the substitute as amended by the gentleman from California prohibits the ignition interlock and prohibits the sequential warning system, so we end up with cars with seatbelts and merely a light on the dash that says the seatbelt is not fastened. Why did the gentleman strike out the option to apply to cars manufactured after August 15, 1976?

Mr. MOSS. Because there is a pending regulation, which already has been published, on which comment has been received for the passive restraint system to become effective on that date.

Mr. WYMAN. I am curious now, because if there is one thing in the world that I do not want to do or to be responsible for, it is burdening the car-buying American public with $200 or $300 more for an air bag for every car they buy after 1976. I want to make sure that they have an option to take a car with seatbelts or an air bag or whatever else technology may then come up with. Is the gentleman suggesting that cars after that date are going to have to have air bags, that they are going to be mandatory?

Mr. MOSS. That is correct.

Mr. WYMAN. If that is so by regulations, I will have to insist upon the language of my original substitute then and make this an option.

Mr. MOSS. The gentleman can do whatever he pleases. I am merely attempting to clarify what I am doing and why I am doing it.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. WYMAN. I yield to the gentleman from Texas.

Mr. KAZEN. I thank the gentleman for yielding.

If I understand the gentleman from California—and I may be wrong, and I am asking for this discussion for the purpose of clarification—the gentleman is proposing that this law be subservient to a pending regulation rather than to make the regulation subservient to the law; am I correct?

Mr. WYMAN. That is correct and that is what I was trying to straighten out by the colloquy which just took place between the gentleman and myself. I do not want to strike out from my substitute language that will give car buyers of cars manufactured after August 15, 1976 an option to have simple seat belts in those cars, which are going to be $200 or more lower in cost than that same car equipped with an air bag.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Moss) to the amendment offered by the gentleman from New Hampshire (Mr. WYMAN) as a substitute for the amendment offered by the gentleman from California (Mr. Moss).

The amendment to the substitute amendment for the amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Hampshire (Mr. WYMAN) as a substitute for the amendment offered by the gentleman from California (Mr. Moss).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MOSS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 339, noes 49, answered "present" 2, not voting 44, as follows:

[Roll No. 476]

AYES—339

| | | |
|---|---|---|
| Addabbo | Cochran | Gaydos |
| Anderson, Ill. | Cohen | Gettys |
| Andrews, N. Dak. | Collins, Tex. | Giaimo |
| Annunzio | Conable | Gibbons |
| Archer | Conlan | Gilman |
| Arends | Conte | Ginn |
| Armstrong | Corman | Goldwater |
| Ashbrook | Cotter | Gonzalez |
| Ashley | Coughlin | Goodling |
| Badillo | Crane | Grasso |
| Bafalis | Cronin | Green, Oreg. |
| Baker | Daniel, Dan | Gross |
| Barrett | Daniel, Robert W., Jr. | Grover |
| Bauman | Daniels, Dominick V. | Guyer |
| Bell | Danielson | Haley |
| Bennett | Davis, S.C. | Hamilton |
| Bergland | Davis, Wis. | Hammer-schmidt |
| Bevill | de la Garza | Hanley |
| Biaggi | Delaney | Hanrahan |
| Biester | Dellenback | Hansen, Idaho |
| Blackburn | Denholm | Harsha |
| Boggs | Dennis | Hastings |
| Boland | Dent | Hawkins |
| Bowen | Derwinski | Hays |
| Bray | Devine | Hechler, W. Va. |
| Breaux | Dickinson | Heckler, Mass. |
| Brinkley | Diggs | Heinz |
| Brooks | Donohue | Helstoski |
| Broomfield | Dorn | Henderson |
| Brotzman | Downing | Hicks |
| Brown, Ohio | Duncan | Hillis |
| Broyhill, Va. | Edwards, Ala. | Hinshaw |
| Buchanan | Erlenborn | Hogan |
| Burgener | Esch | Holifield |
| Burke, Fla. | Eshleman | Holt |
| Burke, Mass. | Evins, Tenn. | Horton |
| Burleson, Tex. | Fascell | Hosmer |
| Burlison, Mo. | Findley | Howard |
| Butler | Fish | Huber |
| Byron | Fisher | Hudnut |
| Camp | Flood | Hungate |
| Carney, Ohio | Flowers | Hunt |
| Carter | Foley | Hutchinson |
| Casey, Tex. | Ford | Ichord |
| Cederberg | Forsythe | Jarman |
| Chamberlain | Fountain | Johnson, Calif. |
| Chappell | Frelinghuysen | Johnson, Colo. |
| Clancy | Frenzel | Johnson, Pa. |
| Clark | Frey | Jones, Ala. |
| Clausen, Don H. | Froehlich | Jones, N.C. |
| Clawson, Del | Fulton | Jones, Okla. |
| Cleveland | Fuqua | Jordan |
| | | Karth |

| | | |
|---|---|---|
| Kastenmeier | Obey | Stanton, James V. |
| Kazen | O'Brien | Steed |
| Kemp | O'Neill | Steele |
| Ketchum | Owens | Steelman |
| King | Patman | Steiger, Ariz. |
| Kluczynski | Patten | Steiger, Wis. |
| Kuykendall | Perkins | Stephens |
| Kyros | Pettis | Stratton |
| Lagomarsino | Peyser | Stubblefield |
| Landgrebe | Pickle | Studds |
| Landrum | Poage | Sullivan |
| Latta | Powell, Ohio | Symington |
| Lent | Preyer | Symms |
| Long, Md. | Price, Ill. | Talcott |
| Lott | Price, Tex. | Taylor, Mo. |
| Lujan | Pritchard | Taylor, N.C. |
| Luken | Quie | Teague |
| McClory | Railsback | Thomson, Wis. |
| McCloskey | Randall | Thone |
| McCollister | Rangel | Thornton |
| McCormack | Rees | Tiernan |
| McDade | Regula | Towell, Nev. |
| McEwen | Rhodes | Traxler |
| McFall | Riegle | Udall |
| McKay | Rinaldo | Ullman |
| McKinney | Roberts | Van Deerlin |
| Macdonald | Robinson, Va. | Vander Jagt |
| Madden | Rodino | Vander Veen |
| Madigan | Roe | Vanik |
| Mahon | Rogers | Veysey |
| Mallary | Roncallo, Wyo. | Vigorito |
| Mann | Roncallo, N.Y. | Waggonner |
| Maraziti | Rooney, Pa. | Walsh |
| Martin, Nebr. | Rose | Wampler |
| Martin, N.C. | Rostenkowski | White |
| Mathias, Calif. | Roush | Whitehurst |
| Mathis, Ga. | Rousselot | Whitten |
| Matsunaga | Roybal | Widnall |
| Melcher | Runnels | Wilson, Bob |
| Metcalfe | Ruppe | Wilson, Charles H., Calif. |
| Milford | Ruth | Wilson, Charles, Tex. |
| Miller | Ryan | Winn |
| Mills | St Germain | Wolff |
| Minish | Sandman | Wright |
| Mink | Sarasin | Wyatt |
| Minshall, Ohio | Satterfield | Wydler |
| Mitchell, Md. | Scherle | Wylie |
| Mitchell, N.Y. | Schneebeli | Wyman |
| Mizell | Schroeder | Yatron |
| Moakley | Sebelius | Young, Alaska |
| Mollohan | Seiberling | Young, Fla. |
| Montgomery | Shipley | Young, Ill. |
| Moorhead, Pa. | Shriver | Young, S.C. |
| Morgan | Shuster | Young, Tex. |
| Mosher | Sikes | Zablocki |
| Murphy, Ill. | Sisk | Zion |
| Murtha | Skubitz | Zwach |
| Myers | Slack | |
| Natcher | Smith, Iowa | |
| Nedzi | Snyder | |
| Nelsen | Spence | |
| Nichols | Stanton, J. William | |
| Nix | | |

NOES—49

| | | |
|---|---|---|
| Abzug | Drinan | Mezvinsky |
| Adams | du Pont | Moss |
| Anderson, Calif. | Eckhardt | O'Hara |
| Aspin | Edwards, Calif. | Pike |
| Bingham | Eilberg | Reuss |
| Brademas | Evans, Colo. | Rosenthal |
| Breckinridge | Fraser | Sarbanes |
| Brown, Calif. | Green, Pa. | Smith, N.Y. |
| Broyhill, N.C. | Griffiths | Staggers |
| Burke, Calif. | Gude | Stark |
| Burton, John | Harrington | Stokes |
| Burton, Phillip | Holtzman | Thompson, N.J. |
| Clay | Koch | Waldie |
| Collins, Ill. | Leggett | Ware |
| Conyers | Long, La. | Whalen |
| Dellums | Mazzoli | Yates |
| | Meeds | |

ANSWERED "PRESENT"—2

| | |
|---|---|
| Lehman | Parris |

NOT VOTING—44

| | | |
|---|---|---|
| Abdnor | Flynt | Passman |
| Alexander | Gray | Pepper |
| Andrews, N.C. | Gubser | Podell |
| Beard | Gunter | Quillen |
| Blatnik | Hanna | Rarick |
| Bolling | Hansen, Wash. | Reid |
| Brasco | Hébert | Robison, N.Y. |
| Brown, Mich. | Jones, Tenn. | Rooney, N.Y. |
| Carey, N.Y. | Litton | Roy |
| Chisholm | McSpadden | Shoup |
| Collier | Mayne | Stuckey |
| Culver | Michel | Treen |
| Davis, Ga. | Moorhead, Calif. | Wiggins |
| Dingell | Murphy, N.Y. | Williams |
| Dulski | | Young, Ga. |

So the amendment offered as a substitute for the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. McKAY). The question is on the amendment offered by the gentleman from California (Mr. Moss) as amended.

The amendment, as amended, was agreed to.

The CHAIRMAN pro tempore. If there are no further amendments, the question is on the committee amendment in the nature of a substitute as amended.

The committee amendment in the nature of a substitute as amended was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. McKAY, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5529) to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations for the fiscal years 1974, 1975, and 1976, to provide for the recall of certain defective motor vehicles without charge to the owners thereof, and for other purposes, pursuant to House Resolution 1304, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The bill was passed.

The title was amended so as to read: "A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations for fiscal years 1975, 1976, and 1977; to provide for the remedy of certain defective motor vehicles without charge to the owners thereof; to require that schoolbus safety standards be prescribed; to amend the Motor Vehicle Information and Cost Savings Act to provide for a special demonstration project; and for other purposes."

A motion to reconsider was laid on the table.

The SPEAKER. Pursuant to the provisions of House Resolution 1304, the Committee on Interstate and Foreign Commerce is discharged from the further consideration of the Senate bill S. 355, to amend the National Traffic and Motor Vehicle Safety Act of 1966 to promote traffic safety by providing that defects and failures to comply with motor vehicle safety standards shall be remedied without charge to the owner, and for other purposes.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. STAGGERS

Mr. STAGGERS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. STAGGERS moves to strike out all after the enacting clause of the bill S. 355, and to insert in lieu thereof the provisions of H.R. 5529, as passed, as follows:

That this Act may be cited as the "Motor Vehicle and Schoolbus Safety Amendments of 1974".

TITLE I—MOTOR VEHICLE SAFETY

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended to read as follows:

"SEC. 121. There are authorized to be appropriated for the purpose of carrying out this Act, not to exceed $55,000,000 for the fiscal year ending June 30, 1975; $60,000,000 for the fiscal year ending June 30, 1976; and $65,000,000 for the fiscal year ending June 30, 1977."

SEC. 102. NOTIFICATION AND REMEDY.

(a) REQUIREMENT OF NOTIFICATION AND REMEDY.—Title I of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391, et seq.) is amended by striking out section 113 and by adding at the end of such title the following new part:

"PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS

"NOTIFICATION RESPECTING MANUFACTURER'S FINDING OF DEFECT OR FAILURE TO COMPLY

"SEC. 151. If a manufacturer of motor vehicles or tires—.

"(1) obtains knowledge that any motor vehicle or item of motor vehicle equipment manufactured by him contains a defect and determines in good faith that such defect relates to motor vehicle safety; or

"(2) determines in good faith that such vehicle or item of equipment does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 103 of this Act;

he shall furnish notification to the Secretary and to owners, purchasers, and dealers, in accordance with section 153, and he shall remedy the defect or failure to comply in accordance with section 154.

"NOTIFICATION RESPECTING SECRETARY'S FINDING OF DEFECT OR FAILURE TO COMPLY

"SEC. 152. (a) If through testing, inspection, investigation, or research carried out pursuant to this Act, or examination of communications under section 158(a), or otherwise, the Secretary determines that any motor vehicle or item of motor vehicle equipment—

"(1) does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 103 of this Act; or

"(2) contains a defect which relates to motor vehicle safety;

he shall immediately notify the manufacturer of such motor vehicle or item of motor vehicle equipment of such defect or failure to comply. The notice shall contain the findings of the Secretary and shall include all information upon which the findings are based. The Secretary shall afford such manufacturer an opportunity to present his views and evidence in support thereof, to establish that there is no failure of compliance or that the alleged defect does not affect motor vehicle safety.

"(b) If after such presentation by the manufacturer the Secretary determines that such vehicle or item of equipment does not comply with an applicable Federal motor vehicle safety standard, or contains a defect which relates to motor vehicle safety, the

Secretary shall order the manufacturer (1) to furnish notification respecting such vehicle or item of equipment to owners, purchasers, and dealers in accordance with section 153, and (2) to remedy such defect or failure to comply in accordance with section 154.

"CONTENTS, TIME, AND FORM OF NOTICE

"SEC. 153. (a) The notification required by section 151 or 152 respecting a defect in or failure to comply of a motor vehicle or item of motor vehicle equipment shall contain, in addition to such other matters as the Secretary may prescribe by regulation—

"(1) a clear description of such defect or failure to comply;

"(2) an evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply;

"(3) a statement of the measures to be taken to obtain remedy of such defect or failure to comply;

"(4) a statement that the manufacturer furnishing the notification will cause such defect or failure to comply to be remedied without charge pursuant to section 154;

"(5) the earliest date (specified in accordance with section 154(b)(2)) on which such defect or failure to comply will be remedied without charge and, in the case of tires, the length of the period during which such defect or failure to comply will be remedied without charge pursuant to section 154; and

"(6) a description of the procedure to be followed in informing the Secretary whenever a manufacturer, distributor, or dealer fails or is unable to remedy without charge such defect or failure to comply.

"(b) The notification required by section 151 or 152 shall be furnished—

"(1) within a reasonable time after the manufacturer first makes a determination with respect to a defect or failure to comply under section 151; or

"(2) within a reasonable time (prescribed by the Secretary) after the manufacturer's receipt of notice of the Secretary's determination pursuant to section 152 that there is a defect or failure to comply.

"(c) The notification required by section 151 or 152 with respect to a motor vehicle or item of motor vehicle equipment shall be accomplished—

"(1) in the case of a motor vehicle, by first class mail to each person who is registered under State law as the owner of such vehicle and whose name and address is reasonably ascertainable by the manufacturer through State records or other sources available to him;

"(2) by first class mail to the first purchaser (or if a more recent purchaser is known to the manufacturer, to the most recent purchasers known to the manufacturer) of each motor vehicle or item of motor vehicle equipment containing such defect or failure to comply, unless the registered owner (if any) of such vehicle or item of equipment was notified under paragraph (1);

"(3) by certified mail or other expeditious means to the dealer or dealers of such manufacturer to whom such motor vehicle or motor vehicle equipment was delivered; and

"(4) by certified mail to the Secretary, if section 151 applies.

In the case of a tire, the manufacturer may elect to provide notification under paragraphs (1) and (2) by certified mail.

"REMEDY OF DEFECT OR FAILURE TO COMPLY

"SEC. 154. (a)(1) If notification is required under section 151 or by an order under section 152(b) with respect to any motor vehicle or item of motor vehicle equipment which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, then the manufacturer of each such motor vehicle or item of motor vehicle equipment presented for remedy pursuant to such notification shall cause such defect or failure to comply in such motor vehicle or such item of motor vehicle equipment to be remedied without charge. In the case of notification pursuant to an order under section 152(b), the preceding sentence shall not apply during any period during which enforcement of the order has been restrained in an action to which section 155(a) applies or if such order has been set aside in such an action.

"(2)(A) In the case of a tire presented for remedy pursuant to such notification, the manufacturer of each such tire shall repair or replace such tire without charge during the 60-day period beginning on the later of (i) the date on which the owner or purchaser receives such notification or (ii) the date on which he receives notice that replacement tires are available.

"(B) In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer (subject to subsection (b) of this section) shall take whichever of the following actions he elects:

"(i) To repair such vehicle.

"(ii) To replace such motor vehicle without charge with a new or equivalent vehicle.

"(iii) To refund the purchase price of such motor vehicle in full, less a reasonable allowance for depreciation.

Replacement or refund may be subject to such conditions imposed by the manufacturer as the Secretary may permit by regulation.

"(C) In the case of an item of motor vehicle equipment, the manufacturer shall (at his election) either repair such item of equipment, or replace such item of equipment without charge with a new or equivalent item of equipment.

"(3) The dealer or retailer who provides remedy (other than replacement of a motor vehicle) pursuant to this section without charge shall receive fair and equitable reimbursement for such remedy from the manufacturer.

"(4) The requirement of this section that remedy be provided without charge shall not apply if the motor vehicle or item of motor vehicle equipment was purchased by the first purchaser more than 8 calendar years (3 calendar years in the case of a tire) before (A) notification respecting the defect or failure to comply is issued pursuant to section 151 or 152, or (B) the Secretary orders such notification, whichever is earlier.

"(b)(1) Whenever a manufacturer has elected under subsection (a) to repair a defect in a motor vehicle or item of motor vehicle equipment or a failure of such vehicle or item of equipment to comply with a motor vehicle safety standard, and he has failed to adequately repair such defect or failure to comply within a reasonable time, (A) the motor vehicle or item of equipment shall be replaced by the manufacturer with a new or equivalent vehicle or item of equipment without charge, or (B) (in the case of a motor vehicle and if the manufacturer so elects) the purchase price shall be refunded in full by the manufacturer, less a reasonable allowance for depreciation. Failure to adequately repair a motor vehicle or item of motor vehicle equipment within sixty days after tender of the motor vehicle or item of equipment for repair shall be prima facie evidence of failure to repair within a reasonable time; unless prior to the expiration of such sixty-day period the Secretary, by order, extends such sixty-day period for good cause shown and published in the Federal Register.

"(2) For purposes of this subsection, the term 'tender' does not include any tender of a motor vehicle or item of equipment for repair prior to the earliest date specified in the notification pursuant to section 153(a) on which such defect or failure to comply will be remedied without charge, or (if notification was not afforded pursuant to section 153(a)) prior to the date specified in any notice required to be given under section 155(d). In either case, such date shall be specified by the manufacturer and shall be the earliest date on which parts and facilities can reasonably be expected to be available. Such date shall be subject to disapproval by the Secretary.

"(c) The manufacturer shall file with the Secretary a copy of his program pursuant to this section for remedying any defect or failure to comply, and the program shall be available to the public.

"ENFORCEMENT OF NOTIFICATION AND REMEDY ORDERS

"SEC. 155. (a)(1) An action under section 110(a) to restrain a violation of an order issued under section 152(b), or under section 109 to collect a civil penalty with respect to a violation of such an order, or any other civil action with respect to such an order, may be brought only in the United States district court for the District of Columbia or the United States district court for a judicial district in the State of incorporation of the manufacturer to which the order applies. All actions (including enforcement actions) brought with respect to the same order under section 152(b) shall be consolidated in an action in a single judicial district, in accordance with an order of the court in which the first such action is brought.

"(2) The court shall expedite the disposition of any civil action to which this subsection applies.

"(b) If a civil action which relates to an order under section 152(b), and to which subsection (a) of this section applies, has been commenced, the Secretary may order the manufacturer to issue a notification in addition to the notification required by section 151 or 152. Such additional notification shall contain—

"(A) a statement that the Secretary has determined that a defect which relates to motor vehicle safety or failure to comply with a Federal motor vehicle safety standard exists, and that the manufacturer is contesting such determination in a proceeding in a United States district court.

"(B) a clear description of the Secretary's stated basis for his determination that there is such a defect or failure.

"(C) the Secretary's evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply,

"(D) any measures which in the judgment of the Secretary are necessary to avoid an unreasonable hazard resulting from the defect or failure to comply,

"(E) a statement that the manufacturer will cause such defect or failure to comply to be remedied without charge pursuant to section 154, but that this obligation of the manufacturer is conditioned on the outcome of the court proceeding, and

"(F) such other matters as the Secretary may prescribe by regulation.

"(c) A manufacturer who fails to notify owners or purchasers in accordance with section 153(c) within the period specified under section 153(b) may beassessed a civil penalty with respect to such failure to notify, unless the manufacturer prevails in an action described in subsection (a) of this section or unless the court in such an action restrains the enforcement of such order throughout the pendency of such action. A manufacturer who fails to notify owners or purchasers as required by an order under subsection (b) of this section may be assessed a civil penalty without regard to whether or not he prevails in an action described in subsection (a) of this section with respect to the validity of the order issued under section 152(b).

"(d) If (1) a manufacturer fails within the period specified in section 153(b) to comply with an order under section 152(b) to afford notification to owners and purchasers,

(ii) a proceeding to which subsection (a) applies is commenced with respect to such order, and (iii) the Secretary prevails in such proceeding, then the Secretary shall order the manufacturer—

"(1) to afford notice (which notice may be combined with any notice required by an order section 152(b) to each owner and purchaser described in section 153(c) of the outcome of the proceeding and containing such other information as the Secretary may require;

"(2) to specify (in accordance with section 154(b)) the earliest date on which such defect or failure will be remedied without charge; and

"(3) if notification was required under subsection (b) of this section, to reimburse such owner or purchaser for any reasonable and necessary expenses (not in excess of any amount specified in the order of the Secretary) which are incurred (A) by such owner or purchaser; (B) for the purpose of repairing the defect or failure to comply to which the order relates; and (C) during the period beginning on the date such notification under subsection (b) was required to be issued and ending on the date such owner or purchaser receives notification pursuant to this subsection.

"REASONABLENESS OF REMEDY

"SEC. 156. Upon petition of any interested person or on his own motion, the Secretary may hold a hearing in which any interested person (including a manufacturer) may make oral (as well as written) presentations of data, views, and arguments on the question of whether a manufacturer has reasonably met his obligation to remedy a defect or failure to comply under section 154. If the Secretary determines the manufacturer has not reasonably met such obligations, he shall order the manufacturer to take specified action to comply with such obligation.

"EXEMPTION FOR INCONSEQUENTIAL DEFECT OR FAILURE TO COMPLY

"SEC. 157. Upon application of a manufacturer, the Secretary shall exempt such manufacturer from giving notice with respect to, or remedying, a defect or failure to comply, if he determines, after public notice and opportunity for presentation of data, views, and arguments, that such defect or failure to comply is inconsequential as it relates to motor vehicle safety.

"INFORMATION, DISCLOSURE, AND RECORDKEEPING

"SEC. 158. (a) Every manufacturer of motor vehicles or tires shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the dealers of such manufacturer or to owners or purchasers of motor vehicles or motor vehicle equipment produced by such manufacturer regarding any defect or failure to comply in such vehicle or equipment which is sold or serviced. The Secretary shall disclose to the public so much of any information which is obtained under this Act and which relates to a defect which relates to motor vehicle safety or to a failure to comply with an applicable Federal motor vehicle safety standard, as he determines will assist in carrying out the purposes of this part; but any information which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential for purposes of that section and shall not be disclosed; unless he determines that disclosure of such information is necessary to carry out the purposes of this part.

"(b) Every manufacturer of motor vehicles or tires shall cause the establishment and maintenance of records of the name and address of the first purchaser of each motor vehicle and tire (and to the extent required by regulations of the Secretary, each item of motor vehicle equipment other than a tire) produced by such manufacturer. The Secretary may, by rule, specify the records to be established and maintained, and reasonable procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this subsection; except that the availability or not of such assistance shall not affect the obligation of manufacturers under this subsection. Such procedures shall be reasonable for the particular type of motor vehicle or tires for which they are prescribed, and shall provide reasonable assurance that customer lists of any dealer and distributor, and similar information, will not be made available to any person other than the dealer or distributor, except where necessary to carry out the purpose of this part.

"DEFINITIONS

"SEC. 159. For purposes of this part:

"(1) The retreader of tires shall be deemed the manufacturer of tires which have been retreated, and the brand name owner of tires marketed under a brand name not owned by the manufacturer of the tire shall be deemed the manufacturer of tires marketed under such brand name.

"(2) Except as otherwise provided in regulations of the Secretary, (A) the manufacturer of a motor vehicle shall be deemed to be the manufacturer of any motor vehicle equipment with which such vehicle is equipped at the time of its delivery to the first purchaser, and (B) any defect or failure to comply in such equipment shall be deemed to be a defect or failure to comply in such vehicle.

"(3) The term 'first purchaser' means first purchaser for purposes other than resale.

"(4) The term 'adequate repair' does not include any repair which results in substantially impaired operation of a motor vehicle or item of motor vehicle equipment."

(b) CONFORMING AMENDMENTS.—

(1) Title I of such Act is amended by inserting after section 101 the following:

"PART A—GENERAL PROVISIONS"

(2) Section 110(c) of such Act is amended by striking out "Actions" and inserting in lieu thereof "Except as provided in section 155(a), actions".

(c) EFFECTIVE DATE.—The amendments made by this section shall not apply to any defect or failure to comply with respect to which before the effective date of this title notification was issued under section 113(a) of such Act or was required to be issued under section 113(e).

SEC. 103. ENFORCEMENT.

(a) PROHIBITED ACTS.—

(1)(A) Section 108(a) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by inserting "(1)" after "SEC. 108. (a)", by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively, and by adding at the end of such subsection the following new paragraph:

"(2) No manufacturer, distributor, dealer, or motor vehicle repair business shall knowingly render inoperative in whole or part, any device or element of design installed on or in a motor vehicle or item of motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard, unless such manufacturer, distributor, dealer, or repair business reasonably believes that such vehicle or item of equipment will not be used (other than for testing or similar purposes in the course of maintenance or repair) during the time such device or element of design is rendered inoperative. For purposes of this paragraph, the term 'motor vehicle repair business' means any person who holds himself out to the public as in the business of repairing motor vehicles or motor vehicle equipment for compensation. The Secretary may by rule exempt any person from this paragraph if he determines that such exemption is consistent with motor vehicle safety and the purposes of this Act. The Secretary may prescribe regulations defining the term 'render inoperative'."

(B) Subsection (b) of section 108 of such Act is amended by inserting "(A)" after "Paragraph (1)" in paragraphs (1), (2), and (5) of such subsection and by inserting "(A)" after "paragraph (1)" in paragraph (3) of such subsection.

(2) Section 108(a) of such Act (15 U.S.C. 1397) as amended by paragraph (1) of this subsection) is amended—

(A) by inserting after the semicolon in paragraph (1)(B) the following: "fail to keep specified records in accordance with such section; or fail or refuse to permit impounding, as required under section 112(b);" and

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

"(E) fail to comply with any rule, regulation, or order issued under section 112 or 114; and"

(3) Section 108(a)(1)(D) of such Act is amended to read as follows:

"(D) fail to furnish notification, fail to remedy any defect or failure to comply, fail to maintain records, or fail to comply with any order or other requirement applicable to any manufacturer, distributor, or dealer pursuant to part B of this title;"

(b) PENALTIES.—Section 109 of such Act (15 U.S.C. 1398) is amended by striking out "$400,000" in the second sentence of such subsection (a) and inserting in lieu thereof "$800,000".

(c) INJUNCTIONS.—

(1) The first sentence of section 110(a) of such Act (15 U.S.C. 1399) is amended (1) by inserting "(or rules, regulations or orders thereunder)" after "violations of this title", and (2) by inserting immediately after "pursuant to this title," the following: "or to contain a defect (A) which relates to motor vehicle safety and (B) with respect to which relates to motor vehicles safety and (B) with respect to which notification has been given under section 151 or has been required to be given under section 152(b),".

(2) The next to the last sentence of section 110(a) of such Act is amended by inserting before the period at the end thereof the following: "or to remedy the defect".

SEC. 104. INSPECTION AND RECORDKEEPING.

(a) Subsections (a), (b), and (c) of section 112 of the National Traffic and Motor Vehicle Safety Act of 1966 are amended to read as follows:

"(a)(1) The Secretary is authorized to conduct any inspection or investigation—

"(A) which may be necessary to enforce this title and any rules, regulations, or orders issued thereunder, or

"(B) which relates to the facts, circumstances, conditions, and causes of any motor vehicle accident and which is for the purposes of carrying out his functions under this Act.

The Secretary shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information obtained indicating noncompliance with this title or any rules, regulations, or orders issued thereunder, for appropriate action. In making investigations under subparagraph (B), the Secretary shall cooperate with appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection.

"(2) For purposes of carrying out paragraph (1), officers or employees duly designated by the Secretary, upon presenting appropriate credentials and written notice to the owner, operator, or agent in charge, are authorized at reasonable times and in a reasonable manner—

"(A) to enter (i) any factory, warehouse, or establishment in which motor vehicles or items of motor vehicle equipment are manufactured, or held for introduction into interstate commerce or are held for sale after such

introduction, or (ii) any premises where a motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident is located;

"(B) to impound for a period not to exceed seventy-two hours, any motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident; and

"(C) to inspect any factory, warehouse, establishment, vehicle, or equipment referred to in subparagraph (A) or (B).

Each inspection under this paragraph shall be commenced and completed with reasonable promptness.

"(3)(A) Whenever, under the authority of paragraph (2)(B), the Secretary inspects or temporarily impounds for the purpose of inspection any motor vehicle (other than a vehicle subject to part II of the Interstate Commerce Act), he shall pay reasonable compensation to the owner of such vehicle to the extent that such inspection or impounding results in the denial of the use of the vehicle to its owner or in the reduction in value of the vehicle.

"(B) As uesd in this subsection, 'motor vehicle accident' means an occurrence associated with the maintenance, use, or operation of a motor vehicle or item of motor vehicle equipment in or as a result of which any person suffers death or personal injury, or in which there is property damage.

"(b) Every manufacturer of motor vehicles and motor vehicle equipment shall establish and maintain such records and every manufacturer, dealer, or distributor shall make such reports, as the Secretary may reasonably require to enable him to determine whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder. Nothing in this subsection shall be construed as imposing recordkeeping requirements on distributors or dealers, except those requirements imposed under section 158 and orders promulgated thereunder.

"(c)(1) For the purpose of carrying out the provisions of this title, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

"(2) In order to carry out the provisions of this title, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this title.

"(3) The Secetary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this title. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

"(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under paragraph (1) or paragraph (3) of this subsection, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(6)(A) The Secretary is authorized to request from any department, agency or instrumentality of the Government such statistics, data, program reports, and other materials as he deems necessary to carry out his functions under this title; and each such department, agency, or instrumentality is authorized and directed to cooperate with the Secretary and to furnish such statistics, data, program reports, and other materials to the Department of Transportation upon request made by the Secretary. Nothing in this subparagraph shall be deemed to affect any provision of law limiting the authority of an agency, department, or instrumentality of the Government to provide information to another agency, department, or instrumentality of the Government.

"(B) The head of any Federal department, agency, or instrumentality is authorized to detail, on a reimbursable basis, any personnel of such department, agency, or instrumentality to assist in carrying out the duties of the Secretary under this title."

(b) Section 112(e) of such Act is amended by striking out "All" and inserting in lieu thereof "Except as otherwise provided in section 158(a) and section 113(b), all"; and striking out "subsection (b) or (c)" and inserting in lieu thereof "this title".

SEC. 105. COST INFORMATION.

The National Traffic and Motor Vehicle Safety Act of 1966 (as amended by section 102) is further amended by inserting after section 113 the following:

"SEC. 113. (a) Whenever any manufacturer opposes an action of the Secretary under section 103, or under any other provision of this Act, on the ground of increased cost, the manufacturer shall submit such cost information (in such detail as the Secretary may by rule or order prescribe) as may be necessary in order to properly evaluate the manufacturer's statement. The Secretary shall thereafter promptly prepare an evaluation of such cost information.

"(b) Such cost information together with the Secretary's evaluation thereof, shall be available to the public unless the manufacturer establishes that is contains a trade secret. Notice of the availability of such information shall be published in the Federal Register. If the Secretary determines that any portion of such information contains a trade secret, such portion may be disclosed to the public only in such manner as to preserve the confidentiality of such trade secret, except that any such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this subsection shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

"(c) For purposes of this section 'cost information' means information with respect to alleged cost increases resulting from action by the Secretary, in such form as to permit the public and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

"(d) The Secretary is authorized to establish rules and regulations prescribing forms and procedures for the submission of cost information under this section.

"(e) Nothing in this section shall be construed to restrict the authority of the Secretary to obtain or require submission of information under any other provision of this Act."

SEC. 106. AGENCY RESPONSIBILITY.

The National Traffic and Motor Vehicle Safety Act of 1966 (as amended by section 103 of this Act) is amended by adding at the end thereof the following new section:

"SEC. 124. (a) Any interested person may file with the Secretary a petition requesting him (1) to commence a proceeding respecting the issuance of an order pursuant to section 103 or to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of this Act.

"(b) Such petition shall set forth (1) facts which it is claimed establish that an order is necessary, and (2) a brief description of the substance of the order which it is claimed should be issued by the Secretary.

"(c) The Secretary may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not such petition should be granted.

"(d) Within one hundred and twenty days after filing of a petition described in subsection (b), the Secretary shall either grant or deny the petition. If the Secretary grants such petition, he shall promptly commence the proceeding requested in the petition. If the Secretary denies such petition he shall publish in the Federal Register his reasons for such denial.

"(e) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law."

SEC. 107. NATIONAL MOTOR VEHICLE SAFETY ADVISORY COUNCIL.

Section 104 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1393) is amended by inserting "(1)" after "SEC. 104. (a)", and by adding the following new paragraph at the end of subsection (a):

"(2) For the purposes of this section, the term 'representative of the general public' means an individual who (A) is not in the employ of, or holding any official relation to any person who is (i) a manufacturer, dealer, or distributor, or (ii) a supplier of any manufacturer, dealer, or distributor, (B) does not own stock or bonds of substantial value in any person described in subparagraph (A)(i) or (ii), and (C) is not in any other manner directly or indirectly pecuniarly interested in such a person. The Secretary shall publish the names of the members of the Council annually and shall designate which members represent the general public. The Chairman of the Council shall be chosen by the Council from among the members representing the general public."

SEC. 108. FUEL SYSTEM INTEGRITY STANDARD.

(a) REQUIREMENT FOR STANDARD.—Within ninety days after the effective date of this title, the Secretary of Transportation shall promulgate a motor vehicle safety standard for fuel system integrity applicable to four-wheeled motor vehicles designed to carry ten or fewer passengers in addition to the driver (including all vehicles designated on the date of enactment of this Act as passenger cars or multipurpose passenger vehicles in regulations of the Secretary of Transportation under the National Traffic and Motor Vehicle Safety Act of 1966), in order to protect occupants of such vehicles, and other persons, from fuel-fed fires. Such standard shall be effective with respect to all passenger motor vehicles produced on or after September 1, 1976. With respect to all other four-wheeled motor vehicles designed to carry ten or fewer passengers in addition to the driver, such standard shall be effective on or after September 1, 1977. In prescribing the standard required by this subsection, the

Secretary shall give consideration to the need to reduce the spread of fire and to limit the escape of fuel. Such standard shall provide as a minimum that fuel spillage shall not exceed one ounce per minute as a result of (1) front fixed barrier impacts at speeds up to 30 mph; (2) rear moving barrier impacts at speeds up to 30 mph; (3) front corner fixed barrier impacts at speeds up to 30 mph; (4) lateral moving barrier impacts at speeds up to 20 mph; and (5) static rollovers.

(b) AMENDMENT OR REPEAL OF STANDARD.—The Secretary may amend or repeal a standard required to be prescribed under subsection (a) if he determines such amendment or repeal will not diminish the level of motor vehicle safety.

SEC. 109. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITION OF SECRETARY.—Section 102 (10) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended to read as follows:

"(10) 'Secretary' means the Secretary of Transportation.".

(b) DATE OF ANNUAL REPORT.—The first sentence of section 120(a) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by striking out "March 1" and inserting in lieu thereof "July 1".

SEC. 110. OCCUPANT RESTRAINT SYSTEMS.

Section 103(a) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by inserting "(1)" after "SEC. 103. (a)" and by adding at the end thereof the following new paragraph:

"(2)(A) Effective with respect to motor vehicles manufactured after the date of enactment of this paragraph, Federal motor vehicle safety standards may not (except as otherwise provided in subparagraph (B)) require that any such vehicle be equipped (i) with a safety belt interlock system, (ii) with any warning device other than a warning light designed to indicate that safety belts are not fastened, or (iii) with any occuant restraint system other than integrated lap and shoulder safety belts for front outboard occupants and lap belts for other occupants.

"(B) Effective with respect to passenger cars manufactured on or after August 15, 1976, Federal motor vehicle safety standards shall require that each motor vehicle manufacturer offer purchasers the option of purchasing either (i) passenger motor vehicles which are equipped with passive restraint systems which meet standards prescribed under this section or (ii) passenger motor vehicles equipped with integrated lap and shoulder belts for front outboard occupants and lap belts for other occupants."

(b) Section 108(a)(1)(A) of such Act (as so redesignated by section 103 of this Act) is amended by inserting "(i)" after "(A)", and by adding at the end thereof the following:

"(i) fail to offer purchasers the option required by section 103(a)(2)(B);".

SEC. 111. REDUCTION OF MOTOR VEHICLE WEIGHT AND COST.

In carrying out responsibilities under the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act, the Secretary of Transportation shall take all steps, consistent with his responsibilities under those Acts to encourage reduction of weight and cost of motor vehicles.

SEC. 112.

Section 204(a) of Public Law 89-563 is amended to read as follows:

"(a) No person shall sell, offer for sale, or introduction for sale, or deliver for introduction in interstate commerce, any tire or motor vehicle equipped with any tire which has been regrooved, except that the Secretary may by order permit the sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of regrooved tires and motor vehicles equipped with regrooved tires which he finds are designed and constructed in a manner consistent with the purpose of this Act."

SEC. 113. EFFECTIVE DATE.

The amendments made by this title (other than section 110) shall take effect on the sixtieth day after the date of enactment of this Act.

TITLE II—SCHOOLBUS SAFETY

SEC. 201. DEFINITIONS.

Section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by adding at the end thereof the following:

"(14) 'schoolbus' means a passenger motor vehicle which is designed to carry more than ten passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools; and

"(15) 'schoolbus equipment' means equipment designed primarily as a system, part, or component of a schoolbus, or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as an accessory or addition to a schoolbus."

SEC. 202. MANDATORY SCHOOLBUS STANDARDS.

Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by adding at the end thereof the following:

"(i)(1)(A) Not later than six months after the date of enactment of this subsection, the Secretary shall publish proposed Federal motor vehicle safety standards to be applicable to schoolbuses and schoolbus equipment. Such proposed standards shall include minimum standards for the following aspects of performance:

"(i) Emergency exits.

"(ii) Interior protection for occupants.

"(iii) Floor strength.

"(iv) Seating systems.

"(v) Crash worthiness of body and frame (including protection against rollover hazards).

"(vi) Vehicle operating systems.

"(vii) Windows and windshields.

"(viii) Fuel systems.

"(B) Not later than fifteen months after the date of enactment of this subsection, the Secretary shall promulgate Federal motor vehicle safety standards which shall provide minimum standards for those aspects of performance set out in clauses (i) through (viii) of subparagraph (A) of this paragraph, and which shall apply to each schoolbus and item of schoolbus equipment which is manufactured in or imported into the United States on or after the expiration of the nine-month period which begins on the date of promulgation of such safety standards.

"(2) The Secretary may prescribe regulations requiring that any schoolbus be test-driven by the manufacturer before introduction into commerce."

SEC. 203. ENFORCEMENT.

Section 108(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966 is amended by adding at the end thereof the following:

"(F) to fail to comply with regulations of the Secretary under section 103(i)(2)."

TITLE III—MOTOR VEHICLE DEMONSTRATION PROJECTS

Section 301. (a) Title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1961 et seq.) is amended—

(1) by redesignating sections 302 through 304 (and references thereto) as sections 303 through 305, respectively; and

(2) by inserting after section 301 the following new section:

"SPECIAL DEMONSTRATION PROJECTS

"SEC. 302. The Secretary shall establish a special motor vehicle diagnostic inspection demonstration project to assist in the rapid development and evaluation of advanced inspection, analysis, and diagnostic equipment suitable for use by the States in standardized high volume inspection facilities and to evaluate the repair characteristics of motor vehicles. Such project shall be designed to facilitate evaluation of repair characteristics by small automotive repair garages."

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended to read as follows: "A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations for the fiscal years 1975, 1976, and 1977; to provide for the remedy of certain defective motor vehicles without charge to the owners thereof; to require that schoolbus safety standards be prescribed; to amend the Motor Vehicle Information and Cost Savings Act to provide for a special demonstration project; and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5529) was laid on the table.

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## WAR CLAIMS ACT AMENDMENTS

Mr. STAGGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill (S. 1728) to increase benefits provided to American civilian internees in Southeast Asia.

The SPEAKER. The question is on the motion offered by the gentleman from West Virginia.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill S. 1728, with Mr. MCKAY in the Chair.

The Clerk read the title of the Senate bill.

By unanimous consent, the first reading the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from West Virginia (Mr. STAGGERS) will be recognized for 30 minutes, and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 30 minutes.

The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of S. 1728, a bill to amend the War Claims Act of 1948.

This bill amends two sections of the War Claims Act of 1948 to accomplish different purposes. Section 5 is amended to increase the authorized detention benefit for American civilians during the Vietnam conflict from $60 to $120 per month. The purpose is to raise the detention benefits authorized for civilians who are or were being held as prisoners to the same level presently authorized for military personnel. Since American civilian prisoners suffered the same deprivations and hardships as military pris-

oners, it is a matter of equity to give them the same detention benefit.

No appropriations are involved, since funds have already been appropriated for payment of the internee benefits.

Section 213 of the War Claims Act is amended to give a first priority to the payment in full of the remaining individual awards for property losses arising out of World War II. Then the bill gives a second priority to payment of the remaining corporate awards for similar losses up to the level of $50,000.

Existing law provides for payment of the major part of both individual and corporate awards on a proportional basis. The unpaid corporate awards total $94.7 million; the unpaid individual awards total $6.5 million. Therefore, pro rata payments would distribute most of the remaining funds to the largest corporate claimants.

Payments for property losses are made from the War Claims Fund, a trust account on the books of the U.S. Treasury. Therefore, no appropriations are required for this amendment to the War Claims Act. The War Claims Fund consists of the net proceeds of German and Japanese assets seized in the United States during World War II.

The sums remaining in the fund will not be sufficient to pay all remaining claims in full. For this reason, priorities of payment become important. Equitable considerations concerning the nature of the individual losses led to the decision to give priority to their payment, followed by payment of the smaller remaining corporate awards.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Iowa.

Mr. GROSS. Mr. Chairman, does not the gentleman from West Virginia think that as a matter of principle it is unfair to pay civilians as military personnel are paid under the circumstances of Vietnam?

Mr. STAGGERS. This is debatable. If the gentleman from Iowa will let me explain, they were there doing jobs, at least, most of them, for the Government, serving their country only in a different capacity. Especially in view of the fact that there are so few civilian internees, only 66, I would say to the gentleman from Iowa that they should receive the same benefit as military personnel.

Mr. GROSS. Is it not true that the civilians were there voluntarily?

Mr. STAGGERS. Some were and some were not. Some were, as I understand.

Mr. GROSS. What is that?

Mr. STAGGERS. Some were working for the Government, and were there under orders.

Mr. GROSS. I do not think that any of them were drafted as civilians and sent to Vietnam.

I do not want to make an issue of this particularly, but I wonder if we are not here setting a precedent which may live to haunt us later. I think there is a great distinction from one who is voluntarily in Vietnam, and someone who may have been involuntarily there.

Mr. STAGGERS. I would say to the gentleman from Iowa that some of these were serving the Government, along with the military personnel, and they were captured. They were doing their jobs just the same as the military personnel were.

Mr. GROSS. That may well be. They are both serving the Government, but on an entirely different basis.

Mr. STAGGERS. That is true. And both of them were interned in the same camps and had to undergo the same kind of treatment.

Mr. BROYHILL of North Carolina. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, if I may have the attention of the Members I will try to explain what this bill is about.

Back in 1948 the Congress enacted the War Claims Act. What this act did was to permit American citizens and American corporations, to receive awards to compensate them for losses that they had suffered as a result of World War II. The War Claims Fund comes from the assets of the enemy nations, the Germans and the Japanese, that were seized during World War II by the U.S. Government.

Under the law that was passed at that time, Mr. Chairman, each individual or each corporation who had a claim could come in to the Foreign Claims Settlement Commission and make their claim and prove it. There is no dispute in this bill over any of these claims or the validity of these claims because the Foreign Claims Settlement Commission has long ago settled these issues and adjudicated each one of them.

Over the years the law has been changed to provide payment to certain categories of claimants.

For example, all of those who have suffered death or personal injury were paid in full. All small business claims were paid. One hundred percent of the claims of those with claims under $10,000 were paid. The claims of charitable organizations were paid in full.

As the chairman has pointed out, there is some $101 million in claims still outstanding but only about $20 million available to pay these claims. Over $200 million has been paid out to claimants already and $101,000,000 in claims remain with about $20 million in property or assets to satisfy these claims. So the claimants are fighting over the remaining assets of the War Claims Fund.

What this bill would do would be to give the first priority and payment in full to all of the individual claims. But it goes further than that and it says that all of the claims up to $50,000 would be given to the corporate claimants. In other words, we are going to be establishing a principle here in this bill that the claims of companies are inferior to the claims of individuals. But we are going even farther than that.

We are saying that the smaller claims of companies, those that have a claim of $50,000 or less have a greater claim than the claims of the larger claimants. I think it is a bad precedent to set and I would urge that the Members vote to send this bill back to the committee for further study and further amendment.

Mr. YOUNG of Illinois. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from Illinois.

Mr. YOUNG of Illinois. Mr. Chairman, if the bill does as the gentleman says, would this not be contrary to the bankruptcy law of this country? As I understand the bankruptcy law of this country, it does not make any difference between individual claimants and corporate claimants. So long as the claims are on a par, they would all receive equally in distributions.

Mr. BROYHILL of North Carolina. It is true that all the claims have been approved by the Foreign Claims Settlement Commission. There is no question as to the validity of the claims. It seems to me only right in principle that all the claimants have an equal right to the assets that remain in the fund.

Mr. SYMMS. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from Idaho.

Mr. SYMMS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I associate myself with the remarks of the gentleman.

I would like to ask the gentleman further, is it not true that because of the amendment added to this bill in section 2, 791 of the claims would be paid out to the individuals before consideration is given to the claims of companies and other individuals? I think it is grossly unjust.

Mr. BROYHILL of North Carolina. That is correct. These large individual claims would be paid before any corporate claims would be paid.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from Nebraska.

Mr. McCOLLISTER. Mr. Chairman, I would like to dissociate myself from the remark of the gentleman particularly as it applies to the priorities in allocation of the $20 million available to satisfy $101 million in claims.

I think the principle of giving individuals preference over corporations is proper because it seems to me in many cases it is going to be impossible to discover who the individual stockholders of the corporations were at the time the loss was suffered. Does the gentleman not agree that the loss suffered by the corporation is a loss suffered by the individual stockholders of that corporation?

Mr. BROYHILL of North Carolina. If the corporation has received any tax benefit, that has been taken into consideration by the Foreign Claims Settlement Commission in making the final award of the claim.

Mr. McCOLLISTER. No. What I am referring to is the stockholders of the corporation at the time the loss was sustained are probably very different from the stockholders of that corporation today, and therefore in trying to give to that corporation a prorata satisfaction for its loss, that loss accrues to the benefit of the stockholders today and does not do any good at all to the stockholders at the time the loss was sustained.

Mr. BROYHILL of North Carolina. I do not understand the gentleman's reasoning. Let us assume there was a fire insurance proceeding and it had been adjudicated in the court. Is the gentle-

man saying that the court would then have the right not to pay out the fire insurance proceeds just because the stockholders are different a few years later?

Mr. McCOLLISTER. I am saying the stockholders of record at the time the loss was sustained are quite different than the stockholders now, and those stockholders whose value of their stock was reduced, and there is no way we can make them whole for the loss sustained. It therefore has a tendency to become a windfall benefit for the corporation, whereas individuals who suffered the loss are still known and the losses are more directly payable to them.

Mr. YOUNG of Illinois. Mr. Chairman, if the gentleman will yield, I would like to point out to the gentleman from Nebraska that when one buys a share of stock he has a bundle of rights and the stock shares have claims against the assets of the corporation for whatever value the claims may have, and that is part of the rights one pays for, so the stockholders who now own the stock would have bought whatever rights that exist in the corporation through their stock ownership. Accordingly this is not a proper distinction to use in determining priorities in the distribution of assets in a fund to claimants against the funds.

Mr. SYMMS. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from Idaho.

Mr. SYMMS. I would like to say further to the gentleman from Nebraska that one of the purposes of corporate entities is so that we can have perpetuation of business enterprises. This would set a dangerous precedent which would downplay the individuality of the corporate interests for a corporate entity which is viewed under the law as an individual and the purpose of it is to have a continuous business enterprise. So I think it matters not who the corporate stockholders are, but the corporate entity stands intact. This is a dangerous precedent that should not be established.

Mr. BROYHILL of North Carolina. Mr. Chairman, I have several requests for time, so I reserve the balance of my time.

Mr. STAGGERS. Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Chairman, what the bill does, in fact, has been accurately described by the gentleman from North Carolina, but I think some of the interpretations that have been given here are incorrect. What we have is about $97 million worth of claims. A considerable amount of these claims have already been paid and they were paid with the corporations coming in at the same level as the individuals; so corporations have already had very large portions of their claims paid. I can give an example.

In the case of the Shanghai Power Co., the Shanghai Power Co. has already received approximately $4.8 million out of a total claim of $7.8 million. It desires to get another $3 million.

Now, I happen to have here in my hands the Boise Cascade Quarterly. Boise Cascade bought Shanghai Power in 1969. Actually, I say bought, I do not know whether anything was paid for it at all, because the assets, if any, of Shanghai Power Co. were part of the property of Ebasco. Ebasco had originally owned Shanghai. Shanghai was first in some way injured in its properties by the Japanese and later taken over by the Chinese. So Ebasco counted Shanghai's value as zero. That is the way it carried it on its books.

Then when Boise bought it, they were able to get $4.8 million out of those funds for the purpose of the losses of Shanghai.

Now, let me read from this quarterly report of Boise Cascade:

> Boise Cascade's claim is based on its ownership of 80 percent of the common stock of the venerable Shanghai Power Company, a property worth $56 million which came to Boise Cascade in 1969 through its merger with Ebasco Industries.

Now, listen to this:

> The Shanghai property has never been carried by Boise Cascade as either an asset or a liability. In fact, even Ebasco's predecessors had written the property off many years ago.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield further?

Mr. ECKHARDT. I yield to the gentleman from Nebraska.

Mr. McCOLLISTER. If there is any way if the war claims might be paid that Boise Cascade could ever reach the original stockholders of Shanghai, is it not entirely a windfall for the stockholders of Boise Cascade?

Mr. ECKHARDT. It is, yes, of course. That is precisely the reason we created a first claim to individuals.

Mr. SMITH of New York. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from New York

Mr. SMITH of New York. There is another item in regard to the Boise Cascade buying Ebasco, who owned Shanghai Power Co. I understand that on the corporate claims, that corporate award holders with assets in excess of $5,000 took a collective total of more than $35 million in tax deductions and for more than 30 years have had the use of that money that they saved in tax deductions. Would the gentleman comment on that?

Mr. ECKHARDT. The gentleman is, I think, quite correct on that point, though I do not have exact figures as I am sure he does. I think that points up one thing we tend to forget. What we are talking about now is making people whole who lost these assets nearly 30 years ago.

In the meantime, many of these companies have recouped considerable of their claims by writing off in tax losses. Individuals have not done so.

Mr. YOUNG of Illinois. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Illinois.

Mr. YOUNG of Illinois. Mr. Chairman, first of all, I would like to point out to the gentleman from Texas that I think it is very difficult for any of us to fully evaluate any particular claim, under any particular set of circumstances. Of course, that is why we have the Foreign Claims Settlement Commission, to evaluate these individual and corporate claims and to determine what the amount of the award should be.

It is my understanding from the gentleman from North Carolina that the Commission has taken into consideration the tax benefits when they have allowed the award which is net of any tax benefit. I point out to the gentleman from Texas that when he reads from a published financial report of a corporation, that the published financial report of a corporation often differs in many respects with the tax returns of a corporation and, therefore, such report may well not be relevant.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. STAGGERS. Mr. Chairman, I yield 3 additional minutes to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Chairman, let me say this: The major merits and demerits of the case—though the tax question was in it, though the question of remoteness of stockholders was in it—I think the major thing that weighed with those who made the decision on the subcommittee and on the full committee was the fact that the individual claimants who came before us had no real choice. They were not risking capital with the possibility of gain. They simply lost, in many instances, the total business which they may have owned, or their parents may have owned.

Incidentally, none of these claims can be by persons who were citizens of the United States at the time of the loss. In every instance, this was either a personal loss or the loss of a corporation which was privately owned by a family. This was not an investment in a large corporation. It was a total loss, frequently, by expropriation by the Nazis.

Therefore, we felt that those who had risked capital were entitled to have their first $50,000 as a preference, but individuals should come in ahead of everyone else and receive their claims first. The result of that will be that the potential $20 million which may be available for division will be divided, as is anticipated, about $6.5 million, or somewhere in the neighborhood of a third, to individuals; about $5.5 million will go to the $50,000 preferred corporate claims; and the rest will be distributed pro rata based upon the full corporate claim in each case.

The result is not at all like what has been stated here, that the individuals are getting most of it. They are getting about a third of it. The corporations are getting another two-thirds.

The thing is that the biggest claimants here were are the corporate claims of businesses who were risking capital overseas, which was only a very small part of their total capital. They lost that small part of their total capital, but that small part was so much larger in total amount that unless we give individuals a preference, their interests are watered down to a very, very paltry sum in spite of their being the great sufferers.

We are not disturbing property of corporations. We are not distributing any property that was even owned by either individuals or corporations. They have no claim of the nature that one would have in a bankruptcy court. This is money that was obtained as a result of the confiscation of enemy property in the United States. What we are trying to

do with it is distribute it in an equitable and humane manner.

Mr. BROYHILL of North Carolina. Mr. Chairman, I yield 8 minutes to the gentleman from Tennessee (Mr. KUYKENDALL).

Mr. KUYKENDALL. Mr. Chairman, we are faced with a problem here much larger, in my opinion, than actually the distributing of a huge amount of money, when it is compared to some of the bills we have around here, or some of the things we do.

For that reason, I think it is incumbent upon all of us to look at the precedent we may be setting here.

Since 1948 we have been conducting the war claims settlements of this Nation under the same act. Not too long after that date, the validity of all the claims involved was arrived at, and I regret very much, Mr. Chairman, that at this late date we decide to start trying to make this rather small piece of legislation an instrument of either social justice or tax reform. I do not consider it either one.

We have in this bill, the way it is now written, decided that a corporation for some reason, even though it may be a relatively modest corporation, shall be, as we may say, outranked in its priority by an individual, even though some of the largest international operators in the world today are individuals. John Paul Getty, Bunker Hunt, those people in many instances operate as individuals, not as corporations. Believe me, I have been involved in a couple of corporations that did not have any money.

Therefore, the idea that we have put an interpretation upon the law in this bill that says an individual, just because he is an individual, regardless of the size of his claim, must be placed ahead of a corporation, no matter how small the corporation, is, as far as I am concerned, bad law.

Mr. Chairman, that is the reason that I am opposing this bill, unless the amendment that I am going to introduce under the 5-minute rule is accepted. The matter of who wrote off what how long is not the important thing.

Mention is being made of the fact that if an individual in business has taken this loss on his income tax years ago, just as Boise Cascade may have, and I am sure they did, are we going to disallow the individual deduction which could very well have been in the 68 and 75 percent tax bracket and then differ as to the corporate deduction which was in the 48 percent tax bracket? What kind of sense does that make?

Mr. Chairman, my last point is this: I will introduce an amendment which will place this bill back in the Senate bill, back pretty close to the act that we have been operating under since 1948, which will do what the chairman referred to in raising the civilian and military class to the same level. Individual claimants will get preference up to $35,000 and thereafter all will get the same treatment under the law, as we now have it.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. KUYKENDALL. I yield to the gentleman from Texas.

Mr. ECKHARDT. Does the gentleman understand that from the information the committee got, we found no individual case where any individual took any tax writeoff because they had nothing to take it against, such as the corporations themselves have?

Mr. KUYKENDALL. Is the gentleman saying that no individuals making claims own a business?

Mr. ECKHARDT. The information we got is that no claims of loss against taxes had been taken by individuals with respect to these losses. That is what our committee understands.

Mr. KUYKENDALL. The thing I do not understand at all is why we should choose this bill to change a traditional law in this land, which says that an individual, regardless of the size he is, and a corporation, regardless of the size it is, are treated as individuals under the law. This is what troubles me.

Let me tell the Members about something else that is in this bill.

Most law considers an individual proprietorship or a partnership as an individual. This bill has classified partnerships the same as corporations, which also flies into the face of the law of the land which we have followed traditionally concerning the status of an individual.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. KUYKENDALL. I yield to the gentleman from Nebraska.

Mr. McCOLLISTER. Mr. Chairman, in response to the question of why we did this, it is very simple: Because we saw there were insufficient assets to pay the claims, and in view of the facts which pertained to this case, we simply felt equity would be better served by setting the priorities which we have set, first, by paying the individual claims, and, second, by paying the corporate claims up to $50,000. This in effect gave priority to the smaller corporations which could not afford to sustain the loss as well as the bigger corporations.

Mr. KUYKENDALL. Mr. Chairman, I will ask the gentleman this question:

Is it not true that the small individual claims and the small corporate claims have already been settled?

Mr. McCOLLISTER. The small individual claims have been settled, but the small corporate claims have not been settled.

Mr. KUYKENDALL. Mr. Chairman, is it true the corporate claims are the larger claims, and that only the individual claims have been settled?

Mr. BROYHILL of North Carolina. Mr. Chairman, if the gentleman will yield, the small business claims have been settled.

Mr. KUYKENDALL. The small corporate claims and the small business claims have both been settled?

Mr. BROYHILL of North Carolina. Under $10,000.

Mr. KUYKENDALL. So what we have left here are the large claims, the large corporate and individual claims, so I think that makes the ground for this proposal even more shaky, instead of less so.

Mr. STAGGERS. Mr. Chairman, I yield 5 minutes to the chairman of the subcommittee, the gentleman from California (Mr. Moss).

Mr. MOSS. Mr. Chairman, this is not a simple piece of legislation nor has it had a very even history.

The gentleman from Tennessee talked about departing from the principles which have guided us through the years in dealing with the assets of the War Assets Administration in paying claims. If the gentleman from Tennessee would give me his attention for a moment, if he can point out to me any consistent line over the years in the administration of the payments from the funds in the War Assets Administration, I would be most interested in learning of it, because I know that the only consistent policy followed during my 22 years in this House has been to enact different formulas each and every time, so that the consistency is the inconsistency of the actions which the Congress has consistently taken. Now, that is the fact of the matter.

What we are attempting to do here in a final wind-up is this: We do not know the precise amount of money we are dealing with, but it is somewhere between $10 million and $14 million. It is not a large sum of money. There are 186 remaining identifiable, individual claimants.

Mr. Chairman, to the best of our ability and that of the agencies advising us, these persons have not been beneficiaries of tax write-offs. Thirteen of these claimants would receive more than $100,000. All the rest would receive much less, and that is obviously from the $6½ million total.

Then there are 161 corporate claimants to share $5.8 million, up to a maximum of $50,000, taking care of the remaining corporate claimants on a fairly even-handed basis. The remaining assets, if there be any, would go to the other claimants who have in the overwhelming majority of instances already written these claims off years ago.

The case cited of Boise-Cascade and its interest in a powerplant, probably where the name was the greatest asset that they acquired, is typical of much of what went on.

We have had classes of claimants given special consideration. We have taken care of exempt foundations. We have taken care of churches. We have taken care of all sorts of organizations throughout the years, and in looking at this fund for the most equitable manner of disposing of it to take care of those having the greatest need, having suffered the greatest loss, that is the formula which in the judgment of the committee was the most equitable.

It is not perfect. I defy any person in this Chamber to come to the committee and give us a perfect formula because I have listened to them for many, many years, and I have not heard it. I heard back 20 years ago that we should give special privilege seekers who had urgent need to do this or to do that consideration. Now we are down at the tail end of the fund, trying to do as much elemental justice as we can, and give to those who have the greatest need, at least under the workings of our economic system so as to come out halfway even and give them a break in the settlement.

Mr. SYMMS. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Idaho.

Mr. SYMMS. Mr. Chairman, I thank the gentleman for yielding.

I think what my concern is that if you have legitimate claimants and you have, say, only a few million dollars left to distribute, why can we not prorate it out and let each person take their share upon the basis of that which we have, instead of a discriminatory $50,000 cutoff which certainly shows favoritism and special treatment for individuals and corporations.

Mr. MOSS. I would say to the gentleman from Idaho that rather than favoritism it is going to show a sense of compassion. Compassion is regard for anything.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STAGGERS. Mr. Chairman, I yield 2 additional minutes to the gentleman from California.

Mr. MOSS. Depending on the circumstances of the individual, which is always a form of discrimination or favoritism, but sometimes we should be compassionate.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Nebraska.

Mr. McCOLLISTER. I would say that nobody on our subcommittee thought otherwise. If we intended to discriminate it was in favor of the small claimant, like two corporations, one with $100 million and one with $1 million. It seemed to our subcommittee that the $1 million corporation was likely to have a greater loss in their ability to deal with the loss than the $100 million; that the $50,000 to a small corporation means a good deal more to it than $50,000 does to the $100 million corporation.

Mr. MOSS. I agree with the gentleman.

Mr. SYMMS. Mr. Chairman, if the gentleman will yield I would just state to the gentleman from California that the system here in America is that that has rewarded people who are able to be successful, and I suppose the most compassionate system yet devised. Yet we are applying a rule to this situation that is very unlike the same free enterprise system where compassion is just rewarding productivity, and rewards excellent effort.

Mr. MOSS. Let me say to the gentleman from Idaho that this is one Member of the House who does not need any instructions in the merits of the American free—and I am going to add a word the gentleman left out—competitive enterprise system. I have lived by it all of my life. I actively engaged in it before becoming a Member of this Congress. I have the utmost regard for it. But I know that built into it frequently, not because of any incompetence on the part of the smaller, is a considerable amount of unjust discrimination.

Much of it occurs because the system has evolved into a free noncompetitive system, and I would like to see us get back to having that competitive element in that description.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STAGGERS. Mr. Chairman, I yield 2 additional minutes to the gentleman from California.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Texas.

Mr. ECKHARDT. I thank the gentleman for yielding.

I think we all on this subcommittee, a well balanced one, are as concerned about free enterprise as any subcommittee in the House, but I know one thing, and I think the gentleman from Nebraska will bear me out on this because he heard all of the hearings. One type of claimant is an insurance company. There were insurance companies that insured these businesses operating in Europe and in the Orient. These insurance companies received premiums for the insurance coverage, so they were paid for the risk; they bore the risk; and they lost.

The difficulty in this decision was to try to balance the loss on the basis of whether or not the person elected the risk in the first place and whether or not he lost his entire savings. I hope there is no commandment in the free enterprise system doctrine that precludes compassion for those who lost heavily with no choice concerning whether or not they should bear the risk.

Mr. MOSS. As a matter of fact, we have a long history in this Nation of such. Not too long ago we voted some special aid to those free enterprises out in the cattle lands of this country, and we have on many occasions seen it to be desirable public policy to give preferential treatment in order to better preserve and serve that free competitive enterprise system.

Mr. Chairman, I yield such time as he may require to the gentleman from New York (Mr. SMITH).

Mr. SMITH of New York. Mr. Chairman, I strongly support the passage of S. 1728 as reported by the Committee on Interstate and Foreign Commerce.

One provision of S. 1728 deals with war claims awards arising out of losses suffered by U.S. citizens during World War II. This provision would give individual awardholders under the War Claims Act priority over corporate awardholders in further payments in compensation for their World War II losses. This language was passed by the House in 1969, but was later dropped in conference. Because this provision is fully justified and because its enactment is of great importance to a large number of American citizens who lost all or very nearly all they had as a result of the war, I introduced a bill, H.R. 4896, to assure that they would be wholly compensated for losses that have now gone uncompensated for over 30 years. I am pleased that the Interstate and Foreign Commerce Committee has included the text of my bill as section 2 of S. 1728.

The purpose of the War Claims Act of 1948 was to compensate U.S. citizens for the losses they suffered in World War II. Every citizen claiming an award was required to prove his claim before the Foreign Claims Settlement Commission. All the awardholders who would benefit from this bill have already proved their claims and been granted an award. Most awardholders have already been paid in full under previous priority categories created by the Congress. There remain unpaid portions of awards to 186 individuals totaling $6.5 million and 161 corporations totaling $94.7 million. The amount remaining in the War Claims Fund, however, is far too small to pay all these awards in full. Under present law, the vast majority of the money in the fund would go to corporate awardholders, and many individuals would receive only a few cents on the dollar for their awards.

The enactment of S. 1728 is thus necessary to assure that these individuals who have for so long lacked full compensation will finally receive their just awards. There are many reasons why the individual awardholders are entitled to this priority:

First. Most corporate awardholders took very substantial tax deductions as a result of their war losses. The corporate awardholders with balances in excess of $500,000 took a collective total of more than $35 million in tax deductions and have for more than 30 years had the use of the money they saved. No individual awardholder took a tax deduction. Thus, these tax benefits, combined with previous payments from the war claims fund, have allowed the corporate awardholders to recover a substantially greater percentage of their actual loss than have the individuals.

Second. The losses of the individuals were of far greater personal and economic significance to them than the corporate losses were to the corporate awardholders. The individuals lost their homes, their small family businesses, and their personal belongings, while the losses to the corporations involved only a small fraction of the total corporate assets of the awardholders.

Third. A high percentage of the individual awardholders are elderly persons beyond their productive years who live on small fixed incomes. Many of them spent most of their working years outside the United States and hence receive little or no social security benefits. These people are relying on the payment of their war claims awards to provide them a final financial stake to support them in their declining years. By contrast, at least 96 percent of the unpaid corporate awards are held by companies whose stock or whose parent company's stock is traded on the New York or American Stock Exchanges. All small businesses have already been paid in full under a previous priority. Many of the remaining corporate awardholders are among the biggest corporations in the country, such as General Motors, Exxon, Mobil, and I.T. & T. Recovery of their awards would have little effect on their financial security.

Fourth. In many cases, the present stockholders of the corporate awardholders have little or no relation to those who actually suffered the loss. In many cases, the corporation holding the award is not even the same company that suffered the loss. For example, in one case, involving one of the largest corporate awards, the company that suffered the loss was a subsidiary of an American corporation which long ago wrote the sub-

sidiary's assets down to zero. In 1969, the present awardholder acquired the stock of the parent corporation, paying absolutely nothing for the stock of the subsidiary that had suffered the loss. The present awardholder—which not only did not suffer the loss but paid nothing for the stock of the company that did—thus would receive a windfall by reason of any further payments. There are numerous instances among the corporate awards in which the company that actually suffered the loss has long since been acquired by the present awardholder. Even in cases in which the present corporate awardholder was the company that suffered the loss, the present stockholders are a very different group from those that held the stock at the time of the loss more than 30 years ago. By contrast, the individual awards are all held by the persons who suffered the loss or by members of the family that suffered the loss.

Another section of this bill would provide benefits for American civilians who were held as prisoners by North Vietnam during the Vietnam war at the same level as those for military personnel who were prisoners of war. These civilians were employees of agencies of the U.S. Government or U.S. Government contractors and suffered as long and as grievously as their military counterparts. However, because of an inequity in the present War Claims Act, their benefits are less than half of those received by military personnel. S. 1728 would correct this inequity and allow them to be compensated at the same rate as military personnel.

Finally, I would like to stress that no provision of this bill requires any appropriation by the Congress or increases Government spending in any way. The funds from which payment of World War II awards is to be made consist of the proceeds of the sale of assets of enemy nationals seized by the U.S. Government during World War II under the Trading With the Enemy Act. The funds to pay Vietnam civilian internees are derived from an appropriation made in fiscal year 1973. Thus, enactment of S. 1728 would have no impact on Federal spending.

These are only some of the reasons why enactment of S. 1728 would be just and proper. I urge the House to act favorably on this bill.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from Nebraska (Mr. McCOLLISTER).

Mr. McCOLLISTER. Mr. Chairman, I would like to voice my support for the enactment of S. 1728. I am a member of the Subcommittee on Commerce and Finance that considered and unanimously reported this bill, and have given close attention to the issues the bill addresses. S. 1728 was overwhelmingly approved after 2 days of markup by the Committee on Interstate and Foreign Commerce.

In addition to the arguments cited by other Members in support of S. 1728, I believe there are further reasons for its enactment:

First. As has been mentioned previously, the corporate awardholders took large tax deductions from their U.S. income taxes as a result of their war losses while individuals took no such deductions. It is also true that many corporate awardholders received substantial tax and other benefits from foreign governments after the war as incentives for reestablishing their operations in those countries. These benefits, which further compensated the corporations for their losses, were in no way taken into account in the calculation of their war claims awards. Such benefits were unavailable to the individual awardholders.

Second. Many of the corporate awardholders are insurance companies that insured risks overseas at premium rates to reflect the risks of war. These companies were then subrogated to the rights of the insured. The substantial premiums received by these insurance companies were not taken account of in the calculation of war claims awards. No individual awardholder is in a comparable position.

Third. Full payment of the individual awards will not substantially affect the amounts that will be available to pay corporate awards. The corporate awards total about $94.7 million. There will be only about $20 million at most available for payment of all awards—both corporate and individual. Thus, even under existing law, the corporations will receive at most about 20 cents on the dollar. Since the total amount payable to individuals is only $6.5 million, giving a priority to individuals will reduce the corporate recovery by only a few cents on the dollar.

Fourth. The corporate awards represent a greater percentage of the actual losses of the corporate awardholders than the individual awards represent of the actual losses of the individuals. In the granting of awards, the Foreign Claims Settlement Commission required documentary proof of the loss for which an award was sought. Many individuals who suffered property losses also lost their documentary proof of ownership in the war. Large U.S. corporations that maintained extensive records in this country did not have similar problems and hence were able to document a much higher percentage of their actual loss than were individuals.

Fifth. All the individual awardholders are U.S. citizens. The War Claims Act required that an individual be a U.S. citizen at the time of his loss in order to be eligible for an award. By contrast, a corporation need only have been incorporated in the United States and 50 percent of its assets owned by U.S. nationals in order to qualify. A significant portion of the stock of many corporate awardholders is held by foreign nationals. Since the basic purpose of the War Claims Act was to compensate U.S. citizens for their losses, this purpose is more consistently served by allowing individual awardholders, all of whom are U.S. citizens, a priority.

These reasons all support the enactment of a priority for individuals in the payment of World War II war claims awards.

In addition to this priority, the Committee on Interstate and Foreign Commerce added an additional priority category through an amendment that I sponsored. Under this amendment, after payment to the individuals, all corporate awards would be paid in equal amounts up to $50,000 and after that amount on a pro rata basis. This amendment does not discriminate against any corporate awardholders since all corporations would receive $50,000 per award even if their awards are larger than that amount. Creation of this priority would benefit the smaller corporate awardholders who, in general, are substantially smaller companies than those with the larger awards. This priority would enable 66 of the 161 corporate awardholders to be paid in full and the further assets in the War Claims Fund would then be divided pro rata among the remaining 95 corporate awardholders. While creation of this priority would reduce somewhat the amounts that would be paid to the very largest corporate awardholders, its effect would not be great since even under existing law these awardholders would receive only a fraction of their outstanding balances. Virtually all the corporate awardholders whose recovery would be reduced are among the Nation's largest corporations, such as Exxon, Mobil, and I.T. & T., and the amount by which their recovery would be reduced would be negligible in terms of their total assets.

I would also like to express my support for the provision of S. 1728 that gives civilian U.S. citizens who were held prisoner in North Vietnam during the Vietnam war benefits on a par with those available to military personnel who were held prisoner. These civilians also served their country and suffered as acutely as the military men in enemy prison camps. We owe them at least this much consideration.

Finally, I would like to point out that this bill involves neither an additional appropriation of funds or an increase in Federal spending. The moneys which will be disbursed to World War II awardholders are derived from the sale of the assets of enemy nationals seized by the U.S. Government during World War II and were not raised from tax dollars. The funds to pay the Vietnam civilian internees are derived from an appropriation for fiscal year 1973. Thus, S. 1728 is in no way an inflationary bill.

For these reasons, I urge the passage of S. 1728 as reported by the Committee on Interstate and Foreign Commerce.

Mr. STAGGERS. Mr. Chairman, I have no further requests for time.

Mr. BROYHILL of North Carolina. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. Pursuant to the rule, the Clerk will now read the committee amendment in the nature of a substitute printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 5(1)(3) of the War Claims Act of 1948 (50 App. U.S.C. 2004(1)(3)) is amended by striking out "$60" and inserting in lieu thereof "$150".

SEC. 2. (a) Section 213(a)(3) of the War Claims Act of 1948 (50 App. U.S.C. 20171(a)(3)) is amended to read as follows:

"(3) Thereafter, payments from time to

time on account of the other awards made to individuals pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment pursuant to this paragraph on account of any award shall not exceed $500,000.".

(b) Section 213(a) of such Act is amended by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (3) the following new paragraph:

"(4) Thereafter, payments from time to time on account of the other awards made to corporations pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment pursuant to this paragraph on account of any award shall not exceed $50,000.".

Mr. STAGGERS (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. KUYKENDALL

Mr. KUYKENDALL. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. KUYKENDALL: Strike out all after the enacting clause and insert in lieu thereof the following:

That section 5(i)(3) of the War Claims Act of 1948 (50 App. U.S.C. 2004(i)(3)) is amended to substitute "$150" for "$60".

Mr. KUYKENDALL. Mr. Chairman, I shall not take the full 5 minutes, since I feel that this amendment was debated to a great extent during the debate.

The amendment technically does this: It mentions the part of the bill mentioned by the Chairman earlier that it puts the civilian and the military claimant under the War Claims Act in the same category. To make it clear as to what the meaning of those of us who are supporting this particular amendment feel that the subcommittee in its desire to create an across-the-board justice did—and my great regard for the members of the subcommittee in attempting this is not lessened by the face that I feel that in so doing they have made a serious strike at a basic constitutional fact, and that is under our laws because of the vast differences in the sizes of individual proprietorship and of partnerships and of corporations and of simple individuals themselves, people who have written our law found it within their ideas of justice necessary to require that all be treated the same.

I am quite sure that the subcommittee attempted to achieve justice, but it is my considered judgment and it is my fear, Mr. Chairman, that in their attempts to achieve justice they have done damage to a constitutional fact that is more serious than the injustices that existed under the present law. So I urge the amendment to be adopted.

Mr. SYMMS. Mr. Chairman, will the gentleman yield?

Mr. KUYKENDALL. I yield to the gentleman from Idaho.

Mr. SYMMS. Mr. Chairman, I thank the gentleman from Tennessee for yielding. I associate myself with his remarks.

Mr. Chairman, I am in support of the amendment.

Mr. Chairman, I have no argument with the original intent of the 1974 War Claims Act Amendment as passed by the Senate. It is very appropriate that our American civilian internees in Southeast Asia receive this increase in assistance, particularly when one considers that it brings them more in line with the compensation awarded our military personnel who suffered the same detention. I commend the House for its humane action in consideration of this provision.

I cannot agree with my colleagues who have been instrumental in adding section 2 to the legislation passed by the Senate. It is discriminatory. It is unjust. It is one of the most damaging precedents proposed in this Congress in a good long time.

Section 2 provides that unpaid balances on World War II claims to individual awardholders shall be satisfied before payments are made on legitimate corporation claims. The State Department, the Foreign Claims Settlement Commission, and the Office of Management and Budget all testified against this amendment in our House committee hearings. The Senate never even addressed the proposal this year although it did defeat such a move in 1970. In a nutshell, we are on the edge of expressing public policy in the House of Representatives which holds the legitimate claims of a business to be inferior to those of an individual. Were any one of you to have a court decision in which you were personally involved take such a direction, the hue and cry could be heard across the country.

Section 2 further restricts payments to corporations, providing that each company shall receive no more than $50,000, regardless of the full unsatisfied amount of their claim; in other words, the more a company lost, the less entitled it is to reimbursement.

Even the House has never addressed itself to this concept in public hearings. The amendment was added in the committee without benefit of hearing and without consultation with the agencies involved.

There is injustice aplenty in that language which holds the claims of corporations to be inferior under the law of those of individuals. This additional language compounds that injustice by favoring small corporate losses over large corporate losses. It is a frightening precedent. I urge this body to consider carefully the consequences of such action.

I urge your support this afternoon of the amendment to restore the original Senate language, which limits itself to the very appropriate cause of assisting our American civilian internees in Southeast Asia. I further urge that the Committee on Interstate and Foreign Commerce readdress itself to the question of unsettled war claims in a more equitable manner consistent with our American concept of justice.

Mr. MOSS. Mr. Chairman, I rise in opposition to the amendment.

I would point out, Mr. Chairman, that all this does is to leave the present fund available at the rate of $35,000 for each claimant without regard to any of the underlying facts as to who was an insurance company, as mentioned by the gentleman from Texas, that took its losses out of its premiums which it had calculated as sufficient to cover the losses. They will get their $35,000. If it is an individual who is totally wiped out, he will get his $35,000. If it is someone who picked up a bit of corporate property that had no value at the time, as Boise Cascade did, they will get their $35,000.

It is represented that this is an equitable way of dealing with this. I submit it is not. I submit it is superficially an equitable way, but upon examination of the facts in any depth at all we will see it misses an equitable resolution of this by many, many yards.

It is bad legislation, it is not good legislation, it was not wise when we wrote it. This was the opportunity to clear it up and to deal a little more equitably with persons who suffered serious losses. I would hope that the amendment offered by the gentleman from Tennessee would not be agreed to.

Mr. SMITH of New York. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from New York.

Mr. SMITH of New York. Mr. Chairman, I associate myself with the remarks of the gentleman. I would hope the amendment offered by the gentleman from Tennessee will not be adopted, because the effect of it is to return the war claims distribution to exactly where it is today.

As the gentleman has pointed out, this is unfair to individuals who have personally lost more of their substance than some of the larger companies.

I would like to get back for a moment to the tax point. I understand from the gentleman from Texas that no individuals appeared before the committee who had taken any tax writeoffs, but corporations apparently had taken some $35 million of tax losses which had not been considered in awarding the war claims to them. Is that correct?

Mr. MOSS. That is correct.

Mr. Chairman, I will yield to the gentleman from Texas if he would like to respond personally. Does the gentleman from Texas (Mr. ECKHARDT) care to respond to the tax question which is propounded as to the fact that no individual we could find during the hearings had taken a tax writeoff while the corporations had taken in excess of $35 million in tax losses?

Mr. ECKHARDT. That is what appeared in the hearings. Of course, individuals usually did not have anything to take it off against.

Mr. SMITH of New York. Mr. Chairman, will the gentleman yield further?

Mr. MOSS. I yield.

Mr. SMITH of New York. One other statement the gentleman just made for

which I wanted confirmation is that the tax writeoff, of course, of some $35 million was not taken into consideration in making the war claims award; is that correct?

Mr. MOSS. Mr. Chairman, I yield to the gentleman from Texas for the purpose of responding to that question.

Mr. ECKHARDT. The corporation had to take into account the U.S. settlement taxes.

Mr. SMITH of New York. I thank the gentleman.

Mr. YOUNG of Illinois. Mr. Chairman, I move to strike the requisite number of words.

I would like to rise in support of the amendment. I regret that we have spent so much time debating this bill; but I do think that we should not overlook what I believe is the appropriate role for Congress with respect to the War Claims Act.

It has been stated that we have roughly $20 million to divide up among $100 million of claims. In effect, we have what I refer to as a bankruptcy situation. The bill without the amendment would give a preference to individuals in the payment of their claims before corporations. This preference would extend to claims over $35,000.

The amendment of the gentleman from Tennessee, as I understand it, would eliminate any such preference with respect to corporations and individuals. Those claims would all be treated on a pro rata basis, which is my understanding of the version that the Senate bill also provides.

Now, I do not think it is appropriate for the House to get into a determination of individual claims. I do not think it is the purpose of the House to do that.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Illinois. I yield to the gentleman from California.

Mr. MOSS. The gentleman has stated there are $20 million. I used the figure $11 million to $14 million. I am correct, am I not, in that figure there are adjudicated claims approximating somewhere between $6 million and $9 million now in process, so that the residual fund which is addressed by the language of this bill addresses itself only to between $11 million and $14 million.

Mr. YOUNG of Illinois. I thank the gentleman and I accept that.

The point I was using the figures for was simply to illustrate we have not enough money to pay all the claims, and on that the gentleman from California agrees with me.

The point I am speaking to is that this House is not the appropriate body to try to determine individual claims. I regret that the gentleman from Texas singled out a particular company, Boise Cascade, to describe certain information set forth in an annual report. It is very difficult to evaluate that type of information. We are not the body to do it. That is what the Foreign Claims Settlement Commission is supposed to do.

I do think if the House of Representatives feels that individuals should have a claim priority over corporations, then the House should offer amendments like this to the bankruptcy laws. The bankruptcy laws, of course, have been on the books for many, many years. They provide no such distinction between claims of individuals and corporations. They make no such discrimination. The reason they do not make such discrimination is that it would not be equitable. Under our Constitution corporations are citizens, the same as individuals. We all recognize the fact that corporations are artificial entities, and they are owned by individuals, so there is no valid basis to discriminate against individuals who are stockholders of corporations, if the corporations have valid legitimate claims, compared to individuals who own property in their own individual names.

I think that the House of Representatives would be well advised to accept the well thought out language of the Senate and to have all claims over $35,000 prorated in amount. We should try to avoid the political implications of corporation versus individual. I think that is not a proper basis for us to act upon, for the purpose of discriminating between claimants.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Illinois. I yield to the gentleman from Nebraska.

Mr. McCOLLISTER. Mr. Chairman, does the gentleman from Illinois know that the income tax law, when it considers corporate taxes, imposes a surtax over $25,000 to earnings of over $25,000, giving thereby some preference to the stockholders of smaller corporations? Is not that somewhat comparable to what the committee and the Congress is doing in this instance?

Mr. YOUNG of Illinois. No, I do not believe that such an analogy is relevant to the issue of the priority of claims in the distribution of a fund where there are more claims than there are assets.

I think the tax laws have certain social and other purposes in their enactment, and here we are dealing with claims, I do not think it appropriate to compare the two.

Mr. McCOLLISTER. Mr. Chairman, I rise in opposition to the amendment.

I would merely like to say that it is the right of the Congress to make these kinds of discriminations, and to give preference to small business and to individual claimants.

I think the amendment of the gentleman from Tennessee should, therefore, be defeated.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. McCOLLISTER. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I think it might be well to point out that if the amendment passes, approximately 93 percent of the available funds would go to corporations. About 7 percent would go to individuals, whereas if it does not pass, approximately a third each will go to the individuals and to the $50,000 claim contenders, and the rest, one-third, would be divided proportionately.

Mr. McCOLLISTER. Mr. Chairman, I thank the gentleman for his contribution.

Mr. STAGGERS. Mr. Chairman, I rise in opposition to the amendment. I do not believe it is fair, and I ask that it be defeated.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Tennessee (Mr. KUYKENDALL).

The amendment in the nature of a substitute was rejected.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. McKAY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the Senate bill (S. 1728) to increase benefits provided to American civilian internees in Southeast Asia, pursuant to House Resolution 1306, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER The question is on the third reading of the bill.

The bill was ordered to be read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 368, nays 17, not voting 49, as follows:

[Roll No. 477]

YEAS—368

| | | |
|---|---|---|
| Abdnor | Brinkley | Conyers |
| Abzug | Brooks | Corman |
| Adams | Broomfield | Cotter |
| Addabbo | Brotzman | Coughlin |
| Anderson, Calif. | Brown, Ohio | Cronin |
| Anderson, Ill. | Broyhill, N.C. | Daniel, Dan |
| Andrews, N.C. | Broyhill, Va. | Daniel, Robert W., Jr. |
| Andrews, N. Dak. | Buchanan | Daniels, Dominick V. |
| Annunzio | Burgener | Danielson |
| Archer | Burke, Calif. | Davis, S.C. |
| Arends | Burke, Fla. | Davis, Wis. |
| Armstrong | Burke, Mass. | de la Garza |
| Ashbrook | Burleson, Tex. | Delaney |
| Ashley | Burlison, Mo. | Dellenback |
| Aspin | Burton, John | Dellums |
| Badillo | Burton, Phillip | Denholm |
| Bafalis | Butler | Dennis |
| Baker | Byron | Dent |
| Barrett | Camp | Derwinski |
| Bauman | Carney, Ohio | Devine |
| Bell | Carter | Dickinson |
| Bennett | Casey, Tex. | Diggs |
| Bergland | Cederberg | Donohue |
| Bevill | Chamberlain | Dorn |
| Biaggi | Clancy | Downing |
| Biester | Clark | Drinan |
| Bingham | Clausen, Don H. | Duncan |
| Blackburn | Clawson, Del | du Pont |
| Boggs | Clay | Eckhardt |
| Boland | Cleveland | Edwards, Ala. |
| Bolling | Cochran | Edwards, Calif. |
| Brademas | Cohen | Eilberg |
| Bray | Collins, Ill. | Erlenborn |
| Breaux | Conable | Esch |
| Breckinridge | Conlan | Eshleman |
| | Conte | |

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|---|---|---|
| Evans, Colo. | McClory | Ruppe |
| Fascell | McCloskey | Ruth |
| Findley | McCollister | Ryan |
| Fish | McCormack | St Germain |
| Fisher | McEwen | Sandman |
| Flood | McFall | Sarasin |
| Flowers | McKay | Sarbanes |
| Foley | McKinney | Satterfield |
| Ford | Macdonald | Scherle |
| Forsythe | Madden | Schneebeli |
| Fountain | Madigan | Schroeder |
| Fraser | Mahon | Sebelius |
| Frelinghuysen | Maraziti | Seiberling |
| Frenzel | Martin, Nebr. | Shipley |
| Frey | Martin, N.C. | Shriver |
| Froehlich | Mathias, Calif. | Sisk |
| Fulton | Mathis, Ga. | Skubitz |
| Fuqua | Matsunaga | Slack |
| Gaydos | Mazzoli | Smith, Iowa |
| Gettys | Meeds | Smith, N.Y. |
| Giaimo | Melcher | Snyder |
| Gibbons | Metcalfe | Spence |
| Gilman | Mezvinsky | Staggers |
| Ginn | Michel | Stanton, |
| Gonzalez | Milford | J. William |
| Goodling | Mills | Stanton, |
| Grasso | Minish | James V. |
| Green, Oreg. | Mink | Stark |
| Green, Pa. | Mitchell, Md. | Steed |
| Griffiths | Mitchell, N.Y. | Steele |
| Grover | Mizell | Steelman |
| Gude | Moakley | Steiger, Wis. |
| Guyer | Mollohan | Stephens |
| Haley | Montgomery | Stokes |
| Hamilton | Moorhead, Pa. | Stratton |
| Hammer- | Morgan | Stubblefield |
| schmidt | Mosher | Studds |
| Hanley | Moss | Sullivan |
| Hanrahan | Murphy, Ill. | Symington |
| Hansen, Idaho | Murtha | Talcott |
| Harrington | Myers | Taylor, Mo. |
| Harsha | Natcher | Taylor, N.C. |
| Hastings | Nedzi | Thompson, N.J. |
| Hawkins | Nelsen | Thomson, Wis. |
| Hays | Nichols | Thone |
| Hechler, W. Va. | Nix | Tiernan |
| Heckler, Mass. | Obey | Towell, Nev. |
| Heinz | O'Brien | Traxler |
| Helstoski | O'Hara | Udall |
| Henderson | O'Neill | Ullman |
| Hicks | Owens | Van Deerlin |
| Hillis | Parris | Vander Jagt |
| Hinshaw | Patman | Vander Veen |
| Hogan | Patten | Vanik |
| Holifield | Perkins | Veysey |
| Holt | Pettis | Vigorito |
| Holtzman | Peyser | Waggonner |
| Horton | Pickle | Waldie |
| Hosmer | Pike | Walsh |
| Howard | Poage | Wampler |
| Hudnut | Powell, Ohio | Ware |
| Hungate | Preyer | Whalen |
| Hunt | Price, Ill. | White |
| Hutchinson | Price, Tex. | Whitehurst |
| Ichord | Pritchard | Whitten |
| Jarman | Quie | Widnall |
| Johnson, Calif. | Rangel | Wilson, Bob |
| Johnson, Colo. | Rees | Wilson, |
| Johnson, Pa. | Railsback | Charles H., |
| Jones, Ala. | Randall | Calif. |
| Jones, N.C. | Regula | Wilson, |
| Jones, Okla. | Reuss | Charles, Tex. |
| Jordan | Rhodes | Winn |
| Karth | Riegle | Wolff |
| Kastenmeier | Rinaldo | Wright |
| Kazen | Roberts | Wyatt |
| Kemp | Robinson, Va. | Wydler |
| Ketchum | Rodino | Wylie |
| King | Roe | Wyman |
| Kluczynski | Rogers | Yates |
| Koch | Roncalio, Wyo. | Yatron |
| Kyros | Roncallo, N.Y. | Young, Alaska |
| Lagomarsino | Rooney, Pa. | Young, Fla. |
| Latta | Rose | Young, Ill. |
| Lehman | Rosenthal | Young, Tex. |
| Lent | Rostenkowski | Zablocki |
| Long, La. | Roush | Zion |
| Lott | Rousselot | Zwach |
| Lujan | Roybal | |
| Luken | Runnels | |

NAYS—17

| | | |
|---|---|---|
| Bowen | Huber | Miller |
| Chappell | Kuykendall | Shuster |
| Collins, Tex. | Landgrebe | Steiger, Ariz. |
| Crane | Long, Md. | Symms |
| Evins, Tenn. | Mallary | Young, S.C. |
| Gross | Mann | |

NOT VOTING—49

| | | |
|---|---|---|
| Alexander | Carey, N.Y. | Dulski |
| Beard | Chisholm | Flynt |
| Blatnik | Collier | Goldwater |
| Brasco | Culver | Gray |
| Brown, Calif. | Davis, Ga. | Gubser |
| Brown, Mich. | Dingell | Gunter |
| Hanna | Moorhead, Calif. | Roy |
| Hansen, Wash. | Murphy, N.Y. | Shoup |
| Hébert | Passman | Sikes |
| Jones, Tenn. | Pepper | Stuckey |
| Landrum | Podell | Teague |
| Leggett | Quillen | Thornton |
| Litton | Rarick | Treen |
| McDade | Reid | Wiggins |
| McSpadden | Robison, N.Y. | Williams |
| Mayne | Rooney, N.Y. | Young, Ga. |
| Minshall, Ohio | | |

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Stuckey.
Mr. Murphy of New York with Mr. Leggett.
Mr. Flynt with Mr. Blatnik.
Mr. Rooney of New York with Mr. Brown of California.
Mr. Dingell with Mr. Gray.
Mr. Carey of New York with Mr. Landrum.
Mrs. Chisholm with Mrs. Hansen of Washington.
Mr. Jones of Tennessee with Mr. Litton.
Mr. Alexander with Mr. McSpadden.
Mr. Podell with Mr. McDade.
Mr. Pepper with Mr. Mayne.
Mr. Roy with Mr. Beard.
Mr. Young of Georgia with Mr. Culver.
Mr. Passman with Mr. Collier.
Mr. Hanna with Mr. Brown of Michigan.
Mr. Rarick with Mr. Gubser.
Mr. Reid with Mr. Goldwater.
Mr. Gunter with Mr. Minshall of Ohio.
Mr. Dulski with Mr. Moorhead of California.
Mr. Davis of Georgia with Mr. Shoup.
Mr. Teague with Mr. Treen.
Mr. Sikes with Mr. Wiggins.
Mr. Thornton with Mr. Williams.

The result of the vote was announced as above recorded.

The title was amended so as to read: "An Act to amend the War Claims Act of 1948 to increase benefits provided to American civilian internees in Southeast Asia and to provide for additional payments on awards made to individuals and corporations under that Act.".

A motion to reconsider was laid on the table.

## FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974

The SPEAKER. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 20 minutes.

Mr. KEMP. Mr. Speaker, it has been a long and arduous road to the achievement of substantive, practical campaign reform. I had hoped, when I first introduced legislation establishing an independent Federal Election Commission in 1973, that meaningful reform would be forthcoming in the first session of the 93d Congress. Finally, we have taken legislative action to help correct campaign abuses and corruption which have surfaced with increased regularity in the past several years.

Certainly no issue has yielded such broad bipartisan support. Illegal campaign practices, unethical tactics, dirty tricks, and influence peddling in the 1972 and prior campaigns have brought demands from the American people for positive legislative action.

The public's wishes have been translated into action. Each American believes that our political system must be ethical to be fair. Each American insists on his or her right to be informed about the campaign practices of the candidates for which he must vote; each American wants candidates to compete equitably for public office.

### THE NEW LAW

With this in mind, the House of Representatives has acted. The legislation drafted by the Committee on House Administration and amended by the full House limits contributions to $1,000 per person and $5,000 for broad-based political committees. Individuals can contribute no more than $25,000 to all candidates and committees in any one calendar year. Contributions are prohibited by foreign nationals and cash contributions cannot exceed $100 per person. These provisions should help restore public confidence by eliminating or reducing public suspicion that candidates are being "bought" or influenced by large campaign contributions.

In addition, the bill places limits on the amount of expenditures a candidate may make: $10 million for nomination for President, $20 million in a general election for President, 5 cents times the populations of the geographical area or $75,000 for the Senate—whichever is greater—and $60,000 for House races. The $60,000 limitation figure was arrived at as a compromise between the Committee on House Administration recommendation of $75,000 and a lower figure advocated by several colleagues and myself.

Other provisions of the bill include the requirement that all candidates designate a principal or central campaign committee. The reports of all other committees supporting that candidate must be filed with the principal committee, which in turn compiles these reports and sends them to the appropriate supervisory officer. All expenditures made on behalf of a candidate must be made through the principal campaign committee.

The requirement for the establishment of a single committee increases the accountability of the candidate to the voter by focusing attention at a single point. Further, reporting procedures would be simplified.

The legislation also reduces the large number of reports that are presently filed which makes it most difficult for the press and other monitoring agencies to fully inform the public of the sources of funds. Fewer, more timely reports actually allow the public to learn more about candidates' sources of funds.

In addition, the bill opens the political process by allowing State and local employees to participate in political campaigns. This provision finally allows a greater number of people the opportunity to participate in the electoral process.

### PUBLIC ACCOUNTABILITY

Our primary responsibility has been to insist on full public disclosure and publication of all campaign contributions and expenditures during a campaign, thereby allowing the voters themselves a better opportunity to judge whether a candidate has spent too much. To those with confidence in the decisionmaking ability of the American people, this is fundamental. After all, individual decisionmaking and the accountability of elected officials to the voter are under-

lying premises on which our political system is based. The American electorate is fully capable of making hard political choices if it is assured the option of holding elected officials accountable at the voting booth each November. As long as accountability is maintained, we have the greatest deterrent to political corruption yet devised, that is, removal from office via the ballot box.

THE NEED FOR AN INDEPENDENT FEDERAL ELECTIONS COMMISSION

One of the glaring shortcomings of the committee bill was in the provisions for enforcement and administration. The worst thing we could have done would be to establish a mechanism which would reflect a conflict of interest in enforcement of these new reforms.

In order to avoid this egregious error from being legislated, I joined with my distinguished colleagues, Mr. FRENZEL and Mr. FASCELL, and 29 other Members, in seeking to amend the legislation by creating an Independent Federal Elections Commission. I am grateful to say that the chairman of the committee was the architect of a significant compromise which I was proud to support. Under the compromise the entity board responsible for enforcement would have sufficient independence and authority so that we can expect uniform, fair enforcement of our Federal election law.

The compromise protects both the general public from undetected violation of campaign law and the rights of Members of Congress and other candidates.

Aside from eliminating the appearance of conflict of interest, the modified Fascell-Frenzel amendment helps reverse the long history of nonenforcement of election laws, regulation, administration, and enforcement, and which build on the experience of 16 States, including New York, which have created similar mechanisms in the past year and a half.

PUBLIC FINANCING

The Congress has debated the issue of public financing of Federal campaigns. Many such proposals have been put forth in an effort to broaden candidate participation, encourage small contributions, equalize incumbent-challenger resources, and diminish the influence of money in campaigns. To the extent that such proposals contribute to the aforementioned objectives, they deserve support.

The Federal Election Campaign Act Amendments limit public financing of all phases of elections to the office of the President. Certainly the greatest potential for abuses by special interest groups rests in Presidential elections. Fortunately, the tax checkoff method for financing Presidential election campaigns has met with marked success, and both the IRS and General Accounting Office have indicated that at the present rate, the 1976 Presidential campaign will be paid for by funds from the checkoff.

It may be that the combined public/private method of financing congressional and senatorial elections is the best way to encourage the solicitation of small contributors and thereby see the reappearance of the average American in the campaign financing formula. Matching Federal/private funding for congressional campaigns did not pass the House but we must take steps to encourage voter participation in the area of campaign financing.

SPECIAL INTERESTS

The Federal Election Campaign Act Amendments of 1974 do not place as strict restrictions on the activities of special interests as I would like, allowing the contribution of as much as $5,000 in the aggregate to each candidate from special interest committees. The $5,000 limitation is clearly an improvement over current law; however, the Congress has not gone nearly far enough in ending the suspicion created among the public by the special interest contribution. I had hoped the whole House would accept the amendment drafted by my colleague, BUD BROWN of Ohio, prohibiting the pooling of funds by any groups and requiring all contributions to be identified as to the original donor. I believe that special interest groups should only be allowed to act as the agents of individual contributors.

Despite the failure of the House to accept the amendment, I have urged each of my colleagues to voluntarily assume the responsibility for showing the public that the special interest contribution is unnecessary in Federal election campaigns. In that spirit, I have personally pledged not to accept any contribution from any special interest group whatever, and have further pledged not to accept any contribution over $500, and then to receive them only from individual contributors. It is essential that the spirit of the law be adhered to, as well as the letter and I am convinced that a broad based, grass root, small contributor type campaign can be successful in restoring confidence in our election process.

THE PUBLIC ETHIC

Finally, each American must have realistic expectations about what changes in the law alone will achieve in helping eradicate campaign abuses. Our national legacy of individual responsibility demands from each of us the highest ethical vigilance. Unless a higher more inflexible ethic is insisted upon by the American electorate, and is reflected in the voting booth, no amount of campaign law will correct campaign abuses and corruption.

Congress has responded to the overwhelming desire of the American people to curb the abuses and corruption which have surfaced in the political election process over the past few years. The legislation is a step forward. I am personally gratified by its passage.

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## TRIBUTE TO FORMER MARYLAND GOVERNOR, THEODORE ROOSEVELT McKELDIN

The SPEAKER. Under a previous order of the House, the gentleman from Maryland (Mr. GUDE) is recognized for 15 minutes.

Mr. GUDE. Mr. Speaker, the Maryland delegation is saddened by the passing this last Saturday of former Gov. Theodore Roosevelt McKeldin, who was also mayor of Baltimore at one time. Mayor and later Governor McKeldin's career spanned a half century of great service to the State of Maryland and to the United States of America. His career was a typical American success story. He was one of 11 children born in South Baltimore, the son of a stonecutter who turned policeman. He had a brilliant career as mayor of Baltimore and a brilliant career as the Governor of Maryland.

Mr. McKeldin placed in nomination at the national convention the name of Dwight Eisenhower for President of the United States, but I think former Governor McKeldin's greatness will last longer as a champion in the field of civil rights in all areas.

I know all Members of the Maryland delegation extend to Mrs. McKeldin and to his family their deepest condolences.

Mr. HOGAN. Mr. Speaker, will the gentleman yield?

Mr. GUDE. I yield to the gentleman from Maryland, the gentleman from Prince Georges County.

Mr. HOGAN. Mr. Speaker, I thank my colleague, the gentleman from Maryland (Mr. GUDE) for taking this time and for yielding to me so I may tribute to a great American and a great Marylander.

Ted McKeldin, as the gentleman from Maryland (Mr. GUDE) has stated, served his State and his country in an outstanding manner for many, many years. He was the leader of our party in the State for several decades. He will be sorely missed. All Republicans in the State who benefited from his counsel on so many occasions will have to try now to find some other source for the wisdom to which Mr. McKeldin had such ready access. He had the ability of being a leader who had the respect of all people regardless of their race or their religion or their creed or their political affiliation. He was a rare politician and a rare statesman and all of us in Maryland will deeply miss him.

Mr. GUDE. I thank the gentleman for his remarks.

Mr. HOGAN. Mr. Speaker, it was with great sorrow that I learned of the passing of Theodore Roosevelt McKeldin, the former Governor of Maryland and mayor of Baltimore who was so revered and beloved by the citizens of the Free State.

Throughout his long and distinguished career in public service, Governor McKeldin set an example worthy to be followed by all of us in public life: An example of honesty, integrity, charity, and dignity which were the hallmark characteristics of his winning personality.

Long known as "Mr. Republican" in Maryland, Governor McKeldin gave our party an enormous gift of prestige and goodwill simply by being himself and serving his State with talent and industry.

His many achievements, some wrought in iron and concrete and others engraved in the attitudes of his fellow citizens, stand today as far more eloquent testimony to his rich, full life than any words that I might speak.

His rewards in this life were many, and the respect his fellow Marylanders and fellow Americans paid to him was well deserved. Such was the esteem in which he was held that he came very close to being nominated for the Vice Presidency of the United States in 1952, at the height of an outstanding public career.

I join all Marylanders and, I am sure, all my colleagues in this House in expressing my deepest sympathy to the Governor's lovely widow and their son and daughter at this sad time for them and for the millions who shared their love for this remarkable man.

Mrs. HOLT. Mr. Speaker, I would like to join my colleagues in paying tribute to a great Marylander and a great American, Theodore McKeldin. I knew Governor McKeldin for over 25 years, and I will always remember his dignity and his personal warmth.

He had a remarkable political career, spanning almost half a century. Twice mayor of Baltimore, twice Governor of Maryland, Ted McKeldin was fearless and forthright in his battle for human dignity. Under his leadership, Maryland's last segregation laws were repealed. In 1952, in a moving and eloquent address to the Nation, Governor McKeldin nominated Dwight Eisenhower for the Presidency.

His compassion for his fellow man underscored his brilliant career, and his dedicated service will be a shining example for future generations of public servants.

Mr. Speaker, we have lost a wise and good man. I know my colleagues join me in extending our deepest sympathy to Mrs. McKeldin and the children.

Mr. BYRON. Mr. Speaker, Maryland has lost one of her most distinguished statesmen with the death on Saturday of former Gov. Theodore R. McKeldin.

Known as "Mr. Republican," Theodore Roosevelt McKeldin was elected twice to the governorship and twice as the mayor of Baltimore. Ted McKeldin earned an enviable record of accomplishments during his career which spanned almost 50 years. One of Ted McKeldin's greatest political moments was in 1952 when he nominated Dwight Eisenhower for the Presidency. His various campaigns carried him throughout the State and his dedication to good government was well known and respected.

Ted McKeldin will be greatly missed by the State of Maryland and his friends from both sides of the aisle.

Mr. BAUMAN. Mr. Speaker, I want to thank the gentleman from Maryland (Mr. GUDE) for taking this time to announce to the House the passing of Theodore Roosevelt McKeldin, one of Maryland's greatest Governors.

I first met Governor McKeldin as a very young Republican active in campaigns on the Eastern Shore. In 1954 when he ran for a second term as Governor I campaigned with him and other candidates throughout the nine counties of the Eastern Shore and over the years I came to know him as a dynamic personality, a truly gentle man, and a person who believed strongly in his convictions and acted upon those convictions.

Ted McKeldin was a liberal in politics and I am a conservative and on numerous occasions we found ourselves in opposite corners. Throughout this time, however, our differences were always in points of view and not of a personal nature. Maryland and the Nation have lost a great man but certainly both are better for the 73 years Ted McKeldin spent on this earth.

My wife and family join me in extending sympathy to Mrs. McKeldin and their children.

I include at this point in my remarks an article from the Baltimore Evening Sun of August 10, 1974, regarding Governor McKeldin:

THEODORE MCKELDIN, FORMER GOVERNOR, MAYOR, DIES

Theodore Roosevelt McKeldin, Sr., former Governor of Maryland and Mayor of Baltimore, died at 6:35 A.M. today, at his home in the 100 block Goodale road in the Homeland section. He was 73.

Mr. McKeldin had been suffering from cancer and was hospitalized frequently over the last several months.

The colorful son of a stone-cutter-turned-policeman, Mr. McKeldin, one of 11 children, was born on Stockholm (now Ostend) street in South Baltimore November 20, 1900, and parlayed a gift for oratory and an evangelist's spirit into a national reputation as a politician and speaker.

He was Baltimore's mayor during World War II, then became the only Republican in state history to serve two terms as governor. He set another precedent when he won his second four-year term as Baltimore's mayor 20 years after winning his first.

The man who went directly from grammar school to a $2-a month job as an office boy and part-time gravedigger, left an indelible imprint on his native state during a career marked by the building of the Harbor Tunnel, the state office building complex in Baltimore and dozens of college buildings.

BUILT ROADS, AIRPORT

Credited to the mayoral and gubernatorial administrations of Mr. McKeldin were hundreds of miles of Maryland roads, work on the Baltimore Beltway, construction of Friendship International Airport (now Baltimore-Washington International) and Liberty Dam.

His days in office saw the birth of the Susquehanna Water Development Project, which assures Baltimore a continuous supply of water until the year 2000, the Maryland Port Authority and the vast Inner Harbor Redevelopment Project.

But more important than structures of stone and steel were Mr. McKeldin's championing of unpopular causes that he knew were right, although there were not votes in them. One of these was social justice and the toppling of racial barriers to provide first class citizenship for all.

The McKeldin accomplishments in this area included the first black appointees to the Baltimore school board, the city solicitor's office and the Mayor's staff, and the first Jewish person appointed to the Court of Appeals.

OPENED POLY A COURSE

He eliminated racial designations on state employment applications, and allowed the first blacks to enter the Poly A Course, two years before the Supreme Court's anti-segregation ruling in 1954.

He ordered integration of state-owned beaches and parks, ruled against the Baltimore Transit Company's ban on black bus and trolley operators, integrated Baltimore hotels and signed the city's first comprehensive public accommodations law.

Wayside picnic areas throughout the state were credited to the McKeldin administration, as were the red brick walks on State House grounds.

He once said that if he were writing his own biography, he would list high amoung his accomplishments the outlawing of slot machines on Maryland's Potomac River piers, the abrogation of the ancient Potomac River Compact and the naming of a commission to draw up an agreement that ended the so-called "oyster war" with Virginia.

During his eight years in the State House from 1951–59, Mr. McKeldin commuted 16 death sentences, 3 just before he left the governorship. Only 5 executions were allowed.

"THE SIDE OF MERCY"

"I would rather err on the side of mercy than to mistake justice," he said.

Some of the millions of words Mr. McKeldin uttered from platforms from Seattle to Tel Aviv, with his Scottish burr varying according to his audience, placed the name of Dwight D. Eisenhower into nomination at the 1952 Republican National Convention in Chicago.

"Here is the man to unite our party," he intoned. "Here is the man to unite our nation. Here is a strong man—the Hercules to sweep the stench and stigma from the Augean stable of the Washington administration."

From his earliest childhood Mr. McKeldin wanted to be a minister, but his family's poverty ruled out such an education.

STUDIED AT NIGHT

It was while working as an office boy that he started taking night courses at Baltimore City College and later at the University of Maryland Law School, where he won his degree in 1925.

As an office boy he also met Honolulu Claire Manzer, a fellow employe whom he married October 17, 1924.

Mr. McKeldin got into politics three years later by volunteering his speaking services to the late William F. Broening, Republican candidate for mayor, who was elected and promptly named the 27-year-old speaker to a job as his secretary.

He went out of office with Mr. Broening in 1931 and it was not until eight years later that he made his first run for mayor. He was beaten by Howard W. Jackson, the Democratic incumbent.

BEAT JACKSON FOR MAYOR

In 1942 Mr. McKeldin made the first of two unsuccessful bids for the governorship. But the next year, he made it as Baltimore's mayor by beating Mr. Jackson by 20,000 votes, the biggest margin ever given a Republican. In 1946 he lost again in a bid for governor.

He bowed out of the political picture when his term ended in 1947, but three years later he ran for the governorship a third time, promising to end the unpopular 2 per cent sales tax that Governor William Preston Lane had jammed through the General Assembly.

Mr. McKeldin won by a landslide 93,000 votes over Mr. Lane, who was seeking his second term. But the new Governor found that eliminating the sales tax was impossible. He was forced to raise it to 3 per cent and also raise the state income tax by 50 per cent.

"I made a mistake," he explained his failure to keep his 1950 pledge.

When his second term as governor ended, Mr. McKeldin, who had narrowly missed being chosen as Mr. Eisenhower's presidential running mate in 1952, had nowhere to turn except back to his old job as mayor.

RUNS AGAIN

Thinking that an upset victory in 1959 over the Democratic incumbent, Thomas D'Alesandro, Jr., would enhance his chances for a crack at the Republican vice presidential nomination the next year, Mr. McKeldin once again ran for mayor.

However, he was in for a rude awakening.

His opponent was not Mr. D'Alesandro, who was beaten in the Democratic primary by J. Harold Grady, a 42-year-old state's attorney and a new face with a glamorous background as a former FBI agent.

Mr. McKeldin lost by more than 81,000 votes, a more than 2-1 margin. The defeat was the worst ever administered a candidate for Baltimore mayor.

GRACEFUL IN DEFEAT

He took his beating gracefully, as he had taken past honors gracefully and went ahead with his speeches, building up his law practice and adding to his collection of antiques and gold coins.

Talking to reporters the day after his defeat, he assured them he was relaxed and told them of his plans for the next few days.

"I'm going to Hartford Thursday to talk at a dinner for the United Jewish Appeal. Then on Friday I go to South Bend, Ind., to speak at Notre Dame University on segregation," he said.

Then he recalled that in the next few days he would also be speaking in Kansas City, Washington, Pottstown, Pa., Harford county, New Orleans. Denver and Baltimore.

In 1963, after Philip H. Goodman had been elevated automatically to mayor from City Council president after Mr. Grady was named to a judgeship the previous year, Mr. McKeldin again received the Republican nomination for mayor despite some misgivings by his party's leadership.

Many considered Mr. McKeldin too liberal, a charge he did not dispute, but when the Republican State Central Committee got together at a formal meeting the vote was overwhelming for his candidacy.

CHARGED BOSSISM

Facing Mr. Goodman in the election, Mr. McKeldin campaigned on his record as governor and wartime mayor, raising the cry of "bossism" at City Hall.

He was making progress when, a month before the balloting, the Republican candidate for city comptroller resigned.

In his place Mr. McKeldin persuaded Hyman A. Pressman, self-appointed watchdog over city affairs who had been narrowly defeated in the Democratic primary for the party's nomination for comptroller, to become the Republican candidate for the post.

The "fusion ticket" caught the fancy of voters and the McKeldin-Pressman ticket nosed out its opponents in the general election.

Joining the administration was Thomas D'Alesandro 3d, son of the former mayor, who was a landslide winner for a term as City Council president.

The new administration got off to a harmonious start although Mr. McKeldin was the only Republican in city government while all other elective jobs were held by Democrats.

Pulpits by the hundreds were occupied by the deeply religious Mr. McKeldin—a teetotaller who recalled seeing his father take the pledge at a church service.

He was a man who could be completely sincere in presenting a rosary to a Catholic and a King James New Testament to a Protestant before donning a skull cap to enter a synagogue for Rosh Hoshana services.

Politicians will remember him as the one Republican who was able to get along with legislatures and City Councils under firm control of the Democrats.

In fact, he had more fights with Republicans than he did with the other side. But the amount of legislation was able to get through Democratic legislatures was remarkable despite his record of having his vetoes overridden more than any other 20th-Century Maryland governor.

He was an exuberant campaigner, one who could use bare knuckles when the necessity arose.

RAN AGAINST BYRD

This was demonstrated in 1954 when he ran for re-election against Dr. Harry C. Byrd, former University of Maryland president.

After one of the roughest campaigns in Maryland history Mr. McKeldin came out with his spirit intact, ready to dig in for another four years.

As governor his opportunity for public speaking were enhanced immensely. He would catch a plane on a moment's notice to give an Israel Bond drive speech in Los Angeles, a Republican oration in Maine or a pro-desegregation rally in Atlanta.

He went abroad regularly—to Israel to Germany for University of Maryland Overseas Branch commencements to Liberia as guest of that government, to Rome and the Holy Land for visits to the shrines of Christendom.

But he never neglected his real jobs—either governing his native state or his native city.

He was a complete extrovert who gave of himself so completely that some of those who did not know him well were inclined to label him as somewhat of a clown. Nothing was further from the truth.

Survivors include his wife the former Honolulu Claire Marzer, a son, Theodore R. McKeldin, Jr., and a daughter Mrs. Claire Whitney Seigler, all of Baltimore.

## GENERAL LEAVE

Mr. GUDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 days in which to revise and extend their remarks and include extraneous matter on the life, character, and public service of the late Gov. Theodore Roosevelt McKeldin.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

There was no objection.

## BACK TO SCHOOL—SAFELY

The SPEAKER. Under a previous order of the House, the gentleman from Connecticut (Mr. McKINNEY) is recognized for 5 minutes.

Mr. McKINNEY. Mr. Speaker, I rise in support of H.R. 10642, the Motor Vehicle and School Bus Safety Amendments of 1974. Ever since coming to Congress I have fought to improve the design and construction of automobiles and school buses. Unfortunately my district as well as many other communities in this Nation have witnessed the tragedy which results when an accident occurs with a busload of children on it. Such a tragedy is heightened when the accident is a result of or is compounded by faulty design or negligent construction.

Studies have indicated that over 19 million children now travel back and forth by bus each day of the school year. Sadly, however, an average of 75 to 100 deaths and 5,100 to 5,200 injuries occur annually in schoolbus-related accidents. Thus it is evident that we can no longer continue to treat school bus safety with such indifference. This bill will set a timetable for establishing the standards which will help decrease these tragic statistics.

This measure will further authorize the secretary of Transportation to develop school bus safety standards within 6 months from the enactment of this bill with the promulgation of such standards within 15 months of the enactment of this bill. Standards would be developed in eight major areas, the most important being interior protection, crash worthiness of the body and frame, including protection against rollover hazards and vehicle operating systems.

In addition to the development of design standards, the Secretary of Transportation will be given the authority to prescribe regulations requiring that any school bus must be test driven by the manufacturer and certified by him that the bus is in sufficient working order and meets all minimum established standards. Until such test drives are made by the manufacturer the bus cannot be offered for sale.

In 1971, and again in 1973, I helped to introduce legislation which would have authorized a comprehensive plan for safety design standards on schoolbuses. I am pleased to note that many of the provisions of my bill have been incorporated into the legislation being considered today. However, I believe this is only the beginning. We must not allow ourselves to compromise the safety of our children. Too many children have died or been maimed because we have failed to adopt such protective measures previously.

In some States an automobile is considered and defined in law to be a "dangerous instrument." This classification puts the car and schoolbus in a category with guns and dynamite. In other States they become dangerous instruments only when they have been found to be faulty and contain some kind of defect. It is our responsibility to keep the schoolbus out of the dangerous instrument classification.

By initiating such protective standards we will not only be saving all concerned from tragedy and suffering, but we will be protecting the most important natural resources of our Nation: Our youth.

## RETURNING TITLE TO TRACT TO NORTH STAR BOROUGH

The SPEAKER. Under a previous order of the House, the gentleman from Alaska (Mr. YOUNG) is recognized for 5 minutes.

Mr. YOUNG of Alaska. Mr. Speaker, in 1970 the North Star Borough of Alaska generously gave a tract of land it had purchased from the city of Fairbanks to the Federal Government with the understanding it was to be used for the construction of an Indian school dormitory. I am today introducing legislation to return this land to the North Star Borough without cost, since the Bureau of Indian Affairs meanwhile decided that due to economic reasons the dormitory facility would not be constructed.

The Bureau of Indian Affairs does not have the authority to reconvey the land, and the General Services Administration cannot return the property without putting severe restrictions on the borough's use of the tract, or charging them fair market value. The BIA and the GSA support this bill since the only way the borough can recover the property without charge is by an act of Congress.

I hope my colleagues will act to restore to the North Star Borough the tract of land so generously given to the Federal Government 4 years ago. The bill follows:

H.R. —

A bill to authorize the Secretary of the Interior to convey all right, title and interest of the United States in and to a tract of land located in the Fairbanks Recording District, State of Alaska, to the Fairbanks North Star Borough, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of*

*America in Congress assembled,* That the Secretary of the Interior is authorized to convey all right, title and interest of the United States in and to the following described real property, located in the Fairbanks Recording District, to the Fairbanks North Star Borough without payment of consideration:

THE WEST PORTION OF BLOCK 209

A tract of land situated in the NW ¼ Section 15, T1S, R1W, F.B. and M., also known as U.S. Survey 849 of the Homestead Claim of Stacia Rickert described as follows:

Commencing at Corner N. 3, U.S. Survey No. 849, thence S89° 57′ 14E a distance of 2300 feet, more or less; along a southerly line of said Survey No. 849 which lies between Corners No. 2 and 3; thence S89° 57′09″E a distance of 30 feet, more or less; thence N 0° 56′ 34″W a distance of 10 feet, more or less; to the true point of beginning; thence N 0° 56′ 34″W a distance of 337 feet, more or less; thence S 89°52′43″E a distance of 518 feet, more or less; thence S 0°07′17″W a distance of 337 feet, more or less; thence N 89°57′09″W a distance of 510 feet, more or less, to the true point of beginning,

and containing 173,218 square feet, more or less.

## NEW YORK TIMES SUPPORTS CREDIT RATIONING

The SPEAKER. Under a previous order of the House, the gentleman from Wisconsin (Mr. REUSS) is recognized for 10 minutes.

Mr. REUSS. Mr. Speaker, the New York Times today added its voice to the growing concern over misallocation of bank credit and supported legislation to channel more credit to our Nation's priority needs.

The credit crunch that developed during the past year has skyrocketed interest rates to record levels and has caused a devastating cutback in credit for interest-sensitive essential needs such as productive capital investment, low- and middle-income housing, State and local governments, and small business. At the same time, short-term business loans, often for inflationary inventory buildups or to finance conglomerate mergers, are up by more than 25 percent since the start of 1974.

The Credit Allocation Incentive Act (H.R. 15709), which I introduced on June 28, 1974, would authorize the Federal Reserve to channel additional credit to priority needs through a new system of reserve requirements, thereby diminishing the credit available for nonessential or inflationary uses. Banks would be required to hold supplemental reserves against their nonpriority loans and investments and would be able to reduce or even eliminate these nonearning reserves by expanding their loans and investments in priority areas.

Last month, in a "Resolution on the Economy," the House Democratic Caucus called for "cushioning the impact of monetary restraint and bringing down high interest rates by channeling credit toward credit-starved areas of the economy, such as productive capital investment, housing, State and local governments, and small business, and away from speculative and inflationary use of credit."

This is exactly what the Credit Allocation Incentive Act would do.

The New York Times editorial follows:

CREDIT RATIONING

One of the shortcomings in a tight money policy as the prime weapon against inflation is its extremely uneven impact on different sectors of the economy. Some borrowers, the biggest or those who can pay the highest rates, can get all the credit they need, while other borrowers are cut off and threatened with financial disaster.

Obviously, it is impossible to run a generally restrictive monetary policy without hurting anybody; but the question raised anew by the present credit squeeze is whether the right borrowers and types of loans are being cut off.

A group of Democrats, led by Representative Henry Reuss of Wisconsin, is urging a more selective Federal Reserve policy—one that would insure a larger flow of credit for four general purposes: productive capital investment that would increase the supply of goods, lower- and middle-income housing, state and local governments and small-business loans. At the same time, they would discourage the use of scarce credit to promote anti-competitive mergers or acquisitions, to boost inventories to get ahead of anticipated higher prices or to speculate in gold or other commodities.

A bill introduced by Mr. Reuss would require that commercial banks put up larger reserves against socially undesirable loans and receive credits when they made socially desirable loans.

The Federal Reserve Board, with one governor dissenting, has opposed the bill. Chairman Burns contends that it would be "inappropriate for the Fed to allocate credit according to its judgment of national priority needs"—because, in a democracy, these are matters for political decision. But, if it enacted the Reuss bill, Congress would in fact be giving the Fed political backing and broad policy guidance. The Federal Reserve, a creature of Congress, would be executing the policy of Congress. There is nothing unique historically in its doing so.

Dr. Burns also argues that the bill would cause "serious administrative problems" for the Fed and for member banks, including greatly increased requirements for information. But there are already heavy costs to the economy and society from the existing distorted pattern of credit allocation and the inadequate information on the uses of banking resources.

Within the same over-all pattern of credit restraint and average reserve requirements, selective allocation of credit should prove to be less inflationary—by encouraging more productive investment and by avoiding undue hardship on particular sectors through higher rates of growth in the money supply. The real choice is not between general and selective controls but between the accidentally selective impact of general tightening and a rationally selective policy within the same framework.

## THE PLIGHT OF SIMAS KUDIRKA

The SPEAKER. Under a previous order of the House, the gentleman from Pennsylvania (Mr. EILBERG) is recognized for 5 minutes.

Mr. EILBERG. Mr. Speaker, for some time I have been deeply concerned over the plight of Simas Kudirka, who is presently serving a 10-year sentence for treason in western Siberia.

It is extremely unfortunate that our Government failed to grant this Lithuanian-born seaman asylum when he jumped aboard the U.S. Coast Guard cutter, *Vigilant,* in November 1970. This situation is even more tragic now that we have learned that Mr. Kudirka is a citizen of the United States.

When it was brought to my attention that Mr. Kudirka had a potential claim for U.S. citizenship, I wrote our U.S. Ambassador in Moscow, the Honorable Walter J. Stoessel, Jr., on July 2, 1974, requesting him to investigate this matter. Less than 2 weeks after this letter was sent, our Embassy in Moscow interviewed Mr. Kudirka's mother and determined that he had derived and retained U.S. citizenship. On July 19, I received a letter from the Department of State confirming these facts.

I have today written to Secretary of State Kissinger requesting his personal intervention in this matter as well as urging him to make every effort to obtain a Soviet exit for Mr. Kudirka's mother as well as access by U.S. consular officials to Mr. Kudirka.

I am inserting into the RECORD at this point copies of the aforementioned letters:

JULY 2, 1974.

Hon. WALTER J. STOESSEL, Jr.,
*U.S. Ambassador, U.S. Embassy,*
*Moscow, U.S.S.R.*

DEAR MR. AMBASSADOR: I am writing with reference to the case of Simas Kudirka about whom, I am sure, you have received many inquiries.

I understand that Mr. Kudirka's mother has been issued a United States passport and I am writing to inquire whether any determination has been made regarding the possibility that her son, Simas Kudirka, is also a United States citizen. If he does not have a claim to United States citizenship, I would like to know whether Mrs. Kudirka has been advised to execute a visa petition in behalf of her son.

With kind regards,
Sincerely,

JOSHUA EILBERG,
*Chairman.*

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DEPARTMENT OF STATE,
*Washington, D.C., July 19, 1974.*

Hon. JOSHUA EILBERG,
*House of Representatives,*
*Washington, D.C.*

DEAR MR. EILBERG: Ambassador Stoessel has asked that we reply to your letter of July 2 regarding the case of Simas Kudirka.

The Department of State deplores the tragic incident that led to the forced return of Mr. Kudirka to the Soviet Union and to his subsequent trial and imprisonment there. The United States Government did intercede with Soviet authorities on Mr. Kudirka's behalf. Unfortunately, our efforts were rejected by the Soviets as attempts to interfere in their internal affairs. Subsequent governmental efforts to assist Mr. Kudirka through the International Red Cross were also unsuccessful.

We have followed the circumstances of Mr. Kudirka's imprisonment as closely as possible. Our information indicates that he is now serving a ten-year sentence at the Perm Labor Camp in Western Siberia.

The Department recently learned that Mr. Kudirka's mother, Maria Sulskiene nee Kudirka, was born in the United States. As the result of an interview with her at the US Embassy in Moscow May 17, it was determined that she was an American citizen, and she was issued a US passport that day.

Mrs. Sulskiene is now seeking to obtain a Soviet exit visa to return to the United States. The Embassy has brought our interest in her case to the attention of the Soviet Ministry of Foreign Affairs.

On the basis of a second interview with Mrs. Sulskiene on July 13, our Embassy in Moscow determined that Simas Kudirka derived US citizenship from his mother and, in the absence of contrary evidence, has retained

US citizenship. With our concurrence, the Embassy accepted and approved Mrs. Sulskiene's application on behalf of her son for his registration as a US. citizen.

Our Embassy has requested consular access to Mr. Kudirka, and we are now considering how best to protect his interests as an American citizen.

I hope you will call on me if you have further questions on this matter.

Cordially,

LINWOOD HOLTON,
*Assistant Secretary for Congressional Relations.*

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COMMITTEE ON THE JUDICIARY,
*Washingtno, D.C., August 12, 1972.*

Hon. HENRY A. KISSINGER,
*Secretary, Department of State,*
*Washington, D.C.*

DEAR MR. SECRETARY: This is to request your urgent assistance with regard to the plight of Simas Kudirka, who is presently serving a ten-year sentence in the Perm Labor Camp in Western Siberia.

When it came to my attention that the mother of Mr. Kudirka was a U.S. citizen, I wrote to the U.S. Ambassador in Moscow, the Honorable Walter J. Stoessel, Jr., inquiring as to whether Mr. Kudirka derived U.S. citizenship from his mother.

Subsequent to this letter, Mr. Kudirka's mother, Maria Sulskiene, was interviewed at the U.S. Embassy on July 13, 1974 and at that time it was determined that Mr. Kudirka had derived and retained U.S. citizenship.

In response to my letter, the State Department has indicated that preliminary steps had been taken by our U.S. Embassy in Moscow to intercede on behalf of Mr. Kudirka and his mother. However, I would respectfully request you to personally intervene with the Soviet government in an effort to obtain a Soviet exit visa for Mr. Kudirka's mother and consular access to Mr. Kudirka.

I would appreciate a prompt response to this request.

With kind personal regards,

Sincerely,

JOSHUA EILBERG,
*Chairman.*

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## AMENDMENT TO THE EXPORT ADMINISTRATION ACT

The SPEAKER. Under a previous order of the House, the gentleman from Ohio (Mr. VANIK) is recognized for 5 minutes.

Mr. VANIK. Mr. Speaker, I intend to offer tomorrow an amendment that would establish a new subsection in the Export Administration Act to require the licensing of police-type equipment prior to their export to foreign countries. The amendment is consistent with the policy of the act to use export controls "to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities."

Hopefully, the administration will use this authority to deny licenses to countries which would use American-made equipment to maintain a police state and to suppress human rights.

Since there can be strong disagreement between the administration and the Congress on which countries should be receiving sophisticated police equipment, the amendment gives the Congress an opportunity to review the licensing procedure.

The third paragraph would permit the administration to exempt certain classes of equipment and certain countries from the congressional review process. Obviously, we do not want to burden the administration or the Congress with export approval of every police raincoat or whistle. Certainly, we do not have to worry about shipments to countries like Canada or Australia.

This amendment—cosponsored by over 50 Members of the House—was developed in response to the news that a number of American companies planned to attend a Moscow trade fair on August 4 through August 28. This trade fair is specializing in the lastest police technology. Some 25,000 Soviet police and KGB would be attending—and some of them apparently planned to buy American equipment—equipment which is considered to be the most advanced and sophisticated in the world—equipment which has been indirectly developed through the Department of Justice's Law Enforcement Assistance Administration.

Mr. Speaker, we are not talking about police whistles or walkie-talkies. The goods which were about to be sold included such things as voice print identification equipment, psychological stress analysis equipment—commonly known as lie detectors—mobile crime labs, gas masks, bulletproof vests, helmets and shields, shotguns, stun guns, dart guns, riot guns, and straitjackets.

We are talking about infared and ultra violet ray films—to take pictures of people at night. We are talking about fingerprint equipment, ballistics labs, metal detecting and other searching equipment, and foolproof identification document equipment. We are talking about sap gloves containing 6 ounces of powdered lead, which—to quote from the catalog of the company selling this device—"gives weight to your authority."

Some of this equipment is beyond anything ever dreamed of in the novel "1984." Much of this merchandise has potential military value. It would be immoral and unconscionable for equipment stamped "made in America" to be used as tools of oppression in Russia and Eastern Europe. We know from Solzhenitsyn how such tools can be used. Even his latest book was published only because his assistant had been interrogated for five straight days, forced to confess the location of his manuscript and then driven to suicide.

Fortunately, as a result of congressional inquiries and public outrage, the Secretary of State expressed his concern about U.S. participation in the trade fair and the Secretary of Commerce, on July 19, ordered police equipment sales to Communist countries placed under export control. Secretary Dent and Secretary Kissinger are to be commended for their action in this case.

However, I would like to proceed with the amendment for two reasons.

First, since the Department of Commerce's regulations could be withdrawn at any time, I believe the Department should have statutory support and that the Congress should have oversight of administration of these export controls.

Second, my amendment does not relate solely to Communist countries. It is an amendment which would permit the administration or the Congress to raise issues about the shipment of equipment to police States. Should equipment stamped "made in America" be used to suppress the majority population by certain African governments, for instance? What about South American governments which torture priests and others in the most sadistic manner? What about the situation in Korea? What about the tiger cages in South Vietnam? What about the treatment of Americans in certain foreign jails?

The amendment I am offering would allow the administration to apply pressure and express concern over developments in these non-Communist countries. If the administration failed to act in a clear-cut situation, the Congress could debate a resolution of disapproval. Obviously, this would seldom arise, but it provides us the opportunity to act.

The amendment is consistent with our obligations under the United Nations Charter "to promote universal respect for and observance of human and fundamental freedoms." It is consistent with everything this Nation stands for—for assistance to oppressed people everywhere.

I urge the adoption of the amendment, the language of which is as follows:

AMENDMENT OFFERED BY MR. VANIK TO H.R. 15264, AS REPORTED

On page 3, immediately after line 7, insert the following new subsection:

"(b) Section 4 of the Export Administration Act of 1969 (50 U.S.C. App. 2403) is amended to include the following new subsection:

"(f) (1) The Secretary of Commerce, after consulting with the Secretary of the Treasury, the Attorney General, and the Secretary of State, shall establish regulations for the licensing of exports of all police, law enforcement, or security equipment manufactured for use in surveillance, eavesdropping, crowd control, interrogations, or penal retribution.

"(2) Any license proposed to be issued under this subsection shall be reviewed by the Attorney General and shall be submitted to the Congress. The Congress shall have a period of sixty calendar days of continuous session of both Houses after the date on which the license is transmitted to the Congress to disapprove the issuance of a license by the adoption in either House of a resolution disapproving the proposed license.

"(3) The Secretary of Commerce, with the concurrence of the Secretary of the Treasury, the Attorney General, and the Secretary of State, may by regulation exempt individual countries and specific categories of police law enforcement, or security equipment from the congressional review and disapproval authority set forth in paragraph (2) if he finds and determines export of the equipment would not threaten fundamental human and civil liberties."

On page 3, line 8, strike "(b)" and insert "(c)".

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## AID FOR VIETNAM

The SPEAKER. Under a previous order of the House, the gentleman from Mississippi (Mr. MONTGOMERY) is recognized for 5 minutes.

Mr. MONTGOMERY. Mr. Speaker, a Washington Post editorial yesterday pointed out that "it would be grievously unfair" for the United States to withhold military assistance from South Vietnam while that country is still locked in a struggle with North Vietnam. It is impossible to tell who is responsible for the renewed fighting, but it is certain

that an end to American aid would leave the South Vietnamese at the mercy of the North. Continued American aid is a life or death matter to South Vietnam. I insert the full text of the editorial:

AID FOR VIETNAM

Congress, in its deliberations on aid for South Vietnam, is shying away from the central issue: What is the American interest? For if it matters to the United States whether Saigon fares well or ill, one aid strategy is dictated; and if not, another. To proceed as though the level and kind of aid has no real connection to the goal of American policy is to fly blind.

Like many Americans, we had hoped that the Paris Agreement of 1973 would launch the contending Vietnamese on the path to eventual reconciliation. This would have resolved the America dilemma. But it has not happened. Hanoi and Saigon are still fighting; it looks as though they will for a long time. If one side or the other were clearly at fault, that would be one thing. We accept, however, the judgment of a new Senate Foreign Relations Committee staff study: "Lack of respect for the Agreement is so widespread that it is impossible to apportion responsibility for the continued fighting."

This bears directly on congressional efforts to cut aid. It would be grievously unfair in our view for the United States—by withholding aid—to penalize Saigon alone for a breakdown which is properly the responsibility of both Vietnamese sides. Nor does withholding aid become any fairer in these circumstances when it is described as a way to induce President Thieu to honor the Paris Agreement and to make concessions to his Vietnamese rivals. We have leaned toward this view ourselves in the past. But looking at the record of the last 20 months, we have had second thoughts. We now conclude that it is wrong to try to make Saigon alone observe the agreement, to its political detriment, when Hanoi is under no similar pressure to observe its side of the agreement. Unilateral pressure, furthermore, precludes a new American approach to Moscow and Peking—an approach we believe should be made—to reduce further all outsiders' roles, especially as arms suppliers.

The only correct basis for phasing out aid, we now believe, is a determination that it no longer is important to the United States what happens in South Vietnam. A powerful case for this can be made: the United States has invested an immense amount of blood, treasure and prestige in Vietnam, won that country the opportunity to fend for itself, and now has its own good reason to turn aside. But if this determination is to be made, we Americans owe to ourselves—and to the Vietnamese and to others elsewhere who rely upon us—to make it openly. To pledge fidelity but to reduce our support progressively or even precipitately is to undermine both interest and honor. If the Congress in its fatigue or wisdom—whatever the mix—is to pare aid this year and to threaten to cut even more next year, it should have the courage to announce that it no longer considers the outcome in Vietnam as a matter of American consequence. To cut aid while claiming that the cut will actually improve Saigon's chances of securing its own salvation is doubletalk. To cut aid while declaring that the people of South Vietnam will benefit from the new policies thereby forced upon President Thieu is at best, speculation; in our view, it is too flimsy a foundation for policy.

The alternative approach is, of course, to acknowledge a continuing interest in the fate of Saigon and to act accordingly on aid. This is the course we have come to favor, after having inclined the other way during the past 20 months. What has persuaded us to change our view is largely the prime new fact that a mutually acceptable political solution has seemed progressively to recede from reach. We think that Americans would not like to live in a world where a small nation that had strong reason to rely on American steadfastness has been let down. In that sense, the American "commitment" to Saigon *is* open-ended. To hold otherwise is to advertise one's own unreliability. It can be argued, with all too much merit, that the assurance of American support lets Saigon ignore American efforts to induce changes in its domestic policies and in its attitude towards Hanoi. The answer—surely worth testing—is that Saigon may become more responsive to American advice as it becomes less fearful to American abandonment.

Aid to Vietnam should be offered on the basis of what dollar levels and what forms of aid (economic or military) and what particular programs will enable Saigon to tend effectively to its citizens' security and welfare. This formulation admittedly leaves many loose ends, many unresolved arguments, many uncertainties. There is in the United States an evident shortage of economic and political resources to assure success. And whether the Thieu government can adequately respond is a question bound to trouble any realistic observer. We are convinced, nonetheless, that the principle of American steadfastness deserves to be honored as best we can, even though the particular government benefitting from its application in this instance is far from a model regime. There is where the overriding American interest lies.

## PERSONAL STATEMENT

The SPEAKER. Under a previous order of the House, the gentleman from New York (Mr. BINGHAM) is recognized for 5 minutes.

Mr. BINGHAM. Mr. Speaker, on June 27, I missed rollcall No. 338; on July 9, I missed rollcall Nos. 366 and 367; and on August 2, I missed rollcall Nos. 436 and 437. On each occasion, had I been present, I would have cast my vote "yea."

## U.N. MEMBERSHIP FOR GUINEA-BISSAU

The SPEAKER. Under a previous order of the House, the gentleman from Michigan (Mr. DIGGS) is recognized for 5 minutes.

Mr. DIGGS. Mr. Speaker, the United Nations Security Council is expected to meet to consider the Republic of Guinea-Bissau's application for United Nations membership this afternoon. Guinea-Bissau is the former Portuguese colony in West Africa which declared its independence from Portugal on September 24, 1973. Since that time, over 90 countries have recognized the new state's independence including the nine members of the European Economic Community (EEC).

I have learned that the White House has announced today its intention to support Guinea-Bissau's U.N. membership in today's Security Council meeting.

Following is the text of a telegram which I sent last Friday to Secretary of State Henry Kissinger, urging the active support by the United States of Guinea-Bissau's U.N. application:

Hon. HENRY A. KISSINGER,
*Secretary of State:*

Strongly urge USG to actively support Guinea-Bissau's application for admission to United Nations.

It is quite clear that Guinea-Bissau, now recognized by 86 countries, fulfills prerequisites for statehood according to international law. Existence of a politically-organized community and machinery of state, substantial PAIGC control over Guinea-Bissau, and the wholehearted support of PAIGC by population is evident.

In view of USG's overriding foreign policy, economic and geopolitical interests in independent, majority-ruled Africa, USG can afford to do no less than recognize State of Guinea-Bissau, and play leadership role in support of that state's admission to U.N. Abstention on such issue with clear support of most of U.N. membership is inimical to U.S. interests, particularly since Portugal's U.N. representative has already stated that Portugal would be happy to sponsor Guinea-Bissau's U.N. entry.

CHARLES C. DIGGS, Jr.,
*Chairman, Subcommittee on Africa.*

## SCHOOLBUS SAFETY

The SPEAKER. Under a previous order of the House, the gentleman from Wisconsin (Mr. ASPIN) is recognized for 20 minutes.

Mr. ASPIN. Mr. Speaker, I rise in support of H.R. 5529, the National Traffic and Motor Vehicle Safety Act of 1974.

I am particularly happy to support title II, the schoolbus safety title of H.R. 5529. Title II is similar to the legislation originally introduced on February 8, 1973—H.R. 4187—by the distinguished gentleman from California and the chairman of the subcommittee which considered this legislation (Mr. Moss). One hundred Members of the House eventually cosponsored H.R. 4187 and its basic provisions were adopted in title II of H.R. 5529.

Title II requires special safety standards be adopted for eight different aspects of schoolbus performance including emergency exits, floor strength, fuel systems, crash-worthiness, interior protection for occupants, seating systems, vehicle operating systems, and window and windshields.

While schoolbuses are rarely involved in accidents, when an accident does occur they are often catastrophic. This legislation is urgently needed to make the schoolbuses which bring 20 million American children to and from school every day as safe as possible.

Mr. Speaker, this schoolbus legislation was made possible in part by the efforts of Mr. Charles Ward, president of the Ward School Bus Manufacturing, Inc. Mr. Ward's company has encouraged both the Congress and the Department of Transportation to make schoolbus construction safer.

Since 1971 he has actively assisted those of us who believe in schoolbus safety legislation and in seeking the enactment of title II.

I am very pleased to commend Mr. Ward for his efforts.

Mr. Speaker, this is a very important piece of legislation. It gives us an opportunity to make sure that the 20 million children traveling to and from school every day on buses are riding in the safest possible vehicles.

## BRUMIDI—MICHELANGELO OF THE U.S. CAPITOL

The SPEAKER. Under a previous order of the House, the gentleman from

Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, my good friend, the Honorable John W. McCormack, former Speaker of the House and distinguished congressional leader from Massachusetts for many years, has brought to my attention an article from the Lynn, Mass., Sunday Post by Anthony Cama, a fine journalist who, in Speaker McCormack's words, writes articles which appeal to the reader's "fine nature—not the primitive or depressing instincts."

The article reviews the great contributions to the United States of the immortal Constantino Brumidi, the Italian immigrant who painted many of the murals and added so much of the artistic beauty which makes the Capitol Building the living work of art it is today.

The article follows:

CONSTANTINO BRUMIDI—MICHELANGELO OF THE U.S. CAPITOL

(By Anthony Cama)

This is the little-known story of a most magnificient Italian artist, Constantino Brumidi.

For many decades the legislators of the Senate and Congress passed the splendid Rotunda of our nation's capitol with perhaps only a glance or two at the beautiful murals and frescoes adorning the walls and the capitol dome. But, among these legislators and visitors, one lost her heart to the outstanding artistic beauty. She was Dr. Myrtle Cheney Murdock, wife of Congressman Murdock of Arkansas.

When she tried to get information about Brumidi, she encountered blank walls. After many efforts, she finally located the unknown grave of Brumidi. Through her efforts she finally won her first victory in 1950, and Congress authorized a bronze marker for Brumidi's grave in Glennwood Cemetery.

This article is not only about the almost forgotten and rediscovered artistic genius Brumidi, but also of Mrs. Murdock, who conducted a relentless crusade until her victory was won on April 30, 1968, when the ceremonies dedicating a bust of Brumidi, Artist Laureate of the United States Capitol, took place in the Capitol Rotunda under the co-chairmanships of Senator John O. Pastore and Rep. Peter W. Rodino, Jr.

Brumidi was a political refugee from Italy who brought his career to an abrupt halt when he vowed he would not paint another stroke until he had found liberty. In 1852, at the age of 47, he sailed for the United States, and here he found the freedom he had sought. In 1857 he became a citizen of the country he had adopted and which he loved so well.

Here are some outstanding remarks inserted by Rep. Frank Annunzio in the Congressional Record on June 6, 1966:

"Brumidi was not just a great artist . . . he was a great American. He was proud to be an American citizen and he was proud of his adopted land. He had a mission in life to accomplish on behalf of his beloved America, and he worked relentlessly to accomplish his goal, because he believed in the principles upon which this great country of ours was founded.

"Only a man with such strong convictions . . . only a person who believed deeply in the inherent dignity of man, in the freedom of man, and in the expression of this freedom by the right to choose our representatives in free elections . . . could create the noble and inspired works of art that Brumidi has left us.

"The Frieze in the rotunda, the painting in the dome of the Capitol, the expertly executed fresoces, the stirring murals, the sensitive portraits of outstanding American statesmen, the colorful paintings depicting supreme moments in American history, the intricate designs of the bronze railings on the staircases in the Capitol, are all part of the rich and imperishable inheritance that Brumidi has left to us and to succeeding generations. These works of art speak for his genius and will perpetuate his memory in the hearts and minds of all those . . . hundreds and thousands of school children, their parents, their teachers and visitors from all over the globe . . . who view with awe and admiration the works of Brumidi when they visit the nation's capitol.

"All of us in the Congress know the story of Brumidi's tragic death, the result of a fall at the age of 75 while he was painting the frieze in the rotunda of the capitol.

"Seventy long years passed before the Congress of the United States in 1950 took action to supply a bronze marker for Brumidi's unmarked grave in Glennwood Cemetery. Aside from this bronze marker, there is no other tangible recognition in this na-

"The passage of Senate Concurrent Resolution 70 will insure that this long withheld recognition, so justly deserved by Contion's capitol of this great artist's contribustantino Brumidi, is finally bestowed upon him. By this resolution, we will honor the memory of a gentle, generous man who gave his art, his talents, his whole life to his adopted country. And by honoring Brumidi, we reflect that same honor upon ourselves.

"Let us therefore, join in wholehearted and unanimous approval of Senate Concurrent Resolution 70 and thereby demonstrate to the entire world our Nation's gratitude to Constantino Brumidi . . . a great artist and a great American."

GREAT AMBITION

"It was Brumidi who said: 'I have no longer any desire for fame or fortune. My one ambition and my daily prayer is that I may live long enough to make beautiful the capitol of the one country on earth in which there is liberty.' "

Research in history shows that he began his extensive work in 1855. For 25 years, he labored lovingly and with inexhaustible determination in the country he came to love so much. Brumidi's work passed through the terms of six presidents, Franklin Pierce, James Buchanan, Abraham Lincoln, Andrew Jackson, Ulysses S. Grant and Rutherford B. Hayes. He survived the strife of the agonizing Civil War and continued ever onward during the complex and heart-breaking period of our nation's reconstruction and the tragic assassination of President Lincoln.

It is known that Brumidi painted "The Crucifixion" for St. Stephan's Church in New York and "The Holy Trinity" in the Cathedral at Mexico City. Records show that he was hired by Capt. Montgomery C. Meigs to decorate the Agricultural Committee room at the capitol, and it appears, that his luminous career as the "Michelangelo of the Capitol" began here.

He created breathtaking symbolic figures of history, geography, mechanics, commerce, the arts and the sciences and war, portraits of Benjamin Franklin, Thomas Jefferson, Alexander Hamilton, John Fitch, Robert Fulton, Samuel F. B. Morse.

Brumidi's ceiling fresco in the President's room honors Christopher Columbus. Its four corners are state seals of Vermont, upper left; Kentucky, upper right, Arkansas, lower left, and Michigan, lower right.

It is said that the decorations of Brumidi in the President's Room contains his best work. He spent over five years making this room a paradise of artistic beauty and greatness. Citizens of this Commonwealth may glory in the paintings of Henry Knox of Mass., Secretary of War and Samuel Osgood of Mass., Postmaster General.

The Dome of the Capitol Building naturally symbolized to Constantino Brumidi, "life, liberty and the pursuit of happiness." Brumidi's appreciation was his artistic dedication to his new found sanctuary. His most splendid artistic climax was the huge canopy in color—4664 square feet of concave fresco covering the inside of the Dome of the capitol of this vast and vibrant land that Brumidi had come to so fervently love.

EULOGY

The legislation that provided the bronze marker and the perpetual care for the grave of Brumidi was signed by President Truman on June 30, 1950. There were many distinguished and dynamic eulogies at that date, but, many admirers of Brumidiana concede that none surpassed the eulogy of Senator Voorhees of Indiana on Feb. 24, 1880.

"Mr. Brumidi was engaged at the time of his death on what he regarded as the greatest work of his life. He was unfolding with the magic of genius in the dome of the Capitol the scroll of American history, from the landing of Columbus to the present day. He earnestly desired to live long enough to complete this vast conception. But he has left an empty chair, and his great design unfinished, as others have done and will continue to do in other places.

"At no distant day some memorial will be erected in some appropriate place in the Capitol to his memory. He who beautifies the pathway of life, who creates images of loveliness for the human eye to rest upon, is a benefactor to the human race. He will be crowned by the gratitude of his own and of succeeding generations. In the older countries of Europe, where the profession of art has higher rank than here, Brumidi would have had a public funeral, and his remains would have been deposited in ground set apart for persons of distinction. In England he would have had a place and a tablet in Westminster Abbey.

"It matters little, however, whether we or those who come after us do anything to perpetuate his memory. The walls of this Capitol will hold his fame fresh and ever increasing as long as they themselves stand."

As this writer has seen and as have thousands of Americans witnessed, Brumidi finally attained his duly deserved recognition. For the millions of Italo-Americans in this nation and for the millions of Italians anywhere on this earth, the victory wreath finally came to rest upon the Brumidi brow. And, for the honor and pride of the ageless history of Greece, we have a record of Brumidi's blood lineage.

States Dr. Murdock in her magnificent book on Brumidi:

"The old Bible given to Mr. Brumidi by the American Bible Society in 1852, when the artist landed in New York was no doubt originally saved by Lola German for her son, Laurence. Lola was the beautiful young lady whom Brumidi married and whose lovely features were used as models for many of Brumidi's paintings. On the inside of the front cover are these words written in the C. Brumidi hand: Constantino Brumidi from Rome, Italy, arrived in New York, America, the 18th of September, 1852. Presented to me by the American Bible Society. Also written in the Brumidi hand: Constantino Brumidi born in Rome, July 26th, 1805 by Stauro Brumidi of Shiliatra, province of Arcadia in the Paloponnesus (Greece) and Ann Bianchini of Rome. Daughter, Maria Elene Brumidi born in Rome the 15th of August 1832. Sons Joseph Brumidi, born in Rome 17th January, 1842. Lawrence S. Brumidi born in Washington, D.C., (America) May 12th, 1861.

"And so we now see how Brumidi establishes his Italian ancestry and nationality of birth as well as his parentage which proves his father was of Greek origin. Therefore, it can be easily understood why the Greek nation can justly claim some part in the immense genius of Brumidi. Small won-

der, indeed, that at the unveiling ceremonies we should see Ambassador of Greece Christian X. Palmas who represented the pride of the Greek Nation in this national tribute to the artist titan in whose veins flowed centuries of Grecian culture and immortal history."

CEREMONY

For the readers of this article, here is a larger part of the program which honored Brumidi on April 30, 1968. The event was highlighted with a thrilling speech by Vice President Hubert H. Humphrey, who accepted the bust in the name of the United States of America. The master of ceremonies was Congressman Rodino, and a splendid prelude was given by the U.S. Marine Band. The invocation was by Rev. Edward Gardiner Latch, chaplain of the House of Representatives. Welcomed was Ambassador Egido Ortona of Italy, Ambassador Christian X. Palmas of Greece, Sen. Carl Hayden, Joseph A. Califano, Jr., Dr. Henry Fouvneir, Dr. N. Capos, Mrs. Louis Brumidi Mais, and her daughter, a great grandchild of Constantino Brumidi and Michael Rivisto, national grand deputy of the Supreme Lodge of the Order Sons of Italy in America.

Remarks were made by the Hon. Paul Douglas, the Hon. Frank Annunzio, Hon. John W. McCormack, Speaker of the House of Representatives, and Dr. Myrtle Chaney Murdock, who worked many years researching Brumidi's history of 25 years of artistic toil on the paintings and frescoes of the capitol and who authored the beautiful illustrated book, "Constantino Brumidi, Michelangelo of the United States Capitol."

Since this is not a booklength effort, but simply an article to bring forth another Italian star of gigantic magnitude to show the younger generation, our school children, and teachers, how much of the priceless treasury of Italian creative genius has come to this grand democratic Republic of ours, this writer concludes that recognition must be given to those far-sighted citizens and legislators who made the Brumidi tribute possible. In this effort, I quote the Hon. Frank Annunzio's prefacing remarks, which were published in the Congressional Record:

"At this gratifying moment, I want particularly to express my appreciation to Senator Paul Douglas, Democrat of Illinois, for his farsightedness in first introducing this legislation, to Senator B. Everett Jordan, Democrat, of North Carolina, the chairman of the Senate Committee on Rules and Administration, for his expeditious disposition of Senate Concurrent Resolution 70 which insured early and unanimous Senate approval on March 25 and to the Honorable Paul G. Jones, Democrat, of Missouri, chairman of the House Subcommittee on Library and Memorials, and Hon. Omar Burleson, Democrat, of Texas, chairman of the House Administration Committee, for their cooperation in scheduling prompt consideration of Senate Concurrent Resolution 70 which resulted in unanimous committee approval of the measure.

"I want also to thank 42 members of the House who responded so generously to my request and introduced legislation identical to my own bill, House Concurrent Resolution 531, providing for a Brumidi bust. Their support of my action was instrumental in focusing attention on the imperative need to bestow long overdue recognition on the Michelangelo of the Capitol, Constantino Brumidi."

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## A HUMANITARIAN PROGRAM GONE WRONG: THE MISUSE OF PUBLIC LAW 480—FOOD FOR PEACE

The SPEAKER. Under a previous order of the House, the gentleman from Massachusetts (Mr. HARRINGTON) is recognized for 5 minutes.

Mr. HARRINGTON. Mr. Speaker, this month the House Foreign Affairs Committee began its mark-up of the foreign aid bill, a legislation that I believe is marred by numerous provisions allowing for the expenditure of foreign aid and military assistance funds without the prior knowledge or specific approval of Congress. One aspect of foreign aid which deserves particular attention, in this respect, is Public Law 480, the Food for Peace program, in which Congress has no control over the large amounts of foreign currencies that are spent for assistance purposes in such countries as South Vietnam and Cambodia. Because the Public Law 480 program is such a gaping loophole in our attempts to control aid to these countries, it is imperative that this program come under the scrutiny of the Foreign Affairs Committee. Therefore, I intend to offer an amendment to the foreign aid bill to give Congress the responsibility to specifically authorize the assistance purposes for which foreign currencies, accruing from agreements signed with Cambodia and South Vietnam after the enactment of the Foreign Assistance Act of 1974, will be used.

This amendment will attempt to halt the uncontrolled expenditure of foreign currencies which have accumulated as a result of the large amount of commodity sales under agreements signed with Cambodia and South Vietnam in the Food for Peace program. Specifically, most of these moneys are generated from the payment made to the United States, by South Vietnam or Cambodia, in foreign currency upon delivery of the commodities. At the time of payment, the United States grants back these funds for local use.

My amendment will also cover the small amount of foreign currency repayments on outstanding local currency loans, as well as those foreign currencies which accrue to the local governments after the sale of commodities to local merchants.

By giving Congress legislative authority over these funds destined for Cambodia and South Vietnam, my amendment will see that the moneys are being used in ways consistent with the original humanitarian goals of this program. This amendment would also insure that Public Law 480 proceeds are used in ways consistent with our overall foreign assistance package for South Vietnam and Cambodia. Finally, it would insure that the stated intention of Congress to limit the military and economic aid provided to these countries is followed.

THE ORIGINAL GOALS OF THE FOOD FOR PEACE PROGRAM

When the Agricultural Trade Development and Assistance Act was passed by Congress in 1954, it was hailed not only as a means of dealing with the surplus of foodstuffs in the United States, but also as a means of offering humanitarian and development assistance to those countries which were not able to produce enough food to feed their own populace. During the early years of this program, the United States provided significant assistance to various countries throughout the world, either through the concessional sales of title I or the donation of food in title II of Public Law 480.

MISPLACED PRIORITIES

In the past few years, the Food for Peace program has been twisted and used by the administration so that the original humanitarian intentions have become obscured. The allocation of 43 percent, or close to $500 million, of the fiscal year 1974 deliveries to just two countries, South Vietnam and Cambodia, clearly reflects the security-related priorities now given to certain countries. Through this program, administration officials have found a back-door way of providing aid to these two countries at the expense of the other 96 nations participating in the Public Law 480 program. Yet, the populations of these two countries account for only 1 percent of the world's population. By comparison, the needy countries of the Sahel and Ethiopia, which together have a population twice that of South Vietnam and Cambodia and have a much more severe hunger problem, received only $56 million in fiscal year 1974. These misplaced priorities are detrimental to the humanitarian aspects of this program.

Today, the African countries are faced with a severe and widespread drought which has claimed the lives of millions of people. In the Sahel between 5 and 7 million people are in danger of starving, while 12.5 million need varying amounts of food. The situation in Ethiopia roughly parallels that in the Sahel: up to 13 million Ethiopians are in danger of starvation.

In South Vietnam and Cambodia, by all accounts, the need is much less pronounced. It is estimated that between 2 and 3 million South Vietnamese need foodstuffs. Much of this, however, can be attributed to dislocation of the population and faults in the food distribution system. In Cambodia, which has a population of about 8 million, food needs are conferred on the 1.3 million refugees in the capital city of Phnom Penh.

Obviously, in these Southeast Asian countries, the supply of food has not reached the critically low levels that have been demonstrated in certain African nations. But the Food for Peace program has done little to help.

During the past fiscal year, the United States, through this program, has shown only its insensitivity and callousness to the situation. Instead of increasing the flow of Public Law 480 dollars to these striken African countries, South Vietnam received substantial increases while Africa got little; $176 million was originally requested for South Vietnam. But, $304 million worth of commodity agreements were entered into as a result of the administration's decision to use Public Law 480 for political purposes. Similarly, even though $31 million was initially requested for Cambodia, the final figure increased by more than 600 percent to $194 million. These dramatic increases follow congressional actions reducing Indochina postwar reconstruction and military aid. As a result, Public Law 480 funds originally directed for other countries were diverted to South Vietnam and Cambodia. Bangladesh, for

example, was originally to receive $64 million but its aid was cut to $34 million. The real tragedy of this program is that the money was not allocated to those countries where the need was most pronounced. In the case of South Vietnam and Cambodia, the Public Law 480 program has proved to be just another vehicle through which the administration can provide hundreds of millions of dollars in additional military and economic aid while circumventing the intentions of Congress.

TOBACCO AND PUBLIC LAW 480

The sale of tobacco to South Vietnam and Cambodia again demonstrates some of the questionable practices in this program. During fiscal year 1973, 8,428 tons of leaf tobacco were shipped to South Vietnam, while Cambodia received 561 tons. This accounted for well in excess of half of the worldwide total allocation of 11,443 tons.

The inclusion of tobacco into the original food-for-peace program came at the insistence of Congressmen from the tobacco-producing States, according to an article by Dan Morgan entitled "U.S. Sells Indochina Tobacco," which appeared in the Washington Post. Representative WALTER B. JONES, a member of the House Agriculture Committee, has been quoted as saying that "Public Law 480 has been kind to tobacco," and was "one way to assist farmers."

Proponents justify this practice by noting that Public Law 480 encourages expansion of export markets for U.S. agricultural commodities. However, because there are many countries in the world whose populations are plagued by hunger, the Public Law 480 program should aim to alleviate malnutrition and starvation, instead of supplying nonfood commodities merely to expand foreign tobacco markets and appease a voting bloc in Congress.

Specifically in Southeast Asia, the government resells this tobacco to local merchants, generating additional large amounts of foreign currency for the Saigon and Phnom Penh governments to use for purposes, direct or indirect, which assist their military operations. This in turn provides a means to evade the limits placed by Congress on aid to these two countries.

CONGRESS ASSERTS SOME CONTROL

To attempt to halt the practice whereby a large percentage of Public Law 480 funds in fiscal year 1974 when to only two countries, South Vietnam and Cambodia, Representative JAMES JOHNSON, Republican of Colorado, succeeded in amending the Agricultural Appropriations Act for fiscal 1975 by placing a 10-percent ceiling on the amount of title I, Public Law 480 appropriations that any one country could receive. I supported this amendment because I believe that a 10-percent ceiling would both control assistance to Indochina and encourage wider and more equitable distribution of Public Law 480 funds. Unfortunately, the appropriations bill was vetoed by former President Nixon for other reasons, and a motion to override the veto is awaiting House action.

CONTROLLING THE USE OF FOREIGN CURRENCIES IN INDOCHINA

Assistance not specifically authorized by Congress can be provided to South Vietnam and Cambodia through many loopholes in title I of the Public Law 480 program.

One of the ways in which South Vietnam and Cambodia can receive extra financial support is through a practice called the "currency use payment"—CUP. These payments constitute the largest way of accumulating U.S.-owned foreign currencies for both South Vietnam and Cambodia. The authority for this is derived from the provisions in section 103(b) of Public Law 480. Briefly, this section permits foreign countries to pay, in their local currencies, for the commodities shipped under the title I congressional sales if this is done at the time of delivery and if these currencies are intended for certain military and economic aid purposes as specified by law. In effect, the U.S. Government "grants back" the foreign currencies to the recipient country for the assistance purposes specified in the sales agreement, as required by section 105 (a), (b), (c), (e), and (h).

Each sales agreement specifies the percentage of the total value of the title I commodities which can be demanded at the time of delivery as a currency use payment. In the case of South Vietnam and Cambodia, where the United States has a significant military interest, the allowable CUP has been unusually high—between 80 and 100 percent in each agreement.

In considering assistance that South Vietnam and Cambodia receive, there are two aspects of the currency use payment mechanism which allow for excessive flexibility and, therefore, potential misuse. Even though the CUP must be made upon delivery, the definition of this time period allows these payments to be made up to 1 year after the last shipment of commodities in each agreement. Because there may be several shipments extending over several months, there is a greater likelihood that South Vietnam or Cambodia, for example, could acquire enough of their respective currencies to finance a large currency use payment. In the past few years this lenient definition of the delivery period has afforded the opportunity for these two countries to make the 80 to 100 percent CUP for the title I foodstuffs.

In addition, although the foreign-owned currencies accumulate in the account that will be used for currency use payments within the delivery period, there is no requirement that the United States demand these currencies all at once. In effect, the grantback mechanism resembles a checking account where the user can draw money out according to their needs. Similarly, the United States may demand portions of the foreign currencies at various times throughout the delivery period which it—the United States—in turn grants back to the foreign government to fulfill certain assistance purposes until the total currency payment is used up. This practice allows greater flexibility to the Untied States in establishing the priorities and the timetables for the purposes under which the CUP may be granted back.

A second way in which foreign currencies may be generated from Public Law 480 sales agreements results when the commodities are shipped to a foreign government on credit and then sold by that government to a local merchant, who pays the government with foreign currencies for the commodities. These currencies are called "counterpart" currencies and are owned by the foreign government. It should be noted that "counterpart" currencies are generated under all Public Law 480 sales agreements, whether they are for repayment in dollars, convertible local currency, or local currency—for those agreement made before January 1, 1972, which afforded the opportunity for repayment of all the agreement in foreign currency.

Although section 106(b) requires that sales agreements specify that counterpart currencies be used only for economic development purposes, it offers several possibilities for circumvention. U.S. control over "counterpart" currencies is minimal at best, and there is only a half-hearted attempt to meet the section 106 (b) requirements. In addition, even in a well controlled "counterpart" program, the use of such currencies for "economic development purposes" frees other local government resources for military uses. The vague statutory terminology offers the opportunity for using "counterpart" funds in such a manner that would provide support for the military while still fulfilling some loosely interpreted economic development purpose.

Foreign currency also accrues as a result of repayments of the principle and interest of the Public Law 480 agreements made prior to January 1, 1972, which afforded the opportunity for the foreign government to completely finance these sales with local currency. However, most of these agreements have been fully repaid; therefore, future foreign currency repayments from this source will constitute a very small proportion of those generated under the Public Law 480 program.

The use of these foreign currencies would be regulated by my amendment.

A FIRST STEP TOWARD CONGRESSIONAL CONTROL

Last year, during its consideration of the Foreign Assistance Act of 1973, Congress made its first successful effort to deal with one of the more blatant abuses of the Public Law 480 program in South Vietnam and Cambodia. By enacting section 40 of that act, Congress restricted the use of foreign currencies for military purposes in recipient countries. Prior to the passage of section 40, CUP grant backs and foreign currency repayments were largely used to support the war efforts of the South Vietnamese and Cambodia Governments. This was authorized by section 104(c) of the Public Law 480 program, which authorized the use of foreign currencies for common defense and internal security purposes. Specifically, section 40 prohibited the use of foreign currencies generated under title I commodity sales for any common defense or internal security purpose without the specific au-

thorization of Congress. Section 40 became law on October 17, 1973.

Funds for military uses in Cambodia and South Vietnam were derived primarily from the currency use payments. Because of administration efforts to supply additional military support to these governments, many title I agreements entered into with South Vietnam and Cambodia provided for a 100 percent CUP with a U.S. grant back of virtually all the foreign currency it received so that this currency could be used for military aid purposes. The amount granted back for these uses varied between 80 and 100 percent of the CUP paid to the United States upon delivery of Public Law 480 commodities. In 80 percent agreements, the remaining 20 percent was reserved for U.S. uses.

Between July 1, 1954, and December 31, 1972, of the $884.4 million worth of foreign currency collected from agreements made with South Vietnam, $714.4 million were used for the common defense objectives stated in section 104(c). Thus more than 80 percent of all Public Law 480 moneys ended up being used for military purposes. The situation in Cambodia was similar. From a total of $7.5 million worth of foreign currencies generated from the sale of title I commodities to Cambodia, $6 million was directed toward common defense purposes. These figures reveal that a large percentage of foreign currencies that have been granted back to these countries have been used as military assistance.

Enactment of section 40, as a practical matter, has eliminated the availability of large amounts of foreign currency generated by Public Law 480 to bolster the South Vietnamese and Cambodian militaries. This month the House reaffirmed its intention to limit military aid by voting to reduce the MASF appropriation for South Vietnam by $300 million from the committee bill and $700 million from the administration's request.

Even though this back-door avenue for military aid has been blocked, the Public Law 480 programs capacity for generating large sums of relatively uncontrolled foreign currencies allows the administration to continue funneling economic assistance, unchecked by Congress, to South Vietnam and Cambodia. While direct military support can no longer be provided by the "grant back" of these foreign currencies, the practical effect of funds generated for other assistance purposes in these two war economies is to free other local resources for military use. The actions of Congress in carefully weighing and limiting the total foreign aid package for South Vietnam and Cambodia could be rendered all but meaningless by adroit use of Public Law 480 local currencies, as these currencies can be used for the same purposes as Indochina Postwar Reconstruction aid. By providing a control mechanism, my amendment would complement previous congressional efforts to review and control these aid programs.

My amendment parallels the existing language in section 40, by requiring specific congressional authorization for the granting of any assistance to South Vietnam and Cambodia using Public Law 480-generated foreign currencies. Its basic thrust would be to control the potential future uses of the currency use payments which have begun to accumulate as a result of section 40's effect on "common defense" grant backs. Although future uses of currency use payments are uncertain, it is important to assert congressional control over these assistance uses so that there foreign currencies cannot be used to promote the military objectives of the South Vietnamese and Cambodia Government, and circumvent the careful limits on other forms of aid enacted by Congress.

Mr. Speaker, the text of my amendment follows:

AMENDMENT TO H.R. — OFFERED BY MR. HARRINGTON

Page 4, after line 14, insert the following new section:

USE OF LOCAL CURRENCIES IN SOUTH VIETNAM AND CAMBODIA

SEC. 5. Section 40 of the Foreign Assistance Act of 1973 is amended—

(1) by inserting "(a)" immediately before "Effective"; and

(2) by adding at the end thereof the following new subsection:

"(b) Effective July 1, 1975, no amount of the foreign currency which accrues as described in subsection (a) may be used under any agreement entered into after the date of enactment of the Foreign Assistance Act of 1974, or any revision or extension entered into after such date of any prior agreement, to provide any assistance to South Vietnam or Cambodia, unless such agreement is specifically authorized by legislation enacted after such date."

## WAUSAU FUN DAY

(Mr. SIKES asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SIKES. Mr. Speaker, there is an unusual festival which is held annually at Wausau in Washington County, Fla. It is unusual in that it is called Wausau Fun Day; that is what it is intended to be and that is what it always proves to be. It is unusual in that Wausau is a small community in a rural area. The largest nearby city is Panama City which is 30 miles away. Nevertheless, thousands of people attend a day-long program. Those who braved the rain on Saturday, August 3, to participate in Fun Day exercises at Wausau were well rewarded for their effort. Even though many got wet in the rains which persisted until early afternoon, they seemed quite happy about the variety and excitement of the day.

Political aspirants can be counted on to attend in record numbers, particularly in an election year. The year 1974 is an election year, and the candidates were there in droves. One of this year's many Fun Day activities was an auction of opossums. Those most favored in the bidding were the "Choctawhatchee Broad Smile" strain of opossum. The Choctawhatchee is a large nearby river and apparently opossums which are denizens of the river swamp have such a happy environment that they wear a broader smile than ordinary opossums. Naturally, the candidates found themselves buying opossums in the auction. Some of them were quite surprised to learn how much a lowly old 'possum can cost in an auction. But the money went for a good cause—to help pay for Fun Day. It would be interesting to know what really happened to most of those 'possums. Some of the purchasers seemed to lose interest as soon as they found they had bought one.

This festival attracted many of the leaders and potential leaders from both State and local areas. They found thousands of good citizens waiting to visit with them. It was probably the largest Fun Day crowd in history. There was a time when few people believed that a small community like Wausau could successfully stage a giant affair like this. Now they know better. The people of Wausau and their neighbors are due much credit. They can be proud of what they have accomplished and they can certainly be proud they have Dalton Carter to mastermind Fun Day. Dalton Carter is a local resident who has been a leader in the Fun Day program from its beginning. No one can fully comprehend the extent of his contributions or the amount of effort he expends for Fun Day. It is a great personal achievement.

Fun Day at Wausau shows what cooperation and determination can do. Knowing the people who accomplished this spectacular, I think we can call it Wausau spirit. We can use that spirit in a lot of places.

## BRUTALITY ON CYPRUS

(Mr. KOCH asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. KOCH. Mr. Speaker, a month ago, a coup in Cyprus overturned the government of Archbishop Makarios. Soon after, the fears of the opponents of the military regime in Greece were temporarily allayed. The Greek junta fell a few days subsequent to the Cyprus coup, and Constantine Karamanlis assumed the Prime Ministry of Greece. Nikos Sampson was foiled in his attempt to enhance Greek control of Cyprus; Glafcos Clerides became President of Cyprus.

But the relief that some of us may have felt when Ioannidis' and Sampson's governments fell was shortlived. Although the foreign policy ramifications of the Cyprus conflict no longer elicit the attention of the world's great powers as they did in the first days of the crisis, the human dimension of the Cyprus war warrants our profound concern. While the Turks attempt to extend their area of control and strive to remove all Greek Cypriots from Turkish-occupied territory, they are committing acts of violence against the civilian citizens of Cyprus and against the international community which shock our human sensibilities.

Let me cite some of the reports from reliable news sources which I have read during the past few days. On August 4, Turkish troops forced their way past U.N. military personnel at Bellapaise—a town between Nicosia and Kyrenia—pulled down the U.N. flag and hoisted the Turkish banner. After driving the U.N.

troops from the town, the Turks began separating nearly 1,500 civilians gathered at the Bellapaise Abbey, a traditional sanctuary. The able-bodied men were shoved into trucks and driven away. The Turks did not disclose the men's destination, but U.N. personnel believe that the men were taken to an open-air detention camp outside Nicosia. Such action is in violation of the Cyprus ceasefire agreement which calls for the release of prisoners. The restriction of movement on the part of U.N. forces in Turkish-occupied territory is also in violation of international accords.

The treatment of the women and children who remained in Bellapaise was little better than the treatment afforded the deported men. The women were also forced to leave the abbey; they were taken to a hotel at the edge of town, where they had to spend the night with as many as 40 to a double room. The 600 refugees had to withstand the 100-degree heat with only one water source available—a concrete drainage ditch.

These women nevertheless fared better than some of their compatriots. Many Greek Cypriots were murdered or raped as they were driven from their homes by the advancing Turkish troops. A 20-year-old woman told of being raped at gunpoint after she had seen her fiancé machine-gunned with other men in her village. She then posed as the mother of a lost baby, hoping to save herself and the child, only to watch a Turkish soldier throw the infant to the ground. Other Greek Cypriots have watched as their homes and shops were plundered by Turkish soldiers. Still others have been deprived of needed supplies, since the Turks confiscated some Red Cross materials intended for Cypriot civilians.

Human tragedy is inevitable in any war. Doubtlessly the Greeks have perpetrated brutal acts against the Turkish Cypriots, just as the Turks have against the Greek Cypriots. Atrocities committed by either side must be condemned. But in attempting to achieve their political aims, the Turks appear to consistently disregard individual human rights and the authority of internationally constituted peacekeeping and relief forces. Their behavior is even reminiscent of the conduct of the Ottoman Turks in Armenia in the first decades of this century, when the Turks attempted to solve the "Armenian problem" by eliminating 2 million Armenians through mass deportation, starvation, and massacre. The barbarism of the Ottoman Turks in Armenia will always be counted among the most infamous historical events of the 20th century. Turkish actions in Cyprus today may yet warrant similar distinction.

## THE TRIUMPH OF JUSTICE

(Mr. KOCH asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. KOCH. Mr. Speaker, the resignation of Richard Nixon from the office of the Presidency is a relief to most Americans. It also is a vindication of our democratic government and the principle that all Americans, including the President, are subject to the law. The fact that Richard Nixon was compelled to resign knowing to do otherwise would result in impeachment and removal, is a reaffirmation of the strength of our country's institutions and the ultimate triumph of justice in this Nation.

As a country we have gone through a trying period since June 1972, when we first learned of the breakin at the Democratic Party headquarters in Watergate. At times we have resented the laborious time-consuming process that the Watergate issue has commanded, but it has had its benefits. It has made us look at the way we run the government and reflect on the kind of people we want in high places of public trust. And we have become more sensitive to conflicts of interest and intrusions on individuals' privacy and civil liberties.

While we all may feel some pity for Richard Nixon and his family as we would for any offender brought to justice, it was shocking to see the lack of humility and contrition in his last address. More appropriate than an effort to eulogize his record would have been an admission of his betrayal of the public trust and a plea to future generations to do better. Apparently he thought he was giving "Washington's Last Address" rather than what should have been a "mea culpa."

The new President takes the mantle of leadership at a difficult time. Our economy is in the throes of a galloping inflation and we are failing in meeting our domestic challenges. But, with the inauguration of Gerald Ford as President, the country hopes for a new beginning—and with greater wisdom on how to conduct our Government and recognition of the importance of truthfulness. In his inaugural speech, President Ford said that he would be candid with the American people. This will be important both in reestablishing confidence in our Government and in dealing more effectively with the problems that face us today.

Finally, it is vital that the Watergate investigation be completed. By removing himself from office, Richard Nixon cut short the impeachment process. But, it was not within his power to cut off the completion of the various Watergate related investigations and the prosecution of illegal acts that they have and will continue to uncover. And, it is essential that the Congress not attempt to impede the adjudication of whatever charges may properly be brought against any of the Watergate offenders, including Richard Nixon. More important than the fate of Richard M. Nixon is that history must record his perfidy. The record of his obstruction of justice and violations of the Constitution revealed by the Judiciary Committee, should be accepted by a rollcall vote establishing these facts for history. We must not permit Richard M. Nixon and some of his still benighted followers to seek to purvey the thought that he left office simply as he put it because "* * * I no longer have a strong enough political base in the Congress to justify continuing that effort," as though he were a prime minister who had been defeated on a vote of confidence. Someone said to me over the weekend that what is really important is that when the generations of children to come look back to this era, they will contrast the shining examples of Jack Kennedy and Harry Truman with the shame of Richard M. Nixon.

There are some who will demand that Congress now legislate the criminal prosecution of the former President. I think it would be inappropriate for the Congress to intervene at this time with the functions of the Special Prosecutor and the Federal courts who have performed so well to date. We have seen justice triumph to date—to those who would short circuit the process, I say to do so would damage what has been an eminently fair procedure.

## TRIBUTE TO MAYOR CHUCK HALL

(Mr. FASCELL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. FASCELL. Mr. Speaker, over the weekend one of the most colorful and popular political figures in south Florida, Miami Beach Mayor Chuck Hall, died suddenly of an apparent heart attack.

His death leaves a great void in government for the city of Miami Beach, Dade County, and Florida. He served the public for many years, in many different capacities, not only as mayor of Miami Beach, but as mayor of metropolitan Dade County as well. His accomplishments are numerous and well known. He will always be pictured for his outgoing personality and the imposing image he presented as he drove around town in his Rolls Royce, immaculately dressed, with his silvery-white hair, looking more like a movie star than the mayor of a great city.

However, the people of Miami Beach and Dade County knew Chuck Hall also as a man of seriousness and dedication, and were well aware of the many things he did on their behalf. He was well liked. He not only had a flair for showmanship but a genuine regard for all people and their problems. People knew and sensed this rapport. Chuck Hall seemed to know everyone personally and he had probably helped most of them at one time or another. No problem or person was too small for Chuck Hall's personal attention. He loved people.

Only last week, Chuck had qualified to run once again for the office of mayor of Dade County and was preparing for a major campaign.

As the host of the two major party's national conventions in 1972, Chuck Hall worked hard to show the Nation and the world that Miami Beach is an outstanding convention city with the facilities for handling any and all contingencies that might arise.

I know my Florida colleagues and others will join me in extending our deepest sympathy to Mrs. Jacqueline Hall and her family.

## RECESS

The SPEAKER. The House is now going to declare a recess until the two Houses meet in joint session to hear an address by the President of the United States.

The House will stand in recess until approximately 8:40 p.m. The bells will sound 15 minutes prior to reconvening.

Accordingly (at 5 o'clock and 24 minutes p.m.), the House stood in recess subject to the call of the Chair.

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 8 o'clock and 40 minutes p.m.

## JOINT SESSION OF THE HOUSE AND SENATE HELD PURSUANT TO THE PROVISIONS OF HOUSE CONCURRENT RESOLUTION 594 TO RECEIVE A MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER of the House presided.

The Doorkeeper, the Honorable William M. Miller, announced the President pro tempore and Members of the U.S. Senate, who entered the Hall of the House of Representatives, the President pro tempore taking the chair at the left of the Speaker, and Members of the Senate the seats reserved for them.

The SPEAKER. The Chair appoints as members of the committee on the part of the House to escort the President of the United States into the Chamber the gentleman from Massachusetts, Mr. O'NEILL; the gentleman from California, Mr. MCFALL; the gentleman from Texas, Mr. TEAGUE; the gentlewoman from Michigan, Mrs. GRIFFITHS; the gentleman from Arizona, Mr. RHODES; the gentleman from Illinois, Mr. ARENDS; the gentleman from Illinois, Mr. ANDERSON; and the gentleman from Michigan, Mr. CEDERBERG.

The PRESIDENT pro tempore. The President pro tempore on behalf of the Senate appoints the following Senators as members of the committee on the part of the Senate to escort the President of the United States into the Chamber: The Senator from Montana, Mr. MANSFIELD; the Senator from West Virginia, Mr. ROBERT C. BYRD; the Senator from Utah, Mr. Moss; the Senator from Arkansas, Mr. MCCLELLAN; the Senator from Washington, Mr. MAGNUSON; the Senator from Michigan, Mr. HART; the Senator from Vermont, Mr. AIKEN; the Senator from Pennsylvania, Mr. HUGH SCOTT; the Senator from Michigan, Mr. GRIFFIN; the Senator from New Hampshire, Mr. COTTON; the Senator from Utah, Mr. BENNETT, and the Senator from Texas, Mr. TOWER.

The Doorkeeper announced the Ambassadors, ministers, and chargés d'affaires of foreign governments.

The Ambassadors, ministers, and chargés d'affaires of foreign governments entered the Hall of the House of Representatives and took the seats reserved for them.

The Doorkeeper announced the Cabinet of the President of the United States.

The Members of the Cabinet of the President of the United States entered the Hall of the House of Representatives and took the seats reserved for them in front of the Speaker's rostrum.

At 9 o'clock and 1 minute p.m., the Doorkeeper announced the President of the United States.

The President of the United States, escorted by the committee of Senators and Representatives, entered the Hall of the House of Representatives, and stood at the Clerk's desk.

[Applause, the Members rising.]

The SPEAKER. My colleagues of the Congress, I have the distinct privilege and the high personal honor—and it is, indeed, a very personal pleasure—to present to you the President of the United States.

[Applause, the Members rising.]

## MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 93-335)

The PRESIDENT. Mr. Speaker, Mr. President, distinguished guests and my very dear friends:

My fellow Americans, we have a lot of work to do.

My former colleagues, you and I have a lot of work to do.

Let's get on with it.

Needless to say, I am deeply grateful for the wonderfully warm welcome. I can never express my gratitude adequately.

I am not here to make an inaugural address. The Nation needs action, not words.

Nor will this be a formal report on the State of the Union. God willing, I will have at least three more chances to do that.

It's good to be back in the People's House.

But this cannnot be a real homecoming. Under the Constitution, I now belong to the Executive branch. The Supreme Court has even ruled that I am the Executive branch, head, heart, and hand.

With due respect to the learned Justices—and I greatly respect the Judiciary—part of my heart will always be here on Capitol Hill. I know well the coequal role of the Congress in our Constitutional process. I love the House of Representatives. I revere the traditions of the Senate despite my too-short internship in that great body. As President, within the limits of basic principles, my motto toward the Congress is communication, conciliation, compromise and cooperation.

This Congress, unless it has changed, I am confident, will be my working partner as well as my most constructive critic. I am not asking for conformity. I am dedicated to the two-party system, and you know which party I belong to.

I do not want a honeymoon with you. I want a good marriage.

I want progress and I want problem solving which requires my best efforts, and also your best efforts.

I have no need to learn how Congress speaks for the people.

As President, I intend to listen; but I also intend to listen to the people themselves—all the people—as I promised last Friday. I want to be sure that we are all tuned into the real voice of America.

My Administration starts off by seeking unity in diversity. My office door has always been open, and that is how it is going to be at the White House. Yes, Congressmen will be welcomed—if you don't overdo it.

The first seven words of the Constitution and the most important are these: "We the People of the United States." We, the people, ordained and established the Constitution and reserved to themselves all powers not granted to Federal and State governments. I respect and will always be conscious of that fundamental rule of freedom.

Only eight months ago, when I last stood here, I told you I was a Ford, not a Lincoln. Tonight I say I am still a Ford, but I am not a Model T.

I do have some old-fashioned ideas, however. I believe in the very basic decency and fairness of America. I believe in the integrity and patriotism of the Congress. And while I am aware of the House rule that no one ever speaks to the galleries, I believe in the First Amendment and the absolute necessity of a free press.

But I also believe that over two centuries since the First Continental Congress was convened, the direction of our nation's movement has been forward. I am here to confess that in my first campaign for President—of my senior class in South High School in Grand Rapids, Michigan—I headed the Progressive Party ticket, and lost. Maybe that is why I became a Republican.

Now I ask you to join with me in getting this country revved up and moving.

My instinctive judgment is that the State of the Union is excellent. But the state of our economy is not so good.

Everywhere I have been as Vice President, some 118,000 miles in 40 States and some 55 press conferences, the unanimous concern of Americans is inflation. For once all the polls seem to agree. They also suggest that the people blame government far more than either management or labor for the high cost of everything they have to buy.

You who come from 50 States, three territories and the District of Columbia know this better than I do. That is why you have created, since I left here, your new Budget Reform Committee. I welcome it and I will work with its Members to bring the Federal budget into balance in fiscal year 1976.

The fact is that for the past 25 years that I had the honor of serving with this body the Federal budget has been balanced in only six.

Mr. Speaker, I am a little late getting around to it, but confession is good

for the soul. I have sometimes voted to spend more taxpayer's money for worthy projects in Grand Rapids, Michigan, while I vigorously opposed wasteful spending boondoggles in Oklahoma.

Be that as it may, Mr. Speaker, you and I have always stood together against unwarranted cuts in national defense. This is no time to change that nonpartisan policy.

Just as escalating Federal spending has been a prime cause of higher prices over many years, it may take some time to stop inflation, but we must begin right now. For a start, before your Labor Day recess Congress should reactivate the Cost of Living Council through passage of a clean bill, without reimposing controls, that will let us monitor wages and prices to expose abuses. Whether we like it or not, the American wage-earner and the American housewife are a lot better economists than most economists care to admit. They know that a government big enough to give you everything you want is a government big enough to take from you everything you have.

If we want to restore confidence in ourselves as working politicians, the first thing we all have to do is to learn to say no.

The first specific request of the Ford administration is not to Congress, but to the voters in the upcoming November elections. It is this, very simply: Support your candidates, Congressmen and Senators, Democrats or Republicans, conservatives or liberals, who consistently vote for tough decisions to cut the cost of government, restrain Federal spending and bring inflation under control.

I applaud the initiative Congress has already taken. The only fault I find with the Joint Economic Committee study on inflation authorized last week is that we need its expert findings in six weeks instead of six months.

A month ago the distinguished Majority Leader of the United States Senate asked the White House to convene an economic conference of Members of Congress, the President's economic consultants and some of the best economic brains from labor, industry and agriculture.

Later this was perfected by resolution to assemble a domestic summit meeting to devise a bipartisan action for stability and growth in the American economy. lity and growth in the American economy.

Neither I nor my staff have much time right now for letter writing, so I will respond: I accept the suggestion and I will personally preside.

Furthermore, I propose that this summit meeting be held at an early date in full view of the American public. They are as anxious as we are to get the right answers. My first priority is to work with you to bring inflation under control. Inflation is domestic enemy No. 1. To restore economic confidence, the Government in Washington must provide some leadership. It does no good to blame the public for spending too much when the Government is spending too much.

I began to put my Administration's own economic house in order, starting last Friday.

I instructed my Cabinet officers and counselors and my White House staff to make fiscal restraint their first order of business and to save every taxpayer's dollar that the safety and genuine welfare of our great nation will permit.

Some economic activities will be effected more by monetary and fiscal restraints than other activities. Good government clearly requires that we tend to the economic problems facing our country in a spirit of equity to all of our citizens in all segments of our society.

Tonight, obviously, is no time to threaten you with vetoes. But I do have the last recourse. And I am a veteran of many a veto fight right here in this great chamber.

Can't we do a better job by reasonable compromise? I hope we can.

Minutes after I took the Presidential oath, the joint leadership of Congress told me at the White House they would go more than half way to meet me. This was confirmed in your unanimous concurrent resolution of cooperation, for which I am deeply grateful. If for my part I go more than half way to meet the Congress, maybe we can find a much larger area of national agreement.

I bring no legislative shopping list here this evening. I will deal with specfics in future messages and talks with you. But here are a few examples of how seriously I feel about what we must do together.

Last week the Congress passed the Elementary and Secondary Education bill, and I found it on my desk. Any reservations I might have about some of its provisions—and I do have—fade in comparison to the urgent needs of America for quality education. I will sign it in a few days.

I must be frank. In implementing its provisions, I will oppose excessive funding during this inflationary crisis. As Vice President, I studied various proposals for better health care financing.

I saw them coming closer together, and urged my friends in the Congress and in the Administration to sit down and sweat out a sound compromise. The Comprehensive Health Insurance Plan goes a long way towards providing early relief to people who are sick. Why don't we write—and I ask this with the greatest spirit of cooperation—why don't we write a good health bill on the statute books in 1974 before this Congress adjourns?

The economy of our country is critically dependent on how we interact with the economies of other countries. It is little comfort that our inflation is only a part of a world-wide problem, or that American families need less of their pay checks for groceries than most of our foreign friends.

As one of the building blocks of peace we have taken the lead in working toward a more open and a more equitable world economic system. A new round of international trade negotiations started last September among 105 nations in Tokyo. The others are waiting for the United States Congress to grant the necessary authority to the Executive Branch to proceed. With modifications, the Trade Reform bill passed by the House last year would do a good job.

I understand good progress has been made in the Senate Committee on Finance. But I am optimistic, as always, that the Senate will pass an acceptable bill quickly as a key part of our joint prosperity campaign.

I am determined to expedite other international economic plans. We will be working together with other nations to find better ways to prevent shortages of food and fuel. We must not let last winter's energy crisis happen again. I will push Project Independence for our own good and the good of others. In that too I will need your help.

Successful foreign policy is an extension of the hopes of the whole American people for a world of peace and orderly reform, and orderly freedom. So I would say a few words to our distinguished guests from the governments of other nations where, as at home, it is my determination to deal openly with allies and adversaries.

Over the past 5½ years in Congress and as Vice President, I have fully supported the outstanding foreign policy of President Nixon. This policy I intend to continue.

Throughout my public service starting with wartime naval duty under the command of President Franklin D. Roosevelt, I have upheld all our Presidents when they spoke for my country to the world. I believe the Constitution commands this.

I know that in this crucial area of international policy I can count on your firm support.

Now let there be no doubt, or any misunderstanding anywhere, and I emphasize anywhere, there are no opportunities to exploit, should anyone so desire. There will be no change of course, no relaxation of vigilance, no abandonment of the helm of our ship of state as the watch changes.

We stand by our commitments and we will live up to our responsibilities, in our formal alliances, in our friendships, and in our improving relations with potential adversaries. On this Americans are united and strong. Under my term of leadership I hope we will become more united. I am certain America will remain strong.

A strong defense is the surest way to peace. Strength makes détente attainable, weakness invites war as my generation, my generation knows from our very bitter experiences. Just as America's will for peace is second to none, so will America's strength be second to none.

We cannot rely on the forbearance of others to protect this Nation. The power and diversity of the armed forces, active guard and reserve, the resolve of our fellow citizens, the flexibility in our command to navigate international waters that remain troubled are all essential to our security.

I shall continue to insist on civilian control of our superb military establishment. The Constitution plainly requires the President to be Commander in Chief and I will be.

Our job will not be easy. In promising continuity I cannot promise simplicity. The problems and challenges of the world remain complex and difficult. But we

have set out on a path of reason, or fairness, and we will continue on it. As guideposts on that path, I offer the following: To our allies of a generation in the Atlantic community and Japan, I pledge continuity in the loyal collaboration of our many mutual endeavors.

To our friends and allies in this hemisphere I pledge continuity in the deepening dialogue to define renewed relationships of equality and justice.

To our allies and friends in Asia I pledge a continuity in our support for their security, independence and economic development. In Indo-China we are determined to see the observance of the Paris agreement on Vietnam, and of cease-fire and negotiated settlement in Laos. We hope to see an early compromise settlement in Cambodia.

To the Soviet Union I pledge continuity in our commitment to the course of the past three years, to our two peoples, and to all mankind we owe a continued effort to live, where possible, to work together in peace, for in a thermonuclear age there can be no alternative to a positive and peaceful relationship between our nations.

To the People's Republic of China, whose legendary hospitality I enjoyed, I pledge continuity in our commitment to the principles of the Shanghai communique. The new relationship built on those principles has demonstrated that it serves serious and objective mutual interests, and has become an enduring feature of the world scene.

To the nations in the Middle East I pledge continuity in our vigorous efforts to advance the progress which has brought hopes of peace to that region after 25 years as a hotbed of war. We shall carry out our promise to promote continuing negotiations among all parties for a complete, just, and lasting settlement.

To all nations I pledge continuity in seeking a common global goal, a stable international structure of trade and finance which reflects the interdependence of all people.

To the entire international community, to the United Nations, to the world's non-aligned nations, and to all others, I pledge continuity in our dedication to the humane goals which throughout our history have been so much of America's contribution to mankind.

So long as the peoples of the world have confidence in our purposes and faith in our work the age-old vision of peace on earth will grow brighter.

I pledge myself unreservedly to that goal. I say to you in words that cannot be improved upon, let us never negotiate out of fear, but let us never fear to negotiate.

As Vice President, at the request of the President, I addressed myself to the individual rights of Americans in the area of privacy. There will be no illegal tappings, eavesdroppings, buggings or breakins by my administration. There will be hot pursuit of tough laws to prevent illegal invasion of privacy in both government and private activities.

On the higher plane of public morality there is no need for me to preach tonight. We have thousands of far better preachers and millions of sacred scriptures to guide us on the path of personal right living and exemplary official conduct. If we can make effective and earlier use of moral and ethical wisdom of the centuries in today's complex society we will prevent more crime and more corruption than all the policemen and prosecutors and governments can ever deter. If I might say so, this is a job that must begin at home, not in Washington.

I once told you that I'm not a saint, and I hope never to see the day that I cannot admit having made a mistake.

So I will close with another confession. Frequently along the tortuous road of recent months from this Chamber to the President's House I have protested that I was my own man. Now I realize that I was wrong. I am your man, for it was your carefully weighed confirmation that changed my occupation. The truth is I am the people's man for you acted in their name, and I accepted and began my new and solemn trust with a promise to serve all the people and do the best that I can for America. When I say all the people I mean exactly that—to the limits of my strength and ability I will be the President of black, brown, red and white Americans, of old and young, of women's liberationists and male chauvinists, and all the rest of us in between, of the poor and the rich, of native sons and new refugees, of those who work at lathes or at desks or in mines, or in the fields or of Christians, Jews, Moslems, Buddhists, and atheists if there really are any atheists after what we have all been through.

Fellow Americans, one final word. I want to be a good President. I need your help. We all need God's sure guidance. With it, nothing can stop the United States of America.

Thank you very much.

At 9 o'clock and 37 minutes p.m. the President of the United States, accompanied by the committee of escort, retired from the Hall of the House of Representatives.

The Doorkeeper escorted the invited guests from the Chamber in the following order:

The members of the President's Cabinet.

The ambassadors, ministers, and chargés d'affaires of foreign governments.

## JOINT SESSION DISSOLVED

The SPEAKER. The Chair declares the joint session of the two Houses now dissolved.

Accordingly, at 9 o'clock and 45 minutes p.m., the joint session of the two Houses was dissolved.

The Members of the Senate retired to their Chamber.

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 9 o'clock and 46 minutes p.m.

## REFERENCE OF PRESIDENT'S MESSAGE

Mr. O'NEILL. Mr. Speaker, I move that the Message of the President, together with the accompanying documents, be referred to the Committee of the Whole House on the State of the Union and ordered printed.

The motion was agreed to.

## CONFERENCE REPORT ON H.R. 2, PENSION REFORM

Mr. PERKINS submitted the following conference report and statement of the bill (H.R. 2) to provide pension reform:

CONFERENCE REPORT (H. Rept. No. 93-1280)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2) to provide for pension reform, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Employee Retirement Income Security Act of 1974".

TABLE OF CONTENTS

## TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

### SUBTITLE A—GENERAL PROVISIONS

#### FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial: that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans is carried on by means of the mails and instrumentalities of interestate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of resting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to rest the accrued benefits of employees with significant periods of service, to meet minimum

standards of funding, and by requiring plan termination insurance.

DEFINITIONS

SEC. 3. For purposes of this title:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan was established or maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

(2) The terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(A) provides retirement income to employees, or

(B) results in a deferral of income by employeers for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

(6) The term "employee" means any individual employed by an employer.

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means a person designated by a participation, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

(9) The term "person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

(10) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone. The term "United States" when used in the geographic sense means the States and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term "industry or activity affectign commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act.

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise.

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly of indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account.

(15) The term "relative" means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

(16)(A) The term "administrator" means—

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term "plan sponsor" means (i) the employer in the case of an employer benefit plan established or maintained by a single employer, (ii) the employer organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(17) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(18) The term "adequate consideration" when used in part 4 means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, or which has been listed for more than 1 month (at the time of such sale or purchase) on an electronic quotations system administered by a national securities association registered under such Act, or (ii) if the security is not traded on such a national securities exchange or so listed on such an electronic quotation system, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

(19) The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan contains a provision described in section 203(a)(3).

(20) The term "security" has the same meaning as such term has under section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1)).

(21)(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any

person designated under section 405(c)(1)-(B).

(B) If any money or other property of an employee benefit plan is invested in securities issued by an investment company registered under the Investment Company Act of 1940, such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this title, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

(22) The term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph. the early retirement benefit under a plan shall be determined without regard to any benefit under the plan which the Secretary of the Treasury finds to be a benefit described in section 204(b)(1)(G).

(23) The term "accrued benefit" means—

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided in section 204(c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(B) in tne case of a plan which is an individual account plan, the balance of the individual's account.

(24) The term "normal retirement age" means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

(25) The term "vested liabilities" means the present value of the immediate or deferred benefits available at normal retirement age for participants and their beneficiaries which are nonforfeitabe.

(26) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by a trustee or a named fiduciary (as defined in section 402(a)(2)) pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination.

(27) The term "present value", with respect to a liability, means the value adjusted to reflect anticipated events. Such adjustments shall conform to such regulations as the Secretary of the Treasury may prescribe.

(28) The term "normal service cost" or "normal cost" means the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan. The Secretary of the Treasury may prescribe regulations to carry in this paragraph.

(29) The term "accrued liability" means the excess of the present value, as of a particular regulation date of a pension plan, of the projected future benefits cost and administrative expenses for all plan participants and beneficiaries over the present value of future contributions for the normal cost of all applicable plan participants and beneficiaries. The Secretary of the Treasury may prescribe regulations to carry in this paragraph.

(30) The term "unfunded accrued liability" means the excess of the accrued liability, under an actuarial cost method which so provides, over the present value of the assets of a pension plan. The Secretary of Treasury may prescribe regulations to carry in this paragraph.

(31) The term "advance funding actuarial cost method" or "actuarial cost method" means a recognized actuarial technique utilized for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable acturarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

(32) The term "governmental plan" means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act (59 Stat. 669).

(33)(A) The term "church plan" means (i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954, or (ii) a plan described in subparagraph (C).

(B) The term "church plan" (notwithstanding the provisions of subparagraph (A)) does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1954), or

(ii) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501 of the Internal Revenue Code of 1954.

(C) Notwithstanding the provisions of subparagraph (B)(ii), a plan in existence on January 1, 1974, shall be treated as a "church plan" if it is established and maintained by a church or convention or association of churches for its employees and employees of one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501 of the Internal Revenue Code of 1954. The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence of this subparagraph shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

(34) the term "individual account plan" or "defined contribution plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(35) The term "defined benefit plan" means a pension plan other than an individual account plan; except that a pension plan which is not an individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant—

(A) for the purposes of section 202, shall be treated as an individual account plan, and

(B) for the purposes of paragraph (23) of this section and section 204, shall be treated as individual account plans to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

(36) The term "excess benefit plan" means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Internal Revenue Code of 1954 on plans to which that section applies, without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.

(37)(A) The term "multiemployer plan" means a plan—

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to one or more collective-bargaining agreement between an employee organization and more than one employer.

(iii) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all empoyers making such contributions.

(iv) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who had employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

(v) which satisfies such other requirements as the Secretary may be regulations prescribe.

(B) For purposes of this paragraph—

(i) if a plan is a multiemployer plan within the meaning of subparagraph (A) for any plan year, clause (iii) of subparagraph (A) shall be applied by substituting "75 percent" for "50 percent" for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions, and

(ii) all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined

without regard to section 1563(e)(3)(C) of such Code) shall be deemed to be one employer.

(38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 402(a)(2))—

(A) who has the power to manage, acquire, or dispose of any asset of a plan;

(B) who is (i) registered as an investment and riser under the Investment Advisers Act of 1940; (ii) is a bank, as defined in that Act; or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

(C) has acknowledged in writing that he is a fiduciary with respect to the plan.

(39) The terms "plan year" and "fiscal year of the plan" mean with respect to a plan, calendar, policy, or fiscal year on which the records of the plan are kept.

COVERAGE

SEC. 4. (a) Except as provided in subsection (b) and in sections 201, 301, and 401, this title shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by an employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this title shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 3(32);

(2) such plan is a church plan (as defined in section 3(33)) with respect to which no election has been made under section 410(d) of the Internal Revenue Code of 1954;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 3(36)) and which is unfinished.

SUBTITLE B—REGULATORY PROVISIONS

*Part I—Reporting and Disclosure*

DUTY OF DISCLOSURE AND REPORTING

SEC. 101. (a) The administrator of each employee benefit plan shall cause to be furnished in accordance with section 104(b) to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan—

(1) a summary plan description described in section 102(a)(1); and

(2) the information described in sections 104(b)(3) and 105 (a) and (c).

(b) The administrator shall, in accordance with section 104(a), file with the Secretary—

(1) the summary plan description described in section 102(a)(1);

(2) a plan description containing the matter required in section 102(b);

(3) modifications and changes referred to in section 102(a)(2);

(4) the annual report containing the information required by section 103; and

(5) terminal and supplementary reports as required by subsection (c) of this section.

(c)(1) Each administrator of an employee pension benefit plan which is winding up its affairs (without regard to the number of participants remaining in the plan) shall, in accordance with regulations prescribed by the Secretary, file such terminal reports as the Secretary may consider necessary. A copy of such report shall also be filed with the Pension Benefit Guaranty Corporation.

(2) The Secretary may require terminal reports to be filed with regard to any employee welfare benefit plan which is winding up its affairs in accordance with regulations promulgated by the Secretary.

(3) The Secretary may require that a plan described in paragraph (1) or (2) file a supplementary or terminal report with the annual report in the year such plan is terminated and that a copy of such supplementary or terminal report in the case of a plan described in paragraph (1) be also filed with the Pension Benefit Guaranty Corporation.

(d) *Cross Reference.*—

For regulations relating to coordination of reports to the Secretaries of Labor and the Treasury, see section 3004.

PLAN DESCRIPTION AND SUMMARY PLAN DESCRIPTION

SEC. 102. (a)(1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 104(b). The summary plan description shall include the information described in subsection (b), shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. Any material modification in the terms of the plan and any change in the information required under subsection (b) shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 104(b)(1).

(2) A plan description (containing the information required by subsection (b)) of any employee benefit plan shall be prepared on forms prescribed by the Secretary, and shall be filed with the Secretary as required by section 104(a)(1). Any material modification in the term of the plan and any change in the information described in subsection (b) shall be filed in accordance with section 104(a)(1)(D).

(b) The plan description and summary plan description shall contain the following information: The name and type of administration of the plan; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 503 of this Act).

ANNUAL REPORTS

(2) If some or all of the information necessary to enable the administrator to comply with the requirements of this title is maintained by—

(A) an insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account.

(B) a bank or similar institution which holds some or all of the assets of the plan is a common or collective trust or a separate trust, or custodial account, or

SEC. 103. (a) (1) (A) An annual report shall be published with respect to every employee benefit plan to which this part applies. Such report shall be filed with the Secretary in accordance with section 104 (a), and shall be made available and furnished to participants in accordance with section 104 (b).

(B) The annual report shall include the information described in subsections (b) and (c) and where applicable subsection (d) and (e) and shall also include—

(i) a financial statement and opinion, as required by paragraph (3) of this subsection, and

(ii) an actuarial statement and opinion, as required by paragraph (4) of this subsection.

(C) a plan sponsor as defined in section 3(16)(B),

such carrier, organization, bank, institution, or plan sponsor shall transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year (or such other date as may be prescribed under regulations of the Secretary).

(3)(A) Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, as independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public account shall also offer his opinion as to whether the separate schedules specified in subsection (b)(3) of this section and the summary material required under section 104(b)(3) present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report. In a case where a plan is not required to file an annual report, the requirements of this paragraph shall not apply. In a case where by reason of section 104(a)(2) a plan is required only to file a simplified annual report, the Secretary may waive the requirements of this paragraph.

(B) In offering his opinion under this section the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b)(3)(G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(D) For purposes of this title, the term "qualified public accountant" means—

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance

with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

(4)(A) The administrator of an employee pension benefit plan subject to the reporting requirements of subsection (d) of this section shall engage, on behalf of all plan participants, an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section. In a case where a plan is not required to file an annual report, the requirement of this paragraph shall not apply, and, in a case where by reason of section 104(a)(2), a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section—

(i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

(ii) represent his best estimate of anticipated experience under the plan.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of this title, the term "enrolled actuary" means an actuary enrolled under subtitle C of title III of this Act.

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under section 103(b) as to which any qualified public accountant has expressed an opinion, if he so states his reliance.

(b) An annual report under this section shall include a financial statement containing the following information:

(1) With respect to an employee welfare benefit plan: a statement of assets and liabilities; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of any significant changes in plan benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of such pension plan.

(3) With respect to all employee benefit plans, the statement required under paragraph (1) or (2) shall have attached the following information in separate schedules:

(A) a statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship or any other party in interest to the plan, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this subsection; and

(H) a schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction. For purposes of the preceding sentence, the term "reportable transaction" means a transaction to which the plan is a party if such transaction is—

(i) a transaction involving an amount in excess of 3 percent of the current value of the assets of the plan;

(ii) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a plan year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the plan;

(iii) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the plan year exceeds 3 percent of the current value of the assets of the plan; or

(iv) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the plan year respecting a security is required to be reported by reason of clause (i).

(4) The Secretary may, by regulation, relieve any plan from filing a copy of a statement of assets and liabilities (or other information) described in subparagraph (3)(G) if such statement and other information is filed with the Secretary by the bank or insurance carrier which maintains the common or collective trust or separate account.

(c) The administrator shall furnish as a part of a report under this section the following information:

(1) The number of employees covered by the plan.

(2) The name and address of each fiduciary.

(3) Except in the case of a person whose compensation is minimal (determined under regulations of the Secretary) and who performs solely ministerial duties (determined under such regulations), the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of trustee, qualified public accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian.

(5) Such financial and actuarial information including but not limited to the material described in subsections (b) and (d) of this section as the Secretary may find necessary or appropriate.

(d) With respect to an employee pension benefit plan (other than (A) a profit sharing,

savings, or other plan, which is an individual account plan, (B) a plan described in section 301(b), or (C) a plan described both in section 4021(b) and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 301(a)) an annual report under this secton for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) The date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed.

(2) The date and amount of the contribution (or contributions) received by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) The following information applicable to the plan year for which the report is filed: the normal costs, the accrued liabilities, an identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to determine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 302.

(4) The number of participants and beneficiaries, both retired and nonretired, covered by the plan.

(5) The current value of the assets accumulated in the plan, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 302 and a statement explaining the basis of such valuation of present value of assets.

(6) The present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories as set forth in section 4044 of this Act, and the actuarial assumptions used in these computations. The Secretary shall establish regulations defining (for purposes of this section) "termination priority categories", and acceptable methods, including approximate methods, for allocating the plan's liabilities to such termination priority categories.

(7) A certification of the contribution necessary to reduce the accumulated funding deficiency to zero.

(8) A statement by the enrolled actuary—

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the requirements of section 302 (relating to reasonable actuarial assumptions and methods) have been complied with.

(9) A copy of the opinion required by subsection (a)(4).

(10) Such other information regarding the plan as the Secretary may by regulation require.

(11) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

(e) If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the fiscal year and enumerating—

(1) the premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service, or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

FILING WITH SECRETARY AND FURNISHING INFORMATION TO PARTICIPANTS

SEC. 104. (a)(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary—

(A) the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing);

(B) the plan description within 120 days after such plan becomes subject to this part and an updated plan description, no more frequently than once every 5 years, as the Secretary may require;

(C) a copy of the summary plan description at the time such summary plan description is required to be furnished to participants and beneficiaries pursuant to subsection (b)(1)(B) of this section; and

(D) modifications and changes referred to in section 102(a)(2) within 60 days after such modification or change is adopted or occurs, as the case may be.

The Secretary shall make copies of such plan descriptions, summary plan descriptions, and annual reports available for inspection in the public document room of the Department of Labor. The administrator shall also furnish to the Secretary, upon request any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

(2)(A) With respect to annual reports required to be filed with the Secretary under this part, he may by regulation prescribe simplified annual reports for any pension plan which covers less than 100 participants. In addition, and without limiting the foregoing sentence, the Secretary may waive or modify the requirements of section 103(d)(6) in such cases or categories of cases as to which he finds that (i) the interests of the plan participants are not harmed thereby and (ii) the expense of compliance with the specific requirements of section 103(d)(6) is not justified by the needs of the participants, the Pension Benefit Guaranty Corporation, and the Department of Labor for some portion or all of the information otherwise required under section 103(d)(6).

(B) Nothing contained in this paragraph shall preclude the Secretary from requiring any information or data from any such plan to which this part applies where he finds such data or information is necessary to carry out the purposes of this title nor shall the Secretary be precluded from revoking provisions for simplified reports for any such plan if he finds it necessary to do so in order to carry out the objectives of this title.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this title, or may provide for simplified reporting and disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans.

(4) The Secretary may reject any filing under this section—

(A) if he determines that such filing is incomplete for the purposes of this part; or

(B) if he determines that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 103(a)(3)(A) or section 103(a)(4)(B).

(5) If the Secretary rejects a filing of a report under paragraph (4) and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the Secretary makes his determination under paragraph (4) to reject the filing, and if the Secretary deems it in the best interest of the participants, he may take any one or more of the following actions—

(A) retain an independent qualified public accountant (as defined in section 103(a)(3)(D)) on behalf of the participants to perform an audit.

(B) retain an enrolled actuary (as defined in section 103(a)(4)(C) of this Act) on behalf of the plan participants, to prepare an actuarial statement.

(C) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this part, or

(D) take any other action authorized by this title.

The administrator shall permit such accountant or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expense for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report, and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(b) Publication of the summary plan descriptions and annual reports shall be made to participants and beneficaries of the particular plan as follows:

(1) The administrator shall furnish to each participant and each beneficiary receiving benefits under the plan a copy of the summary plan description, and all modifications and changes referred to in section 102(a)(1)—

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant and each beneficiary who is receiving benefits under the plan every fifth year after the plan becomes subject to this part an updated summary plan description described in section 102 which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant and to each beneficiary who is receiving benefits under the plan the summary plan description described in section 102 every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 102(a)(1), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant and to each beneficiary who is receiving benefits.

(2) The administrator shall make copies of the plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the prin-

cipal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 103(b)(3) and such other material as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(c) The Secretary may by regulation require that the administrator of any employee benefit plan furnish to each participant and to each beneficiary receiving benefits under the plan a statement of the rights of participants and beneficiaries under this title.

(d) Cross Reference—

For regulations respecting coordination of reports to the Secretaries of Labor and Treasury, see section 3004.

REPORTING OF PARTICIPANT'S BENEFITS RIGHTS

SEC. 105. (a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so rquests in writing, a statement indicating, on the basis of the latest available information—

(1) the total benefits accrued, and

(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12 month period.

(c) Each administrator required to register under section 6057 of the Internal Revenue Code of 1954 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, and individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of such Code.

(d) Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.

REPORTS MADE PUBLIC INFORMATION

SEC. 106. (a) Except as provided in subsection (b), the contents of the descriptions, annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in section 105 (a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act may be disclosed under such Act.

RETENTION OF RECORDS

SEC. 107. Every person subject to a requirement to file any description or report or to certify any information therefor under this title or who would be subject to such a requirement but for an exemption under section 104(a)(3) of this title shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption under section 104(a)(3).

RELIANCE ON ADMINISTRATIVE INTERPRETATIONS

SEC. 108. In any criminal proceeding under section 501 based on any act or omission in alleged violation of sections 101 trough 107 and section 412 of this Act, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with sections 101 through 107 and section 412 of this Act if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any regulation or written ruling of the Secretary, or (2) publish and file any information required by any provision of this part if he pleads and proves tht he published and filed such information in good faith, and in conformity with any regulation or written ruling of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the plan description, annual reports, and other reports required by this title, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

FORMS

SEC. 109. (a) Except as provided in subsection (b) of this section, the Secretary may require that any information required under this title to be submitted to him, including but not limited to the information required to be filed by the administrator pursuant to section 103(b)(3) and (c), must be submitted on such forms as he may prescribe.

(b) The financial statement and opinion required to be prepared by an independent qualified public accountant pursuant to section 103(a)(3)(A), the actuarial statement required to be prepared by an enrolled actuary pursuant to section 103(a)(4)(A) and the summary plan description required by section 102(a) shall not be required to be submitted on forms.

(c) The Secretary may prescribe the format and content of the summary plan description, the summary of the annual report described in section 104(b)(3) and any other report, statements or documents (other than the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated), which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan.

ALTERNATIVE METHODS OF COMPLIANCE

SEC. 110. (a) The Secretary on his own motion or after having received the petition of an administrator may prescribe an alternative method for satisfying any requirement of this part with respect to any pension plan or any type of pension plan subject to such requirement if he determines—

(1) that the use of such alternative method is consistent with the purposes of this title and that it provides adequate disclosure to the participants and beneficiaries in the plan, and adequate reporting to the Secretary,

(2) that the application of such requirement of this part would—

(A) increase the costs to the plan, or

(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved; and

(3) that the application of this part would be adverse to the interests of plan participants in the aggregate.

(b) An alternative method may be prescribed under subsection (a) by regulation or otherwise. If an alternative method is prescribed other than by regulation, the Secretary shall provide notice and an opportunity for interested persons to present their views and shall publish in the Federal Register the provisions of such alternative method.

REPEAL AND EFFECTIVE DATE

SEC. 111. (a)(1) The Welfare and Pension Plans Disclosure Act is repealed except that such Act shall continue to apply to any conduct which occurred before the effective date of this part.

(2)(A) Section 664 of title 18, United States Code, is amended by striking out "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974".

(B)(i) Section 1027 of such title 18 is amended by striking out "Welfare and Pension Plan Disclosure Act" and inserting in lieu thereof "title I of the Employee Retirement Income Security Act of 1974", and by striking out "Act" each place it appears and inserting in lieu thereof "title".

(ii) The heading for such section is amended by striking out "WELFARE AND PENSION PLANS DISCLOSURE ACT" and inserting in lieu thereof "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974".

(iii) The table of sections of chapter 47 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" in the item relating to section 1027 and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(C) Section 1954 of such title 18 is amended by striking out "any plan subject to the provisions of the Welfare and Pension Plans Disclosure Act as amended" and inserting in lieu thereof "any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974"; and by striking out "sections 3(3) and 5(b) (1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended" and inserting in lieu thereof "sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974".

(D) Section 211 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 441) is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(b)(1) Except as provided in paragraph (2), this part (including the amendments and repeals made by subsection (a)) shall take effect on January 1, 1975.

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may postpone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure

Act (and of any amendment made by subsection (a)(2)) and the effective date of any provision of this part, until the beginning of the first plan year of such plan which begins after January 1, 1975.

(c) The provisions of this title authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act.

PART 2—PARTICIPATION AND VESTING

COVERAGE

SEC. 201. This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)) other than—

(1) an employee welfare benefit plan;

(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(3) (A) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to or under such plan are made by employers of participants in such plan, or

(B) a trust described in section 501(c)(18) of such Code;

(4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of the Internal Revenue Code of 1954 and which does not at any time after the date of enactment of this Act provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of the Internal Revenue Code of 1954;

(6) an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954, or a retirement bond described in section 409 of such Code; or

(7) such plan is an excess benefit plan.

MINIMUM PARTICIPATION STANDARDS

SEC. 202. (a)(1)(A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 25; or

(ii) the date on which he completes 1 year of service.

(B)(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "3 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1954) by an employer which is exempt from tax under section 501(a) of such Code, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "30" for "25". This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age, unless—

(A) the plan is a—

(i) defined benefit plan, or

(ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury), and

(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

(3)(A) For purposes of this section, the term "year of service" means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary.

(C) For purposes of this section, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b)(1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a)(1).

(2) In the case of any employee who has any 1-year break in service (as defined in section 203(b)(3)(A)) under the plan to which the service requirements of clause (i) of subsection (a)(1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) in the case of any participant who has any 1-year break in service (as defined in section 203(b)(3)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3)) after his return.

(4) In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this paragraph by reason of any prior break in service.

MINIMUM VESTING STANDARDS

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

(A) A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

| Years of service: | Nonforfeitable percentage |
|---|---|
| 5 | 25 |
| 6 | 30 |
| 7 | 35 |
| 8 | 40 |
| 9 | 45 |
| 10 | 50 |
| 11 | 60 |
| 12 | 70 |
| 13 | 80 |
| 14 | 90 |
| 15 or more | 100. |

(C)(i) A plan satisfies the requirements of this subparagraph if a participant who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

| If years of service equal or exceed | and sum of age and service equals or exceeds— | then the nonforfeitable percentage is— |
|---|---|---|
| 5 | 45 | 50 |
| 6 | 47 | 60 |
| 7 | 49 | 70 |
| 8 | 51 | 80 |
| 9 | 53 | 90 |
| 10 | 55 | 100. |

(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any participant who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 205).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 302(c)(8).

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal of the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 204(c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision defined in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defense benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 204(c)(2)(C) (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made before the participant has any 1-year break in service commencing after the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of this Act, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides than an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before the date of the enactment of this Act if such amount foreited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after the date of the enactment of this Act. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) CROSS REFERENCE.—

For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 206(c).

(b)(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 22, except that in the case of a plan which does no satisfy subparagraph (A) or (B) of subsection (a)(2), the plan may not disregard any such year of service during which the employee was a participant;

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970; and

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date.

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

(B) For purposes of this section, the term "hours of service" has the meaning provided by section 202(a)(3)(C).

(C) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "years of service" shall be such period as determined under regulations of the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purpose of this subparagraph.

(3)(A) For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 204(b)(1)(F) who has any 1-year break in service, years of service after such break shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such break.

(D) For purposes of paragraph (1), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

(4) Cross References.—

(A) For definitions of "accrued benefit" and "normal retirement age", see sections 3(23) and (24).

(B) For effect of certain cash out distributions, see section 204(d)(1).

(c)(1)(A) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(2) Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary of the Treasury to preclude the discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1954.

(3) The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this part, the term "class year plan" means a profit sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

(d) A pension plan may allow for nonfeitable benefits after a lesser period and in greater amounts than are required by this part.

BENEFIT ACCRUAL REQUIREMENTS

SEC. 204. (a) Each pension plan shall satisfy the requirements of subsection (b)(2), and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1).

(b)(1)(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. A plan does not meet the requirements of this subparagraph unless the amount of accrued benefits of any participant who has separated from the service equals the amount of accrued benefits to which he would have been entitled at normal retirement age if he had the same credited service under the plan and the same compensation (determined in accordance with this subparagraph) but had not separated from the service. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the re-

quirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefits and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraph. (A),(B) and (C) shall not apply with respect to years of participation before the first plan year to which this section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only, if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to the date of the enactment of this Act, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 202(a)(3)(A).

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of the paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 301(b) (relating to certain insurance contract plans), but only if an employee's accrued benefits as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 301(b) were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—

(i) do not exceed such social security benefits, and

(ii) terminate at the time of entitlement to such social security benefits commence.

(2) A plan satisfies the requirements of this paragraph if—

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(3)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 202(b)) as determined under regulations prescribed by the Secretary which provided for the calculation of such period on any reasonable and consistent basis.

(B) For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

(D) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary.

(E) For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(c)(1) For purposes of this section and section 203 an employee's accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2)(A) In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B)(i) In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

(ii) For purposes of clause (i), the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.

(C) For purposes of this subsection, the term "accumulated contributions" means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section 203(a)(2) does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which section 203(a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary of the Treasury determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(E) The accrued benefit derived from employee contributions shall not exceed the greater of—

(i) the employee's accrued benefit under the plan, or

(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.

(3) For purposes of this section, in the case of any defined benefit plan, if an em-

ployee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(4) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(d) Notwithstanding section 203(b)(1), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

(e) For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

(1) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(2) resumes employment covered under the plan, and

(3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has any 1-year break in service commencing after such withdrawal.

(f) For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

(g) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 302(c)(8).

(h) CROSS REFERENCE.—

(For special rules relating to class year plans and plan provisions adopted to preclude discrimination, see sections 203(c)(2) and (3)).

JOINT AND SURVIVOR ANNUITY REQUIREMENT

SEC. 205. (a) If a pension plan provides for the payment of benefits in the form of an annuity, such plan shall provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

(b) In the case of a plan which provides for the payment of benefits before the normal retirement age as defined in section 3(24), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(1) the date the employee reaches the earliest retirement age, or

(2) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(c)(1) A plan described in subsection (b) does not meet the requirements of subsection (a) unless, under the plan, a participant has a reasonable period in which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subsection (b) ends and ending on the date on which he reaches normal retirement age if he continues his employment during that period.

(2) A plan does not meet the requirements of this subsection unless, in the case of such election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he had made an election under this subsection immediately prior to his retirement and if his retirement had occurred on the date immediately preceding the date of his death and within the period within which an election can be made.

(d) A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made under subsection (c)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

(e) A plan shall not be treated as satisfying the requirements of this section unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subsection) not to take such joint and survivor annuity.

(f) A plan shall not be treated as not satisfying the requirements of this section solely because, under the plan there is a provision that any election under subsection (c) or (e), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

(1) the participant dies from accidental causes,

(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) such election or revocation is made before such accident occurred.

(g) For purposes of this section:

(1) The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability).

(2) The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(3) The term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single annuity for the life of the participant.

(h) For the purposes of this section, a plan may take into account in any equitable fashion (as determined by the Secretary of the Treasury) any increased costs resulting from providing joint and survivor annuity benefits under an election made under subsection (c).

(i) This subsection shall apply only if—

(1) the annuity starting date did not occur before the effective date of this section, and

(2) the participant was an active participant in the plan on or after such effective date.

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

SEC. 206. (a) Nonforfeitable benefits accrued by terminated participants may be distributed in the manner set forth in the plan for payment of retirement benefits except that distribution of such benefits shall, at the election of the terminated participant, commence at the earlier of either—

(1) the first date that a participant who is not a terminated participant, with the same credited service under the plan, could have exercised any unrestricted option under the plan to receive retirement benefits, or

(2) the later date of the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan,

(C) the participant terminates his service with the employer.

For the purposes of this subsection, the term "terminated participant" means a participant for whom service is no longer being credited under the plan.

(b) If—

(1) a participant or beneficiary is receiving benefits under such plan, or

(2) a participant is separated from the service and has nonforfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act or the Railroad Retirement Act of 1937, or any increase in the wage base under such title II, if such increase takes place after the date of the enactment of this Act or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

(c) No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 203(a)(3)(D)(iii).

(d)(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of

this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before the date of enactment of this Act. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1).

TEMPORARY VARIANCES FROM CERTAIN VESTING REQUIREMENTS

SEC. 207. In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of enactment of this Act, the administrator petitions the Secretary, the Secretary may prescribe an alternate method which shall be treated as satisfying the requirements of section 203(a)(2) or 204(b)(1) (other than subparagraph (D thereof)) or both for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

(1) the application of such requirements would increse the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation.

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 303 or 304 of this Act would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the administrator petitions the Secretary for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.

MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS

SEC. 208. A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after the date of the enactment of this Act, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation.

RECORDKEEPING AND REPORTING REQUIREMENTS

SEC. 209. (a)(1) Except as provided by paragraph (2) every employer shall, in accordance with regulations prescribed by the Secretary, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employee. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 203(b)(3)(A)).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.

(2) If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary of Labor, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary of Labor or his delegate, make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a), to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

PLANS MAINTAINED BY MORE THAN ONE EMPLOYER, PREDECESSOR PLANS, AND EMPLOYER GROUPS

SEC. 210. (a) Notwithstanding any other provision of this part or part 3, the following provisions shall apply to a plan maintained by more than one employer:

(1) Section 202 shall be applied as if all employees of each of the employers plan were employed by a single employer,

(2) Sections 203 and 204 shall be applied if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 302 shall be determined as if all participants in the plan were employed by a single employer.

(b) For purposes of this part and part 3—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

(c) For purposes of sections 202, 203, and 204, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(4) and (e)(3)(C) of such code) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 302 shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

(d) For purposes of sections 202, 203, and 204, under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c).

EFFECTIVE DATES

SEC. 211. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b)(1) Except as otherwise provided in subsection (d), sections 205, 206(d), and 208 shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of section 204 solely by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

(A) the date on which the last of such agerements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 306(c), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act or the Internal Revenue Code of 1954 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on the date of enactment of this Act are not less favorable to participants, in the aggregate, than the rules provided under section 202, 203, and 204.

(2) For purposes of paragraph (1), the term "supplementary or special plan provision" means any plan provision which—

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of a participant with a survivor annuity for the life of his spouse, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit, this part shall apply to (1) the first plan year to which such election applies and to all subsequent plan years.

(e)(1) No pension plan to which section 202 applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 202 first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 202(b), or

(B) the date on which his participation

would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 203 applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 203 first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 202(b)(3), or

(B) the plan as in effect on Janaury 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

PART 3—FUNDING

COVERAGE

SEC. 301. (a) This part shall apply to any employee pension benefit plan described in section 4(a), (and not exempted under section 4(b)), other than—

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b);

(3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(4)(A) a plan which is established and maintained by a society, order, or association described in section 501(c) (8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to or under such plan are made by employees of participants in such plan; or

(B) a trust described in section 501(c)(18) of such Code;

(5) a plan which has not at any time after the date of enactment of this Act provided for employer contributions,

(6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of the Internal Revenue Code of 1954,

(7) an individual retirement account or annuity as described in section 408(a) of the Internal Revenue Code of 1954, or a retirement bond described in section 409 of such Code;

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 3(35)(B) of this title; or

(9) an excess benefit plan.

(b) For the purposes of paragraph (2) of subsection (a) a plan is an "insurance contract plan" if—

(1) the plan is funded exclusively by the purchase of individual insurance contracts.

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective).

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid.

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy.

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary of the Treasury to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

MINIMUM FUNDING STANDARDS

SEC. 306. (a)(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard, (or the alternative minimum funding standard under section 305) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year as of the end of such plan year the plan does not have an accumulated funding deficiency under the funding standard account (as required under subsection (b)) or the alternative minimum funding standard account (as required under section 305).

(2) For the purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

(b)(1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year.

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 30 plan years (40 plan years in the case of a multiemployer plan).

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan.)

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years.

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 303(c)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, and

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D).

(3) For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years.

(C) the amount of the waived funding deficiency (within the meaning of section 303(c)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(5) The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(c)(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2)(A) For purposes of this part the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted, under regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this part the value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary of the Treasury.

(3) For purposes of this part all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term "ranges" under section 3121 of the Internal Revenue Code of 1954, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of the Internal Revenue Code of 1954,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary of the Treasury. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of the Treasury.

(6) If, as of the case of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (g)) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2), (B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(7) For the purposes of paragraph (6), the term "full funding limitation" means the excess (if any) of—

(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).

(8) For purposes of this part, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment or, within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless he determines that such amendment is necessary because of a substantial business hardship (as determined under section 303(b)) and that waiver under section 303(a) is unavailable or inadequate.

(9) For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(10) For purposes of this part, any contributions for a plan year made by an employer after the last day of such plan year, but not later than 2½ months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such 2½ month period may be extended for not more than 6 months under regulations prescribed by the Secretary of the Treasury.

(d) CROSS REFERENCE.—For alternative amortization method for certain multiemployer plans see section 1013(d) of this Act.

VARIANCE FROM MINIMUM FUNDING STANDARD

SEC. 303. (a) If an employer, or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan are unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary of the Treasury may waive the requirements of section 302(a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under section 302(b)(2)(C). The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

(b) For purposes of this part, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether—

(1) the employer is operating at an economic loss,

(2) there is substantial unemployment or underemployment in the trade or business and in the industry concerned.

(3) the sales and profits of the industry concerned are depressed or declining, and

(4) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(c) For purposes of this part, the term "waived funding deficiency" means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C) of section 302) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(d) CROSS REFERENCE.—

(For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1954, see section 412(d) of such Code.)

EXTENSION OF AMORTIZATION PERIODS

SEC. 304. (a) The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B) of section 302) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

(1) result in—

(A) a substantial risk to the voluntary continuation of the plan, or

(B) a substantial curtailment of pension benefit levels or employee compensation, and

(2) be adverse to the interests of plan participants in the aggregate.

(b)(1) No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits becomes nonforfeitable under the plan shall be adopted if a waiver under section 303(a) or an extension of time under subsection (a) of this section is in effect with respect to the plan, or if a plan amendment described in section 302(c)(8) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(2) Paragraph (1) shall not apply to any plan amendment which—

(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(B) only repeals an amendment described in section 302(c)(8), or

(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of the Internal Revenue Code of 1954.

ALTERNATIVE MINIMUM FUNDING STANDARD

SEC. 305. (a) A plan which uses a funding method that requires contributions in all years not less than required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this section.

(b) For a plan year the alternative minimum funding standard accounts shall be—

(1) charged with the sum of—

(A) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

(B) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

(C) an amount equal to the excess, if any, of credits to the alternative minimum funding standard account for all prior plan years over charges to such account for all such years, and

(2) credited with the amount considered contributed by the employer to or under the plan (within the meaning of section 302(c)(10)) for the plan year.

(c) The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under section 302(b)(5) with respect to the funding standard account.

EFFECTIVE DATES

SEC. 306. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b) Except as otherwise provided in subsections (c) and (d), in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee representatives and one or more employers, this part shall apply only with respect to plan years beginning after the earlier of the date specified in subparagraph (A) or (B) of section 211(c)(1).

(2) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

(d) In the case of a plan the administrator of which elects under section 1017(d) of this Act to have the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit to apply to a plan year and to all subsequent plan years, this part shall apply to plan years beginning on the earlier of the first plan year to which such election applies or the first plan year determined under subsections (a), (b), and (c) of this section.

PART 4—FIDUCIARY RESPONSIBILITY

COVERAGE

SEC. 401. (a) This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)), other than—

(1) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation

for a select group of management or highly compensated employees; or

(2) a plan consisting of an agreement described in section 736 of the Internal Revenue Code of 1954, which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest.

(b) For purposes of this part:

(1) In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, solely by reason of such investment, be deemed to include any assets of such investment company.

(2) In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to include any assets of such insurer. For purposes of this paragraph:

(A) The term "insurer" means an insurance company, insurance service, or insurance organization, qualified to do business in a State.

(B) The term "guaranteed benefit policy" means an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account.

ESTABLISHMENT OF PLAN

SEC. 402. (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1)),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 405(c)(1), may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

ESTABLISHMENT OF TRUST

SEC. 403. (a) Except as provided in subsection (b), all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 402(a) or appointed by a person who is named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that—

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this title, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3).

(b) The requirements of subsection (a) of this section shall not apply—

(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) to any assets of such an insuranse company or any assets of a plan which are held by such an insurance company;

(3) to a plan—

(i) some or all of the participants of which are employees described in section 401(c)(1) of the Internal Revenue Code of 1954; or

(ii) which consists of one or more individual retirement accounts described in section 408 of the Internal Revenue Code of 1954, to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of such Code, whichever is applicable; (4) to any plan not subject to part 2 or 3 of this subtitle, or to title IV of this Act, if the Secretary exempts such a plan from the requirement of subsection (a); or

(5) to a contract established and maintained under section 403(b) of the Internal Revenue Code of 1954 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of such Code.

(c)(1) Except as provided in paragraph (2) or (3) or subsection (d), or under section 4042 and 4044 (relating to allocation of assets of terminated plans), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

(2)(A) In the case of a contribution which is made by an employer by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution.

(B) If a contribution is conditioned on qualification of the plan under section 401, 403(a), or 405(a) of the Internal Revenue Code of 1954, and if the plan does not qualify, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the date of denial of qualification of the plan.

(C) If a contribution is conditioned upon the deductability of the contribution under section 404 of the Internal Revenue Code of 1954, then, to the extent the deduction is disallowed, paragraph (1) shall not prohibit the return to the employer of such contribution (to the extent disallowed) within one year after the disapproval of the deduction.

(3) In the case of a contribution which would otherwise be an excess contribution (as defined in section 4972(b) of the Internal Revenue Code of 1954) paragraph (1) shall not prohibit a correcting distribution with respect to such contribution from the plan to the employer to the extent permitted in such section to avoid payment of an excise tax on excess contributions under such section.

(d)(1) Upon termination of a pension plan to which section 4021 does not apply at the time of termination and to which this part applies (other than a plan to which no employer contributions have been made) the assets of the plan should be allocated in accordance with the provisions of section 4044 of this Act, except as otherwise provided in regulations of the Secretary.

(2) The assets of a welfare plan which terminates shall be distributed in accordance with the terms of the plan, except as otherwise provided in regulations of the Secretary.

FIDUCIARY DUTIES

SEC. 404. (a)(1) Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3)), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 407(d)(4) and (5)).

(b) Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)—

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

LIABILITY FOR BREACH OF CO-FIDUCIARY

SEC. 405. (a) In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b)(1) Except as otherwise provided in

subsection (d) and in section 403(a) (1) and (2), if the assets of a plan are held by two or more trustees—

(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement authorized by the trust instrument allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) or any other provision of this part.

(3) (A) In the case of a plan the assets of which are held in more that one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 403(a) (1).

(c) (1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and (B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that—

(A) the named fiduciary violated section 404(a) (1)—

(i) with respect to such allocation or designation.

(ii) with respect to the establishment of implementation of the procedure under paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a).

(3) For purposes of this subsection, the term "trustee responsibility" means any responsibility provided in the plan's trust instrument (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 402(c) (3).

(d) (1) If an investment manager or managers have been appointed under section 402 (c) (3), then, notwithstanding subsections (a) (2) and (3) and subsection (b), no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee.

PROHIBITED TRANSACTIONS

SEC. 406. (a) Except as provided in section 408:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 407(a).

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a).

(b) A fiduciary with respect to a plan shall not—

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer.

10 PERCENT LIMITATION WITH RESPECT TO ACQUISITION AND HOLDING OF EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CERTAIN PLANS

SEC. 407. (a) Except as otherwise provided in this section and section 414:

(1) A plan may not acquire or hold—

(A) any employer security which is not a qualifying employer security, or

(B) any employer real property which is not qualifying employer real property.

(2) A plan may not acquire any qualifying employer security of qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

(3) (A) After December 31, 1984, a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984, exceeds 10 percent of the greater of—

(i) the fair market value of the assets of the plan, determined on December 31, 1984, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(B) subparagraph (A) of this paragraph shall not apply to any plan which on any date after December 31, 1974; and before January 1, 1985, did not hold employer securities or employer real property (or both) the aggregate fair market value of which determined on such date exceeded 10 percent of the greater of—

(i) the fair market value of the assets of the plan, determined on such date, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(4) (A) After December 31, 1979, a plan may not hold any employer securities or employer real property in excess of the amount specified in regulations under subparagraph (B). This subparagraph shall not apply to a plan after the earliest date after December 31, 1974, on which it complies with such regulations.

(B) Not later than December 31, 1976, the Secretary shall prescribe regulations which shall have the effect of requiring that a plan divest itself of 50 percent of the holdings of employer securities and employer real property which the plan would be required to divest before January 1, 1985, under paragraph (2) or subsection (c) (whichever is applicable).

(b) (1) Subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.

(2) Cross References.—

(A) For exemption from diversification requirements for holding of qualifying employer securities and qualifying employer real property by eligible individual account plans, see section 404(a) (2).

(B) For exemption from prohibited transactions for certain acquisitions of qualifying employer securities and qualifying employer real property which are not in violation of 10 percent limitation, see section 408(e) (C).

(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 414(c).

(c) (1) A plan which makes the election under paragraph (3) shall be treated as satisfying the requirement of subsection (a) (3) if and only if employer securities held on any date after December 31, 1974, and before January 1, 1985, have a fair market value, determined as of December 31, 1974, not in excess of 10 percent of the lesser of—

(A) the fair market value of the assets of the plan determined on such date (disregarding any portion of the fair market value of employer securities which is attributable to appreciation of such securities after December 31, 1974) but not less than the fair market value of plan assets on January 1, 1975, or

(B) an amount equal to the sum of (i) the total amount of the contributions to the plan received after December 31, 1974, and prior to such date, plus (ii) the fair market value of the assets of the plan, determined on January 1, 1975.

(2) For purposes of this subsection, in the case of an employer security held by a plan after January 1, 1975, the ownership of which is derived from ownership of employer securities held by the plan on January 1, 1975, or from the exercise of rights derived from such ownership, the value of such security held after January 1, 1975, shall be based on the value as of January 1, 1975, of the security from which ownership was derived. The Secretary shall prescribe regulations to carry out this paragraph.

(3) An election under this paragraph may not be made after December 31, 1975. Such an election shall be made in accordance with regulations prescribed by the Secretary, and shall be irrevocable. A plan may make an election under this paragraph only if on January 1, 1975, the plan holds no employer real property. After such election and before January 1, 1985, the plan may not acquire any employer real property.

(d) For purposes of this section—

(1) The term "employer security" means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. A contract to which section 408(b) (5) applies shall not be treated as a security for purposes of this section.

(2) The term "employer real property" means real property (and related personal property) which is leased to an employer of employees covered by the plan or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this section, such property shall be deemed to be

acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

(3)(A) The term "eligible individual account plan" means an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on the date of enactment of this Act and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in section 498 of the Internal Revenue Code of 1954.

(B) Notwithstanding subparagraph (A), a plan shall be treated as an eligible individual account plan with respect to the acquisition or holding of qualifying employer real property or qualifying employer securities only if such plan explicitly provides for acquisition and holding of qualifying employer securities or qualifying employer real property (as the case may be). In the case of a plan in existence on the date of enactment of this Act, this subparagraph shall not take effect until the expiration of one year after the effective date of this part.

(4) the term "qualifying employer-real property" means parcels of employer real property—

(A) if a substantial number of the parcels are dispersed geographically:

(B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use;

(C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer); and

(D) if such acquisition and retention complies with the provisions of this part (other than sections 404(a)(1)(B) to the extent, it requires diversification, and sections 404(a)(1)(C), 406, and subsection (a) of this section)

(5) The term "qualifying employer security" means as employer security which is stock; or a marketable obligation (as defined in subsection (e)).

(6) The term "employee stock ownership plan" means an individual account plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase both of which are qualified, under section 401 of the Internal Revenue Code of 1954, and which is designed to invest primarily in qualifying employee securities, and

(B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(7) A corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1954, except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided in regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary. Regulations under this paragraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

(8) The Secretary may prescribe regulation specifying the extent to which conversions, splits, the exercise of rights, and similar transactions are not treated as acquisitions.

(e) For puposes of subsection (d)(5), the term "marketable obligation" means a bond, debenture, note, or certificate, or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Security and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

EXEMPTIONS FROM PROHIBITED TRANSACTIONS

SEC. 408. (a) The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a). Action under this subsection may be taken only after consultation and coordination with the Secretary of the Treasury. An exemption granted under this section shall not relieve a fiduciary from any other applicable provision of this Act. The Secretary may not grant an exemption under this subsection unless he finds that such exemption is—

(1) administratively feasible,

(2) in the interests of the plan and of its participants and beneficiaries, and

(3) protective of the rights of participants and beneficiaries of such plan.

Before granting an exemption under this subsection from section 406(a) or 407(a), the Secretary shall publish notice in the Federal Register of the pendency of the exemption, shall require that adequate notice be given to interested persons, and shall afford interested persons opportunity to present views. The Secretary may not grant an exemption under this subsection from section 406(b) unless he affords an opportunity for a hearing and makes a determination on the record with respect to the findings required by paragraphs (1), (2), and (3) of this subsection.

(b) The prohibitions provided in section 406 shall not apply to any of the following transactions:

(1) Any loan made by the plan to parties in interest who are participants or beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis, (B) are not made available to highly compensated employees, officers, shareholders in an amount greater than the amount made available to other employees, (C) are made in accordance with specific provisions regarding such loans set forth in the plan, (D) bear a reasonable rate of interest, and (E) are adequately secured.

(2) Contracting or making reasonable arrangements with a party in interest for office spaces, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

(3) A loan to an employee stock ownership plan (as defined in section 407(d)(6)), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at an interest rate which is not in excess of a reasonable rate.

If the plan gives collateral to a party in interest for such loan, such collateral may consist only of qualifying employer securities (as defined in section 407(d)(5)).

(4) The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment.

(5) Any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State, if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a party in interest which is wholly owned (directly or indirectly) by the employer maintaining the plan, or by any person which is a party in interest with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers, are parties—in interest (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan).

(6) The providing of any ancillary service by a bank or similar financial institutions supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans.

Such ancillary services shall not be provided at more than reasonable compensation.

(7) The exercise of a privilege to convert securities, to the extent provided in regula-

tions of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion.

(8) Any transaction between a plan and (i) a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency or (ii) a pooled investment fund of an insurance company qualified to do business in a State, if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan.

(9) The making by a fiduciary of a distribution of the assets of the plan in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of this Act (relating to allocation of assets).

(c) Nothing in section 406 shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan; except that no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such plan, except for reimbursement of expenses properly and actually incurred; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Section 407(b) and subsections (a), (b), (c), and (e) of this section shall not apply to any transaction in which a plan, directly or indirectly—

(1) lends any part of the corpus or income of the plan to;

(2) pays any compensation for personal services rendered to the plan to; or

(3) acquires for the plan any property from or sells any property to;

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1954), a member of the family (as defined in section 267(c)(4) of such Code) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of this subsection a shareholder employee (as defined in section 1379 of the Internal Revenue Code of 1954) and a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of the Internal Revenue Code of 1954) and an employer or association of employers which establishes such an account or annuity under section 408(c) of such Code shall be deemed to be an owner-employee.

(e) Sections 406 and 407 shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5)) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 407(d)(4))—

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 407(e)(1)),

(2) if no commission is charged with respect thereto, and

(3) if—

(A) the plan is an eligible individual account plan (as defined in section 407(d)(3)), or

(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 407(a).

LIABILITY FOR BREACH OF FIDUCIARY DUTY

SEC. 409. (a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

EXCULPATORY PROVISIONS: INSURANCE

SEC. 410. (a) Except as provided in sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(b) Nothing in this subpart shall preclude—

(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING CERTAIN POSITIONS

SEC. 411. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), a violation of any provision of this Act, a violation of section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. 186), a violation of chapter 63 of title 18, United States Code, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or

(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this title. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.

(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

BONDING

SEC. 412. (a) Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as "plan official") shall be bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, and

(2) no bond shall me required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State?

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business:

(C) is subject to supervision or examination by Federal or State authority, and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regula-

tions issued by the Secretary, which amount shall be at least $1,000,000.

Paragraph (2) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation, only if such bank or institution meets bonding or similar requirements under State law which the Secretary determines are at least equivalent to those imposed on banks by Federal law.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall not be less than 10 per centum of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 per centum limitation of the preceding sentence. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the plan official, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6, United States Code. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any plan official to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any plan official of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section including exempting a plan from the requirements of this section where he finds that (1) other bonding arrangements or (2) the overall financial condition of the plan would be adequate to protect the interests of the beneficiaries and participants. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

LIMITATION ON ACTIONS

SEC. 413. (a) No action may be commenced under this title with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

(1) six years after (A) the date of the last action which constituted a part of the breach of violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this title:

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

EFFECTIVE DATE

SEC. 414. (a) Except as provided in subsections (b), (c), and (d), this part shall take effect on January 1, 1975.

(b) (1) The provisions of this part authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act.

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 402, 403 (other than 403 (c)), 405 (other than 405(a) and (d)), and 410(a), as it applies to any plan in existence on the date of enactment of this Act if he determines such postponement is (A) necessary to amend the instrument establishing the plan under which the plan is maintained and (B) not adverse to the interest of participants and beneficiaries.

(3) This part shall take effect on the date of enactment of this Act with respect to a plan which terminates after June 30, 1974, and before January 1, 1975, and to which at the time of termination section 4021 applies.

(c) Sections 406 and 407(a) (relating to prohibited transactions) shall not apply—

(1) until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954 or the corresponding provisions of prior laws);

(2) until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954) or the corresponding provisions of prior law;

(3) until June 30, 1984, to the sale, exchange, or other disposition of property described in paragraph (2) between a plan and a party in interest if—

(A) in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition; (4) until June 30, 1977, to the provision of services, to which paragraphs (1), (2), and (3) do not apply, between a plan and a party in interest—

(A) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or

(B if the party-in-interest ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if such provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954) or the corresponding provisions of prior law; or

(5) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a) (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideration.

(d) Any election, or failure to elect, by a disqualified person under section 2003(c) (1) (B) of this Act shall be treated for purposes of this part (but not for purposes of section 514) as an act or omission occurring before the effective date of this part.

PART 5—ADMINISTRATION AND ENFORCEMENT

CRIMINAL PENALTIES

SEC. 501. Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $100,000.

CIVIL ENFORCEMENT

SEC. 502. (a) A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan; to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c);

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title, or

(6) by the Secretary to collect any civil penalty under subsection (i).

(b) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a) (5) with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if—

(1) requested by the Secretary of the Treasury, or

(2) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request, under this paragraph, he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect claims of participants or beneficiaries to benefit under the plan.

(c) Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this title to funish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(d)(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against a plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

(e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) The district courts of the United States shall have jurisdiction without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) In any action under this title by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(h) A copy of the complaint in any action under this title by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved (as defined in section 4975(f)(4) of the Internal Revenue Code of 1954); except that if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation, which regulations shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of such Code.

(j) In all civil actions under this title, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28, United States Code), but all such litigations shall be subject to the direction and control of the Attorney General.

(k) Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to receiver a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this Act, or to compel him to take action required under this title, may be brought in the district court of the United States for the district where plan has its principal office, or in the United States District Court for the District of Columbia.

CLAIMS PROCEDURE

SEC. 503. In accordance with regulations of the Secretary, every employee benefit plan shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

INVESTIGATIVE AUTHORITY

SEC. 504. (a) The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order thereunder—

(1) to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this title, and

(2) to enter such places, inspect such books and records and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this title or any rule or regulation issued thereunder or if the entry is pursuant to an agreement with the plan.

The Secretary may make available to any person actually affected by any matter which is the subject of any investigation under this section, and to any department or agency of the United States, information concerning any matter which may be the subject of such investigation; except that any information obtained by the Secretary pursuant to section 6103(g) of the Internal Revenue Code of 1954 shall be made available only in accordance with regulations prescribed by the Secretary of the Treasury.

(b) The Secretary may not under the authority of this section require any plan to submit to the Secretary any books or records of the plan more than once in any 12 month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order thereunder.

(c) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) are hereby made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. To the extent he considers appropriate, the Secretary may delegate his investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

REGULATIONS

SEC. 505. Subject to title III and section 109, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this title. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 504 (a) and (b)).

OTHER AGENCIES AND DEPARTMENTS

SEC. 506. In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this title and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this title. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this title as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

ADMINISTRATION

SEC. 507. (a) Subchapter II of chapter 5, and chapter 7, of title 5, United States Code (relating to administrative procedure), shall be applicable to this title.

(b) Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) In addition to the number of positions authorized by subsection (a), the Secretary of Labor is authorized, without regard to any other provision of this section, to place 1 position in the Department of Labor in grade GS-18, and a total of 20 positions in the Department of Labor in grades GS-16 and 17."

(c) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this title or the Internal Revenue Code of 1954 with respect to any employee benefit plan under which he is a participant or beneficiary, any em-

ployee organization of which he is a member, or any employer organization in which he has an interest. This subsection does not apply to an employee benefit plan which covers only employees of the United States.

APPROPRIATIONS

SEC. 508. There are hereby authorized to be appropriated such sums as may be necessary to enable the Secretary to carry out his functions and duties under this Act.

SEPARABILITY PROVISIONS

SEC. 509. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

INTERFERENCE WITH RIGHTS PROTECTED UNDER ACT

SEC. 510. It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this title section 3001, or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this title, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this Act or the Welfare and Pension Plans Disclosure Act. The provisions of section 502 shall be applicable in the enforcement of this section.

COERCIVE INTERFERENCE

SEC. 511. It shall be unlawful for any person through the use of fraud, force, violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce, intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, this title, section 3001, or the Welfare and Pension Plans Disclosure Act. Any person who willfully violates this section shall be fined $10,000 or imprisoned for not more than one year, or both.

ADVISORY COUNCIL

SEC. 512. (a)(1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter in this section referred to as the "Council") consisting of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be members of the same political party.

(2) Members shall be persons qualified to appraise the programs instituted under this Act.

(3) Of the members appointed, three shall be representatives of employee organizations (at least one of whom shall be representative of any organization members of which are participants in a multiemployer plan); three shall be representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); three representatives shall be appointed from the general public, one of whom shall be a person representing those receiving benefits from a pension plan; and there shall be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

(4) Members shall serve for terms of three years except that of those first appointed, five shall be appointed for terms of one year, five shall be appointed for terms of two years, and five shall be appointed for terms of three years. A member may be reappointed. A member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present and voting.

(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four times each year and at such other times as the Secretary requests. In his annual report submitted pursuant to section 513(b), the Secretary shall include each recommendation which he has received from the Council during the preceding calendar year.

(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d)(1) Members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council.

(2) While away from their homes or regular places of business in the performance of services for Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(e) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

RESEARCH, STUDIES, AND ANNUAL REPORT

SEC. 513. (a)(1) The Secretary is authorized to undertake research and surveys and in connection therewith to collect, compile, analyze and publish data, information, and statistics relating to employee benefit plans, including retirement, deferred compensation, and welfare plans, and types of plans not subject to this Act.

(2) The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (A) the effects of this title upon the provisions and costs of pension plans, (B) the role of priavte pensions in meeting the economic security needs of the Nation, and (C) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial and actuarial characteristics and practices, and methods of encouraging the growth of the private pension system.

(3) The Secretary may, as he deems appropriate or necessary, undertake other studies relating to employee benefit plans, the matters regulated by this title, and the enforcement procedures provided for under this title.

(4) The research, surveys, studies, and publications referred to in this subsection may be conducted directly, or indirectly through grant or contract arrangements.

(b) The Secretary shall submit annually a report to the Congress covering his administration of this title for the preceding year, and including (1) an explanation of any variances or extensions granted under section 110, 207, 303, or 304 and the projected date for terminating the variance; (2) the status of cases in enforcement status; (3) recommendations received from the Advisory Council during the preceding year; and (4) such information, data, research findings, studies, and recommendations for further legislation in connection with the matters covered by this title as he may find advisable.

(c) The Secretary is authorized and directed to cooperate with the Congress and its appropriate committees, subcommittees, and staff in supplying data and any other information, and personnel and services, required by the Congress in any study, examination, or report by the Congress relating to pension benefit plans established or maintained by States or their political subdivisions.

EFFECT ON OTHER LAWS

SEC. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

## TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS

SEC. 1001. AMENDMENT OF INTERNAL REVENUE CODE OF 1954

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

### SUBTITLE A—PARTICIPATION, VESTING, FUNDING, ADMINISTRATION, ETC.

PART 1—PARTICIPATION, VESTING, AND FUNDING

SEC. 1011. MINIMUM PARTICIPATION STANDARDS

Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus, plans, etc.) is amended by adding at the end thereof the following:

"SUBPART B—SPECIAL RULES

"Sec. 410. Minimum participation standards.
"Sec. 411. Minimum vesting standards.
"Sec. 412. Minimum funding standards.
"Sec. 413. Collectively bargained plans.
"Sec. 414. Definitions and special rules.

"Sec. 415. Limitations on benefits and contributions under qualified plans.

"SEC. 410. MINIMUM PARTICIPATION STANDARDS

"(a) PARTICIPATION.—

"(1) MINIMUM AGE AND SERVICE CONDITIONS.—

"(A) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plans extending beyond the later of the following dates—

"(i) the date on which the employee attains the age of 25; or

"(ii) the date on which he completes 1 year of service.

"(B) SPECIAL RULES FOR CERTAIN PLANS.—

"(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting '3 years of service' for '1 year of service'.

"(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii)) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting '30' for '25'. This clause shall not apply to any plan to which clause (i) applies.

"(2) MAXIMUM AGE CONDITIONS.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age, unless—

"(a) the plan is a—

"(i) defined benefit plan, or

"(ii) target benefit plan (as defined under regulations prescribed by the Secretary or his delegate), and

"(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

"(3) DEFINITION OF YEAR OF SERVICE.—

"(A) GENERAL RULE.—For purposes of this subsection, the term 'year of service' means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, under regulations prescribed by the Secretary of Labor, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

"(B) SEASONAL INDUSTRIES.—In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term 'year of service' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

"(C) HOURS OF SERVICE.—For purposes of this subsection, the term 'hour of service' means a time of service determined under regulations prescribed by the Secretary of Labor.

"(D) MARITIME INDUSTRIES.—For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out this subparagraph.

"(4) TIME OF PARTICIPATION.—A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

"(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

"(B) the date 6 months after the date on which he satisfied such requirements.

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

"(5) BREAKS IN SERVICE.—

"(A) GENERAL RULE.—Except as otherwise provided in subparagraphs (B), (C), and (D), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of paragraph (1).

"(B) EMPLOYEES UNDER 3-YEAR 100 PERCENT VESTING.—In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

"(C) 1-YEAR BREAK IN SERVICE.—In computing an employee's period of service for purposes of subsection (a)(1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in paragraph (3)) after his return.

"(D) NONVESTED PARTICIPANTS.—In the case of a participant who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

"(b) ELIGIBILITY.—

"(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401(a) unless the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under section 401(a) which benefits either—

"(A) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation, or

"(B) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, are highly compensated.

"(2) EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of paragraph (1), there shall be excluded from consideration—

"(A) employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

"(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

"(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight.

"(c) APPLICATION OF PARTICIPATION STANDARDS TO CERTAIN PLANS.—

"(1) The provisions of this section (other than paragraph (2) of this subsection) shall not apply to—

"(A) a governmental plan (within the meaning of section 414(d)),

"(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by subsection (d) of this section has not been made.

"(C) a plan which has not at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974 provided for employer contributions, and

"(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) if no part of the contributions to or under such plan are made by employers of participants in such plan.

"(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this setcion, for purposes of section 401(a), if such plan meets the requirements of section 401(a)(3) as in effect on the day before the date of the enactment of this section.

"(d) ELECTION BY CHURCH TO HAVE PARTICIPATION, VESTING, FUNDING, ETC., PROVISIONS APPLY.—

"(1) IN GENERAL.—If the church or convention or association of churches which maintain any church plan makes an election under this subsection (in such form and manner as the Secretary or his delegate may by regulations prescribe), then the provisions of this title relating to participation, resting, funding, etc. (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.

"(2) ELECTION IRREVOCABLE.—An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable."

SEC. 1012. MINIMUM VESTING STANDARDS.

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 410 the following new section:

"SEC. 411. MINIMUM VESTING STANDARDS.

"(a) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in subsection (a)(8)) and in addition satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b).

"(1) EMPLOYEE CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

"(2) EMPLOYER CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

"(A) 10-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

"(B) 5-TO-15-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

| "Years of service: | Nonforfeitable percentage |
|---|---|
| 5 | 25 |
| 6 | 30 |
| 7 | 35 |
| 8 | 40 |
| 9 | 45 |
| 10 | 50 |
| 11 | 60 |
| 12 | 70 |
| 13 | 80 |
| 14 | 90 |
| 15 or more | 100. |

"(C) Rule of 45.—

"(i) A plan satisfies the requirements of this subparagraph if an employer who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

| "If years of service equal or exceed— | and sum of age and service equals or exceeds— | then the nonforfeitable percentage is— |
|---|---|---|
| 5 | 45 | 50 |
| 6 | 47 | 60 |
| 7 | 49 | 70 |
| 8 | 51 | 80 |
| 9 | 53 | 90 |
| 10 | 55 | 100 |

"(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any employee who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

"(3) CERTAIN PERMITTED FORFEITURES, SUSPENSIONS, ETC.—For purposes of this subsection—

"(A) FORFEITURE ON ACCOUNT OF DEATH.—A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).

"(B) SUSPENSION OF BENEFITS UPON REEMPLOYMENT OF RETIREE.—A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

"(i) in the case of a plan other than a multiemployer plan by the employee who maintains the plan under which such benefits were being paid; and

"(ii) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the meaning of the term 'employed'.

"(C) EFFECT OF RETROACTIVE PLAN AMENDMENTS.—A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(c)(8).

"(D) WITHDRAWAL OF MANDATORY CONTRIBUTION.—

"(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employee contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.

"(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan, the plan provision required under this clause may provide that such repayment must be made before the participant has any one-year break in service commencing after the withdrawal.

"(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of the Employee Retirement Income Security Act of 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C) made by such participant before the date of the enactment of the Act if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after the date of the enactment of such Act. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

"(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

"(v) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19).

"(4) SERVICE INCLUDED IN DETERMINATION OF NONFORFEITABLE PERCENTAGE.—In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

"(A) years of service before age 22, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;

"(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

"(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary or his delegate);

"(D) service not required to be taken into account under paragraph (6);

"(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970; and

"(F) years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date.

"(5) YEAR OF SERVICE.—

"(A) GENERAL RULE.—For purposes of this subsection, except as provided in subparagraph (C), the term 'year of service' means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibted under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.

"(B) HOURS OF SERVICE.—For purposes of this subsection, the term 'hour of service' has the meaning provided by section 410(a)(3)(C).

"(C) SEASONAL INDUSTRIES.—In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term 'year of service' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

"(D) MARITIME INDUSTRIES.—For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

"(6) BREAKS IN SERVICE.—

"(A) DEFINITION OF 1-YEAR BREAK IN SERVICE.—For purposes of this paragraph, the term '1-year break in service' means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.

"(B) 1 YEAR OF SERVICE AFTER 1-YEAR BREAK IN SERVICE.—For purposes of paragraph (4) in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

"(C) 1-YEAR BREAK IN SERVICE UNDER DEFINED CONTRIBUTION PLAN.—For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has any 1-year break in service, years of service after such break shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such break.

"(D) NONVESTED PARTICIPANTS.—For purposes of paragraph (4), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions,

years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

"(7) ACCRUED BENEFIT.—

"(A) IN GENERAL.—For purposes of this section, the term 'accrued benefit' means—

"(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

"(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

"(B) EFFECT OF CERTAIN DISTRIBUTIONS.—Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

"(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the Secreatry or his delegate, or

"(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary or his delegate.

"(C) REPAYMENT OF SUBPARAGRAPH (B) DISTRIBUTIONS.—For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

"(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

"(ii) resumes employment covered under the plan, and

"(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has any one-year break in service commencing after such withdrawal.

"(8) NORMAL RETIREMENT AGE.—For purposes of this section, the term 'normal retirement age' means the earlier of—

"(A) the time a plan participant attains normal retirement age under the plan, or

"(B) the later of—

"(i) the time a plan participant attains age 65, or

"(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

"(9) NORMAL RETIREMENT BENEFIT.—For purposes of this section, the term 'normal retirement benefit' means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

"(A) medical benefits, and

"(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act become payable which—

"(i) do not exceed such social security benefits, and

"(ii) terminate when such social security benefits commence.

"(10) CHANGES IN VESTING SCHEDULE.—

"(A) GENERAL RULE.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

"(B) ELECTION OF FORMER SCHEDULE.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

"(b) ACCRUED BENEFIT REQUIREMENTS.—

"(1) GENERAL RULES.—

"(A) 3-PERCENT METHOD.—A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

"(i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

"(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. A plan does not meet the requirements of this subparagraph unless the amount of accrued benefits of any participant who has separated from the service equals the amount of accrued benefits to which he would have been entitled at normal retirement age if he had the same credited service under the plan and the same compensation (determined in accordance with this subparagraph) but had not separated from the service. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

"(B) 133⅓ PERCENT RULE.—A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

"(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

"(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

"(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

"(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

"(C) FRACTIONAL RULE.—A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

"(D) ACCRUAL FOR SERVICE BEFORE EFFECTIVE DATE.—Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

"(i) his accrued benefit determined under the plan as in effect from time to time prior to the date of the enactment of the Employee Retirement Income Security Act of 1974, or

"(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

"(E) FIRST TWO YEARS OF SERVICE.—Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term years of service has the meaning provided by section 410(a)(3)(A).

"(F) CERTAIN INSURED DEFINED BENEFIT PLANS.—Notwithstanding subparagraphs (A),

(B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

"(i) is funded exclusively by the purchase of insurance contracts, and

"(ii) satisfies the requirements of paragraphs (2) and (3) of section 412(i) (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 412(i) were satisfied.

"(G) ACCRUED BENEFIT MAY NOT DECREASE ON ACCOUNT OF INCREASING AGE OR SERVICE.—Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—

"(i) do not exceed such social security benefits, and

"(ii) terminate when such social security benefits commence.

"(2) SEPARATE ACCOUNTING REQUIRED IN CERTAIN CASES.—A plan satisfies the requirements of this paragraph if—

"(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

"(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

"(3) YEAR OF PARTICIPATION.—

"(A) DEFINITION.—For purposes of determining an employee's accrued benefit, the term 'year of participation' means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5)) as determined under regulations prescribed by the Secretary of Labor which provide for the caculation of such period on any reasonable and consistent basis.

"(B) LESS THAN FULL TIME SERVICE.—For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) LESS THAN 1,000 HOURS OF SERVICE DURING YEAR.—For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.

"(D) SEASONAL INDUSTRIES.—In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term 'year of participation' shall be such period as determined under regulations prescribed by the Secretary of Labor.

"(E) MARITIME INDUSTRIES.—For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

"(c) ALLOCATION OF ACCRUED BENEFITS BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS.—

"(1) ACCRUED BENEFIT DERIVED FROM EMPLOYER CONTRIBUTIONS.—For purposes of this section, an employee's accrued benefit derived from employee contributions as of any applicable date is the excess, if any, of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

"(2) ACCRUED BENEFIT DERIVED FROM EMPLOYEE CONTRIBUTIONS.—

"(A) PLANS OTHER THAN DEFINED BENEFIT PLANS.—In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

"(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

"(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

"(B) DEFINED BENEFIT PLANS.—

"(i) IN GENERAL.—In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

"(ii) APPROPRIATE CONVERSION FACTOR.—For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

"(C) DEFINITION OF ACCUMULATED CONTRIBUTIONS.—For purposes of this subsection, the term 'accumulated contributions' means the total of—

"(i) all mandatory contributions made by the employee,

"(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which subsection (a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term 'mandatory contributions' means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"(D) ADJUSTMENTS.—The Secretary or his delegate is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary or his delegate determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

"(E) LIMITATION.—The accrued benefit derived from employee contributions shall not exceed the greater of—

"(i) the employee's accrued benefit under the plan, or

"(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.

"(3) ACTUARIAL ADJUSTMENT.—For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

"(d) SPECIAL RULES.—

"(1) COORDINATION WITH SECTION 401(a)(4).—A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) unless—

"(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are officers, shareholders, or highly compensated, or

"(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders, or highly compensated.

"(2) PROHIBITED DISCRIMINATION.—Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401(a)(4).

"(3) TERMINATION OR PARTIAL TERMINATION; DISCONTINUANCE OF CONTRIBUTIONS.—Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that—

"(A) upon its termination or partial termination, or

"(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan.

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401(a)(4), may not be used for designated employees in the event of early termination of the plan.

"(4) CLASS YEAR PLANS.—The requirements

of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this section, the term 'class year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

"(5) TREATMENT OF VOLUNTARY EMPLOYEE CONTRIBUTIONS.—In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

"(6) ACCRUED BENEFIT NOT TO BE DECREASED BY AMENDMENT.—A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan other than an amendment described in section 412(c)(8).

"(e) APPLICATION OF VESTING STANDARDS TO CERTAIN PLANS.—

"(1) The provisions of this section (other than paragraph (2)) shall not apply to—

"(A) a governmental plan (within the meaning of section 414(d)),

"(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410 (d) has not been made.

"(C) a plan which has not, at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974, provided for employer contributions, and

"(D) a plan established and maintained by a society, order, or association described in section 591(c) (8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

"(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401 (a), if such plan meets the resting requirements resulting from the application of section 401(a)(4) and 401(a)(7) as in effect on the day before the date of the enactment of the Employee Retirement Income Security Act of 1974.

(b) COMPARABILITY OF PLANS.—Section 401 (a) (relating to requirements for qualification) is amended by adding at the end of paragraph (5) the following: "For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate. For the purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his delegate to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates."

(c) VARIATIONS FROM CERTAIN VESTING AND ACCRUED BENEFITS REQUIREMENTS.—In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of the enactment of this Act, the plan administrator petitions the Secretary of Labor, the Secretary of Labor may prescribe an alternate method which shall be treated as satisfying the requirements of subsection (a) (2) of section 411 of the Internal Revenue Code of 1954, or of subsection (b)(1) (other than subparagraph (D) thereof) of such section 411, or of both such provisions for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation.

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 412(d) or (e) would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the plan administrator petitions the Secretary of Labor for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.

"SEC. 1013. MINIMUM FUNDING STANDARDS.

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 411 the following new section:

"SEC. 412. MINIMUM FUNDING STANDARDS.

"(a) GENERAL RULE.—Except as provided in subsection (h), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

"(1) such plan included a trust which qualified (or was determined by the Secretary or his delegate to have qualified) under section 401(a), or

"(2) such plan satisfied (or was determined by the Secretary or his delegate to have satisfied) the requirements of section 403(a) or 405(a).

A plan to which this section applies shall have satisfied the minimum funding standard for such plan for a plan year if at the end of such plan year, the plan does not have an accumulated funding deficiency. For purposes of this section and section 4971, the term 'accumulated funding deficiency' means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

"(b) FUNDING STANDARD ACCOUNT.—

"(1) ACCOUNT REQUIRED.—Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

"(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

"(A) the normal cost of the plan for the plan year,

"(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

"(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years.

"(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

"(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

"(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

"(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,

"(C) the amount necessary to amortize each waived funding deficiency (within the meaning of subsection (d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, and

"(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D).

"(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

"(A) the amount considered contributed by the employer to or under the plan for the plan year,

"(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

"(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

"(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

"(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years.

"(C) the amount of the waived funding deficiency (within the meaning of subsection (d)(3)) for the plan year, and

"(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

"(4) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary or his delegate, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

"(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

"(B) may be offset against amounts required to be amortized under the other such

paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

"(5) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary or his delegate) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(c) SPECIAL RULES.—

"(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

"(2) VALUATION OF ASSETS.—

"(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary or his delegate.

"(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary or his delegate shall by regulations provide, shall aply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary or his delegate.

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

"(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

"(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

"(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5).

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

"(5) CHANGE IN FUNDING METHOD OR IN PLAN YEAR REQUIRES APPROVAL.—If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary or his delegate. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary or his delegate.

"(6) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (g)) in excess of the full funding limitation—

"(A) the funding standard account shall be credited with the amount of such excess, and

"(B) all amounts described in paragraphs (2) (B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

"(7) FULL FUNDING LIMITATION.—For purposes of paragraph (6), the term 'full funding limitation' means the excess (if any) of—

"(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).

"(8) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

"(A) is adopted after the close of such plan year but no later than 2 and one-half months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

"(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

"(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances.

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of Labor notifying him of such amendment and the Secretary of Labor has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of Labor unless he determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (d)(2)) and that a waiver under subsection (d)(1) is unavailable or inadequate.

"(9) 3-YEAR VALUATION.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary or his delegate.

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary or his delegate.

"(d) VARIANCE FROM MINIMUM FUNDING STANDARD.—

"(1) WAIVER IN CASE OF SUBSTANTIAL BUSINESS HARDSHIP.—If an employer, or in the case of a multiemployer plan, 10 percent or more of the number of employees contributing to or under the plan, are unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary or his delegate may waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under subsection (b)(2)(C). The Secretary or his delegate shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

"(2) DETERMINATION OF SUBSTANTIAL BUSINESS HARDSHIP.—For purposes of this section, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether or not—

"(A) the employer is operating at an economic loss,

"(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

"(C) the sales and profits of the industry concerned are depressed or declining, and

"(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

"(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section, the term 'waived funding deficiency' means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C)) for a plan year waived by the Secretary or his delegate and not satisfied by employer contributions.

"(e) EXTENSION OF AMORTIZATION PERIODS.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any plan may be extended by the Secretary of Labor for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

"(1) result in—

"(A) a substantial risk to the voluntary continuation of the plan, or

"(B) a substantial curtailment of pension benefits levels or employee compensation, and

"(2) be adverse to the interests of plan participants in the aggregate.

"(f) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—

"(1) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under subsection (d)(1) or an extension of time under subsection (e) is in effect with respect to the plan, or if a plan amendment described in subsection (c)(8) has been made at any time in the preceding 12 months (24 months for multiemployer plans). If a plan is amended in violation of the preceding sentence, any such waiver or extension of time shall not apply to any plan year ending on or after the date on which such amendment is adopted.

"(2) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

"(A) the Secretary of Labor determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

"(B) only repeals an amendment described in subsection (c)(8), or

"(C) is required as a condition of qualification under this part.

"(g) ALTERNATIVE MINIMUM FUNDING STANDARD.—

"(1) IN GENERAL.—A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this subsection.

"(2) CHARGES AND CREDITS TO ACCOUNT.—For a plan year the alternative minimum funding standard account shall be—

"(A) charged with the sum of—

"(i) the lesser of normal cost under the funding method used under the plan or nor-

mal cost determined under the unit credit method.

"(ii) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

"(iii) an amount equal to the excess (if any) of credits to the alternative minimum standard account for all prior plan years over charges to such account for all such years, and

"(B) credited with the amount considered contributed by the employer to or under the plan for the plan year.

"(3) SPECIAL RULES.—The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under subsection (b)(5) with respect to the funding standard account.

"(h) EXCEPTIONS.—This section shall not apply to—

"(1) any profit-sharing or stock bonus plan,

"(2) any insurance contract plan described in subsection (i),

"(3) any governmental plan (within the meaning of section 414(d)),

"(4) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

"(5) any plan which has not, at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974, provided for employer contributions, or

"(6) any plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

No plan described in paragraph (3), (4), or (6) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on the day before the date of the enactment of the Employee Retirement Income Security Act of 1974.

"(i) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this subsection if—

"(1) the plan is funded exclusively by the purchase of individual insurance contracts.

"(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

"(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

"(4) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

"(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

"(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary or his delegate to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

(b) EXCISE TAX ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

"Sec. 4971. Taxes on failures to meet minimum funding standards.

"SEC. 4971. TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS

"(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 5 percent on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year. The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(b) ADDITIONAL TAX.—In and case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected. The tax imposed by this subsection shall be paid by the employer described in subsection (a).

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

"(1) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given to such term by the last sentence of section 412(a).

"(2) CORRECT.—The term 'correct' means, with respect to an accumulated funding deficiency, the contribution, to or under the plan; of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

"(3) CORRECTION PERIOD.—The term 'correction period' means, with respect to an accumulated funding deficiency, the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b), extended—

"(A) by any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) by any other period which the Secretary or his delegate determines is reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero under this section.

"(d) NOTIFICATION OF THE SECRETARY OF LABOR.—Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary or his delegate shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—

"(1) to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency, or

"(2) to comment on the imposition of such tax.

"(e) CROSS REFERENCES.—

"For disallowance of deduction for taxes paid under this section, see section 275.

"For liability for tax in case of an employer party to collective bargaining agreement, see section 413(b)(6).

"For provisions concerning notification of Secretary of Labor of imposition of tax under this section, waiver of the tax imposed by subsection (b), and other coordination between Secretary of the Treasury and Secretary of Labor with respect to compliance with this section, see section 3002(b) of title III of the Employee Retirement Income Security Act of 1974.".

(c) AMENDMENTS TO SECTION 404.—

(1) Paragraph (1) of section 404(a) (relating to deduction for employer contributions to pension trusts) is amended to read as follows:

"(1) PENSION TRUSTS.

"(A) IN GENERAL.—In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows:

"(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan).

"(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years.

"(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary or his delegate.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 412, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 412.

"(B) SPECIAL RULE IN CASE OF CERTAIN AMENDMENTS.—In the case of a plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary or his delegate), if the full funding limitation determined under section 412(c)(7) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 412(c)(7)(B) exceeds the amount determined under section 412(c)(7)(A), and if the funding method and the actual assumptions used are those used for such year under section 412, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

"(i) the full funding limitation for such year determined by applying section 412(c)(7) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

"(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary or his delegate to carry out the purposes of this subparagraph.

"(C) ALTERNATE TRANSFER OF TERMS.—In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer do-

ing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 167(l)(3)(A)(iii), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words 'plan amendment' the words 'plan amendment or increase in benefits payable under title II of the Social Security Act'. For purposes of this subparagraph, the term 'controlled group' has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).

"(D) CARRYOVER.—Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each succeeding year and the maximum amount deductible for such year under the foregoing limitations."

(2) Paragraph (6) of section 404(a) (relating to taxpayers on accrual basis) is amended to read as follows:

"(6) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)."

(3) Paragraph (7) of section 404(a) (relating to limit on deductions) is amended to read as follows:

"(7) LIMIT ON DEDUCTIONS.—If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year). In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust or a trust and an annuity plan."

(d) ALTERNATIVE AMORTIZATION METHOD FOR CERTAIN MULTIEMPLOYER PLANS.—

(1) GENERAL RULE.—In the case of any multiemployer plan (as defined in section 414(f) of the Internal Revenue Code of 1954) to which section 412 of such Code applies, if—

(A) on January 1, 1974, the contributions under the plan were based on a percentage of pay,

(B) the actuarial assumptions with respect to pay are reasonably related to past and projected experience, and

(C) the rates of interest under the plan are determined on the basis of reasonable actuarial assumptions.

the plan may elect (in such manner and at such time as may be provided under regulations prescribed by the Secretary of the Treasury or his delegate) to fund the unfunded past service liability under the plan existing as of the date 12 months following the first date on which such section 412 first applies to the plan by charging the funding standard account with an equal annual percentage of the aggregate pay of all participants in the plan in lieu of the level dollar charges to such account required under clauses (i), (ii), and (iii) of section 412(b)(2)(B) of such Code and section 302(b)(2)(B)(i), (ii), and (iii) of this Act.

(2) LIMITATION.—In the case of a plan which makes an election under paragraph (1), the aggregate of the charges required under such paragraph for a plan year shall not be less than the interest on the unfunded past service liabilities described in clauses (i), (ii), and (iii) of section 412(b)(2)(B) of the Internal Revenue Code of 1954.

SEC. 1014. COLLECTIVELY BARGAINED PLANS, ETC.

Subpart B of part I of subchapter D of chapter 1 (relating to special rules) is amended by inserting after section 412 the following new section;

"SEC. 413. COLLECTIVELY BARGAINED PLANS, ETC.

"(a) APPLICATION OF SUBSECTION (b).—Subsection (b) applies to—

"(1) a plan maintained pursuant to an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

"(2) each trust which is a part of such plan.

"(b) GENERAL RULE.—If this subsection applies to a plan, notwithstanding any other provision of this title—

"(1) PARTICIPATION.—Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

"(2) DISCRIMINATION, ETC.—Sections 401(a)(4) and 411(d)(3) shall be applied as if all participants who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement were employed by a single employer.

"(3) EXCLUSIVE BENEFIT.—For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

"(4) VESTING.—Section 411 (other than subsection (d)(3) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

"(5) FUNDING.—The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

"(6) LIABILITY FOR FUNDING TAX.—For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate—

"(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

"(B) then on the basis of their respective liabilities for contributions under the plan.

"(7) DEDUCTION LIMITATIONS.—Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

"(8) EMPLOYEES OF LABOR UNIONS.—For purposes of this subsection, employees of employee representatives shall be treated as employees of an employer described in subsection (a)(1) if such representatives meet the requirements of sections 401(a)(4) and 410 with respect to such employees.

"PLANS MAINTAINED BY MORE THAN ONE EMPLOYER.—In the case of a plan maintained by more than one employer—

"(1) PARTICIPATION.—Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer.

"(2) EXCLUSIVE BENEFIT.—For purposes of section 401(a), in determining whether the plan an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees.

"(3) VESTING.—Section 411 shall be applied as if all employers who maintain the plan constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

"(4) FUNDING.—The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

"(5) LIABILITY FOR FUNDING TAX.—For a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate—

"(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

"(B) then on the basis of their respective liabilities for contributions under the plan.

"(6) DEDUCTION LIMITATIONS.—Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation of the anticipated employer contribution for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this

purpose by the Secretary or his delegate."

SEC. 1015. DEFINITIONS AND SPECIAL RULES.

Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 413 the following new section:

"SEC. 414. DEFINITIONS AND SPECIAL RULES.

"(a) SERVICE FOR PREDECESSOR EMPLOYER.—For purposes of this part—

"(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

"(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary or his delegate, be treated as service for the employer.

"(b) EMPLOYEES OF CONTROLLED GROUP OF CORPORATIONS.—For purposes of sections 401, 410, 411, and 415, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 412, the tax imposed by section 4971, and the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary or his delegate.

"(c) EMPLOYEES OF PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—For purposes of sections 401, 410, 411, and 415, under regulations prescribed by the Secretary or his delegate, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

"(d) GOVERNMENTAL PLAN.—For purposes of this part, the term 'governmental plan' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term 'governmental plan' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669).

"(e) CHURCH PLAN.—

"(1) IN GENERAL.—For purposes of this part the term 'church plan' means—

"(A) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501, or

"(B) a plan described in paragraph (3).

"(2) CERTAIN UNRELATED BUSINESS OR MULTIEMPLOYER PLANS.—The term 'church plan' does not include a plan—

"(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513), or

"(B) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501.

"(3) SPECIAL TEMPORARY RULE FOR CERTAIN CHURCH AGENCIES UNDER CHURCH PLAN.—

"(A) Notwithstanding the provisions of paragraph (2)(B), a plan in existence on January 1, 1975, shall be treated as a church plan if it is established and maintained by a church or convention or association of churches and one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501.

"(B) Subparagraph (A) shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974.

"(C) Subparagraph (A) shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

"(f) MULTIEMPLOYER PLAN.—

"(1) IN GENERAL.—For purposes of this part, the term 'multiemployer plan' means a plan—

"(A) to which more than one employer is required to contribute,

"(B) which is maintained pursuant to a collective-bargaining agreement between employee representatives and more than one employer,

"(C) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions,

"(D) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

"(E) which satisfies such other requirements as the Secretary of Labor may by regulations prescribe.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) If a plan is a multiemployer plan within the meaning of paragraph (1) for any plan year, subparagraph (C) of paragraph (1) shall be applied by substituting '75 percent' for '50 percent' for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions.

"(B) All corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(e)(3)(C)) shall be deemed to be one employer.

"(g) PLAN ADMINISTRATOR.—For purposes of this part, the term 'plan administrator' means—

"(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

"(2) in the absence of a designation referred to in paragraph (1)—

"(A) in the case of a plan maintained by a single employer, such employer,

"(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

"(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary or his delegate may by regulation, prescribe.

"(h) TAX TREATMENT OF CERTAIN CONTRIBUTIONS.—

"(1) IN GENERAL.—Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

"(A) to an employees' trust described in section 401(a), or

"(B) under a plan described in section 403(a) or 450(a), shall not be treated as having been made by the employer if it is designated as an employee contribution.

"(2) DESIGNATION BY UNITS OF GOVERNMENT.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

"(i) DEFINED CONTRIBUTION PLAN.—For purposes of this part, the term 'defined contribution plan' means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

"(j) DEFINED BENEFIT PLAN.—For purposes of this part, the term 'defined benefit plan' means any plan which is not a defined contribution plan.

"(k) CERTAIN PLANS.—A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—

"(1) for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan,

"(2) for purposes of sections 411(a)(7)(A) (relating to minimum vesting standards) and 415 (relating to limitations on benefits and contributions under qualified plans), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and

"(3) for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.

"(l) MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) or 405 unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immedately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation."

SEC. 1016. CONFORMING AND CLERICAL AMENDMENTS.

(a) CONFORMING AMENDMENTS.—

(1) Section 275(a) (relating to denial of deduction for certain taxes) is amended by adding at the end thereof the following new paragraph:

"(6) Taxes imposed by chapter 42 and chapter 43."

(2) Section 401(a) (relating to requirements for qualification) is amended—

(A) by striking out paragraph (3) and inserting in lieu thereof:

"(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and",

(B) by striking out "paragraph (3)(B) or (4)" in paragraph (5) and inserting in lieu thereof "paragraph (4) or section 410(b) (without regard to paragraph (1)(A) thereof)", and

(C) by striking out paragraph (7) in lieu thereof:

"(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum resting standards)."

(3) Section 404(a)(2) (relating to deduction for contributions of an employer to an employee's annuity plan) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)".

(4) Section 406(b)(1) (relating to certain employees of foreign subsidiaries) is amended by striking out "paragraphs (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)".

(5) Section 407(b)(1) (relating to certain employees of domestic subsidiaries engaged in business outside the United States) is amended by striking out "paragraph (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)".

(6) Section 805(d)(1)(C) (relating to definition of pension plan reserves) is amended by striking out "and (8)" and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)".

(7) Section 6161(b)(1) (relating to extensions of time for paying tax) is amended by striking out "or 42" and inserting in lieu thereof "42 or 43". The second sentence of section 6161(b) is amended by striking out "or 42" and inserting in lieu thereof ", 42, or chapter 43".

(8) Section 6201(d) (relating to assessment authority) is amended by striking out "and chapter 42" and inserting in lieu thereof ", chapter 42, and chapter 43".

(9) Section 6211 (defining deficiency) is amended—

(A) by striking out so much of subsection (a) as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"(a) IN GENERAL.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 42 and 43, the term 'deficiency' means the amount by which the tax imposed by subtitle A or B, or chapter 42 or 43, exceeds the excess of—"; and

(B) by striking out "chapter 42" in subsection (b)(2) and inserting in lieu thereof "chapter 42 or 43".

(10) Section 6212 (relating to notice of deficiency) is amended—

(A) by striking out "chapter 42" in subsection (a) and inserting in lieu thereof "chapter 42 or 43",

(B) by striking out "or chapter 42" in subsection (b)(1) and inserting in lieu thereof "chapter 42, or chapter 43",

(C) by striking out "chapter 42, and this chapter" in subsection (b)(1) and inserting in lieu thereof "chapter 42, chapter 43, and this chapter", and

(D) by striking out "of the same decedent," in subsection (c) and inserting in lieu thereof "of the same decedent, of chapter 43 tax for the same taxable years,".

(11) Section 6213 (relating to restrictions applicable to deficiencies and petition to Tax Court) is amended—

(A) by striking out "or chapter 42" in subsection (a) and inserting in lieu thereof ", chapter 42 or 43".

(B) by striking out the heading of subsection (e) and inserting in lieu thereof:

"(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXCISE TAXES.—",

(C) by striking out "or 4945 (relating to taxes on taxable expenditures)" in subsection (e) and inserting in lieu thereof "4945 (relating to taxes on taxable expenditures), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions)"; and

(D) by striking out "or 4945(h)(2)" in subsection (c) and inserting in lieu thereof ", 4945(i)(2), 4971(c)(3) or 4975(f)(4).".

(12) Section 6214 (relating to determinations by Tax Court) is amended—

(A) by amending the heading of subsection (c) to read as follows:

"(c) TAXES IMPOSED BY SECTION 507 OR CHAPTER 42 OR 43.—."

(B) by inserting after "chapter 42" each place it appears in subsection (c) "or 43"; and

(C) by striking out "chapter 42" in subsection (d) and inserting in lieu thereof "chapter 42 or 43".

(13) Section 6344(a)(1) (relating to cross references) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(14) Section 6501(e)(3) (relating to limitations on assessment and collection) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(15) Section 6503 (relating to suspension of running of period of limitations) is amended—

(A) by striking out "chapter 42 taxes)" in subsection (a)(1) and inserting in lieu thereof "certain excise taxes)", and

(B) by inserting after "section 507" in subsection (h) "or section 4971 or section 4975", and by striking out "or 4945(h)(2)" in subsection (h) and inserting in lieu thereof "4945(i)(2). 4971(c)(3), or 4975(f)(4)".

(16) Section 6512 (relating to limitations in case of petition to Tax Court) is amended by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 43".

(17) Section 6601(d) (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) is amended by—

(A) striking out in the heading thereof "CHAPTER 42" and inserting in lieu thereof "CHAPTER 42 OR 43", and

(B) striking out "chapter 42" and inserting in lieu thereof "certain excise".

(18) Section 6653(c)(1) (relating to income, estate, gift, and chapter 42 taxes) is amended by striking out "chapter 42" each place it appears therein (including the heading) and inserting in lieu thereof "certain excise".

(19) Section 6659(b) (relating to applicable rules) is amended by striking out "chapter 42" and inserting in lieu thereof "certain excise".

(20) Section 6676(b) (relating to failure to supply identifying numbers) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(21) Section 6677(b) (relating to failure to file information returns with respect to certain foreign trusts) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(22) Section 6679(b) (relating to failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(23) Section 6682(b) (relating to false information with respect to withholding allowances based on itemized deductions) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(24) The heading of section 6861 (relating to jeopardy assessments of income, estate, and gift taxes) is amended by striking out "and gift taxes.", and inserting in lieu thereof ", gift, and certain excise taxes."

(25) Section 6862 (relating to jeopardy assessment of taxes other than income, estate, and gift taxes) is amended—

(A) by striking out "and Gift Taxes.", in the heading and inserting in lieu thereof ", Gift, and Certain Excise Taxes.",

(B) by striking out "and gift tax)" in subsection (a) and inserting in lieu thereof "gift tax, and certain excise taxes)".

(26) Section 7422 (relating to civil actions for refund) is amended—

(A) by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43" in subsection (e),

(B) by striking out "CHAPTER 42" in the heading of subsection (g) and inserting in lieu thereof "CHAPTER 42 OR 43",

(C) by striking out "or 4945" in subsection (g)(1) and inserting in lieu thereof "4945, 4971, or 4975",

(D) by striking out "section 4945(a) (relating to initial taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(a) (relating to initial taxes on taxable expenditures), 4971(a) (relating to initial tax on failure to meet minimum funding standard), 4975(a) (relating to initial tax on prohibited transactions)",

(E) by striking out "or section 4945(b) (relating to additional taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(b) (relating to additional taxes on taxable expenditures), section 4971(b) (relating to additional tax on failure to meet minimum funding standard), or section 4975(b) (relating to additional tax on prohibited transactions)", and

(F) by striking out "or 4945" in paragraph (2) and (3) of subsection (g) and inserting in lieu thereof "4945, 4971, or 4975".

(27) Section 6204(b) (relating to supplemental assessments) is amended by striking out "and gift taxes" and inserting in lieu thereof "gift, and certain excise taxes".

(b) CLERICAL AMENDMENTS.—

(1) Part I of subchapter D of chapter 1 is amended by inserting after the heading and before the table of sections the following:

"Subpart A. General rule.
"Subpart B. Special rules.

"SUBPART A—GENERAL RULE."

(2) The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"CHAPTER 43. Qualified pension, etc., plans."

(3) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to the section captioned "Assessable penalties with respect to information required to be furnished under section 7654" and inserting in lieu thereof: "SEC. 6688. Assessable penalties with respect to information required to be furnished under section 7654."

(4) Subchapter B of chapter 68 is amended by striking out the heading of the section immediately preceding section 6689 and inserting in lieu thereof:

"SEC. 6688. ASSESSABLE PENALTIES WITH RESPECT TO INFORMATION REQUIRED TO BE FURNISHED UNDER SECTION 7654."

(5) The table of sections for part II of subchapter A of chapter 70 is amended by striking out "and gift taxes" in the items relating to sections 6861 and 6862 and inserting in lieu thereof "gift, and certain excise taxes".

SEC. 1017. EFFECTIVE DATES AND TRANSITIONAL RULES

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments

made by this part shall apply for plan years beginning after the date of the enactment of this Act.

(b) EXISTING PLANS.—Except as otherwise provided in subsections (c) through (h), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply for plan years beginning after December 31, 1975.

(c) EXISTING PLANS UNDER COLLECTIVE BARGAINING AGREEMENTS.—

(1) APPLICATION OF VESTING RULES TO CERTAIN PLAN PROVISIONS.—

(A) USUAL APPLICATION WAIVED.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, during the special temporary waiver period the plan shall not be treated as not meeting the requirements of section 411(b) (1) or (2) of the Internal Revenue Code of 1954 solely by reason of a supplementary or special plan provision (within the meaning of subparagraph (D)).

(B) SPECIAL TEMPORARY WAIVER PERIOD.—For purposes of this paragraph, the term "special temporary waiver period" means plan years beginning after December 31, 1975, and before the earlier of—

(i) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) January 1, 1981.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act shall not be treated as a termination of such collective bargaining agreement.

(C) DETERMINATION BY SECRETARY OF LABOR REQUIRED.—Subparagraph (A) shall not apply unless the Secretary of Labor determines that the participation and vesting rules in effect on the date of the enactment of this Act are not less favorable to the employees, in the aggregate, than the rules provided under sections 410 and 411 of the Internal Revenue Code of 1954.

(D) SUPPLEMENTARY OR SPECIAL PLAN PROVISIONS.—For purposes of this paragraph, the term "supplementary or special plan provision" means any plan provision which—

(i) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant with a survivor annuity for the life of his spouse, or

(ii) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(2) APPLICATION OF FUNDING RULES.—

(A) IN GENERAL.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, section 412 of the Internal Revenue Code of 1954, and other amendments made by this part to the extent such amendments relate to such section 412, shall not apply during the special temporary waiver period (as defined in paragraph (1)(B)).

(B) INTERIM LAW GRANTING WAIVER OF UNDERFUNDING.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, if by reason of subparagraph (A) the requirements of section 401(a)(7) of the Internal Revenue Code of 1954 apply without regard to the amendment of such section 401(a)(7) by section 1016(a)(2)(C) of this Act, the plan shall not be treated as not meeting such requirements solely by reason of the application of the amendments made by sections 1011 and 1012 of this Act or related amendments made by this part.

(d) EXISTING PLANS MAY ELECT NEW PROVISIONS.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act but before the applicable effective date determined under subsection (b) or (c)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

(e) CERTAIN DEFINITIONS AND SPECIAL RULES.—Section 414 of the Internal Revenue Code of 1954 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act, shall take effect on the date of the enactment of this Act.

(f) TRANSITIONAL RULES WITH RESPECT TO BREAKS IN SERVICE.—

(1) PARTICIPATION.—In the case of a plan to which section 410 of the Internal Revenue Code of 1954 applies, if any plan amendment with respect to breaks in service (which amendment with respect to breaks in service is made or becomes effective after January 1, 1974, and before the date on which such section 410 first becomes effective with respect to such plan) provides that any employee's participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 410(a)(5) of such Code, or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code.

(2) VESTING.—In the case of a plan to which section 411 of the Internal Revenue Code of 1954 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 411 first becomes effective with respect to such plan) provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 411(a)(6) of such Code, or

(B) the plan as in effect on January 1, 1974.

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code. Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

(g) 3-YEAR DELAY FOR CERTAIN PROVISIONS.—Subparagraphs (B) and (C) of section 404(a)(1) shall apply only in the case of plan years beginning on or after 3 years after the date of the enactment of this Act.

(h)(1) Except as provided in paragraph (2), section 413 of the Internal Revenue Code of 1954 shall apply to plan years beginning after December 31, 1953.

(2)(A) For plan years beginning before the applicable effective date of section 410 of such Code, the provisions of paragraphs (1) and (8) of subsection (b) of such section 413 shall be applied by substituting "401(a)(3)" for "410".

(B) For plan years beginning before the applicable effective date of section 411 of such Code, the provisions of subsection (b)(2) of such section 413 shall be applied by substituting "401(a)(7)" for "411(d)(3)".

(C)(i) The provisions of subsection (b)(4) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 411 of such Code.

(ii) The provisions of subsection (b)(5) (other than the second sentence thereof) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 412 of such Code.

PART 2—CERTAIN OTHER PROVISIONS RELATING TO QUALIFIED RETIREMENT PLANS

SEC. 1021. ADDITIONAL PLAN REQUIREMENTS.

(a) JOINT AND SURVIVOR ANNUITY REQUIREMENT.—

(1) IN GENERAL.—Effective with respect to plan years beginning after December 31, 1975, section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (10) the following new paragraph:

"(11)(A) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of an annuity unless such plan provides for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

"(B) Notwithstanding the provisions of subparagraph (A), in the case of a plan which provides for the payment of benefits before the normal retirement age (as defined in section 411(a)(8)), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

"(i) the date the employee reaches the earliest retirement age under the plan, or

"(ii) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

"(C) A plan described in subparagraph (B) does not meet the requirements of subparagraph (A) unless, under the plan, a participant has a reasonable period during which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subparagraph (B) ends and ending on the date on which he reaches normal retirement age (as defined in section 411(a)(8)) if he continues his employment during that period. A plan does not meet the requirements of this subparagraph unless, in the case of such an election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he made an election described in this subparagraph immediately prior to his retirement and if his retirement had occurred on the day before his death and within the period within which an election can be made.

"(D) A plan shall not be treated as not satisfying the requirements of this paragraph solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election described in subparagraph (C) has been made under subparagraph (C)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

"(E) A plan shall not be treated as satisfy-

ing the requirements of this paragraph unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary or his delegate by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subparagraph) not to take such joint and survivor annuity.

"(F) A plan shall not be treated as not satisfying the requirements of this paragraph solely because under the plan there is a provision that any election described in subparagraph (C) or (E), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

"(i) the participant dies from accidental causes,

"(ii) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

"(iii) such election or revocation is made before such accident occurred.

"(G) For purposes of this paragraph—

"(i) the term 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability),

"(ii) the term 'earliest retirement age' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, and

"(iii) the term 'qualified joint and survivor annuity' means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the participant.

For purposes of this paragraph, a plan may take into account in any equitable manner (as determined by the Secretary or his delegate) any increased costs resulting from providing joint and survivor annuity benefits.

"(H) This paragraph shall apply only if—

"(i) the annuity starting date did not occur before the effective date of this paragraph, and

"(ii) the participant was an active participant in the plan on or after such effective date."

(2) CERTAIN ADDITIONAL REQUIREMENTS APPLY ONLY TO PLANS TO WHICH VESTING REQUIREMENTS APPLY.—Section 401(a) (relating to requirements for qualification) is amended by adding at the end thereof the following new sentence: "Paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section."

(b) REQUIREMENTS IN CASE OF MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—Effective with respect to plan years beginning after December 31, 1975, section 401(a) is amended by inserting after paragraph (11) the following new paragraph:

"(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation."

(c) RETIREMENT BENEFITS MAY NOT BE ASSIGNED OR ALIENATED.—Section 401(a) is amended by inserting after paragraph (12) the following new paragraph:

"(13) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on the date of the enactment of the Employee Retirement Income Security Act of 1974."

(d) REQUIREMENT THAT PAYMENT OF BENEFITS BEGIN NOT LATER THAN WHEN THE PARTICIPATION ATTAINS AGE 65 OR HAS COMPLETED 10 YEARS OF PARTICIPATION.—Section 401(a) is amended by inserting after paragraph (13) the following new paragraph:

"(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

"(A) the date on which the partcipant attains the earlier of age 65 or the normal retirement age specified under the plan,

"(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

"(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary or his delegate."

(e) REQUIREMENT THAT PLAN BENEFITS ARE NOT DECREASED BY CERTAIN SOCIAL SECURITY INCREASES.—Section 401(a) is amended by inserting after paragraph (14) the following new paragraph:

"(15) a trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

"(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

"(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after the date of the enactment of the Employee Retirement Income Security Act of 1974 or (if later) the earlier of the date of first receipt of such benefits on the date of such separation, as the case may be."

(f) REQUIREMENT OF NONFORFEITABILITY IN CASE OF CERTAIN WITHDRAWALS.—Section 401(a) is amended by inserting after paragraph (18) the following new paragraph:

"(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before enactment of the Employee Retirement Income Security Act of 1974, in the event of withdrawal of certain mandatory contributions)."

(g) REQUIREMENT OF NO FURTHER SOCIAL SECURITY INTEGRATION IN EXCESS OF CERTAIN LIMITS.—

(1) A pension, profit-sharing, or stock bonus plan shall be treated as not meeting the requirements of section 401(a)(3)(B) or (4) of the Internal Revenue Code of 1954, or section 401(d)(6) of such Code (or, after the effective date of the amendments made by section 1016 of this Act, section 401(a)(3), section 401(a)(4), section 401(d)(6), or section 410 of such Code) if it does not meet the requirements of Revenue Ruling 71-446 without taking into account any amendment made to title II of the Social Security Act after December 31, 1971.

(2) Paragraph (1) shall not apply to any plan which met the requirements of such revenue ruling on June 27, 1974, unless—

(A) the plan is amended after that date to take into account a greater level of benefits or a greater wage base under such title II, or

(B) such plan takes into account a greater level of benefits or a greater wage base than that in effect under such title on June 27, 1974 (and, for purposes of this subparagraph, the level of benefits is determined without regard to any increase therein under section 215 of the Social Security Act after that date, and the wage base is determined without regard to any increase therein under section 230 of that Act).

If it is necessary to amend the plan in order for the provisions of subparagraph (B) not to apply to it, a plan will be treated as a plan not described in subparagraph (B) if the necessary amendment is made not later than June 30, 1975, and applies to the period beginning on January 1, 1975.

(3) This subsection takes effect on the date of enactment of this Act and ceases to be effective on July 1, 1976.

SEC. 1022. MISCELLANEOUS PROVISIONS.

(a) REQUIREMENT THAT PLAN NOT BE DISCRIMINATORY.—Section 401(a)(4) (disqualifying discriminatory plans) is amended to read as follows:

"(4) If the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

"(A) officers,

"(B) shareholders, or

"(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(2)(A) and (C)."

(b) AMENDMENTS RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—

(1) AMENDMENT OF SECTION (401)(a)(10).—So much of subparagraph (A) of section 401(a)(10) as precedes clause (i) thereof is amended to read as follows:

"(A) paragraph (3), the first and second sentences of paragraph (5), and section 410 shall not apply, but—".

(2) AMENDMENT OF SECTION (401)(d)(a).—Section 401(d)(3) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

"(3)(A) The plan benefits each employee having 3 or more years of service (within the meaning of section 410(a)(3)).

"(B) For purposes of subparagraph (A), the term 'employee' does not include—

"(i) any employee included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A), and

"(ii) any employee who is a nonresident alien individual described in section 410(b)(2)(C)."

(c) PERSONS OTHER THAN BANKS MAY BE TRUSTEES OF TRUSTS BENEFITING OWNER-EMPLOYEES.—

(1) The first sentence of section 401(d)(1) is amended to read as follows: In the case of a trust which is created on or after October 10, 1962, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, or exchanges)."

(2) The second sentence of section 401(d)(1) is amended by striking out "the date of the enactment of this subsection" and inserting in lieu thereof "October 10, 1962,".

(d) CERTAIN CUSTODIAL ACCOUNTS.—Effective as of January 1, 1974, subsection (f) of section 401 (relating to certain custodial accounts) is amended to read as follows:

"(f) CERTAIN CUSTODIAL ACCOUNTS AND ANNUITY CONTRACTS.—For purposes of this title, a custodial account or an annuity contract shall be treated as a qualified trust under this section if—

"(1) the custodial account or annuity contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

"(2) in the case of a custodial account the assets thereof are held by a bank (as defined in subsection (d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or annuity contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof."

(e) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—Effective as of January 1, 1974, section 403(b) (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end thereof the following new paragraph:

"(7) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—

"(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account.

"(B) ACCOUNT TREATED AS PLAN.—For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

"(C) REGULATED INVESTMENT COMPANY.—For purposes of this paragraph, the term 'regulated investment company' means a domestic corporation which is a regulated investment company within the meaning of section 851(a), and which issues only redeemable stock."

(f) INSURED CREDIT UNIONS.—Effective as of January 1, 1974, the last sentence of section 401(d)(1) is amended by striking out "section 581," and inserting in lieu thereof "section 581, an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act).".

(g) PUBLIC INSPECTION OF CERTAIN INFORMATION WITH RESPECT TO PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.—

(1) AMENDMENT OF SECTION 6104(a).—Paragraph (1) of section 6104(a) (relating to public inspection of applications for tax exemption) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D) and by inserting after subparagraph (A) the following new subparagraphs:

"(B) PENSION, ETC., PLANS.—The following shall be open to public inspection at such times and in such places as the Secretary or his delegate may prescribe:

"(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b),

"(ii) any application filed with respect to the exemption from tax under section 501(a) of an organization forming part of a plan or account referred to in clause (i),

"(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

"(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

Except in the case of a plan participant, this subparagraph shall not apply to any plan referred to in clause (i) having not more than 25 participants.

"(C) CERTAIN NAMES AND COMPENSATION NOT TO BE OPENED TO PUBLIC INSPECTION.—In the case of any application, document, or other papers, referred to in subparagraph (B), information from which the compensation (including deferred compensation) of any individual may be ascertained shall not be opened to public inspection under subparagraph (B)."

(B) The heading of subparagraph (A) of section 6104(a)(1) is amended to read as follows:

"(A) ORGANIZATIONS DESCRIBED IN SECTION 501.—".

(C) The heading of subparagraph (D) of section 6104(a)(1) as redesignated by subparagraph (A) of this paragraph) is amended to read as follows:

"(D) WITHHOLDING OF CERTAIN OTHER INFORMATION.—".

(D) Subparagraph (D) of section 6104(a)(1) (as so redesignated) is amended by striking out "subparagraph (A)" each place it appears and inserting in lieu thereof "subparagraph (A) or (B)".

(2) AMENDMENT OF SECTION 6104(a)(2).—Subparagraph (A) of section 6104(a)(2) is amended by adding at the end thereof "any application referred to in subparagraph (B) of subsection (a)(1) of this section, and".

(3) AMENDMENT OF SECTION 6104(b).—Section 6104(b) (relating to inspection of annual information returns) is amended by striking out "and 6056" and inserting in lieu thereof "6056, and 6058".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to applications filed (or documents issued) after the date of enactment of this Act.

(h) PUBLICITY OF RETURNS.—Effective on the date of the enactment of this Act, section 6103 (relating to publicity of returns and disclosure of information as to persons filing income tax returns) is amended by adding at the end thereof a new subsection (g) to read as follows:

"(g) DISCLOSURE OF INFORMATION WITH RESPECT TO DEFERRED COMPENSATION PLANS.—The Secretary or his delegate is authorized to furnish—

"(1) returns with respect to any tax imposed by this title or information with respect to such returns to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of administration of Titles I and IV of the Employee Retirement Income Security Act of 1974, and

"(2) registration statements (as described in section 6057) and information with respect to such statements to the proper officers and employees of the Department of Health, Education, and Welfare for purposes of administration of section 1131 of the Social Security Act."

(i) CERTAIN PUERTO RICAN PENSION, ETC., PLANS TO BE EXEMPT FROM TAX UNDER SECTION 501(a).—

(1) GENERAL RULE.—Effective for taxable years beginning after December 31, 1973, for purposes of section 501(a) of the Internal Revenue Code of 1954 (relating to exemption from tax), any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401(a) of such Code if such trust—

(A) forms part of a pension, profit-sharing, or stock bonus plan, and

(B) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

(2) ELECTION TO HAVE PROVISIONS OF, AND AMENDMENTS MADE BY, TITLE II OF THIS ACT APPLY.—

(A) If the administrator of a pension, profit-sharing, or stock bonus plan which is created or organized in Puerto Rico elects, at such time and in such manner as the Secretary of the Treasury may require, to have the provisions of this paragraph apply, for plan years beginning after the date of election any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Internal Revenue Code of 1954.

(B) An election under subparagraph (A), once made, is irrevocable.

(C) This paragraph applies to plan years

beginning after the date of enactment of this Act.

(D) The source of any distributions made under a plan which makes an election under this paragraph to participants and beneficiaries residing outside of the United States shall be determined, for purposes of subchapter N of chapter 1 of the Internal Revenue Code of 1954, by the Secretary of the Treasury in accordance with regulations prescribed by him. For purposes of this subparagraph the Untied States means the United States as defined in section 7701(a)(9) of the Internal Revenue Code of 1954.

(j) YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW.—Effective for taxable years beginning after December 31, 1973, if—

(1) an employer is engaged in a trade or business in a foreign country,

(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employee's retirement, death, or other separation from the service, and

(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1954 the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees.

(k) RECEIPTS FOR EMPLOYEES:—Section 6051 (relating to receipts for employees) is amended by inserting after "exemption," in subsection (a) the following: "or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash,".

SEC. 1023. RETROACTIVE CHANGES IN PLAN.

Section 401(b) (relating to certain retroactive changes in plan) is amended to read as follows:

"(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period."

Sec. 1024. Effective Dates.

Except as otherwise provided in section 1021, the amendments made by section 1021 shall apply to plan years to which part I applies. Except as otherwise provided in section 1022, the amendments made by section 1022 shall apply to plan years to which part I applies. Section 1023 shall take effect on the date of the enactment of this Act.

PART 3—REGISTRATION AND INFORMATION

SEC. 1031. REGISTRATION AND INFORMATION.

(a) ANNUAL REGISTRATION AND INFORMATION RETURNS.—PART III of subchapter A of chapter 61 (relating to information returns) is amended by adding at the end thereof the following new subpart:

"SUBPART E—REGISTRATION OF AND INFORMATION CONCERNING PENSION, ETC., PLANS

"Sec. 6057. Annual registration, etc.
"Sec. 6058. Information required in connection with certain plans of deferred compensation.
"Sec. 6059. Periodic report by actuary.

"SEC. 6057. ANNUAL REGISTRATION, ETC.

"(a) ANNUAL REGISTRATION.—

"(1) GENERAL RULE.—Within such period after the end of a plan year as the Secretary or his delegate may by regulations prescribe, the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 applies for such plan year shall file a registration statement with the Secretary or his delegate.

"(2) CONTENTS.—The registration statement required by paragraph (1) shall set forth—

"(A) the name of the plan,

"(B) the name and address of the plan administrator,

"(C) the name and taxpayer identifying number of each participant in the plan—

"(i) who, during such plan year, separated from the service covered by the plan,

"(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

"(iii) with respect to whom retirement benefits were not paid under the plan during such plan year.

"(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

"(E) such other information as the Secretary or his delegate may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary or his delegate that he has complied with the requirement contained in subsection (e).

"(b) NOTIFICATION OF CHANGE IN STATUS.—Any plan administrator required to register under subsection (a) shall also notify the Secretary or his delegate, at such time as may be prescribed by regulations, of—

"(1) any change in the name of the plan,

"(2) any change in the name or address of the plan administrator,

"(3) the termination of the plan, or

"(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

"(c) VOLUNTARY REPORTS.—To the extent provided in regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may receive from—

"(1) any plan to which subsection (a) applies, and

"(2) any other plan (including any governmental plan or or church plan (within the meaning of section 414)),

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred rested benefit rights of any participant separated from the service covered by the plan during any plan year.

"(d) TRANSMISSION OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE.—The Secretary or his delegate shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health, Education, and Welfare.

"(e) INDIVIDUAL STATEMENT TO PARTICIPANT.—Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement.

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health, Education, and Welfare, may prescribe such regulations as may be necessary to carry out the provisions of this section.

"(2) PLANS TO WHICH MORE THAN ONE EMPLOYER CONTRIBUTES.—This section shall apply to any plan to which more than one employer is required to contribute only to the extent provided in regulations prescribed under this subsection.

"(g) CROSS REFERENCES.—

"For provisions relating to penalties for failure to register or furnish statements required by this section, see section 6652(e) and section 6690.

"For coordination between Department of the Treasury and the Department of Labor with regard to administration of this section, see section 3004 of the Employee Retirement Income Security Act of 1974.

"SEC. 6058. INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.

"(a) IN GENERAL.—Every employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation described in part I of subchapter D of chapter 1, or the plan administrator (within the meaning of section 414(a) of the plan, shall file an annual return stating such information as the Secretary or his delegate may by regulations prescribe with respect to the qualifications, financial condition, and operations of the plan; except that, in the discretion of the Secretary or his delegate, the employer may be relieved from stating in its return any information which is reported in other returns.

"(b) ACTUARIAL STATEMENT IN CASE OF MERGERS, ETC.—Not less than 30 days before a merger, consolidation, or transfer of assets or liabilities of a plan described in subsection (a) to another plan, the plan administrator (within the meaning of section 414(g)) shall file an actuarial statement of valuation evidencing compliance with the requirements of section 401(a)(12).

"(c) EMPLOYER.—For purposes of this section, the term 'employer' includes a person described in section 401(c)(4) and an individual who establishes an individual retirement account or annuity described in section 408.

"(d) CROSS REFERENCES.—

"For provisions relating to penalties for failure to file a return required by this section, see section 6052(f).

"For coordination between the Department of the Treasury and the Department of Labor with respect to the information required under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974."

(b) SANCTIONS.—

(1) FAILURE TO FILE REGISTRATION STATEMENTS OR NOTIFICATION OF CHANGE OF STATUS.—

(A) Section 6652 (relating to failure to file certain information returns) is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsections:

"(e) ANNUAL REGISTRATION AND OTHER NOTIFICATION BY PENSION PLAN.—

"(1) REGISTRATION.—In the case of any failure to file a registration statement required under section 6057(a) (relating to annual registration of certain plans) which includes all participants required to be included in such statement, on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his

delegate and in the same manner as tax) by the person failing so to file, an amount equal to $1 for each participant with respect to whom there is a failure to file, multiplied by the number of days during which such failure continues, but the total amount imposed under this paragraph on any person for any failure to file with respect to any plan year shall not exceed $5,000.

"(2) NOTIFICATION OF CHANGE OF STATUS.—In the case of failure to file a notification required under section 6057(b) (relating to notification of change of status) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $1 for each day during which such failure continues, but the total amounts imposed under this paragraph on any person for failure to file any notification shall not exceed $1,000.

"(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.—In the case of failure to file a return or statement required under section 6058 (relating to information required in connection with certain plans of deferred compensation) or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $10 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $5,000."

(B) (i) The section heading for section 6652 is amended by adding ", Registration Statements, etc." before the period at the end thereof.

(ii) The item relating to section 6652 in the table of contents for subchapter A of chapter 68 is amended by adding ", registration statements, etc." before the period of the end thereof.

(2) FAILURE TO FURNISH STATEMENT TO PARTICIPANT.—

(A) Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6690. FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATEMENT TO PLAN PARTICIPANT

"Any person required under section 6057 (e) to furnish a statement to a participant who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6057(e), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111."

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

"SEC. 6690. Fraudulent statement or failure to furnish statement to plan participant."

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for such part III is amended by adding at the end thereof the following:

"Subpart E. Registration of and information concerning pension, etc., plans."

(2) Section 6033(c) (relating to cross references) is amended by adding at the end thereof the following:

"For provisions relating to information required in connection with certain plans of deferred compensation, see section 6058."

(3) Subsection (d) of section 6047 (relating to information with respect to certain trusts and annuity and bond purchase plans) is amended to read as follows:

"(d) CROSS REFERENCES.—

"(1) For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

"(2) For criminal penalty for furnishing fraudulent information, see section 7207."

SEC. 1032. DUTIES OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE.

Title XI of the Social Security Act (relating to general provisions) is amended by adding at the end of part A thereof the following new section:

"NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO DEFERRED VESTED BENEFITS

"SEC. 1131. (a) Whenever—

"(1) the Secretary makes a finding of fact and a decision as to—

"(A) the entitlement of any individual to monthly benefits under section 202, 223, or 228.

"(B) the entitlement of any individual to a lump-sum death payment payable under section 202(i) on account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

"(C) the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or

"(2) the Secretary is requested to do so—

"(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of the Internal Revenue Code of 1954, or

"(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 204(d) of this Act, he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 with respect to the individual referred to in paragraph (1) or (2)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

"(b)(1) For purposes of section 201(g)(1), expenses incurred in the administration of subsection (a) shall be deemed to be expenses incurred for the administration of title II.

"(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Secretary deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a)."

SEC. 1033. REPORTS BY ACTUARIES.

(a) REPORTS BY ACTUARIES.—Subpart E of part III of subchapter A of chapter 61 (relating to registration of and information concerning pension, etc., plans) as added by section 1031(a) of this Act, is amended by adding at the end thereof the following new section:

"SEC. 6059. PERIODIC REPORT OF ACTUARY.

"(a) GENERAL RULE.—The actuarial report described in subsection (b) shall be filed by the plan administrator (as defined in section 414(g)) of each defined benefit plan to which section 412 applies for the first plan year for which section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary or his delegate determines that more frequent reports are necessary).

"(b) ACTUARIAL REPORT.—The actuarial report of a plan required by subsection (a) shall be prepared and signed by an enrolled actuary (within the meaning of section 7701 (a)(35)) and shall contain—

"(1) a description of the funding method and actuarial assumptions used to determine costs under the plan,

"(2) a certification of the contribution necessary to reduce the accumulated funding deficiency (as defined in section 412(a)) to zero,

"(3) a statement—

"(A) that to the best of his knowledge the report is complete and accurate, and

"(B) the requirements of section 412(c) (relating to reasonable actuarial assumptions) have been complied with,

"(4) such other information as may be necessary to fully and fairly disclose the actuarial position of the plan, and

"(5) such other information regarding the plan as the Secretary or his delegate may by regulations require.

"(c) TIME AND MANNER OF FILING.—The actuarial report and statement required by this section shall be filed at the time and in the manner provided by regulations prescribed by the Secretary or his delegate.

"(d) CROSS REFERENCE.—

"For coordination between the Department of the Treasury and the Department of Labor with respect to the report required to be filed under this section, see action 3004 of title III of the Employee Retirement Income Security Act of 1974.".

(b) ASSESSABLE PENALTIES.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6692. FAILURE TO FILE ACTUARIAL REPORT.

"The plan administrator (as defined in section 414(g)) of each defined benefit plan to which section 412 applies who fails to file the report required by section 6059 at the time and in the manner required by section 6059, shall pay a penalty of $1,000 for each such failure unless it is shown that such failure is due to reasonable cause."

(c) CONSOLIDATION OF ACTUARIAL REPORTS.—The Secretary of the Treasury and the Secretary of Labor shall take such steps as may be necessary to assure coordination to the maximum extent feasible between the actuarial reports required by section 6059 of the Internal Revenue Code of 1954 and by section 103(d) of title I of the Employee Retirement Income Security Act of 1974.

(d) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6692. Failure to file actuarial report.".

SEC. 1034. EFFECTIVE DATES.

This part shall take effect upon the date of the enactment of this Act; except that—

(1) the requirements of section 6059 of the Internal Revenue Code of 1954 shall apply only with respect to plan years to which part I of this title applies,

(2) the requirements of section 6057 of such Code shall apply only with respect to plan years beginning after December 31, 1975,

(3) the requirements of section 6058(a) of such Code shall apply only with respect to plan years beginning after the date of the enactment of this Act, and

(4) the amendments made by section 1032 shall take effect on January 1, 1975.

PART 4—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

SEC. 1041. TAX COURT PROCEDURE.

(a) IN GENERAL.—Subchapter C of chapter 76 (relating to the Tax Court) is amended by adding at the end thereof the following new part:

"PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

"Sec. 7476. Declaratory judgments.

"SEC. 7476. DECLARATORY JUDGMENTS.

"(a) CREATION OF REMEDY.—In a case of actual controversy involving—

"(1) a determination by the Secretary or his delegate with respect to the initial qualification or continuing qualification of a retirement plan under subchapter D of chapter 1, or

"(2) a failure by the Secretary or his delegate to make a determination with respect to—

"(A) such initial qualification, or

"(B) such continuing qualification if the controversy arises from a plan amendment or plan termination,

upon the filing of an appropriate pleading, the United States Tax Court may make a declaration with respect to such initial qualification or continuing qualification. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by a petitioner who is the employer, the plan administrator, an employee who has qualified under regulations prescribed by the Secretary or his delegate as an interested party for purposes of pursuing administrative remedies within the Internal Revenue Service, or the Pension Benefit Guaranty Corporation.

"(2) NOTICE.—For purposes of this section, the filing of a pleading by any petitioner may be held by the Tax Court to be premature, unless the petitioner establishes to the satisfaction of the court that he has complied with the requirements prescribed by regulations of the Secretary or his delegate with respect to notice to other interested parties of the filing of the request for a determination referred to in subsection (a).

"(3) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Internal Revenue Service. A petitioner shall not be deemed to have exhausted his administrative remedies with respect to a failure by the Secretary or his delegate to make a determination with respect to initial qualification or continuing qualification of a retirement plan before the expiration of 270 days after the request for such determination was made.

(4) PLAN PUT INTO EFFECT.—No proceeding may be maintained under this section unless the plan (and in the case of a controversy involving the continuing qualification of the plan because of an amendment to the plan, the amendment) with respect to which a decision of the Tax Court is sought has been put into effect before the filing of the pleading. A plan or amendment shall not be treated as not being in effect merely because under the plan the funds contributed to the plan may be refunded if the plan (or the plan as so amended) is found to be not qualified.

"(5) TIME FOR BRINGING ACTION.—If the Secretary or his delegate sends by certified or registered mail notice of his determination with respect to the qualification of the plan to the persons referred to in paragraph (1) (or in the case of employees referred to in paragraph (1), to any individual designated under regulations prescribed by the Secretary or his delegate as a representative of such employee), no proceeding may be initiated under this section by any person unless the pleading is filed before the ninety-first day after the day after such notice is mailed to such person (or to his designated representative, in the case of an employee).

"(c) COMMISSIONERS.—The chief judge of the Tax Court may assign proceedings under this section to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to such proceeding, subject to such conditions and review as the court may by rule provide.

"(d) RETIREMENT PLAN.—For purposes of this section, the term 'retirement plan' means—

"(1) a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is part of such a plan,

"(2) an annuity plan described in section 403(a), or

"(3) a bond purchase plan described in section 405(a).

"(e) CROSS REFERENCE.—

"For provisions concerning intervention by Pension Benefit Guaranty Corporation and Secretary of Labor in actions brought under this section and right of Pension Benefit Guaranty Corporation to bring action, see section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) FEE FOR FILING PETITION.—Section 7451 (relating to fee for filing petition) is amended by striking out "deficiency" and inserting in lieu thereof "deficiency or for a declaratory judgment under part IV of this subchapter".

(2) DATE OF DECISION.—Section 7459(c) (relating to date of decision) is amended by inserting before the period at the end of the first sentence the following: "or, in the case of a declaratory judgment proceeding under part IV of this subchapter, the date of the court's order entering the decision".

(3) VENUE FOR APPEAL OF DECISION.—

(A) Section 7482(b)(1) (relating to venue) is amended by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or" and by inserting after subparagraph (B) the following new subparagraph:

"(C) in the case of a person seeking a declaratory decision under section 7476, the principal place of business, or principal office or agency of the employer."

(B) Section 7482(b)(1) is further amended—

(i) by striking out "neither subparagraph (A) nor (B) applies" and inserting in lieu thereof "subparagraph (A), (B), and (C) does not apply"; and

(ii) by inserting before the period at the end of the last sentence thereof the following: "or as of the time the petition seeking a declaratory decision under section 7476 was filed with the Tax Court".

(c) CLERICAL AMENDMENT.—The table of parts for subchapter C of chapter 76 (relating to the Tax Court) is amended by adding at the end thereof the following new item:

"PART IV. Declaratory judgments relating to qualification of certain retirements plans.".

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

PART 5—INTERNAL REVENUE SERVICE

SEC. 1051. ESTABLISHMENT OF OFFICE.

(a) IN GENERAL.—Section 7802 (relating to Commissioner of Internal Revenue) is amended to read as follows:

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS).

"(a) COMMISSIONER OF INTERNAL REVENUE.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary.

"(b) ASSISTANT COMMISSIONER FOR EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS.—There is established within the Internal Revenue Service an office to be known as the 'Office of Employee Plans and Exempt Organizations' to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary or his delegate may prescribe with respect to organizations exempt from tax under section 501(a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies)."

(b) SALARIES.—

(1) ASSISTANT COMMISSIONER.—Section 5109 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1954 is classified at GS–18, and is in addition to the number of positions authorized by section 5108(a) of this title."

(2) CLASSIFICATION OF POSITIONS AT GS–16 AND 17.—Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) In addition to the number of positions authorized by subsection (a), the Commissioner of Internal Revenue is authorized, without regard to any other provision of this section, to place a total of 20 positions in the Internal Revenue Service in GS–16 and 17.".

(c) CLERICAL AMENDMENTS.—The item relating to section 7802 in the table of sections for subchapter A of chapter 80 is amended to read as follows:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act.

SEC. 1052. AUTHORIZATION OF APPROPRIATIONS

There is authorized to be appropriated to the Department of the Treasury for the purpose of carrying out all functions of the Office of Employee Plans and Exempt Organizations for each fiscal year beginning after June 30, 1974, an amount equal to the sum of—

(1) so much of the collections from the taxes imposed under section 4940 of such Code (relating to excise tax based on investment income) as would have been collected if the rate of tax under such section was 2 percent during the second preceding fiscal year, and

(2) the greater of—

(A) an amount equal to the amount described in paragraph (1), or

(B) $30,000,000.

SUBTITLE B—OTHER AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS

SEC. 2001. CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES

(a) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE FOR SELF-EMPLOYED INDIVIDUALS.—

(1) Paragraph (1) of section 404(e) (relating to special limitations for self-employed individuals) is amended—

(A) by striking out "2,500, or 10 percent" and inserting in lieu thereof "$7,500, or 15 percent", and

(B) by striking out "subject to the provisions of paragraph (2)" and inserting in lieu thereof "subject to paragraphs (2) and (4)".

(2) Paragraph (2)(A) of section 404(e) is amended by striking out "shall not exceed $2,500, or 10 percent" and inserting in lieu thereof "shall (subject to paragraph (4)) not exceed $7,500, or 15 percent".

(3) Section 404(e) is amended by adding at the end thereof the following new paragraph:

"(4)) LIMITATIONS CANNOT BE LOWER THAN $750 OR 100 PERCENT OF EARNED INCOME.—The limitations under paragraphs (1) and (2)(A) for any employee shall not be less than the lesser of—

"(A) $750, or

"(B) 100 percent of the earned income derived by such employee from the trades or businesses taken into account for purposes of paragraph (1) or (2)(A) as the case may be.".

(b) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE FOR SHAREHOLDER-EMPLOYEES.—Paragraph (1) of section 1379(b) (relating to taxability of shareholder-employees) is amended—

(1) by striking out "10 percent" in subparagraph (A) and inserting in lieu thereof "15 percent", and

(2) by striking out "$2,500" in subparagraph (B) and inserting in lieu thereof "$7,500".

(c) ONLY FIRST $100,000 OF ANNUAL COMPENSATION TO BE TAKEN INTO ACCOUNT.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting after paragraph (16) the following new paragraph:

"(17) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if the annual compensation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation."

(d) DEFINED BENEFIT PLANS FOR SELF-EMPLOYED INDIVIDUALS.—

(1) Subsection (a) of section 401 is amended by inserting after paragraph (17) the following new paragraph:

"(18) In the case of a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if such plan satisfies the requirements of subsection (j)."

(2) Section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) DEFINED BENEFIT PLANS PROVIDING BENEFITS FOR SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.—

"(1) IN GENERAL.—A defined benefit plan satisfies the requirements of this subsection only if the basic benefit accruing under the plan for each plan year of participation by an employee within the meaning of subsection (c)(1) (or a shareholder-employee) is permissible under regulations prescribed by the Secretary or his delegate under this subsection to insure that there will be reasonable comparability (assuming level funding) between the maximum retirement benefits which may be provided with favorable tax treatment under this title for such employees under—

"(A) defined contribution plans,

"(B) defined benefit plans, and

"(C) a combination of defined contribution plans and defined benefit plans.

"(2) GUIDELINES FOR REGULATIONS.—The regulations prescribed under this subsection shall provide that a plan does not satisfy the requirements of this subsection if, under the plan, the basic benefit of any employee within the meaning of subsection (c)(1) (or a shareholder-employee) may exceed the sum of the products for each plan year of participation of—

"(A) his annual compensation (not in excess of $50,000) for such year, and

"(B) the applicable percentage determined under paragraph (3).

"(3) APPLICABLE PERCENTAGE.—

"(A) TABLE.—For purposes of paragraph (2), the applicable percentage for any individual for any plan year shall be based on the percentage shown on the following table opposite his age when his current period of participation in the plan began.

| "Age when participation began: | Applicable percentage |
|---|---|
| 30 or less | 6.5 |
| 35 | 5.4 |
| 40 | 4.4 |
| 45 | 3.6 |
| 50 | 3.0 |
| 55 | 2.5 |
| 60 or over | 2.0 |

"(B) ADDITIONAL REQUIREMENTS.—The regulations prescribed under this subsection shall include provisions—

"(i) for applicable percentages for ages between any two ages shown on the table,

"(ii) for adjusting the applicable percentages in the case of plans providing benefits other than a basic benefit,

"(iii) that any increase in the rate of accrual, and any increase in the compensation base which may be taken into account, shall, with respect only to such increase, begin a new period of participation in the plan, and

"(iv) when appropriate, in the case of periods beginning after December 31, 1977, for adjustments in the applicable percentages based on changes in prevailing interest and mortality rates occurring after 1973.

"(4) CERTAIN CONTRIBUTIONS AND BENEFITS MAY NOT BE TAKEN INTO ACCOUNT.—A defined benefit plan which provides contributions or benefits for owner-employees does not satisfy the requirements of this subsection unless such plan meets the requirements of subsection (a)(4) without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

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

"(A) BASIC BENEFIT.—The term 'basic benefit' means a benefit in the form of a straight life annuity commencing at the later of—

"(i) age 65, or

"(ii) the day 5 years after the day the participant's current period of participation began under a plan which provides no ancillary benefits and to which employees do not contribute.

"(B) SHAREHOLDER-EMPLOYEE.—The term 'shareholder-employee' has the same meaning as when used in section 1379(d).

"(C) COMPENSATION.—The term 'compensation' means—

"(i) in the case of an employee within the meaning of subsection (c)(1), the earned income of such individual, or

"(ii) in the case of a shareholder-employee, the compensation received or accrued by the individual from the electing small business corporation.

"(6) SPECIAL RULES.—Section 404(e) (relating to special limitations for self-employed individuals) and section 1379(b) (relating to taxability of shareholder-employee beneficiaries) do not apply to a trust to which this subsection applies.".

(e) REPEAL OF EXISTING TAX TREATMENT OF EXCESS CONTRIBUTIONS.—

(1) The last sentence of section 401(d)(5) is amended to read as follows: "Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)."

(2) Paragraph (8) of section 401(d) is repealed.

(3) Subsection (e) of section 401 is amended to read as follows:

"(e) CONTRIBUTIONS FOR PREMIUMS ON ANNUITY, ETC., CONTRACTS.—A contribution by the employer on behalf of an owner-employee is described in this subsection if—

"(1) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

"(2) the amount of such contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

"(3) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible if such section had been in effect) for the first three taxable years (A) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan, and (B) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in paragraph (1) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence does not apply if the amount of such contributions under all such plans for all such years exceeds $7,500. Any contribution which is described in this subsection shall, for purposes of section 4972(b), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year, but only for the purpose of applying section 4972(b) to other contributions made by such owner-employee as an employee."

(4) Clause (ii) of section 401(a)(10)(A) is amended by striking out "subsection (e)(3)(A)" and inserting in lieu thereof "subsection (e)".

(5) Subparagraph (A) of section 72(m)(5)(A) is amended—

(A) by inserting "and" at the end of clause (i),

(B) by striking out the comma at the end of clause (ii) and the word "and" following that comma, and inserting in lieu thereof a period, and

(C) by striking out clause (iii).

(f) TAX ON EXCESS CONTRIBUTIONS.—

(1) Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4971 the following new section:

"SEC. 4972. TAX ON EXCESS CONTRIBUTIONS FOR SELF-EMPLOYED INDIVIDUALS.

"(a) TAX IMPOSED.—In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), there is imposed, for each taxable year of the employer who maintains such plan, a tax in an amount equal to 6 percent of the amount of the excess contributions under the plan (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by the employer who maintains the plan. This section applies only to plans which include a trust described in section 401(a), which are described in section 403(a), or which are described in section 405(a).

"(b) EXCESS CONTRIBUTIONS.—

"(1) IN GENERAL.—For purposes of this section, the term 'excess contributions' means the sum of the amounts (if any) determined under paragraphs (2), (3), and (4), reduced by the sum of the correcting distributions (as defined in paragraph (5)) made in all prior taxable years beginning after December 31, 1975. For purposes of this subsection the amount of any contribution which is allocable (determined under regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

"(2) CONTRIBUTIONS BY OWNER-EMPLOYEES.—The amount determined under this paragraph, in the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (within the meaning of section 401(c)(3)), is the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed under the plan by each owner-employee (as an employee) for the taxable year, over

"(ii) the amount permitted to be contributed by each owner-employee (as an employee) for such year, and

"(B) the amount determined under this paragraph for the preceding taxable year of the employer, reduced by the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

"(3) DEFINED BENEFIT PLANS.—The amount determined under this paragraph, in the case of a defined benefit plan, is the amount contributed under the plan by the employer during the taxable year or any prior taxable year beginning after December 31, 1975, if—

"(A) as of the close of the taxable year, the full funding limitation of the plan (determined under section 412(c)(7)) is zero, and

"(B) such amount has not been deductible for the taxable year or any prior taxable year.

"(4) DEFINED CONTRIBUTION PLANS.—The amount determined under this paragraph, in the case of a plan other than a defined benefit plan, is the portion of the amounts contributed under the plan by the employer during the taxable year and each prior taxable year beginning after December 31, 1975, which has not been deductible for the taxable year or any prior taxable year.

"(5) CORRECTING DISTRIBUTION.—For purposes of this subsection the term 'correcting distribution' means—

"(A) in the case of a contribution made by an owner-employee as an employee, regardless of the type of plan, the amount determined under paragraph (2) distributed to the owner-employee who contributed such amount,

"(B) in the case of a defined benefit plan, the amount determined under paragraph (3) which is distributed from the plan to the employer, and

"(C) in the case of a defined contribution plan, the amount determined under paragraph (4) which is distributed from the plan to the employer or to the employee to the account of whom the amount described was contributed.

"(c) AMOUNT PERMITTED TO BE CONTRIBUTED BY OWNER-EMPLOYEE.—For purposes of subsection (b)(2), the amount permitted to be contributed under a plan by an owner-employee (as an employee) for any taxable year is the smallest of the following:

"(1) $2,500,

"(2) 10 percent of the earned income (as defined in section 401(c)(2)) for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established, or

"(3) the amount of the contribution which would be contributed by the owner-employee (as an employee) if such contribution were made at the rate of contributions permitted to be made by employees other than owner-employees.

In any case in which there are no employees other than owner-employees, the amount determined under the preceding sentence shall be zero.

"(d) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section see section 275.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by inserting after the item relating to section 4971 the following new item:

"Sec. 4972. Tax on excess contributions for self-employed individuals.".

(g) PREMATURE DISTRIBUTIONS TO OWNER-EMPLOYEES.—

(1) IN GENERAL.—Subparagraph (B) of section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) is amended to read as follows:

"(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraphs (C), (D), and (E) of section 72(m)(5) are repealed.

(B) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3), as each is amended by section 2005(c)(4) of this Act, are each amended by inserting after "tax preferences)." the following: "section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),".

(C) The third sentence of section 901(a), as amended by section 2005(c)(5) of this Act, is amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),".

(D) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c), as each is amended by section 2005(c)(7) of this Act, are each amended by striking out "402(e)" and inserting in lieu thereof "72(m)(5)(B), 402(e)".

(E) Section 404(a)(2) is amended by striking out "(16)" and inserting in lieu thereof "(16), (17), (18)".

(F) Clause (ii) of section 404(a)(9)(B) is amended to read as follows:

"(ii) without regard to the second sentence of paragraph (3); and".

(h) WITHDRAWAL OF EMPLOYEE CONTRIBUTIONS OF OWNER-EMPLOYEES.—

(1) Section 401(d)(4)(B) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended by inserting "in excess of contributions made by an owner-employee as an employee" after "benefits".

(2) Paragraph (1) of section 72(m) (relating to certain amounts received before annuity starting date) is repealed.

(3) Section 72(m)(5)(A)(i) is amended by striking out "(whether or not paid by him)" and inserting in lieu thereof the following: "(other than contributions made by him as an owner-employee)".

(i) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (b) apply to taxable years beginning after December 31, 1973.

(2) The amendments made by subsection (c) apply to—

(A) taxable years beginning after December 31, 1975, and

(B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) as in effect on the day before the date of the enactment of this Act.

(3) The amendments made by subsection (d) apply to taxable years beginning after December 31, 1975.

(4) The amendments made by subsections (e) and (f) apply to contributions made in taxable years beginning after December 31, 1975.

(5) The amendments made by subsection (g) apply to distributions made in taxable years beginning after December 31, 1975.

(6) The amendments made by subsection (h) apply to taxable years ending after the date of enactment of this Act.

SEC. 2002. DEDUCTION FOR RETIREMENT SAVINGS.

(a) ALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 219 as 220 and by inserting after section 218 the following new section:

"SEC. 219. RETIREMENT SAVINGS.

"(a) DEDUCTION ALLOWED.—In the case of an individual, there is allowed as a deduction amounts paid in cash during the taxable year by or on behalf of such individual for his benefit—

"(1) to an individual retirement account described in section 408(a).

"(2) for an individual retirement annuity described in section 408(b), or

"(3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance).

For purposes of this title, any amount paid by an employer to such a retirement account or for such a retirement annuity or retirement bond constitutes payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1) includible in his gross income, whether or not a deduction for such payment is allowable under this section to the employee after the application of subsection (b).

"(b) LIMITATIONS AND RESTRICTIONS.—

"(1) MAXIMUM DEDUCTION.—The amount allowable as a deduction under subsection (a) to an individual for any taxable year may not exceed an amount equal to 15 percent of the compensation includible in his gross income for such taxable year, or $1,500, whichever is less.

"(2) COVERED BY CERTAIN OTHER PLANS.—No deduction is allowed under subsection (a) for an individual for the taxable year if for any part of such year—

"(A) he was an active participant in—

"(i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(ii) an annuity plan described in section 403(a),

"(iii) a qualified bond purchase plan described in section 405(a), or

"(iv) a plan established for its employees by the United States, by a State or political division thereof, or by an agency or instrumentality of any of the foregoing, or

"(B) amounts were contributed by his employer for an annuity contract described in section 403(b) (whether or not his rights in such contract are nonforfeitable).

"(3) CONTRIBUTIONS AFTER AGE 70½.—No deduction is allowed under subsection (a) with respect to any payment described in subsection (a) which is made during the taxable year of an individual who has attained age 70½ before the close of such taxable year.

"(4) RECONTRIBUTED AMOUNTS.—No deduction is allowed under this section with respect to a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C).

"(5) AMOUNTS CONTRIBUTED UNDER ENDOWMENT CONTRACT.—In the case of an endowment contract described in section 408(b),

no deduction is allowed under subsection (a) for that portion of the amounts paid under the contract for the taxable year properly allocable, under regulations prescribed by the Secretary or his delegate, to the cost of life insurance.

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) COMPENSATION.—For purposes of this section, the term 'compensation' includes earned income as defined in section 401(c)(2).

"(2) MARRIED INDIVIDUALS.—The maximum deduction under subsection (b)(1) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.".

(2) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Section 62 (defining adjusted gross income) is amended by inserting after paragraph (9) the following new paragraph:

"(10) RETIREMENT SAVINGS.—The deduction allowed by section 219 (relating to deduction of certain retirement savings).".

(b) INDIVIDUAL RETIREMENT ACCOUNTS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by adding at the end thereof the following new section:

"SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this section, the term 'individual retirement account' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

"(1) Except in the case of a rollover contribution described in subsection (d)(3), in section 402(a)(5), 403(a)(4), or 409(b)(3)(C), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year in excess of $1,500 on behalf of any individual.

"(2) The trustee is a bank (as defined in section 401(d)(1)) or such other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

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

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

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

"(6) The entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such individual or the lives of such individual and his spouse, or

"(B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

"(7) If an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence does not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

"(b) INDIVIDUAL RETIREMENT ANNUITY.—For purposes of this section, the term 'individual retirement annuity' means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary or his delegate), issued by an insurance company which meets the following requirements:

"(1) The contract is not transferable by the owner.

"(2) The annual premium under the contract will not exceed $1,500 and any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

"(3) The entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary or his delegate over—

"(A) the life of such owner or the lives of such owner and his spouse, or

"(B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

"(4) If the owner dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall have no application if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

"(5) The entire interest of the owner is nonforfeitable. Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed $1,500.

"(c) ACCOUNTS ESTABLISHED BY EMPLOYERS AND CERTAIN ASSOCIATIONS OF EMPLOYEES.—A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

"(1) The trust satisfies the requirements of paragraphs (1) through (7) of subsection (a).

"(2) There is a separate accounting for the interest of each employee or member.

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. The basis of any person in such an account or annuity is zero.

"(2) DISTRIBUTIONS OF ANNUITY CONTRACTS.—Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero.

"(3) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

"(A) IN GENERAL.—Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

"(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) or retirement bond for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

"(ii) the entire amount received (including money and other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an employees' trust described in section 401(a) which is exempt from tax under section 501(a) (other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan), or an annuity plan described in section 403(a), other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan, and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution.

"(B) LIMITATION.—This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 3-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account, individual retirement annuity, or a retirement bond which was not includible in his gross income because of the application of this paragraph.

"(4) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity to the extent that such contribution exceeds the amount

allowable as a deduction under section 219 if—

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

"(B) no deduction is allowed under section 219 with respect to such excess contribution, and

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

Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received.

"(5) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in an individual retirement account, individual retirement annuity, or retirement bond to his former spouse under a divorce decree or under a written instrument incident to such divorce is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as a qualified individual retirement account of such spouse, and not of such individual. Thereafter such account, annuity, or bond for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

"(e) TAX TREATMENT OF ACCOUNTS AND ANNUITIES.—

"(1) EXEMPTION FROM TAX.—Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

"(2) LOSS OF EXEMPTION OF ACCOUNT WHERE EMPLOYEE ENGAGES IN PROHIBITED TRANSACTION.—

"(A) IN GENERAL.—If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

"(i) the individual for whose benefit any account was established is treated as the creator of such account and

"(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

"(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

"(3) EFFECT OF BORROWING ON ANNUITY CONTRACT.—If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

"(4) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

"(5) PURCHASE OF ENDOWMENT CONTRACT BY INDIVIDUAL RETIREMENT ACCOUNT.—If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

"(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3), and

"(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

"(6) COMMINGLING INDIVIDUAL RETIREMENT ACCOUNT AMOUNTS IN CERTAIN COMMON TRUST FUNDS AND COMMON INVESTMENT FUNDS.—Any common trust fund or common investment fund of indivdiual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).

"(f) ADDITIONAL TAX ON CERTAIN AMOUNTS INCLUDED IN GROSS INCOME BEFORE AGE 59½—

"(1) EARLY DISTRIBUTIONS FROM AN INDIVIDUAL RETIREMENT ACCOUNT, ETC.—If a distribution from an individual retirement account or under an individual retirement annuity to the individual for whose benefit such account or annuity was established is made before such individual attains age 59½, his tax under this chapter for the taxable year in which such distribution is received shall be increased by an amount equal to 10 percent of the amount of distribution which is includible in his gross income for such taxable year.

"(2) DISQUALIFICATION CASES.—If an amount is includible in gross income for a taxable year under subsection (e) and the taxpayer has not attained age 59½ before the beginning of such taxable year, his tax under this chapter for such taxable year shall be increased by an amount equal to 10 percent of such amount so required to be included in his gross income.

"(3) DISABILITY CASES.—Paragraphs (1) and (2) do not apply if the amount paid or distributed, or the disqualification of the account or annuity under subsection (e), is attributable to the taxpayer becoming disabled within the meaning of section 72(m)(7).

"(g) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

"(h) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 401(d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(i) REPORTS.—The trustee of an individual retirement account and the issuer of an endowment contract described in section 408(b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary or his delegate and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions, distributions, and such other matters as the Secretary or his delegate may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.

"(j) CROSS REFERENCES.—

"(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4973.

"(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974."

(c) RETIREMENT BONDS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by inserting after section 408 the following new section:

"SEC. 409. RETIREMENT BONDS.

"(a) RETIREMENT BOND.—For purposes of this section and section 219(a), the term 'retirement bond' means a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary or his delegate under such Act—

"(1) provides for payment of interest, or investment yield, only on redemption;

"(2) provides that no interest, or investment yield, is payable if the bond is redeemed within 12 months after the date of its issuance;

"(3) provides that it ceases to bear interest, or provide investment yield on the earlier of—

"(A) the date on which the individual in whose name it is purchased (hereinafter in this section referred to as the 'registered owner') attains age 70½; or

"(B) 5 years after the date on which the registered owner dies, but not later than the date on which he would have attained the age 70½ had he lived;

"(4) provides that, except in the case of a rollover contribution described in subsection (b)(3)(C) or in section 402(a)(5), 403(a)(4), or 408(d)(3) the registered owner may not contribute for the purchase of such bonds in excess of $1,500 in any taxable year; and

"(5) is not transferable.

"(b) INCOME TAX TREATMENT OF BONDS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, on the redemption of a retirement bond the entire proceeds shall be included in the gross income of the taxpayer entitled to the proceeds on redemption. If the registered owner has not tendered it for redemption before the close of the taxable year in which he attains age 70½, such individual shall include in his gross income for such taxable year the amount of proceeds he would have received if the bond had been redeemed at age 70½. The provisions of section 72 (relating to annuities) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply to a retirement bond.

"(2) BASIS.—The basis of a retirement bond is zero.

"(3) EXCEPTIONS.—

"(A) REDEMPTION WITHIN 12 MONTHS.—If a retirement bond is redeemed within 12 months after the date of its issuance, the proceeds are excluded from gross income if no deduction is allowed under section 219 on account of the purchase of such bond.

"(B) REDEMPTION AFTER AGE 70½.—If a retirement bond is redeemed after the close of the taxable year in which the registered owner attains age 70½, the proceeds from the redemption of the bond are excluded from the gross income of the registered

owner to the extent that such proceeds were includible in his gross income for such taxable year.

"(C) ROLLOVER INTO AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY OR A QUALIFIED PLAN.—If a retirement bond is redeemed at any time before the close of the taxable year in which the registered owner attains age 70½, and the registered owner transfers the entire amount of the proceeds from the redemption of the bond to an individual retirement account described in section 408(a) or to an individual retirement annuity described in section 408(b) (other than an endowment contract) which is maintained for the benefit of the registered owner of the bond, or to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) for the benefit of the registered owner, on or before the 60th day after the day on which he received the proceeds of such redemption, then the proceeds shall be excluded from gross income and the transfer shall be treated as a rollover contribution described in section 403(d)(3). This subparagraph does not apply in the case of a transfer to such an employees' trust or such an annuity plan unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an employees' trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan).

"(c) ADDITIONAL TAX ON CERTAIN REDEMPTIONS BEFORE AGE 59½—

"(1) EARLY REDEMPTION OF BOND.—If a retirement bond is redeemed by the registered owner before he attains age 59½, his tax under this chapter for the taxable year in which the bond is redeemed shall be increased by an amount equal to 10 percent of the amount of the proceeds of the redemption includible in his gross income for the taxable year.

"(2) DISABILITY CASES.—Paragraph (1) does not apply for any taxable year during which the retirement bond is redeemed if, for that taxable year, the registered owner is disabled within the meaning of section 72(m)(7).

"(3) REDEMPTION WITHIN ONE YEAR.—Paragraph (1) does not apply if the registered owner tenders the bond for redemption within 12 months after the date of its issuance.".

(d) EXCISE TAX ON EXCESS CONTRIBUTIONS.—Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4972 the following new section:

"SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS, CERTAIN SECTION 403(b) CONTRACTS, CERTAIN INDIVIDUAL RETIREMENT ANNUITIES, AND CERTAIN RETIREMENT BONDS.

"(a) TAX IMPOSED.—In the case of—

"(1) any individual retirement account (within the meaning of section 408(a)),

"(2) any individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock), or

"(3) a retirement bond (within the meaning of section 409), established for the benefit or any individual, there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts, annuities, or bonds (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account, annuity, or bond (determined as of the close of the taxable the year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

"(b) EXCESS CONTRIBUTIONS.—For purposes of this section, in the case of individual retirement accounts, individual retirement annuities, or bonds, the term 'excess contributions' means the sum of—

"(1) the excess (if any) of—

"(A) the amount contributed for the taxable year to the accounts or for the annuities or bonds (other than a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3)), or 409(b)(3)(C), over

"(B) the amount allowable as a deduction under section 219 for such contributions, and

"(2) the amount determined under this subsection for the preceding taxable year, reduced by the excess (if any) or the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable year and reduced by the sum of the distributions out of the account (for all prior taxable years) which were included in the gross income of the payee under section 408(d)(1). For purposes of this paragraph, any contribution which is distributed out of the individual retirement account, individual retirement annuity, or bond in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

"(c) SECTION 403(b) CONTRACTS.—For purposes of this section, in the case of a custodial account referred to in subsection (a)(3), the term 'excess contributions' means the sum of—

"(1) the excess (if any) of the amount contributed for the taxable year to such account, over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

"(2) the amount determined under this subsection for the preceding taxable year, reduced by—

"(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

"(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e).

(e) EXCISE TAX ON EXCESSIVE ACCUMULATIONS.—Chapter 43 is amended by inserting after section 4973 the following new section:

"SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.

"(a) IMPOSITION OF TAX.—If, in the case of an individual retirement account or individual retirement annuity, the amount distributed during the taxable year of the payee is less than the minimum amount required to be distributed under section 408(a)(6) or (7), or 408(b)(3) or (4) during such year, there is imposed a tax equal to 50 percent of the amount by which the minimum amount or (7), or 408(b)(3) or (4) during such year, exceeds the amount actually distributed during the year. The tax imposed by this section shall be paid by such payee.

"(b) REGULATIONS.—For purposes of this section, the minimum amount required to be distributed during a taxable year under section 408(a)(6) or (7) or 408(b)(3) or (4) shall be determined under regulations prescribed by the Secretary or his delegate.".

(f) PENALTY FOR FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6693. FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.

"(a) The person required by section 408(i) to file a report regarding an individual retirement account or individual retirement annuity at the time and in the manner required by section 408(i) shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain exercise taxes does not apply to the assessment or collection of any penalty imposed by subsection (a).".

(g) CONFORMING AMENDMENTS.—

(1) Section 37(c)(1) (defining retirement income) is amended—

(A) by striking out "and" at the end of subparagraph (D),

(B) by adding at the end of subparagraph (E) the following: "retirement bonds described in section 409, and", and

(C) by adding at the end thereof the following new paragraph:

"(F) an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b), or".

(2) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3), as each is amended by sections 2001(g)(2)(B)(C) and 2005(c)(4) of this Act, are each amended by inserting after "owner-employees)," the following: "section 408(e) (relating to additional tax on income from certain retirement accounts),".

(3) The third sentence of section 901(a), as amended by section 2005(c)(5) of this Act, is amended by inserting "against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts)," before "against the tax imposed by section 531".

(4) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by striking out "531" and inserting in lieu thereof "408(f),531,".

(5) Section 402(a) (relating to taxability of beneficiary of exempt trust) as amended by section 2005(c)(2) of this Act, is amended by inserting after paragraph (5) the following new paragraph:

"(5) ROLLOVER AMOUNTS.—In the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if—

"(A) the balance to the credit of an employee is paid to him on one or more distributions which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subsection (e)(4)(B)),

"(B)(i) the employee transfers all the property he receives in such distribution to an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e)(4)(D)(1), or

"(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in section 403(a) on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e)(4)(D)(1), and

"(C) the amount so transferred consists of

the property (other than money) distributed, to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distributions are not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution as described in section 408(d)(3). Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan of any part of the lump sum distribution described in subparagraph (A) is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan."

(6) Section 403(a) (relating to taxation of employee annuities) is amended by adding after paragraph (3) the following new paragraph:

"(4) ROLLOVER AMOUNTS.—In the case of an employee annuity described in 403(a), if—

"(A) the balance to the credit of an employee is paid to him in one or more distributions which constitute a lump sum distribution within the meaning of section 402(e)(4)(A) (determined without reference to section 402(e)(4)(B),

"(B)(i) the employee transfers all the property he receives in such distribution to an individual account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), or

"(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in subsection (a) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), and

"(C) the amount so transferred consists of the property distributed to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B), then such distribution is not includible in gross income for the year in which paid.

For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution described in section 408(d)(3).

Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of the lump sum distribution described in subparagraph (A) is attributable to an annuity plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.".

(7) Section 3401(a)(12) (relating to exemption from collection of income tax at source on certain wages) is amended by adding at the end thereof the following new subparagraph:

"(D) for a payment described in section 219(a) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for payment; or".

(8) Section 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) OTHER PROGRAMS.—To the extent provided by regulations prescribed by the Secretary or his delegate, the provisions of this section apply with respect to any payment described in section 219(a) and to transactions of any trust described in section 408(a) or under an individual retirement annuity described in section 408(b).".

(9) Section 805(d)(1) (relating to definition of pension plan reserves) is amended by striking out "or" at the end of subparagraph (C), by striking out "foregoing." at the end of subparagraph (D) and inserting in lieu thereof "foregoing: or", and by adding at the end thereof the following new subparagraph:

"(E) purchased under contracts entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b)."

(10) Section 72 (relating to annuities) is amended—

(A) by inserting after "501(a)" in subsection (m)(4)(A) ", an individual retirement amount described in section 408(a), an individual retirement annuity described in section 408(b)".

(B) by striking out at the end of subsection (m)(6) "401(c)(3)" and inserting in lieu thereof "401(c)(3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408 (a) or (b) is maintained".

(11) Section 801(g)(7) (relating to basis of assets held for qualified pension plan contracts) is amended by striking out "or (D)" and inserting in lieu thereof "(D), or (E)".

(h) CLERICAL AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 219 and inserting in lieu thereof the following:

"SEC. 219. RETIREMENT SAVINGS.
"SEC. 220. CROSS REFERENCES.".

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by adding at the end thereof the following:

"SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.
"SEC. 409. RETIREMENT BONDS.".

(3) The table of sections for chapter 43 is amended by inserting after the item relating to section 4972 the following new items:

"Sec. 4973. Tax on Excess Contributions to Individual Retirement Accounts, Certain 403(a) Contracts, Certain Individual Retirement Annuities, and Certain Retirement Bonds.
"Sec. 4973. Tax of Certain Accumulations in Individual Retirement Accounts.
"Sec. 4975. Tax on Prohibited Transactions."

(4) The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6693. Failure to Provide Reports on Individual Retirement Accounts or Annuities."

(i) EFFECTIVE DATES.—

(1) The amendments made by subsections (a), (b), and (c) apply to taxable years beginning after December 31, 1974.

(2) The amendments made by subsections (d) through (h) except subsection (g)(5) and (6) shall take effect on January 1, 1975.

(3) The amendments made by subsection (g)(5) and (6) shall apply on and after the date of enactment of this Act with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code.

SEC. 2003. PROHIBITED TRANSACTIONS.

(a) EXCESS TAX ON PROHIBITED TRANSACTIONS.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding after section 4974 the following new section:

"SEC. 4975. TAX ON PROHIBITED TRANSACTIONS.

"(a) INITIAL TAXES ON DISQUALIFIED PERSON.—There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 5 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

"(b) ADDITIONAL TAXES ON DISQUALIFIED PERSON.—In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

"(c) PROHIBITED TRANSACTION.—

"(1) GENERAL RULE.—For purposes of this section, the term 'prohibited transaction' means any direct or indirect—

"(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

"(B) lending of money or other extension of credit between a plan and a disqualified person;

"(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

"(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

"(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or

"(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

"(2) SPECIAL EXEMPTION.—The Secretary or his delegate shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, or class of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary or his delegate may not grant an exemption under this paragraph unless he finds that such exemption is—

"(A) administratively feasible.

"(B) in the interests of the plan and of its participants and beneficiaries, and

"(C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph, the Secretary or his delegate shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pedency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary or his delegate affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except that in lieu on such hearing the Secretary or his delegate may accept any record made by the Secretary of Labor with respect to an ap-

plication for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

"(3) SPECIAL RULE FOR INDIVIDUAL RETIREMENT ACCOUNTS.—An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt for the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

"(d) EXEMPTIONS.—The prohibitions provided in subsection (c) shall not apply to—

"(1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

"(A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

"(B) is not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees,

"(C) is made in accordance with specific provisions regarding such loans set forth in the plan,

"(D) bears a reasonable rate of interest, and

"(E) is adequately secured;

"(2) any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

"(3) any loan to an employee stock ownership plan (as defined in subsection (e)(7)), if—

"(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

"(B) such loan is at a reasonable rate of interest, and any collateral is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e)(8));

"(4) the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

"(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

"(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;

"(5) any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

"(A) the employer maintaining the plan, or

"(B) a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

"(6) the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—

"(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

"(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary or his delegate after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—

"(i) in an excessive or unreasonable manner, and

"(ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

"(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary or his delegate, but only if the plan receives no less than adequate consideration pursuant to such conversion;

"(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or pooled investment fund of an insurance company qualified to do business in a State if—

"(A) the transaction is a sale or purchase of an interest in the fund,

"(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

"(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

"(9) receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

"(10) receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

"(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

"(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets);

"(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction).

The exemptions provided by this subsection (other than paragraphs (9) and (12)) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section of 1379), a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409), and an employer or association of employees which establishes such an account or annuity under section 408 (c) shall be deemed to be an owner-employee.

"(e) DEFINITIONS.—

"(1) PLAN.—For purposes of this section, the term 'plan' means a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a) or 405(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) or a retirement bond described in section 409 (or a trust, plan, account, annuity, or bond which, at any time, has been determined by the Secretary or his delegate to be such a trust, plan, account, or bond).

"(2) DISQUALIFIED PERSON.—For purposes of this section, the term 'disqualified person' means a person who is—

"(A) a fiduciary;

"(B) a person providing services to the plan;

"(C) an employer any of whose employees are covered by the plan;

"(D) an employee organization any of whose members are covered by the plan;

"(E) an owner, direct or indirect, of 50 percent or more of—

"(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

"(ii) the capital interest or the profits interest of a partnership, or

"(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

"(F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);

"(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

"(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

"(ii) the capital interest or profits interest of such partnership, or

"(iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or

held by persons described in subparagraph (A), (B), (C), (D), or (E);

"(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or

"(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of Labor, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

"(3) FIDUCIARY.—For purposes of this section, the term 'fiduciary' means any person who—

"(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

"(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

"(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

"(4) STOCKHOLDINGS.—For purposes of paragraphs (2)(E)(i) and (G)(i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

"(5) PARTNERSHIPS; TRUSTS.—For purposes of paragraphs (2)(E)(ii) and (iii), (G)(ii) and iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

"(6) MEMBER OF FAMILY.—For purposes of paragraph (2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

"(7) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means a defined contribution plan—

"(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401, and which are designed to invest primarily in qualifying employer securities; and

"(B) which is otherwise defined in regulations prescribed by the Secretary or his delegate.

"(8) QUALIFYING EMPLOYER SECURITY.—The term 'qualifying employer security' means an employer security which is—

"(A) stock or otherwise an equity security, or

"(B) a bond, debenture, note, or certificate or other evidence of indebtedness which is described in paragraphs (1), (2), and (3) of section 503(e).

If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) JOINT AND SEVERAL LIABILITY.—If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

"(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency pursuant to section 6212, with respect to the tax imposed by subsection (a), or

"(B) the date on which correction of the prohibited transaction is completed.

"(3) SALE OR EXCHANGE; ENCUMBERED PROPERTY.—A transfer of real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.

"(4) AMOUNT INVOLVED.—The term 'amount involved' means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2), (11), and (12) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

"(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and

"(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the correction period.

"(5) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

"(6) CORRECTION PERIOD.—The term 'correction period' means, with respect to a prohibited transaction the period beginning with the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (b) under section 6212, extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) any other period which the Secretary or his delegate determines is reasonable and necessary to bring about the correction of the prohibited transaction.

"(g) APPLICATION OF SECTION.—This section shall not apply—

"(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b)(2)(B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy;

"(2) to a governmental plan (within the meaning of section 414(d)); or

"(3) to a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

"(h) NOTIFICATION OF SECRETARY OF LABOR.—Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary or his delegate shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

"(i) Cross Reference.—

"For provisions concerning coordination procedures between Secretary of Labor and Secretary of Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3002 of Employment Retirement Income Security Act of 1974.".

(b) AMENDMENT OF SECTION 503.—Section 503 (relating to requirements for exemption) is amended—

(1) by striking out "or (18)" in subsection (a)(1)(A),

(2) by amending subsection (a)(1)(B) by inserting "which is referred to in section 4975(g)(2) or (3)" after "described in section 401(a)",

(3) by striking out "or section 401" in subsection (a)(2) and inserting in lieu thereof "or paragraph (1)(B)",

(4) by striking out "or section 401" in subsection (c) and inserting in lieu thereof "or subsection (a)(1)(B)", and

(5) by striking out subsection (g).

(c) EFFECTIVE DATE AND SAVINGS PROVISIONS.—

(1)(A) The amendments made by this section shall take effect on January 1, 1975.

(B) If, before the amendments made by this section take effect, an organization described in section 401(a) of the Internal Revenue Code of 1954 is denied exemption under section 501(a) of such Code by reason of section 503 of such Code, the denial of such exemption shall not apply if the disqualified person elects (in such manner and at such time as the Secretary or his delegate shall by regulations prescribe) to pay, with respect to the prohibited transaction (within the meaning of section 503(b)(g)) which resulted in such denial of exemption, a tax in the amount and in the manner provided with respect to the tax imposed under section 4975 of such Code. An election made under this subparagraph, once made, shall be irrevocable. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(2) Section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) shall not apply to—

(A) a loan of money or other extension of credit between a plan and a disqualified person under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of such Code or the corresponding provisions of prior law);

(B) a lease or joint use of property involving the plan and a disqualified person, pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law;

(C) the sale, exchange, or other disposition of property described in subparagraph (B) between a plan and a disqualified person before June 30, 1984, if—

(i) in the case of a sale, exchange, or other disposition of the property by the plan to the disqualified person, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(ii) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(D) until June 30, 1977, the provision of services to which subparagraphs (A), (B), and (C) do not apply, between a plan and a disqualified person (i) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or (ii) if the disqualified person ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law; or

(E) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a disqualified person, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a)(2)(A) (relating to the prohibition against holding excess employer securities and employer real property) of the Employee Retirement Income Security Act of 1974, and if the plan receives not less than adequate consideration.

For the purposes of this paragraph, the term "disqualified person" has the meaning provided by section 4975(e)(2) of the Internal Revenue Code of 1954.

SEC. 2004. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS.

(a) PLAN REQUIREMENTS.—

(1) Section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (15) the following new paragraph:

"(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415."

(2) Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 414 the following new section:

"SEC. 415. Limitations on Benefits and Contribution Under Qualified Plans.

"(a) GENERAL RULE.—

"(1) TRUSTS.—A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if—

"(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b),

"(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c), or

"(C) in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (g).

"(2) SECTION APPLIES TO CERTAIN ANNUITIES AND ACCOUNTS.—In the case of—

"(A) an employee annuity plan described in section 403(a),

"(B) an annuity contract described in section 403(b),

"(C) an individual retirement account described in section 408(a),

"(D) an individual retirement annuity described in section 408(b),

"(E) a plan described in section 405(a), or

"(F) a retirement bond described in section 409, such contract, annuity plan, account, annuity, plan, or bond shall not be considered to be described in section 403(a), 403(b), 405, 408(a), 408(b), or 409, as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2).

"(b) LIMITATIONS FOR DEFINED BENEFIT PLANS.—

"(1) IN GENERAL.—Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

"(A) $75,000, or

"(B) 100 percent of the participant's average compensation for his high 3 years.

"(2) ANNUAL BENEFIT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'annual benefit' means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3), and 409(b)(3)(C) are made.

"(B) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFIT.—If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3) and 409(b)(3)(C)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 401(a)(11)(H)(iii)) shall not be taken into account.

"(C) ADJUSTMENT TO $75,000 LIMIT WHERE BENEFIT BEGINS BEFORE AGE 55.—If the retirement income benefit under the plan begins before age 55, the determination as to whether the $75,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to such a benefit beginning at age 55.

"(3) AVERAGE COMPENSATION FOR HIGH 3 YEARS.—For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant both was an active participant in the plan and had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for 'compensation from the employer' the following: 'the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'.

"(4) TOTAL ANNUAL BENEFITS NOT IN EXCESS OF $10,000.—Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—

"(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefits plans of the employer do not exceed $10,000 for the plan year, or for any prior plan year, and

"(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

"(5) REDUCTION FOR SERVICE LESS THAN 10 YEARS.—In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10.

"(6) COMPUTATION OF BENEFITS AND CONTRIBUTIONS.—The computation of—

"(A) benefits under a defined contribution plan, for purposes of section 401(a)(4),

"(B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4), and

"(C) contributions and benefits provided for a participant in a plan described in section 414(k), for purposes of this section shall not be made on a basis inconsistent with regulations prescribed by the Secretary or his delegate.

"(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

"(1) IN GENERAL.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

"(A) $25,000, or

"(B) 25 percent of the participant's compensation.

"(2) ANNUAL ADDITION.—For purposes of paragraph (1), the term 'annual addition's means the sum for any year of—

"(A) employer contributions,

"(B) the lesser of—

"(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

"(ii) one-half of the employee contributions, and

"(C) forfeitures.

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3), and 409(b)(3)(C)).

"(3) PARTICIPANT'S COMPENSATION.—For purposes of paragraph (1), the term 'participant's compensation' means the compensation of the participant from the employer for the year. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied

by substituting for 'compensation of the participant from the employer' the following: 'the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'.

"(4) SPECIAL ELECTION FOR SECTION 403(b) CONTRACTS PURCHASED BY EDUCATIONAL INSTITUTIONS, HOSPITALS, AND HOME HEALTH SERVICE AGENCIES.—

(A) In the case of amounts contributed for an annuity contract described in section 403(b) for the year in which occurs a participant's separation from the service with an educational institution, a hospital, or a home health service agency, at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the amount of the exclusion allowance which would be determined under section 403(b)(2) (without regard to this section) for the participant's taxable year in which such separation occurs if the participant's years of service were computed only by taking into account his service for the employer during the period of years (not exceeding ten) ending on the date of such separation.

"(B) In the case of amounts contributed for an annuity contract described in section 403(b) for any year in the case of a participant who is an employee of an educational institution, a hospital, or a home health service agency, at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the least of—

"(i) 25 percent of the participant's includible compensation (as defined in section 403(b)(3) plus $4,000,

"(ii) the amount of the exclusion allowance determined for the year under section 403(b)(2), or

"(iii) $15,000.

"(C) In the case of amounts contributed for an annuity contract described in section 403(b) for any year for a participant who is an employee of an educational institution, a hospital, or a home health service agency, at the election of the participant the provisions of section 403(b)(2)(A) shall not apply.

"(D)(i) The provisions of this paragraph apply only if the participant elects its application at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under subparagraph (A) by any participant. A participant who elects to have the provisions of subparagraph (A), (B), or (C) of this paragraph apply to him may not elect to have any other subparagraph of this paragraph apply to him. Any election made under this paragraph is irrevocable.

"(ii) For purpose of this paragraph the term 'educational institution' means an educational institution as defined in section 151(e)(4).

"(iii) For purposes of this paragraph the term 'home health service agency' means an organization described in subsection 501(c)(3) which is exempt from tax under section 501(a) and which has been determined by the Secretary of Health, Education, and Welfare to be a home health agency (as defined in section 1861(o) of the Social Security Act).

"(d) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—The Secretary or his delegate shall adjust annually—

"(A) the $75,000 amount in subsection (b)(1)(A),

"(B) the $25,000 amount in subsection (c)(1)(A), and

"(C) in the case of a participant who is separated from service, the amount taken into account under subsection (b)(1)(B), for increases in the cost of living in accordance with regulations prescribed by the Secretary or his delegate. Such regulations shall provide for adjustment procedures which are similar to the procedures used to adjust primary insurance amounts under section 215(i)(2)(A) of the Social Security Act.

"(2) BASE PERIODS.—The base period taken into account—

"(A) for purposes of subparagraphs (A) and (B) of paragraph (1) is the calendar quarter beginning October 1, 1974, and

"(B) for purposes of subparagraph (C) of paragraph (1) is the last calendar quarter of the calendar year before the calendar year in which the participant is separated from service.

"(e) LIMITATION IN CASE OF DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN FOR SAME EMPLOYEE.—

"(1) IN GENERAL.—In any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any year may not exceed 1.4.

"(2) DEFINED BENEFIT PLAN FRACTION.—For purposes of this subsection, the defined benefit plan fraction for any year is a fraction—

"(A) the numerator of which is the projected annual benefit of the participant under the plan (determined as of the close of the year), and

"(B) the denominator of which is the projected annual benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsection (b).

"(3) DEFINED CONTRIBUTION PLAN FRACTION.—For purposes of this subsection, the defined contribution plan fraction for any year is a fraction—

"(A) the numerator of which is the sum of the annual additions to the participant's account as of the close of the year, and

"(B) the denominator of which is the sum of the maximum amount of annual additions to such account which could have been made under subsection (c) for such year and for each prior year of service with the employer.

"(4) SPECIAL TRANSITION RULES FOR DEFINED CONTRIBUTION FRACTION.—In applying paragraph (3) with respect to years beginning before January 1, 1976—

"(A) the aggregate amount taken into account under paragraph (3)(A) may not exceed the aggregate amount taken into account under paragraph (3)(B), and

"(B) the amount taken into account under subsection (c)(2)(B)(i) for any year concerned is an amount equal to—

"(i) the excess of the aggregate amount of employee contributions for all years beginning before January 1, 1976, during which the employee was an active participant of the plan, over 10 percent of the employee's aggregate compensation for all such years, multiplied by

"(ii) a fraction the numerator of which is 1 and the denominator of which is the number of years beginning before January 1, 1976, during which the employee was an active participant in the plan.

Employee contributions made on or after October 2, 1973, shall be taken into account under subparagraph (B) of the preceding sentence only to the extent that the amount of such contributions does not exceed the maximum amount of contributions permissible under the plan as in effect on October 2, 1973.

"(5) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—For purposes of this subsection, any annuity contract described in section 403(b) (except in the case of a participant who has elected under subsection (c)(4)(D) to have the provisions of subsection (c)(4)(C) apply), any individual retirement account described in section 408(a), any individual retirement annuity described in section 408(b), and any retirement bond described in section 409, for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). In the case of any annuity contract described in section 403(b), the amount of the contribution disqualified by reason of subsection (g) shall reduce the exclusion allowance as provided in section 403(b)(2).

"(f) COMBINING OF PLANS.—

"(1) IN GENERAL.—For purposes of applying the limitations of subsections (b), (c), and (e)—

"(A) all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and

"(B) all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.

"(2) ANNUAL COMPENSATION TAKEN INTO ACCOUNT FOR DEFINED BENEFIT PLANS.—If the employer has more than one defined benefit plan—

"(A) subsection (b)(1)(B) shall be applied separately with respect to each such plan, but

"(B) in applying subsection (b)(1)(B) to the aggregate of such defined benefit plans for purposes of this subsection, the high 3 years of compensation taken into account shall be the period of consecutive calendar years (not more than 3) during which the individual had the greatest aggregate compensation from the employer.

"(g) AGGREGATION OF PLANS.—The Secretary or his delegate, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary or his delegate, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsections (e) and (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

"(h) 50 PERCENT CONTROL.—For purposes of applying subsections (b) and (c) of section 414 to this section, the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563(a)(1).

"(i) RECORDS NOT AVAILABLE FOR PAST PERIODS.—Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary or his delegate may by regulations prescribe alternative methods for determining the amounts to be taken into account for such period.

"(j) REGULATIONS; DEFINITION OF YEAR.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section, including, but not limited to, regulations defining the term 'year' for purposes of any provision of this section.

"(k) SPECIAL RULES.—

"(1) DEFINED BENEFIT PLAN AND DEFINED

CONTRIBUTION PLAN.—For purposes of this title, the term 'defined contribution plan' or 'defined benefit plan' means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

"(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

"(B) an annuity plan described in section 403(a),

"(C) a qualified bond purchase plan described in section 405(a),

"(D) an annuity a contract described in section 403(b),

"(E) an individual retirement account described in section 408(a),

"(F) an individual retirement annuity described in section 408(b), or

"(G) an individual retirement bond described in section 409.".

(3) SPECIAL RULE FOR CERTAIN PLANS IN EFFECT ON DATE OF ENACTMENT.—In any case in which, on the date of enactment of this Act, an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, and the sum of the defined benefit plan fraction and the defined contribution plan fraction for the year during which such date occurs exceeds 1.4, the sum of such fractions may continue to exceed 1.4 if—

(A) the defined benefit plan fraction is not increased, by amendment of the plan or otherwise, after the date of enactment of this Act, and

(B) no contributions are made under the defined contribution plan after such date.

A trust which is part of a pension, profit-sharing, or stock bonus plan described in the preceding sentence shall not be treated as not constituting a qualified trust under section 401(a) of the Internal Revenue Code of 1954 on account of the provisions of section 415(e) of such Code, as long as it is described in the preceding sentence of this subsection.

(b) LIMIT ON EMPLOYER DEDUCTIONS.—The second sentence of section 404(a)(3)(A) (relating to limits on deductible contributions) is amended by striking out "beneficiaries under the plan," and inserting in lieu thereof "beneficiaries under the plan, but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan.".

(c) CERTAIN ANNUITY AND BOND PURCHASE PLANS.—

(1) Section 404(a)(2) (relating to the general rule for deduction for employee annuities) is amended by striking out "(15)" and inserting in lieu thereof "(15), (16), and (19)" and by striking out "(a)(9) and (10)" and inserting in lieu thereof "(a) (9), (10), (17), and (18)".

(2) Section 405(a)(1) (relating to requirements for qualified bond purchase plans) is amended by striking out "and (8)." and inserting in lieu thereof "(8), (16), and (19)".

(3) Section 805(d)(1)(C) (relating to pension plan reserves) is amended by striking out "and (15)" and inserting in lieu thereof "(15), (16), and (19)".

(4) Section 403(b)(2) (relating to exclusion allowance) is amended to read as follows:

"(2) EXCLUSION ALLOWANCE.—

"(A) IN GENERAL.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

"(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

"(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

"(B) ELECTION TO HAVE ALLOWANCE DETERMINED UNDER SECTION 415 RULES.—In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, and home health service agencies) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415) by his employer under a plan described in section 403(a) if the annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.".

(d) EFFECTIVE DATE.—

(1) GENERAL RULE.—The amendments made by this section shall apply to years beginning after December 31, 1975. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.

(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan before October 3, 1973, if—

(A) the annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1954) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on the earlier of (i) October 2, 1973, or (ii) the date on which he separated from the service of the employer,

(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date, and

(C) in the case of a participant who separated from the service of the employer prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from the service, then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1954. For purposes of subparagraph (B) of section 415(e)(2) of such Code, the maximum benefit allowable under subsection (b) of such section 415 shall be determined without regard to this paragraph.

SEC. 2005. TAXATION OF CERTAIN LUMP SUM DISTRIBUTIONS.

(a) TREATMENT OF TOTAL DISTRIBUTIONS.—Section 402(e) (relating to certain plan terminations) is amended to read as follows:

"(e) TAX ON LUMP SUM DISTRIBUTIONS.—

"(1) IMPOSITION OF SEPARATE TAX ON LUMP SUM DISTRIBUTIONS.—

"(A) SEPARATE TAX.—There is hereby imposed a tax (in the amount determined under subparagraph (B)) on the ordinary income portion of a lump sum distribution.

"(B) AMOUNT OF TAX.—The amount of tax imposed by subparagraph (A) for any taxable year shall be an amount equal to the amount of the initial separate tax for such taxable year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the taxable year and the denominator of which is the total taxable amount of such distribution for such year.

"(C) INITIAL SEPARATE TAX.—The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to one-tenth of the excess of—

"(i) the total taxable amount of the lump sum distribution for the taxable year, over

"(ii) the minimum distribution allowance.

"(D) MINIMUM DISTRIBUTION ALLOWANCE.—For purposes of this paragraph, the minimum distribution allowance for the taxable year is an amount equal to—

"(i) the lesser of $10,000 or one-half of the total taxable amount of the lump sum distribution for the taxable year, reduced (but not below zero) by

"(ii) 20 percent of the amount (if any) by which such total taxable amount exceeds $20,000.

"(E) LIABILITY FOR TAX.—The recipient shall be liable for the tax imposed by this paragraph.

"(2) MULTIPLE DISTRIBUTIONS AND DISTRIBUTIONS OF ANNUITY CONTRACTS.—In the case of any recipient of a lump sum distribution for the taxable year with respect to whom during the 6-taxable-year period ending on the last day of the taxable year there has been one or more other lump sum distributions after December 31, 1973, or if the distribution (or any part thereof) is an annuity contract, in computing the tax imposed by paragraph (1)(A), the total taxable amounts of all such distributions during such 6-taxable-year period shall be aggregated, but the amount of tax so computed shall be reduced (but not below zero) by the sum of—

"(A) the amount of the tax imposed by paragraph (1)(A) paid with respect to such other distributions, plus

"(B) that portion of the tax on the aggregated total taxable amounts which is attributable to annuity contracts.

For purposes of this paragraph, a beneficiary of a trust to which a lump sum distribution is made shall be treated as the recipient of such distribution if the beneficiary is an employee (including an employee within the meaning of section 401(c)(1)) with respect to the plan under which the distribution is made or if the beneficiary is treated as the owner of such trust for purposes of subpart E of part I of subchapter J. In the case of the distribution of an annuity contract, the taxable amount of such distribution shall be deemed to be the current actuarial value of the contract, determined on the date of such distribution. In the case of a lump sum distribution with respect to any individual which is made only to two or more trusts, the tax imposed by paragraph (1)(A) shall be computed as if such distribution was made to a single trust, but the liability for such tax shall be apportioned among such trusts according to the relative amounts received by each. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

"(3) ALLOWANCE OF DEDUCTION.—The ordinary income portion of a lump sum distribution for the taxable year shall be allowed as a deduction from gross income for such taxable year, but only to the extent included in the taxpayer's gross income for such taxable year.

"(4) DEFINITIONS AND SPECIAL RULES.—

"(A) LUMP SUM DISTRIBUTION.—For purposes of this section and section 403, the term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

"(i) on account of the employee's death,

"(ii) after the employee attains age 59½,

"(iii) on account of the employee's separation from the service, or

"(iv) after the employee has become disabled (within the meaning of section 72(m)(7)) from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an

employees without regard to section 401(c)(1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this subparagraph, a distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution. For purposes of this subparagraph, a distribution to two or more trusts shall be treated as a distribution to one recipient.

"(B) ELECTION OF LUMP SUM TREATMENT.—For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distributed under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.

"(C) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under subparagraph (A)—

"(i) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

"(ii) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

"(D) TOTAL TAXABLE AMOUNT.—For purposes of this section and section 403, the term 'total taxable amount' means, with respect to a lump sum distribution, the amount of such distribution which exceeds the sum of—

"(i) the amounts considered contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, and

"(ii) the net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.

"(E) ORDINARY INCOME PORTION.—For purposes of this section, the term 'ordinary income portion' means, with respect to a lump sum distribution, so much of the total taxable amount of such distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(i) the numerator of which is the number of calendar years of active participation by the employee in such plan after December 31, 1973, and

(ii) the denominator of which is the number of calendar years of active participation by the employee in such plan.

(F) EMPLOYEE.—For purposes of this subsection and subsection (a)(2), except as otherwise provided in subparagraph (A), the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) and the employer of such individual is the person treated as his employer under section 401(c)(4).

"(G) COMMUNITY PROPERTY LAWS.—The provisions of this subsection, other than paragraph (3), shall be applied without regard to community property laws.

"(H) MINIMUM PERIOD OF SERVICE.—For purposes of this subsection (but not for purposes of subsection (a)(2) or section 403(a)(2)(A)), no amount distributed to an employee from or under a plan may be treated as a lump sum distributed under subparagraph (A) unless he has been a participant in the plan for 5 or more taxable years before the taxable year in which such amounts are distributed.

"(I) AMOUNTS SUBJECT TO PENALTY.—This subsection shall not apply to amounts described in clause (ii) of subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

"(J) UNREALIZED APPRECIATION OF EMPLOYER SECURITIES.—In the case of any distribution including securities of the employer corporation which, without regard to the requirement of subparagraph (H) would be treated as a lump sum distribution under subparagraph (A), there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation so distributed. In the case of any such distribution or any lump sum distribution including securities of the employer corporation, the amount of net unrealized appreciation of such securities and the resulting adjustments to the basis of such securities shall be determined under regulations prescribed by the Secretary or his delegate.

"(K) SECURITIES.—For purposes of this subsection, the terms 'securities' and 'securities of the employer corporation' have the respective meanings provided by subsection (a)(3)."

(b) PHASEOUT OF CAPITAL GAINS TREATMENT.—

(1) IN GENERAL.—Section 402(a)(2) (relating to capital gains treatment for certain distributions) is amended to read as follows:

"(2) CAPITAL GAINS TREATMENT FOR PORTION OF LUMP SUM DISTRIBUTIONS.—In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e)(4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(A) the numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

"(B) the denominator of which is the number of calendar years of active participation by the employee in such plan, shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction described in this paragraph and the fraction under subsection (e)(4)(E), the Secretary or his delegate may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B), but no distribution to any taxpayer other than an individual estate, or trust may be treated as a lump sum distribution under this paragraph."

(2) AMENDMENT OF SECTION 403.—That part of paragraph (2) of section 403(a) which follows clause (ii) of subparagraph (A) thereof is amended to read as follows:

"(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

"(B) CROSS REFERENCE.—

"For impositions of separate tax on ordinary income portion of lump sum distribution, see section 402(e).".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 402(a)(3) is repealed.

(2) Paragraph (5) (as in effect on December 31, 1973) of section 402(a) is repealed.

(3) Section 72 is amended by striking out subsection (n) thereof and by redesignating subsections (o) and (p) as (n) and (o), respectively.

(4) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3) are each amended by inserting after "tax preferences)," the following: "section 402(e) (relating to tax on lump sum distributions),".

(5) The third sentence of section 901(a) is amended by inserting "against the tax imposed by section 402(e) (relating to tax on lump sum distributions)," before "against the tax imposed by section 531".

(6) Subsection 1304(b)(2) (relating to special rules) is amended by striking out paragraph (2) and by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

(7) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by inserting before "531" the following: "402(e),".

(8) Sections 871(b)(1) and 877(b) are each amended by inserting ", 402(e)(1)," after "section 1".

(9) Section 62 (defining adjusted gross income), is amended by inserting after paragraph (10) the following new paragraph:

"(11) CERTAIN PORTION OF LUMP-SUM DISTRIBUTIONS FROM PENSION PLANS TAXED UNDER SECTION 402(e).—The deduction allowed by section 402(e)(4)."

(10) Section 122(b)(2) (relating to consideration for the contract) is amended by striking out "72(o)" and inserting "72(n)".

(11) Section 405(e) (relating to capital gains treatment and limitation of tax not to apply to bonds distributed by trusts) is amended by striking out "Section 72(n) and section 402(a)(2)" and inserting "Subsections (a)(2) and (e) of section 402".

(12) Section 406(c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72(n), section 402(a)(2)" and inserting "subsections (a)(2) and (e) of section 402".

(13) Section 407(c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72(n), section 402(a)(2)" and inserting "subsections (a)(2) and (e) of section 402".

(14) Section 1348(b)(1) (relating to earned income) is amended by striking out "72(n), 402(a)(2)" and inserting "402(a)(2), 402(e)".

(15) Section 101(b)(2)(B) is amended by striking out "total distributions payable (as defined in section 402(a)(3)) which are paid to a distributee within one taxable year of

the distributee by reason of the employee's death" and inserting in lieu thereof "a lump sum distribution (as defined in section 402(e)(4))".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.

Sec. 2006. Salary Reduction Regulations.

(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1977, to an employees' trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

(b) ADMINISTRATION IN THE CASE OF CERTAIN QUALIFIED PENSION OR PROFIT-SHARING PLANS, ETC., IN EXISTENCE ON JUNE 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1977, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

(1) provided for contributions to an employees' trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or

(2) was maintained as part of an arrangement under which an employee was permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954.

(c) ADMINISTRATION OF LAW WITH RESPECT TO CERTAIN PLANS.—

(1) ADMINISTRATION IN THE CASE OF PLANS DESCRIBED IN SUBSECTION (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

(A) without regard to the proposed salary reduction regulations (37 F.R. 25938) and without regard to any other proposed salary reduction regulations, and

(B) in the manner in which such law was administered before January 1, 1972.

(2) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

(A) Revenue Ruling 56-497 (1956—2 C.B. 284),

(B) Revenue Ruling 63-180 (1963—2 C.B. 189), and

(C) Revenue Ruling 68-89 (1968—1 C.B. 402).

(d) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after December 31, 1976—

(1) for purposes of chapter 1 of the Internal Revenue Code of 1954 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1977; and

(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations issued in final form.

(e) SALARY REDUCTION REGULATIONS DEFINED.—For purposes of this section, the term "salary reduction regulations" means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a part that qualifies under section 401(a), or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compenation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954).

Sec. 2008. Certain Armed Forces Survivor Annuities.

(a) TREATMENT OF CERTAIN PARTICIPANTS IN THE PLAN.—Section 404(c) (relating to certain negotiated plans) is amended by inserting after the first sentence the following new sentences: "For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

"(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

"(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

"(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection.".

(b) OTHER AMENDMENTS TO SECTION 404(c)(1).—

(1) Paragraph (1) of the first sentence of section 404(c) is amended by striking out "and pensions" and inserting in lieu thereof "or pensions".

(2) The last sentence of section 404(c) is amended by striking out "This subsection" and inserting in lieu thereof "The first and third sentences of this subsection".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after June 30, 1972.

Sec. 2007. Rules for Certain Negotiated Plans.

(a) IN GENERAL.—Section 122(a) (relating to certain reduced uniformed services retired pay) is amended to read as follows:

"(a) GENERAL RULE.—In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, of the United States Code.".

(b) TECHNICAL AMENDMENTS.—

(1) Section 122(b)(2) is amended by striking out "section 1438" in subparagraph (B) and inserting in lieu thereof "section 1438 or 1452(d)".

(2) Section 72(o) is amended by inserting after "Plan" in the heading of such section "or Survivor Benefit Plan".

(3) Section 101(b)(2)(D) is amended by striking out "if the individual who made the election under such chapter" and inserting in lieu thereof "if the member or former member of the uniformed services by reason of whose death such annuity is payable".

(4) Section 2039(c) is amended by striking out "section 1438" in the last sentence and inserting in lieu thereof "section 1438 or 1452(d)".

(c) EFFECTIVE DATES.—The amendments made by this section apply to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) apply with respect to individuals dying on or after such date.

## TITLE III—JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

### SUBTITLE A—JURISDICTION, ADMINISTRATION, AND ENFORCEMENT

#### PROCEDURES IN CONNECTION WITH THE ISSUANCE OF CERTAIN DETERMINATION LETTERS BY THE SECRETARY OF THE TREASURY

SEC. 3001. (a) Before issuing an advance determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954, the Secretary of the Treasury shall require the person applying for the determination to provide, in addition to any material and information necessary for such determination, such other material and information as may reasonably be made available at the time such application is made as the Secretary of Labor may require under title I of this Act for the administration of that title. The Secretary of the Treasury shall also require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who qualifies as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of such Code (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of the application for a determination.

(b)(1) Whenever an application is made to the Secretary of the Treasury for a determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954, the Secretary shall upon request afford an opportunity to comment on the application at any time within 45 days after receipt thereof to—

(A) any employee or class of employee qualifying as an interested party within the meaning of the regulations referred to in subsection (a),

(B) the Secretary of Labor, and

(C) the Pension Benefit Guaranty Corporation.

(2) The Secretary of Labor may not request an opportunity to comment upon such an application unless he has been requested in writing to do so by the Pension Benefit Guaranty Corporation or by the lesser of—

(A) 10 employees, or

(B) 10 percent of the employees

who qualify as interested parties within the meaning of the regulations referred to in subsection (a). Upon receiving such a request, the Secretary of Labor shall furnish a copy of the request to the Secretary of the Treasury within 5 days (excluding Saturdays, Sundays, and legal public holidays (as set forth in section 6103 of title 5, United States Code)).

(3) Upon receiving such a request from the Secretary of Labor, the Secretary of the Treasury shall furnish to the Secretary of Labor such information held by the Secretary of the Treasury relating to the application as the Secretary of Labor may request.

(4) The Secretary of Labor shall, within 30 days after receiving a request from the Pension Benefit Guaranty Corporation or from the necessary number of employees who qualify as interested parties, notify the Secretary of the Treasury, the Pension Benefit Guaranty Corporation, and such employees with respect to whether he is going to comment on the application to which the request relates and with respect to any matters raised in such request on which he is not going to comment. If the Secretary of Labor indicates in the notice required under the preceding sentence that he is not going to comment on all or part of the matters raised in such request, the Secretary of the Treasury shall afford the corporation, and such employees, an opportunity to comment on the application with respect to any matter on which the Secretary of Labor has declined to comment.

(c) The Pension Benefit Guaranty Corporation and, upon petition of a group of employees referred to in paragraph (2), the Secretary of Labor, may intervene in any action brought for declaratory judgment under section 7476 of the Internal Revenue Code of 1954 in accordance with the provisions of such section. The Pension Benefit Guaranty Corporation is permitted to bring an action under such section 7476 under such rules as may be prescribed by the United States Tax Court.

(d) If the Secretary of the Treasury determines that a plan or trust to which this section applies meets the applicable requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 and issues a determination letter to the applicant, the Secretary shall notify the Secretary of Labor of his determination and furnish such information and material relating to the application and determination held by the Secretary of the Treasury as the Secretary of Labor may request for the proper administration of title I of this Act. The Secretary of Labor shall accept the determination of the Secretary of the Treasury as prima facie evidence of initial compliance by the plan with the standards of parts 2, 3, and 4 of subtitle B of title I of this Act. If an application for such a determination is withdrawn, or if the Secretary of the Treasury issues a determination that the plan or trust does not meet the requirements of such part I, the Secretary shall notify the Secretary of Labor of the withdrawal or determination.

(e) This section does not apply with respect to an application for any plan received by the Secretary of the Treasury before the date on which section 410 of the Internal Revenue Code of 1954 applies to the plan, or on which such section will apply if the plan is determined by the Secretary to be a qualified plan.

PROCEDURES WITH RESPECT TO CONTINUED COMPLIANCE WITH REQUIREMENTS RELATING TO PARTICIPATION, VESTING, AND FUNDING STANDARDS

SEC. 3002. (a) In carrying out the provisions of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 with respect to whether a plan or a trust meets the requirements of section 410(a) or 411 of such Code (relating to minimum participation standards and minimum vesting standards, respectively), the Secretary of the Treasury shall notify the Secretary of Labor when the Secretary of the Treasury issues a preliminary notice of intent to disqualify related to the plan or trust or, if earlier, at the time of commencing any proceeding to determine whether the plan or trust satisfies such requirements. Unless the Secretary of the Treasury finds that the collection of a tax imposed under the Internal Revenue Code of 1954 is in jeopardy, the Secretary of the Treasury shall not issue a determination that the plan or trust does not satisfy the requirements of such section until the expiration of a period of 60 days after the date on which he notifies the Secretary of Labor of such review. The Secretary of the Treasury, in his discretion, may extend the 60-day period referred to in the preceding sentence if he determines that such an extension would enable the Secretary of Labor to obtain compliance with such requirements by the plan within the extension period. Except as otherwise provided in this Act, the Secretary of Labor shall not generally apply part 2 of title I of this Act to any plan or trust subject to sections 410(a) and 411 of such Code, but shall refer alleged general violations of the vesting or participation standards to the Secretary of the Treasury. (The preceding sentence shall not apply to matters relating to individual benefits.)

(b) Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4971 of the Internal Revenue Code of 1954 (relating to taxes on the failure to meet minimum funding standards), the Secretary of the Treasury shall notify the Secretary of Labor before sending a notice of deficiency with respect to any tax imposed under that section on an employer, and, in accordance with the provisions of subsection (d) of that section, afford the Secretary of Labor an opportunity to comment on the imposition of the tax in the case. The Secretary of the Treasury may waive the imposition of the tax imposed under section 4971(b) of such Code in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be commenced expeditiously with respect to whether the tax imposed under section 4971 of such Code should be applied with respect to any employer to which the request relates. The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 412 of the Internal Revenue Code of 1954 (relating to minimum funding standards) and with respect to the funding standards applicable under title I of this Act in order to coordinate the rules applicable under such standards.

(c) Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of the Internal Revenue Code of 1954 (relating to minimum participation standards, minimum vesting standards, and minimum funding standards, respectively) shall also apply to the minimum participation, vesting, and funding standards set forth in parts 2 and 3 of subtitle B of title I of this Act, Except as otherwise expressly provided in this Act, the Secretary of Labor shall not prescribe other regulations under such parts, or apply the regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, 412 of the Internal Revenue Code of 1954 and applicable to the minimum participation, vesting, and funding standards under such parts in a manner inconsistent with the way such regulations apply under sections 410(a), 411, and 412 of such Code.

(d) The Secretary of Labor and the Pension Benefit Guaranty Corporation, before filing briefs in any case involving the construction or application of minimum participation standards, minimum vesting standards, or minimum funding standards under title I of this Act, shall afford the Secretary of the Treasury a reasonable opportunity to review any such brief. The Secretary of the Treasury shall have the right to intervene in any such case.

PROCEDURES IN CONNECTION WITH PROHIBITED TRANSACTIONS

SEC. 3003. (a) Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) the Secretary of the Treasury shall, in accordance with the provisions of subsection (h) of such section, notify the Secretary of Labor before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b) of such section, and, in accordance with the provisions of subsection (h) of such section, afford the Secretary an opportunity to comment on the imposition of the tax in any case. The Secretary of the Treasury shall have authority to waive the imposition of the tax imposed under section 4975(b) in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be carried out with respect to whether the tax imposed by section 4975 of such Code should be applied to any person referred to in the request.

(b) The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) and with respect to the provisions of title I of this Act relating to prohibited transactions and exemptions therefrom in order to coordinate the rules applicable under such standards.

(c) Whenever the Secretary of Labor obtains information indicating that a party-in-interest or disqualified person is violating section 406 of this Act he shall transmit such information to the Secretary of the Treasury.

COORDINATION BETWEEN THE DEPARTMENT OF THE TREASURY AND THE DEPARTMENT OF LABOR

SEC. 3004. (a) Whenever in this Act or in any provision of law amended by this Act the Secretary of the Treasury and the Secretary of Labor are required to carry out provisions relating to the same subject matter (as determined by them) they shall consult with each other and shall develop rules, regulations, practices, and forms which, to the extent appropriate for the efficient administration of such provisions in order to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden of compliance with such provisions by plan administrators, employers, and employees.

(b) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary of the Treasury and the Secretary of Labor may make such arrangements or agreements for cooperation or mutual assistance in the performance of their functions under this Act, and the functions of any such agency as they find to be practicable and consistent with law. The Secretary of the Treasury and the Secretary of Labor may utilize, on a reimbursable or other basis, the facilities or services, of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services, of any of its employees, with the lawful consent of such department, agency, or establishment with or without reimbursement; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary of the Treasury and the Secretary of Labor and, to the extent permitted by law, to provide such information and facilities as they may request for their assistance in the performance of their functions under this Act. The Attorney General or his representative shall receive from the Secretary of the Treasury and the Secretary of Labor for appropriate action such evidence developed in the performance of their functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

SUBTITLE B—JOINT PENSION TASK FORCE: STUDIES

PART 1—PENSION TASK FORCE

ESTABLISHMENT

SEC. 3021. The staffs of the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, the Joint Committee on Internal Revenue Taxation, and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall carry out the duties assigned under this title to the Joint Pension Task Force. By agreement among the chairmen of such Committees, the Joint Pension Task Force shall be furnished with office space, clerical personnel, and such supplies and equipment as may be necessary for the Joint Pension Task Force to carry out its duties under this title.

DUTIES

SEC. 3022. (a) The Joint Pension Task Force shall, within 24 months after the date of enactment of this Act, make a fully study and review of—

(1) the effect of the requirements of section 411 of the Internal Revenue Code of 1954 and of section 203 of this Act to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements;

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under title IV of this Act (relating to termination insurance) of plans established and maintained by small employers;

(4) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(5) such other matter as any of the committees referred to in section 3021 may refer report the results of its study and review to it.

(b) The Joint Pension Task Force shall report the results of its study and review to each of the committees referred to in section 3021.

PART 2—OTHER STUDIES

CONGRESSIONAL STUDY

SEC. 3031. (a) The Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of the United States, by any State (including the District of Columbia) or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Such study shall include an analysis of—

(1) the adequacy of existing levels of participation, vesting, and financing arrangements.

(2) existing fiduciary standards, and

(3) the necessity for Federal legislation and standards with respect to such plans.

In determining whether any such plan is adequately financed, each committee shall consider the necessity for minimum funding standards, as well as the taxing power of the government maintaining the plan.

(b) Not later than December 31, 1976, the Committee on Education and Labor and the Committee on Ways and Means shall each submit to the House of Representatives the results of the studies conducted under this section, together with such recommendations as they deem appropriate. The Committee on Finance and the Committee on Labor and Public Welfare shall each submit to the Senate the results of the studies conducted under this section together with such recommendations as they deem appropriate not later than such date.

PROTECTION FOR EMPLOYEES UNDER FEDERAL PROCUREMENT, CONSTRUCTION, AND RESEARCH CONTRACTS AND GRANTS

SEC. 3032. (a) The Secretary of Labor shall, during the 2-year period beginning on the date of the enactment of this Act, conduct a full and complete study and investigation of the steps necessary to be taken to insure that professional, scientific, and technical personnel and others working in associated occupations employed under Federal procurement, construction, or research contracts or grants will, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts, grants, or procurement policies. The Secretary of Labor shall report the results of his study and investigation to the Congress within 2 years after the date of the enactment of this Act. The Secretary of Labor is authorized, to the extent provided by law, to obtain the services of private research institutions and such other persons by contract or other arrangement as he determines necessary in carrying out the provisions of this section.

(b) In the course of conducting the study and investigation described in subsection (a), and in developing the regulations referred to in subsection (c), the Secretary of Labor shall consult—

(1) with appropriate professional societies, business organizations, and labor organizations, and

(2) with the heads of interested Federal departments and agencies.

(c) Within 1 year after the date on which he submits his report to the Congress under subsection (a), the Secretary of Labor shall, if he determines it to be feasible, develop regulations which will provide the protection of pension and retirement rights and benefits referred to in subsection (a).

(d)(1) Any regulations developed pursuant to subsection (c) shall take effect if, and only if—

(A) the Secretary of Labor, not later than the day which is 3 years after the date of the enactment of this Act, delivers a copy of such regulations to the House of Representatives and a copy to the Senate, and

(B) before the close of the 120-day period which begins on the day on which the copies of such regulations are delivered to the House of Representatives and to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval.

(2) For purposes of this subsection, the term "resolution of disapproval" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the —— does not favor the taking effect of the regulations transmitted to the Congress by the Secretary of Labor on ——", the first blank space therein being filled with the name of the resolving House and the second blank space therein being filled with the day and year.

(3) A resolution of disapproval in the House of Representatives shall be referred to the Committee on Education and Labor. A resolution of disapproval in the Senate shall be referred to the Committee on Labor and Public Welfare.

(4)(A) If the committee to which a resolution of disapproval has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution of disapproval.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resoltuion of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution of disapproval shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

(7) Whenever the Secretary of Labor transmits copies of the regulations to the Congress, a copy of such regulations shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(8) The 120 day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(9) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in paragraph (2); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so for as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

SUBTITLE C—ENROLLMENT OF ACTUARIES

ESTABLISHMENT OF JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

SEC. 3041. The Secretary of Labor and the Secretary of the Treasury shall, not later

than the last day of the first calendar month beginning after the date of the enactment of this Act, establish a Joint Board for the Enrollment of Actuaries (hereinafter in this part referred to as the "Joint Board").

ENROLLMENT BY JOINT BOARD

SEC. 3042. (a) The Joint Board shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans to which this Act applies and, upon application by any individual, shall enroll such individual if the Joint Board finds that such individual satisfies such standards and qualifications. With respect to individuals applying for enrollment before January 1, 1976, such standards and qualifications shall include a requirement for an appropriate period of responsible actuarial experience relating to pension plans. With respect to individuals applying for enrollment on or after January 1, 1976, such standards and qualifications shall include—

(1) education and training in actuarial mathematics and methodology, as evidenced by—

(A) a degree in actuarial mathematics or its equivalent from an accredited college or university.

(B) successful completion of an examination in actuarial mathematics and methodology to be given by the Joint Board, or

(C) successful completion of other actuarial examinations deemed adequate by the Joint Board, and

(2) an appropriate period of responsible actuarial experience.

Notwithstanding the preceding provisions of this subsection, the Joint Board may provide for the temporary enrollment for the period ending on January 1, 1976, of actuaries under such interim standards as it deems adequate.

(b) The Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this section if the Joint Board finds that such individual—

(1) has failed to discharge his duties under this Act, or

(2) does not satisfy the requirements for enrollment as in effect at the time of his enrollment.

The Joint Board may also, after notice and opportunity for hearing, suspend or terminate the temporary enrollment of an individual who fails to discharge his duties under this Act or who does not satisfy the interim enrollment standards.

AMENDMENT OF INTERNAL REVERSE CODE

SEC. 3043. Section 7701(a) of the Internal Revenue Code of 1954 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(35) ENROLLED ACTUARY.—The term 'enrolled actuary' means a person who is enrolled by the Joint Board of the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974."

## TITLE IV—PLAN TERMINATION INSURANCE

### SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

DEFINITIONS

SEC. 4001. (a) For purposes of this title, the term—

(1) "administrator" means the person or persons described in paragraph (16) of section 3 of this Act;

(2) "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(4) and (e)(3)(C) of such Code, as one employer) who has made contributions to or under a plan under which more than one employer makes contributions for each of—

(A) the two immediately preceding plan years, or

(B) the second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year;

(3) "multiemployer plan" means a multiemployer plan as defined in section 414(f) of the Internal Revenue Code of 1954 (as added by this Act but without regard to whether such section is in effect on the date of enactment of this Act);

(4) "corporation", except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 4002;

(5) "fund" means the appropriate fund established under section 4005;

(6) "basic benefits" means benefits guaranteed under section 4022 other than under section 4022(c); and

(7) "non-basic benefits" means benefits guaranteed under section 4022(c).

(b) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954. For purposes of this title, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer. The regulations prescribed under the preceding sentence shall be consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under section 414(c) of the Internal Revenue Code of 1954.

PENSION BENEFIT GUARANTY CORPORATION

SEC. 4002. (a) There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this title, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this title, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this title applies, and

(3) to maintain premiums charged by the corporation under section 4007 at the lowest level consistent with carrying out its obligations under this title.

(b) To carry out the purposes of this title, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act and, in addition to any specific power granted to the corporation elsewhere in this title or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by the board of directors, bylaws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this Act;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this Act in any State or other jurisdiction without regard to qualification, licensing, or other requirements imposed by law in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of any property, real, personal, or mixed, or any interest therein wherever situated;

(6) to appoint and fix the compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, and, to the extent desired by the corporation, require bonds for them and fix the penalty thereof, and to appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(7) to utilize the personnel and facilities of any other agency or department of the United States Government, with or without reimbursement, with the consent of the head of such agency or department; and

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the corporation by this Act.

(c) Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) In addition to the number of positions authorized by subsection (a), the Pension Benefit Guaranty Corporation is authorized, without regard to any other provision of this section, to place one position in the corporation at GS–18 and a total of 10 positions in the corporation at GS–16 and 17.".

(d) The board of directors of the corporation consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. Members of the board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board. The Secretary of Labor is the chairman of the board of directors.

(e) The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

(f) As soon as practicable, but not later than 180 days after the date of enactment of this Act, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. The chairman of the board shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less often than once each year.

(g)(1) The corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of any fund established under section 4005), shall be exempt from all taxation now or hereafter imposed by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

(2) The receipts and disbursements of the corporation in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitations imposed by statute on budget outlays of the United States. Except as explicitly provided in this title, the United States is not liable for any obligation or liability incurred by the corporation.

(3) Section 101 of the Government Corporation Control Act (31 U.S.C. 846) is amended by inserting before the period a semicolon and the following: "and Pension Benefit Guaranty Corporation".

(h)(1) There is established an advisory committee to the corporation, for the purpose of advising the corporation as to its policies and procedures relating to (A) the appointment of trustees in termination proceedings, (B) investment of moneys, (C) whether plans being terminated should be liquidated immediately or continued in operation under a trustee, and (D) such other issues as the corporation may request from time to time. The advisory committee may also recommend persons for appointment as trustees in termination proceedings, make recommendations with respect to the investment of moneys in the funds, and advise the corporations as to whether a plan subject to being terminated should be liquidated immediately or continued in operation under a trustee.

(2) The advisory committee consists of seven members appointed, from among individuals recommended by the board of directors, by the President. Of the seven members, two shall represent the interests of employee organizations, two shall represent the interests of employers who maintain pension plans, and three shall represent the interests of the general public. The President shall designate one member as chairman at the time of the nomination of that member.

(3) Members shall serve for terms of 3 years each, except that, of the members first appointed, one of the members representing the interests of employee organizations, one of the members representing the interests of employers, and one of the members representing the interests of the general public shall be appointed for terms of 2 years each, one of the members representing the interests of the general public shall be appointed for a term of 1 year, and the other members shall be appointed to full 3-year terms. The advisory committee shall meet at least six times each year and at such other times as may be determined by the chairman or requested by any three members of the advisory committee.

(4) Members shall be chosen on the basis of their experience with employee organizations, with employers who maintain pension plans, with the administration of pension plans, or otherwise on account of outstanding demonstrated ability in related fields. Of the members serving on the advisory committee at any time, no more than four shall be affiliated with the same political party.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of a member of the advisory committee shall be filled in the manner in which that office was originally filled.

(6) The advisory committee shall appoint and fix the compensation of such employees as it determines necessary to discharge its duties, including experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. The corporation shall furnish to the advisory committee such professional, secretarial, and other services as the committee may request.

(7) Members of the advisory committee shall, for each day (including traveltime) during which they are attending meetings or conferences of the committee or otherwise engaged in the business of the committee, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection.

INVESTIGATORY AUTHORITY; COOPERATION WITH OTHER AGENCIES; CIVIL ACTIONS

SEC. 4003. (a) The corporation may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder; and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any such investigation, or any other proceeding under this title, any member of the board of directors of the corporation, or any officer designated by the chairman, may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the corporation deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpena issued to any person, the corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue an order requiring such person to appear before the corporation, or member or officer designated by the corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

(d) In order to avoid unnecessary expense and duplication of functions among government agencies, the corporation may make such arrangements of agreements for cooperation or mutual assistance in the performance of its functions under this title as is practicable and consistent with law. The corporation may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment. The head of each department, agency, or establishment of the United States shall cooperate with the corporation and, to the extent permitted by law, provide such information and facilities as it may request for its assistance in the performance of its functions under this title. The Attorney General or his representative shall receive from the corporation for appropriate action such evidence developed in the performance of its functions under this title as may be found to warrant consideration for criminal prosecution under the provisions of this or any other Federal law.

(e)(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to redress violations of the provisions of this title.

(2) Except as otherwise provided in this title, where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) The district courts of the United States shall have jurisdiction of actions brought by the corporation under this title without regard to the amount in controversy in any such action.

(4) Upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation is a party, it is the duty of that court to assign such case for hearing at the earliest practical date and to cause such case to be in every way expedited.

(5) In any action brought under this title, whether to collect premiums, penalties, and interest under section 4007 or for any other purpose, the court may award to the corporation all or a portion of the costs of litigation incurred by the corporation in connection with such action.

TEMPORARY AUTHORITY FOR INITIAL PERIOD

SEC. 4004. (a) Notwithstanding anything to the contrary in this title, the corporation may, upon receipt of notice that a plan is to be terminated or upon making a determination described in section 4042, appoint a receiver whose powers shall take effect immediately. The receiver shall assume control of such plan and its assets, protecting the interests of all interested persons during subsequent proceedings.

(b)(1) Within a reasonable time, not exceeding 20 days, after the appointment of a receiver under subsection (a), the corporation shall apply to an appropriate United States district court for a decree approving such appointment. The court to which application is made shall issue a decree approving such appointment unless it determines that it would not be in the best interests of the participants and beneficiaries of the plan.

(2) If the court to which application is made under paragraph (1) dismisses the application with prejudice, or if the corporation fails to apply for a decree under paragraph (1) within 20 days after the appointment of the special receiver, the receiver shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of the 20 day period. The receiver shall not be liable to the plan or to any other person for his acts as receiver other than for willful misconduct, or for conduct in violation of the provisions of part 4 of subpart B of title I of this Act (except to the extent that the provisions of section 4042(d)(1)(A) provide otherwise).

(c) The corporation is authorized, as an alternative to appointing a receiver under subsection (a), to direct a plan administrator to apply to a district court of the United States for the appointment of a receiver to assume control of the plan and its assets for the purpose of protecting the interests of all interested persons until the plan can be terminated under the provisions of this title.

(d) A receiver appointed under this section has the powers of a trustee under section 4042(d)(1)(A) and (B) and shall report to the corporation and the court on the plan from time to time as required by the corporation or the court, respectively. As soon as practicable after his appointment, a receiver appointed under this section shall determine whether the assets of the plan are sufficient to discharge when due all obligations of the plan with respect to benefits guaranteed under this title in accordance with the requirements of section 4044. If the determination of the receiver is approved by the corporation and the court, the receiver shall proceed as if he were a trustee appointed under section 4042.

(e) A receiver may not be appointed under this section more than 270 days after the date of enactment of this Act.

(f) In addition to its other powers under this title, for only the first 270 days after the

date of enactment of this Act the corporation may—

(1) contract for printing without regard to the provisions of chapter 5 of title 44, United States Code,

(2) waive any notice required under this title if the corporation finds that a waiver is necessary or appropriate,

(3) extend the 90-day period referred to in section 4041(a) for an additional 90 days without the agreement of the plan administrator and without application to a court as required under section 4041(d), and

(4) waive the application of the provisions of sections 4062, 4063, and 4064 to, or reduce the liability imposed under such sections on, any employer with respect to a plan terminating during that 270 day period if the corporation determines that such waiver or reduction is necessary to avoid unreasonable hardship in any case in which the employer was not able, as a practical matter, to continue the plan.

ESTABLISHMENT OF PENSION BENEFIT GUARANTY FUNDS

SEC. 4005. (a) There are established on the books of the Treasury of the United States four revolving funds to be used by the corporation in carrying out its duties under this title. One of the funds shall be used in connection with benefits guaranteed under sections 4022 and 4023 (but not non-basic benefits) with respect to plans other than multiemployer plans, one of the funds shall be used with respect to such benefits guaranteed under such sections (other than non-basic benefits) for multiemployer plans, one of the funds shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 4022, for plans which are not multiemployer plans, and the remaining fund shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 4022 for multiemployer plans. Whenever in this title reference is made to the term "fund" the reference shall be considered to refer to the appropriate fund established under this subsection.

(b)(1) Each fund established under this section shall be credited with the appropriate portion of—

(A) funds borrowed under subsection (c),

(B) premiums, penalties, interest, and charges collected under this title,

(C) the value of the assets of a plan administered under section 4042 by a trustee to the extent that they exceed the liabilities of such plan,

(D) the amount of any employer liability payments collected under section 4067, to the extent that such payments exceed liabilities of the plan (taking into account all other plan assets),

(E) earnings on investments of the fund or on assets credited to the fund under this subsection, and

(F) receipts from any other operations under this title.

(2) Subject to the provisions of subsection (a), each fund shall be available—

(A) for making such payments as the corportation determines are necessary to pay benefits guaranteed under section 4022.

(B) for making such payments as the corporation determines are necessary under section 4023.

(C) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best protect the interests of the corporation, participants in the plan being terminated, and other insured plans.

(D) to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c), and

(E) to pay the operational and administrative expenses of the corporation, including reimbursement of the expenses incurred by the Department of the Treasury in maintaining the funds, and the Comptroller General in auditing the corporation.

(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States but, until all borrowings under subsection (c) have been repaid, the obligations in which such excess moneys are invested may not yield a rate of return in excess of the rate of interest payable on such borrowings.

(c) The corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

PREMIUM RATES

SEC. 4006. (a)(1) The corporation shall prescribe such insurance premium rates and such coverage schedules for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this title. The premium rates charged by the corporation for any period shall be uniform for all plans, other than multiemployer plans insured by the corporation, with respect to basic benefits guaranteed by it under section 4022, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under such section. The premium rates charged by the corporation for any period for non-basic benefits guaranteed by it shall be uniform by category of non-basic benefit guaranteed, shall be based on the risk insured in each category, and shall reflect the experience of the corporation (including reasonably anticiapted experience) in guaranteeing such benefits.

(2) The corporation shall maintain separate coverage schedules for—

(A) basic benefits guaranteed by it under section 4022 for—

(i) plans which are multiemployer plans, and

(ii) plans which are not multiemployer plans,

(B) employers insured under section 4023 against liability under subtitle D of this title, and

(C) non-basic benefits.

Except as provided in paragraph (3), the corporation may revise such schedules whenever it determines that revised rates are necessary, but a revised schedule described in subparagraph (A) shall apply only to plan years beginning more than 30 days after the date on which the Congress approves such revised schedule by a concurrent resolution.

(3) Except as provided in paragraph (4), the rate for all plans for benefits guaranteed under section 4022 (other than non-basic benefits) with respect to plan years ending no more than 35 months after the effective date of this title is—

(A) in the case of each plan which is not a multiemployer plan, an amount equal to one dollar for each individual who is a participant in such plan at any time during the plan year; and

(B) in the case of a multiemployer plan, an amount equal to fifty cents for each individual who is a participant in such plan, at any time during such plan year.

The rate applicable under this paragraph to any plan the plan year of which does not begin on the date of enactment of this Act is a fraction of the rate described in the preceding sentence, the numerator of which is the number of months which end before the date on which the new plan year commences and the denominator of which is 12. The corporation is authorized to prescribe regulations under which the rate described in subparagraph (B) will not apply to the same participant in any multiemployer plan more than once for any plan year.

(4) Upon notification filed with the corporation not less than 60 days after the date on which the corporation publishes the rates applicable under paragraph (5), at the election of a plan the rate applicable to that plan with respect to the second full plan year to which this section applies beginning after the date of enactment of this Act shall be the greater of—

(A) an alternative rate determined under paragraph (5), or

(B) one-half of the rate applicable to the plan under paragraph (3).

In the case of a multiemployer plan, the rate prescribed by this paragraph (at the election of a plan) for the second full plan year is also the applicable rate for plan years succeeding the second full plan year and ending before the full plan year first commencing after December 31, 1977.

(5) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 4022 the corporation shall establish such rates and bases in coverage schedules for plan years beginning 24 months or more after the date of enactment of this Act in accordance with the provisions of this paragraph. The corporation shall publish the rate schedules first applicable under this paragraph in the Federal Register not later than 270 days after the date of enactment of this Act.

(A) The corporation may establish annual premiums composed of—

(i) a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent for plans which are not multiemployer plans and not in excess of 0.025 percent for multiemployer plans, and

(ii) an additional charge based on the rate applicable to the present value of the basic benefits of the plan which are guaranteed, determined separately for multiemployer plans and for plans which are not multiemployer plans.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level (determined separately for multiemployer plans and for plans which are not multiemployer plans), which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the premiums referred to in clause (i) of this subparagraph.

(B) The corporation may establish annual premiums based on—

(i) the number of participants in a plan but such premium rates shall not exceed the rates described in paraagraph (3).

(ii) unfunded basic benefits guaranteed under this title, but such premium rates shall not exceed the limitations applicable under subparagraph (4) (i), or

(iii) total guaranteed basic benefits but such premium rates may not exceed the rates determined under subparagraph (A) (ii).

If the corporation uses 2 or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

(6) The corporation shall by regulation define the terms "value of the assets" and "present value of the benefits of the plan which are guaranteed" in a manner consistent with the purposes of this title and the provisions of this section.

(b) (1) In order to place a revised coverage schedule (other than a schedule described in subsection (a) (2) (B) or (C) 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 to the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Public Welfare of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the Congress favors the proposed revised coverage schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ———.", the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

(4) A resolution shall be referred 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 Public Welfare of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) When a committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Motions to postpone, made with respect to the discharge from the committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

PAYMENT OF PREMIUMS

SEC. 4007. (a) The plan administrator of each plan shall pay the premiums imposed by the corporation under this title with respect to that plan when they are due. Any employer obtaining contingent liability coverage under section 4023 shall pay the premiums imposed by the corporation under that section when due. Premiums under this title are payable at the time, and on an estimated, advance, or other basis, as determined by the corporation. Premiums imposed by this title on the date of enactment (applicable to that portion of any plan year during which such date occurs) are due within 30 days after such date. Premiums imposed by this title on the first plan year commencing after the date of enactment of this Act are due within 30 days after such plan year commences. Premiums shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure, or until a trustee is appointed pursuant to section 4042, whichever is earlier.

(b) If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the plan administrator obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the plan administrator, but the corporation may not grant a waiver if it appears that the plan administrator will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of the Internal Revenue Code of 1954 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

(c) If any plan administrator fails to pay a premium when due, the corporation is authorized to bring a civil action in any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or in which a defendant resides or is found for the recovery of the amount of the premium penalty, and interest, and process may be served in any other district. The district courts of the United States shall have jurisdiction over actions brought under this subsection by the corporation without regard to the amount in controversy.

(d) The corporation shall not cease to guarantee basic benefits on account of the failure of a plan administrator to pay any premium when due.

REPORT BY THE CORPORATION

SEC. 4008. As soon as practicable after the close of each fiscal year the corporation shall transmit to the President and the Congress a report relative to the conduct of its business under this title for that fiscal year. The report shall include financial statements setting forth the finances of the corporation at the end of such fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year and shall include an actuarial evaluation of the expected operations and status of the funds established under section 4005 for the next five years (including a detailed statement of the actuarial assumptions and methods used in making such evaluation).

PORTABILITY ASSISTANCE

SEC. 4009. The corporation shall provide advice and assistance to individuals with respect to evaluating the economic desirability of establishing individual retirement accounts or other forms of individual retirement savings for which a deduction is allowable under section 219 of the Internal Revenue Code of 1954 and with respect to evaluating the desirability, in particular cases, of transferring amounts representing an employee's interest in a qualified plan to such an account upon the employee's separation from service with an employer.

SUBTITLE B—COVERAGE

PLANS COVERED

SEC. 4021. (a) Except as provided in subsection (b), this section applies to any plan (including successor plan) which, for a plan year—

(1) is an employee pension benefit plan (as defined in paragraph (2) of section 3 of this Act) established or maintained—

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 (as in effect for the preceding 5 plan years of the plan) applicable to plans described in paragraph (2) for the preceding 5 plan years; or

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of the Internal Revenue Code of 1954, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of such Code.

For purpose of this title, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) This section does not apply to any plan—

(1) which is an individual account plan,

as defined in paragraph (34) of section 3 of this Act.

(2) established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality or any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act,

(3) which is a church plan as defined in section 414(e) of the Internal Revenue Code of 1954, unless that plan has made an election under section 410(d) of such Code, and has notified the corporation in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this part apply to it,

(4)(A) established and maintained by a society, order, or association described in section 501(c) (8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to or under the plan is made by employers of participants in the plan, or

(B) of which a trust described in section 501(c)(18) of such Code is a part;

(5) which has not at any time after the date of enactment of this Act provided for employer contributions;

(6) which is unfunded and which is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees:

(7) which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens;

(8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Internal Revenue Code of 1954 on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is maintained for such purpose, that part shall be treated for purposes of this title, as a separate plan which is an excess benefit plan;

(9) which is established and maintained exclusively for substantial owners as defined in section 4022(b)(6);

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act;

(11) maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35)(B) of section 3 of this Act; or

(13) established and maintained by a professional service employer which does not at any time after the date of enactment of this Act have more than 25 active participants in the plan.

(c)(1) For purposes of subsection (b)(1), the term "individual account plan" does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b)(13)—

(A) the term "professional service employer" means any proprietorship, partnership, corporation, or other association or organization (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

(B) the term "professional individuals" includes but it not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described in subsection (b)(13) if, at any time after the date of enactment of this Act the plan has more than 25 active participants.

BENEFITS GUARANTEED

SEC. 4022. (a) Subject to the limitations contained in subsection (b), the corporation shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when section 4021 applies to it.

(b)(1) Except to the extent provided in paragraph (8)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purpose of this subsection, the time a successor plan (within the meaning of section 4021(a)) has been in effect includes the time a previously established plan (within the meaning of section 4021(a)) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 4021 does not apply on the day after the date of enactment of this Act, the 60 month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denomination of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits.

(4)(A) The actuarial value of a benefit, for purposes of this subsection, shall be determined in accordance with regulations prescribed by the corporation.

(B) For purposes of paragraph (3)—

(i) the term "gross income" means "earned income" within the meaning of section 911(b) of the Internal Revenue Code of 1954 (determined without regard to any community property laws),

(ii) in the case of a participant in a plan under which contributions are made by more than one employer, amounts received as gross income from any employer under that plan shall be aggregated with amounts received from any other employer under that plan during the same period, and

(iii) any nonbasic benefit shall be disregarded.

(5) Notwithstanding paragraph (3), no person shall receive from the corporation for basic benefits with respect to a participant an amount, or amounts, with an actuarial value which exceeds a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under paragraph (3)(B) at the time of the last plan termination.

(6)(A) For purposes of this title, the term "substantial owner" means an individual who—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(c) of the Internal Revenue Code of 1954 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this title an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) (as limited under paragraph (3) of this subsection).

(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.

(7)(A) No benefits accrued under a plan after the date on which the Secretary of the Treasury issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401(a) of the Internal Revenue Code of 1954, or that the plan does not meet the requirements of section 404(a)(2) of such Code, are guaranteed under this section unless such determination is erroneous. This subparagraph does not apply if the Secretary subsequently issues a notice that such trust meets the requirements of section 401(a) of such Code or that the plan meets the requirements of section 404(a)(2) of such Code and if the Secretary determines that the trust or plan has taken action necessary to meet such requirements during the period between the issuance of the notice referred to in the preceding sentence and the issuance of the notice referred to in this sentence.

(B) No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury to determine that any trust un-

der the plan has ceased to meet the requirements of section 401(a) of the Internal Revenue Code of 1954 or that the plan has ceased to meet the requirements of section 404(a)(2) of such Code, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is revoked as of the date it was first effective or amended to comply with such requirements.

(8) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of—

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) $20 per month.

multipled by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect. In determining how many years a plan or amendment has been in effect for purposes of this paragraph, the first 12 months following the date on which the plan or amendment is made or first becomes effective (whichever is later) constitutes one year, and each consecutive period of 12 months thereafter constitutes an additional year. This paragraph does not apply to benefits payable under a plan unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this title.

(c) The corporation is authorized to guarantee the payment of such other classes of benefits and to establish the terms and conditions under which such other classes of benefits are guaranteed as it determines to be appropriate.

CONTINGENT LIABILITY COVERAGE

SEC. 4023. (a) The corporation shall insure any employer who maintains or contributes to or under a plan to which section 4021 applies against the payment of any liability imposed on him under subtitle D of this title in the event of a termination of that plan. The corporation may develop arrangements with persons engaged in the business of providing insurance under which the insurance coverage described in the preceding sentence could be provided in whole or in part by such private insurers. In developing such arrangements the corporation shall devise a system under which risks are equitably distributed between the corporation and private insurers with respect to the classes of employers insured by each.

(b) The corporation is authorized to prescribe and collect in such manner as it determines to be appropriate premiums for insurance offered under subsection (a). If the corporation requires all employers to which this title applies to purchase coverage under this section, the provisions of section 4007(b) and (c) apply to the collection of premiums under this section. The premiums shall be determined by the corporation and revised by it from time to time as may be necessary, and shall be chargeable at a rate sufficient to fund any payment by the corporation becoming necessary under such coverage.

(c) If the corporation is, in its determination, able to develop a satisfactory arrangement with private insurers, within 36 months after the date of enactment of this Act, to carry out the program of insurance authorized by this section in whole or in part, the corporation is authorized to require employers to elect coverage by such private insurance or by the corporation at such times and in such manner as the corporation determines necessary.

(d) No payment may be made by the corporation under any insurance provided by it under this section unless the premiums on such insurance have been paid by the employer and the insurance has been in effect (with respect to any benefit) for more than 60 months. The corporation is authorized to prescribe conditions under which no payment will be made by it under any insurance offered under this section without regard to whether premiums for such insurance have been paid.

(e) Nothing in this section precludes the purchase by the employer of insurance from any other person, or limits the circumstances under which that insurance is payable, or in any way limits the terms and conditions of such insurance, except that the corporation may prescribe as a condition precedent to the purchase of such insurance the payment of a reinsurance premium or other reasonable fee under this section determined by the corporation to be necessary to assure the liquidity and adequacy of any fund or funds established to carry out the provisions of this section.

(f) In carrying out its duties under subsection (a) to develop arrangements with private insurers the corporation shall consider as an alternative or as a supplement to private insurance the feasibility of using private industry guarantees, indemnities, or letters of credit.

SUBTITLE C—TERMINATIONS

TERMINATION BY PLAN ADMINISTRATOR

SEC. 4041. (a) Before the effective date of the termination of a plan, the plan administrator shall file a notice with the corporation that the plan is to be terminated on a proposed date (which may not be earlier than 10 days after the filing of the notice), and for a period of 90 days after the proposed termination date the plan administrator shall pay no amount pursuant to the termination procedure of the plan unless, before the expiration of such period, he receives a notice of sufficiency under subsection (b). Upon receiving such a notice, the plan administrator may proceed with the termination of the plan in a manner consistent with this subtitle.

(b) If the corporation determines that, after application of section 4044, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator of such determination as soon as practicable.

(c) If, within such 90-day period, the corporation finds that it is unable to determine that, if the assets of the plan are allocated in accordance with the provisions of section 4044, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator within such 90-day period of that finding. When the corporation issues a notice under this subsection, it shall commence proceedings in accordance with the provisions of section 4042. Upon receiving a notice under this subsection, the plan administrator shall refrain from taking any action under the proposed termination.

(d) The corporation and the plan administrator may agree to extend the 90-day period provided by this section by a written agreement signed by the corporation and the plan administrator before the expiration of the 90-day period, or the corporation may apply to an appropriate court (as defined in section 4042(g)) for an order extending the 90-day period provided by this section. The 90-day period shall be extended as provided in the agreement or in any court order obtained by the corporation. The 90-day period may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 90-day period, or by subsequent order of the court. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator or as specified in the court order.

(e) If, after the plan administrator has begun to terminate the plan as authorized by this section, the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay basic benefits when due, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall institute appropriate proceedings under section 4042. The plan administrator terminating a plan shall furnish such reports to the corporation as it may require for purposes of its duties under this section.

(f) For purposes of subsection (a), a plan with respect to which basic benefits are guaranteed shall be treated as terminated upon the adoption of an amendment to such plan, if, after giving effect to such amendment, the plan is a plan described in section 4021(b)(1).

(g) Notwithstanding any other provision of this title, a plan administrator or the corporation may petition the appropriate court for the appointment of a trustee in accordance with the provisions of section 4042 if the interests of the participants and beneficiaries would be better served by the appointment of the trustee.

TERMINATION BY CORPORATION

SEC. 4042. (a) The corporation may institute proceedings under this section to terminate a plan whenever it determines that—

(1) the plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code of 1954, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of such Code has been mailed with respect to the tax imposed under section 4971(a) of such Code,

(2) the plan is unable to pay benefits when due,

(3) the reportable event described in section 4043(b)(7) has occurred, or

(4) the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

The corporation may prescribe a simplified procedure to follow in terminating small plans as long as that procedure includes substantial safeguards for the rights of the participants and beneficiaries under the plans, and for the employers who maintain such plans (including the requirement for a court decree under subsection (c)). The corporation is authorized to pool the assets of such small plans for purposes of administration and such other purposes, not inconsistent with its duties to the plan participants and the employer maintaining the plan under this title, as it determines to be required for the efficient administration of this title.

(b) Whenever the corporation makes a determination under subsection (a) with respect to a plan if may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determination is made pending the issuance of a degree under subsection (c) ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan consents to the appointment of a trustee, or fails to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer the plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary. The corporation may request that it be appointed as trustee of a plan in any case.

(c) If the corporation has issued a notice under this section to a plan administrator and (whether or not a trustee has been ap-

pointed under subsection (b)) has determined that the plan should be terminated, it may, upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants and to avoid any further deterioration of the financial condition of the plan or any further increase in the liability of the fund. If the trustee appointed under subsection (b) disagrees with the determination of the corporation under the preceding sentence he may intervene in the proceeding relating to the application for the decree, or make application for such decree himself. Upon granting a decree for which the corporation or trustee has applied under this subsection the court shall authorize the trustee appointed under subsection (b) (or appoint a trustee if one has not been appointed under such subsection and authorize him) to terminate the plan in accordance with the provisions of this subtitle. If the corporation and the plan administrator agree that a plan should be terminated and agree to the appointment of a trustee without proceeding in accordance with the requirements of this subsection (other than this sentence) the trustee shall have the power described in subsection (d)(1) and, in addition to any other duties imposed on the trustee under law or by agreement between the corporation and the plan administrator, the trustee is subject to the duties described in subsection (d)(3). Whenever a trustee appointed under this title is operating a plan with discretion as to the date upon which final distribution of the assets is to be commenced, the trustee shall notify the corporation at least 10 days before the date on which he proposes to commence such distribution.

(d)(1)(A) A trustee appointed under subsection (b) shall have the power—

(i) to do any act authorized by the plan or this title to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee;

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan, regulations of the corporation, and applicable rules of law;

(iv) to limit payment of benefits under the plan to basic benefits or to continue payment of some or all of the benefits which were being paid prior to his appointment; and

(v) to do such other acts as he deems necessary to continue operation of the plan without increasing the potential liability of the corporation, if such acts may be done under the provisions of the plan.

If the court to which application is made under subsection (c) dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) within 30 days after the date on which the trustee is appointed under subsection (b), the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct, or for conduct in violation of the provisions of part 4 of subpart B of title I of this Act (except as provided in subsection (d)(1)(A)(v)). The 30-day period referred to in this subparagraph may be extended as provided by agreement between the plan administrator and the corporation or by court order obtained by the corporation.

(B) If the court to which an application is made under subsection (c) issues the decree requested in such application, in addition to the powers described in subparagraph (A), the trustee shall have the power—

(i) to pay benefits under the plan in accordance with the allocation requirements of section 4044;

(ii) to collect for the plan any amounts due the plan;

(iii) to receive any payment made by the corporation to the plan under this title;

(iv) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan, except to the extent that the corporation is an adverse party in a suit or proceeding;

(v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court;

(vi) to liquidate the plan assets;

(vii) to recover payments under section 4045(a); and

(viii) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries.

(2) As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this title to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term "interested party" means—

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant, and

(C) each employer who may be subject to liability under section 4062, 4063, or 4064.

(3) Except to the extent inconsistent with the provisions of this Act, or as may be otherwise ordered by the court, a trustee appointed under this section shall be subject to the same duties as a trustee appointed under section 47 of the Bankruptcy Act, and shall be, with respect to the plan, a fiduciary within the meaning of paragraph (21) of section 3 of this Act and under section 4975 (e) of the Internal Revenue Code of 1954 (except to the extent that the provisions of this title are inconsistent with the requirements applicable under part 4 of subtitle B of title I of this Act and of such section 4975).

(e) An application by the corporation under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act. Pending an adjudication under subsection (c) such court shall stay, and upon appointment by it of a trustee, as provided in this section such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

(g) An action under this subsection may be brought in the judicial district where the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

(h)(1) The amount of compensation paid to each trustee appointed under the provisions of this title shall require the prior approval of the corporation, and, in the case of a trustee appointed by a court, the consent of that court.

(2) Trustees shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel in accordance with regulations prescribed by the corporation.

REPORTABLE EVENTS

SEC. 4043. (a) Within 30 days after the plan administrator knows or has reason to know that a reportable event described in subsection (b) has occurred, he shall notify the corporation that such event has occurred. The corporation is authorized to waive the requirement of the preceding sentence with respect to any or all reportable events with respect to any plan, and to require the notification to be made by including the event in the annual report made by the plan. Whenever an employer making contributions under a plan to which section 4021 applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.

(b) For purposes of this section a reportable event occurs—

(1) when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2), or when the Secretary of Labor determines the plan is not in compliance with title I of this Act;

(2) when an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased;

(3) when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year;

(4) when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of the Internal Revenue Code of 1954, but the occurrence of such a termination or partial termination does not, by itself, constitute or require a termination of a plan under this title;

(5) when the plan fails to meet the minimum funding standards under section 412 of of such Code (without regard to whether the plan is a plan described in section 4021(a)(2) of this Act) or under section 302 of this Act;

(6) when the plan is unable to pay benefits thereunder when due;

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section 4022(b)(6) if—

(A) such distribution has a value of $10,000 or more;

(B) such distribution is not made by reason of the death of the participant; and

(C) immediately after the distribution, the plan has nonforfeitable benefits which are not funded;

(8) when a plan merges, consolidates, or transfers its assets under section 208 of this Act, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 110 of this Act; or

(9) when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.

For purposes of paragraph (7), all distributions to a participant within any 24 month period are treated as a single distribution.

(c) The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

(d) The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described

in paragraph (1), (5), or (8) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

ALLOCATION OF ASSETS

Sec. 4044. (a) In the case of the termination of a defined benefit plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) First, to that portion of each individual's accrued benefit which is derived from the participant's contributions to the plan which were not mandatory contributions.

(2) Second, to that portion of each individual's accrued benefit which is derived from the participant's mandatory contributions.

(3) Third, in the case of benefits payable as an annuity—

(A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

(B) in the case of a participant's or beneficiary's benefit (other than a benefit described in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(4) Fourth—

(A) to all other benefits (if any) of individuals under the plan guaranteed under this title (determined without regard to section 4022(b)(5)), and

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 4022(b)(6) did not apply.

For purposes of this paragraph, section 4021 shall be applied without regard to subsection (c) thereof.

(5) Fifth, to all other nonforfeitable benefits under the plan.

(6) Sixth, to all other benefits under the plan.

(b) For purposes of subsection (a)—

(1) The amount allocated under any paragraph of subsection (a) with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of subsection (a).

(2) If the assets available for allocation under any paragraph of subsection (a) (other than paragraphs (5) and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

(A) If this paragraph applies, except as provided in subparagraph (B), the assets shall be allocated to the benefits of individuals described in such paragraph (5) on the basis of the benefits of individuals which would have been described in such paragraph (5) under the plan as in effect at the beginning of the 5-year period ending on the date of plan termination.

(B) If the assets available for allocation under subparagraph (A) are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph (A), benefits of individuals described in such subparagraph shall be determined on the basis of the plan as amended by the most recent plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph (A) and any assets remaining to be allocated under such subparagraph shall be allocated under subparagraph (A) on the basis of the plan as amended by the next succeeding plan amendment effective during such period.

(4) If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1954 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 4401(a), 403(a), or 405(a) of such Code, the assets allocated under subsection (a)(4)(B), (a)(5), and (a)(6) shall be reallocated to the extent necessary to avoid such discrimination.

(5) The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

(6) A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) in accordance with regulations prescribed by the corporation.

(c) Any increase or decrease in the value of the assets of a plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 4042 (b) or (2) the date on which the plan is terminated is to be allocated between the plan and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator in any other case. Any increase or decrease in the value of the assets of a plan occurring after the date on which the plan is terminated shall be credited to or suffered by the corporation.

(d)(1) Any residual assets of a plan may be distributed to the employer if—

(A) all liabilities of the plan to participants and their beneficiaries have been satisfied.

(B) the distribution does not contravene any provision of law, and

(C) the plan provides for such a distribution in these circumstances.

(2) Notwithstanding the provisions of paragraph (1), if any assets of the plan attributable to employee contributions remain after all liabilities of the plan to participants and their beneficiaries have been satisfied, such assets shall be equitably distributed to the employees who made such contributions (or their beneficiaries) in accordance with their rate of contributions.

RECAPTURE OF CERTAIN PAYMENTS

Sec. 4045. (a) Except as provided in subsection (c), the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b)) of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated.

(b) For purposes of subsection (a) the recoverable amount is the excess of the amount determined under paragraph (1) over the amount determined under paragraph (2).

(1) The amount determined under this paragraph is the sum of the amount of the actual payments received by the participant within the 3-year period.

(2) The amount determined under this paragraph is the sum of —

(A) the sum of the amount such participant would have received during each consecutive 12-month period within the 3 years if the participant received the benefit in the form described in paragraph (3),

(B) the sum for each of the consecutive 12-month periods of the lesser of—

(i) the excess, if any, of $10,000 over the benefit in the form described in paragraph (3), or

(ii) the excess of the actual payment, if any, over the benefit in the form described in paragraph (3), and

(C) the present value at the time of termination of the participant's future benefits guaranteed under this title as if the benefits commenced in the form described in paragarph (3).

(3) The form of benefit for purposes of this subsection shall be the monthly benefit the participant would have received during the consecutive 12-month period, if he had elected at the time of the first payment made during the 3-year period, to receive his interest in the plan as a monthly benefit in the form of a life annuity commencing at the time of such first payment.

(c)(1) In the event of a distribution described in section 4043(b)(7) the 3-year period referred to in subsection (b) shall not end sooner than the date on which the corporation is notified of the distribution.

(2) The trustee shall not recover any payment made from a plan after or on account of the death of a participant, or to a participant who is disabled (within the meaning of section 72(m)(7) of the Internal Revenue Code of 1954).

(3) The corporation is authorized to waive, in whole or in part, the recovery of any amount which the trustee is authorized to recover for the benefit of a plan under this section in any case in which it determines that substantial economic hardship would result to the participant or his beneficiaries from whom such amount is recoverable.

REPORTS TO TRUSTEE

Sec. 4046. The corporation and the plan administrator of any plan to be terminated under this subtitle shall furnish to the trustee such information as the corporation or the plan administrator has and, to the extent practicable, can obtain regarding—

(1) the amount of benefits payable with respect to each participant under a plan to be terminated,

(2) the amount of benefits guaranteed under section 4022 which are payable with respect to each participant in the plan.

(3) the present value, as of the time of termination, of the aggregate amount of benefits payable under section 4022 (determined without regard to section 4022(b)(5)).

(4) the fair market value of the assets of the plan at the time of termination,

(5) the computations under section 4044, and all actuarial assumptions under which the items described in paragraphs (1) through (4) were computed, and

(6) any other information with respect to the plan the trustee may require in order to terminate the plan.

RESTORATION OF PLANS

Sec. 4047. Whenever the corporation determines that a plan which is to be terminated, or which is in the process of being terminated, under this subtitle should not be terminated as a result of such circumstances

as the corporation determines to be relevant, the corporation is authorized to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated. In the case of a plan which has been terminated under section 4042 the corporation is authorized in any such case in which the corporation determines such action to be appropriate and consistent with its duties under this title, to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator control of part or all of the remaining assets and liabilities of the plan.

DATE OF TERMINATION

SEC. 4048. For purposes of this title the date of termination is—

(1) in the case of a plan terminated in accordance with the provisions of section 4041, the date established by the plan administrator and agreed to by the corporation,

(2) in the case of a plan terminated in accordance with the provisions of section 4042, the date established by the corporation and agreed to by the plan administrator, or

(3) in the case of a plan terminated in accordance with the provisions of either section in any case in which no agreement is reached between the plan administrator and the corporation (or the trustee), the date established by the court.

SUBTITLE D—LIABILITY

AMOUNTS PAYABLE BY THE CORPORATION

SEC. 4061. The corporation shall pay benefits under a plan terminated under this title subject to the limitations and requirements of subtitle C of this title. Amounts guaranteed by the corporation under section 4022 shall be paid by the corporation out of the appropriate fund.

LIABILITY OF EMPLOYER

SEC. 4062. (a) This section applies to any employer who maintained a plan (other than a multiemployer plan) at the time it was terminated, but does not apply—

(1) to an employer who maintained a plan with respect to which he paid the annual premium described in section 4006(a)(2)(B) for each of the 5 plan years immediately preceding the plan year during which the plan terminated unless the conditions imposed by the corporation on the payment of coverage under section 4023 do not permit such coverage to apply under the circumstances, or

(2) to the extent of any liability arising out of the insolvency of an insurance company with respect to an insurance contract.

(b) Any employer to which this section applies shall be liable to the corporation, in an amount equal to the lesser of—

(1) the excess of—

(A) the current value of the plan's benefits guaranteed under this title on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section.

(c) For purposes of subsection (b)(2) the net worth of an employer is—

(1) determined on whatever basis best reflects, in the determination of the corporation, the current status of the employer's operations and prospects at the time chosen for determining the net worth of the employer, and

(2) increased by the amount of any transfers of assets made by the employer determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under the Bankruptcy Act if the employer were the subject of a proceeding under that Act.

(d) For purposes of this section the following rules apply in the case of certain corporate reorganizations.

(1) If an employer ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the employer to whom this section applies.

(2) If an employer ceases to exist by reason of a liquidation into a parent corporation, the parent corporation shall be treated as the employer to whom this section applies.

(3) If an employer ceases to exist by reason of a merger or, consolidation, or division, the successor corporation or corporations shall be treated as the employer to whom this section applies.

(e) If an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment, the employer shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 4063, 4064, and 4065 shall apply.

LIABILITY OF SUBSTANTIAL EMPLOYER FOR WITHDRAWAL

SEC. 4063. (a) Except as provided in subsection (d), the plan administrator of a plan under which more than one employer makes contributions—

(1) shall notify the corporation of the withdrawal of a substantial employer from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of such employer under this subtitle with respect to such withdrawal.

The corporation shall as soon as practicable thereafter, determine whether such employer is liable for any amount under this subtitle with respect to the withdrawal and notify such employer of such liability.

(b) Except as provided in subsection (c), an employer who withdraws from a plan to which section 4021 applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a), shall be liable to the corporation in accordance with the provisions of section 4062 and this section. The amount of such employer's liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 4062 for the entire plan, as if the plan had been terminated by the corporation on the date of the employer's withdrawal, multiplied by a fraction—

(1) the numerator of which is the total amount required to be contributed to the plan by such employer for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount required to be contributed to the plan by all employers for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceeding sentence, the corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions of paragraphs (2) and (3) of subsection (c).

(c)(1) In lieu of payment of his liability under this section the employer may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 6 through 13 of title 6, United States Code. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated within the 5-year period commencing on the day of withdrawal the liability of such employer is abated and any payment held in escrow shall be refunded without interest to the employer (or his bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the employer which is not required to meet any obligation of the corporation with respect to the law.

(d) The provisions of this subsection apply in the case of a withdrawal described in subsection (a), and the provisions of subsections (b) and (c) shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 4064 and is more appropriate in the particular case. Upon a showing by the plan administrator of a plan that the withdrawal from the plan by any employer or employers has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan by employers, the corporation may—

(1) require the plan fund to be equitably allocated between those participants no longer working in covered service under the plan as a result of their employer's withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a termination; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section to any employer or plan administrator whenever it determines that there is an indemnity agreement in effect among all other employers under the plan which is adequate to satisfy the purposes of this section and of section 4064.

LIABILITY OF EMPLOYERS ON TERMINATION OF PLAN MAINTAINED BY MORE THAN ONE EMPLOYER

SEC. 4064. (a) This section applies to all employers who maintain a plan under which more than one employer makes contributions at the time such plan is terminated, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan.

(b) The corporation shall determine the liability of each such employer in a manner consistent with section 4062 except that the amount of the liability determined under section 4062(b)(1) with respect to the entire plan shall be allocated to each employer by multiplying such amounts by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan by each employer for the last 5 plan years ending prior to the termination, and

(2) the denominator of which is the total amount required to be contributed to the plan by all such employers for such last 5 years.

and the limitation described in section 4062 (b)(2) shall be applied separately to each employer. The corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations.

ANNUAL REPORT OF PLAN ADMINISTRATOR

SEC. 4065. For each plan year for which section 4021 applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

(1) a copy of each notification required under section 4063 with respect to such year, and

(2) a statement disclosing whether any reportable event (described in section 4043 (b) occurred during the plan year.

The report shall be filed within 6 months after the close of the plan year to which it relates. The corporation shall cooperate with the Secretary of the Treasury and the Secretary of Labor in an endeavor to coordinate the timing and content, and possibly obtain the combination, of reports under this section with reports required to be made by plan administrators to such Secretaries.

ANNUAL NOTIFICATION TO SUBSTANTIAL EMPLOYERS

SEC. 4066. The plan administrator of each plan under which contributions are made by more than one employer shall notify, within 6 months after the close of each plan year, any employer making contributions under that plan who is described in section 4001 (a)(2) that he is a substantial employer for that year.

RECOVERY OF EMPLOYER LIABILITY FOR PLAN TERMINATION

SEC. 4067. The corporation is authorized to make arrangements with employers who are liable under section 4062, 4063, or 4064 for payment of their liability, including arrangements for deferred payment on such terms and for such periods as the corporation deems equitable and appropriate.

LIEN FOR LIABILITY OF EMPLOYER

SEC. 4068. (a) If any employer or employers liable to the corporation under section 4062, 4063, or 4064 neglect or refuse to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation upon all property and rights to property, whether real or personal, belonging to such employer or employers.

(b) The lien imposed by subsection (a) arises—

(1) on the later of—

(A) the date on which a trustee is appointed under section 4042(b), or

(B) the date on which application is made for a decree under section 4042(c), or

(2) on the date agreed upon by the corporation and the plan as the date of termination in the case of a voluntary termination.

The lien shall continue until the liability imposed under section 4062, 4063, or 4064 is satisfied or becomes unenforceable by reason of lapse of time.

(c)(1) Except as otherwise provided under this section, the priority of the lien imposed under subsection (a) shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. Such section 6323 shall be applied by substituting "lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974" for "lien imposed by section 6321"; "corporation" for "Secretary or his delegate"; "employer liability lien" for "tax lien"; "employer" for "taxpayer"; "lien arising under section 4068(a) of the Employee Retirement Income Security Act of 1974" for "assessment of the tax"; and "payment of the loan value is made to the corporation" for "satisfaction of a levy pursuant to section 6332(b)"; each place such terms appear.

(2) In the case of bankruptcy or insolvency proceedings, the lien imposed under subsection (a) shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

(3) For purposes of applying section 6323 (a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under subsection (a) and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) shall be filed in the same manner as under section 6323 (f) and (g) of the Internal Revenue Code of 1954.

(d)(1) In any case where there has been a refusal or neglect to pay the liability imposed under section 4062, 4063, or 4064, the corporation may bring civil action in a district court of the United States to enforce the lien of the corporation under this section with respect to such liability or to subject any property, of whatever nature, of the employer, or in which he has any right, title, or interest to the payment of such liability.

(2) The liability imposed by section 4062, 4063, or 4064 may be collected by a proceeding in court if the proceeding is commenced within 6 years after the date upon which the plan was terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the employer before the expiration of such 6-year period. The period of limitations provided under this paragraph shall be suspended for the period the assets of the employer are in the control or custody of any court of the United States, or of any State, or of the District of Columbia, and for 6 months thereafter, and for any period during which the employer is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) If the corporation determines, with the consent of the board of directors, that release of the lien or subordination of the lien to any other creditor of the employer or employers would not adversely affect the collection of the liability imposed under section 4062, 4063, or 4064, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such release or subordination, and that the ultimate collection of the liability will be facilitated by such release or subordination, the corporation may issue a certificate of release or subordination of the lien with respect to such property, or any part thereof.

SUBTITLE E—AMENDMENTS TO INTERNAL REVENUE CODE OF 1954; EFFECTIVE DATES

AMENDMENTS TO INTERNAL REVENUE CODE OF 1954

SEC. 4081. (a) Section 404 of the Internal Revenue Code of 1954 (relating to deduction for contributions of an employer to employees' trust or annuity plan in compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection:

"(g) CERTAIN EMPLOYER LIABILITY PAYMENTS CONSIDERED AS CONTRIBUTIONS.—For purposes of this section any amount paid by an employer under section 4062, 4063, or 4064 of the Employer Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.".

(b) Section 6511(d) of the Internal Revenue Code of 1954 (relating to special rules applicable to income taxes) is amended by adding at the end thereof the following new paragraph:

"(8) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO AMOUNTS INCLUDED IN INCOME SUBSEQUENTLY RECAPTURED UNDER QUALIFIED PLAN TERMINATION.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.".

EFFECTIVE DATE; SPECIAL RULES

SEC. 4082. (a) The provisions of this title take effect on the date of enactment of this Act.

(b) Notwithstanding the provisions of subsection (a), the corporation shall pay benefits guaranteed under this title with respect to any plan—

(1) which is not a multiemployer plan,

(2) which terminates after June 30, 1974, and before the date of enactment of this Act,

(3) to which section 4021 would apply if that section were effective beginning on July 1, 1974, and

(4) with respect to which a notice is filed with the Secretary of Labor and received by him not later than 10 days after the date of enactment of this Act, except that, for reasonable cause shown, such notice may be filed with the Secretary of Labor and received by him not later than October 31, 1974, stating that the plan is a plan described in paragraphs (1), (2), and (3).

The corporation shall not pay benefits granted guaranteed under this title with respect to a plan described in the preceding sentence if the corporation finds that the plan was terminated for the purpose (whether or not the primary purpose) of obtaining the payment of such benefits by the corporation, avoiding the liability which would be imposed under subtitle D if the plan terminated on or after the date of enactment of this Act, or for both such purposes.

The provisions of subtitle D do not apply in the case of such a plan which terminates before the date of enactment of this Act. For purposes of determining whether a plan is a plan described in paragraph (2), the provisions of section 4048 shall not apply, but the corporation shall make the determination on the basis of the date on which benefits ceased to accrue or on any other reasonable basis consistent with the purposes of this subsection.

(c)(1) Except as provided in paragraphs (2), (3), and (4), the corporation shall not pay benefits guaranteed under this title with respect to a multiemployer plan which terminates before January 1, 1978. Whenever the corporation exercises the authority granted under paragraph (2) or (3), the corporation shall notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Labor and Public Welfare and the Committee on Finance of the Senate.

(2) The corporation may, in its discretion pay benefits guaranteed under this title with respect to a multiemployer plan which terminates after the date of enactment of this Act and before January 1, 1978, if—

(A) the plan was maintained during the 60 months immediately preceding the date on which the plan terminates, and

(B) the corporation determines that the payment by the corporation of benefits guaranteed under this title with respect to that plan will not joepardize the payments the corporation anticipates it may be required to make in connection with benefits guaranteed under this title with respect to multiemployer plans which terminate after December 31, 1977.

(3) Notwithstanding any provision of section 4021 or 4022 which would prevent such

payments, the corporation, in carrying out its authority under the paragraph (2), may pay benefits guaranteed under this title with respect to a multiemployer plan described in paragraph (2) in any case in which those benefits would otherwise not be payable if—

(A) the plan has been in effect for at least 5 years,

(B) the plan has been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding 5 years, and

(C) the participating employers and employee organization or organizations had no reasonable recourse other than termination.

(4) If the corporation determines, under paragraph (2) or (3), that it will pay benefits guaranteed under this title with respect to a multiemployer plan which terminates before January 1, 1978, the corporation—

(A) may establish requirements for the continuation of payments which commenced before January 2, 1974, with respect to retired participants under the plan,

(B) may not, notwithstanding any other provision of this title, make payments with respect to any participant under such a plan who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to such participant on that date,

(C) may not make any payments with respect to benefits guaranteed under this title in connection with such a plan which are derived, directly or indirectly, from amounts borrowed under section 4005(c), and

(D) shall review from time to time payments made under the authority granted to it by paragraph (2) and (3), and reduce or terminate such payments to the extent necessary to avoid jeopardizing the ability of the corporation to make payments of benefits guaranteed under this title in connection with multiemployer plans which terminate after December 31, 1977, without increasing premium rates for such plans.

And the Senate agree to the same.

CARL D. PERKINS,
FRANK THOMPSON, Jr.,
JOHN H. DENT,
PHILLIP BURTON,
ALBERT H. QUIE,
JOHN N. ERLENBORN,
RONALD A. SARASIN,
*Managers on the Part of the House as to Title I of the House Bill.*

AL ULLMAN,
JAMES A. BURKE,
MARTHA W. GRIFFITHS,
DAN ROSTENKOWSKI,
H. T. SCHNEEBELI,
HAROLD R. COLLIER,
JOEL T. BROYHILL,
*Managers on the Part of the House as to Title II of the House Bill.*

RUSSELL LONG,
HARRISON A. WILLIAMS,
JENNINGS RANDOLPH,
GAYLORD NELSON,
LLOYD BENTSEN,
JACOB K. JAVITS,
RICHARD S. SCWEIKER,
WALLACE F. BENNETT,
CARL T. CURTIS,
*Managers on the Part of the Senate.*

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2) to provide for pension reform, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute amendment. The conference has agreed to a substitute for both the Senate amendment and the House bill. The statement following the table of contents explains the principal differences between the substitute agreed to in conference and the House and Senate bills.

I. REPORTING AND DISCLOSURE (SECS. 101–111 OF THE BILL)

The House bill requires annual reporting of detailed financial and actuarial data and comprehensive plan descriptions to the Secretary of Labor, and disclosure of more limited data to the participants. The financial and actuarial data filed with the Secretary of Labor are required to be in the form of a conventional audited financial statement prepared by a qualified accountant and a certified actuarial statement prepared by an enrolled actuary.

The Senate bill requires submission of comparable financial and actuarial data and plan descriptions to both the Secretary of Labor and participants. Like the House bill, actuarial data is required to be certified by an enrolled actuary. Unlike the House bill, all reports were required to be submitted on forms promulgated by the Secretary. The conference substitute is described below. In general, the substitute combines the rules of both the House and Senate bill.

The conference substitute adopts the reporting format contained in both the House and Senate bills. Each plan (unless exempted) is to be required to report annually to the Secretary of Labor certain financial and actuarial data. In addition to these reports, each plan will be required to have prepared an audited financial statement and defined benefit plans must have a certified actuarial report. Special reports are also required at the time of plan terminations.

The Secretary of Labor is given the authority to prescribe forms for reports to him (other than the audited financial statement and certified actuarial report) paralleling similar authority already available to the Secretary of Treasury. The two Secretaries are to unify, to the extent feasible, the reports made to them and it is expected that all of the material subject to the form authority of either Secretary, comprising the annual reports to be made by a plan, can and should be reported on a single form.

*Plans subject to the provisions and exemptions*

Under the conference substitute, the new reporting and disclosure requirements are to be administered by the Secretary of Labor and are to be applied to all pension and welfare plans established or maintained by an employer or employee organization engaged in, or affecting, interstate commerce. Governmental plans, certain church plans, workmen's compensation and unemployment compensation plans, plans maintained outside the United States for the benefit of persons substantially all of whom are nonresident aliens, and so-called excess benefit plans, which provide benefits in addition to those for which deductions may be taken under the tax laws, are exempted from the requirements. The Secretary of Labor also is authorized to waive and modify certain of these requirements for employee benefit plans.

All plans of the types subject to the reporting and disclosure provisions are to be required to file an annual report with the Secretary of Labor regardless of the number of participants involved. However, simplified reports may be authorized for plans with fewer than 100 participants.

*Contents of annual report*

The annual report generally is to include audited financial statements for both welfare plans and pension plans. With respect to welfare plans the statement is to include a statement of assets and liabilities, a statement of changes in fund balance, and a statement of changes in financial position. With respect to employee pension plans the statement is to include a statement of assets and liabilities and a statement of changes in net assets available for plan benefits, including details as to revenues and expenses and other changes aggregated by general source and application.

In the notes to the annual financial statement, the accountant is to disclose any significant changes in the plan, material lease commitments and contingent liabilities, any agreements and transactions with persons known to be parties-in-interest, information as to whether a tax ruling or determination letter has been obtained, and any other relevant matters necessary to fairly present the financial status of the plan. In addition, in the case of employee pension plans the notes should also deal with funding policy (including policy with respect to prior service costs and changes in such policies during the year). An accountant may rely on the correctness of any actuarial matter certified by any enrolled actuary if the accountant indicates his reliance on such certification.

In addition to the audited financial statement, the annual report is to include for all employee benefit plans a statement on separate schedules showing among other things, a statement of plan assets and liabilities aggregated by categories, a statement of receipts and disbursements, a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessee and a schedule of each transaction involving a person known to be a party-in-interest. Also, a schedule of all loans and leases in default at the end of the year or which are classified during the year as uncollectible is to be included in the annual report.

There is also to be supplied with the annual report a schedule listing each transaction which exceeds 3 percent of the value of the fund. If some or all of the assets of a plan are held in a common or collective trust maintained by a bank or similar institution the annual report is to include the most recent annual statement of assets and liabilities of the common or collective trust. (The Secretary of Labor will have authority to prescribe for the filing of a master copy of the annual statement of this common or collective trust in order to avoid duplicate filings of this statement by plans participating in this common or collective trust.)

With respect to persons employed by the plan the annual report is to include the name and address of each fiduciary, the name of each person who receives more than minimal compensation from the plan for services rendered, along with the amount of compensation (or who perform duties which are not ministerial), the nature of the services, and the relationship to the employer or any other party in interest to the plan. Also, the reasons for any changes in trustees, accountant, actuary, investment manager, or administrator are to be provided in the annual report.

As indicated in the discussion of the funding provisions, under the conference agreement, the annual report is to include an actuarial statement for all pension plans which are subject to the funding requirements of title I. If plan benefits are purchased from, and guaranteed by, an insurance company, the annual report is to include the premiums paid, benefits paid, charges for administrative expenses, commissions and other information. The insurance carrier is to certify to the plan administrator the information needed to comply with the annual reporting requirements within 120 days after the close of the plan year, or within such other period as is prescribed by the Secretary of Labor.

The annual report for a plan is to be filed within 210 days after the close of the plan year or within such period of time as the Secretary of Labor may require in order to reduce the necessity for duplicate filing with the Internal Revenue Service. The Secretary of Labor may reject the filing of an annual report if he finds that it is incomplete or there is a material qualification in the accountant's or actuary's opinion. If a revised report is not submitted within 45 days after rejection, the Secretary may retain an accountant to perform an audit, or retain an actuary, whichever is appropriate, or bring a civil action for legal or equitable relief. The plan is to bear the costs of any expenses of an audit or actuarial report.

*Accountant and actuary reports*

Every plan is to retain on behalf of its participants an independent qualified public accountant who annually is to prepare an audited financial statement of the plan's operations. The accountant is to give an opinion as to whether the financial statements of the plan conform with generally accepted accounting principles and the statement is to be based upon an examination in accordance with generally accepted auditing standards. An accountant's opinion is not to be required for statements prepared by banks or similar institutions or an insurance carrier if the statements of the bank or insurance carrier are certified by the bank and are made part of an annual report. For purposes of this provision a qualified public accountant includes certified public accountants, licensed public accountants and any person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in a State where there is no certification or licensing procedure for accountants. Further, to the extent a plan is not required to make an annual report to the Secretary of Labor an annual audit is not required (and an independent, qualified public

accountant need not be retained). Also the Secretary of Labor may waive the the requirement of an audited financial statement in cases where simplified annual reports are permitted to be filed.

Every plan subject to the funding requirements of title I must retain an enrolled actuary who is to prepare an actuarial statement on an annual basis. This statement is to show the present value of all plan liabilities for nonforfeitable pension benefits allocated by the termination priority categories. The actuary is to supply a statement to be filed with the annual report as to his opinion as to whether the actuarial statements of the plan are reasonably related to the experience of the plan and to the reasonable expectations of the plan. The actuary is to use assumptions and techniques as are necessary to form an opinion as to whether the contents of the matters upon which he reports are in the aggregate reasonably related to the experience of the plan and to reasonable expectations, and represent his best estimate of anticipated experience under the plan. The actuarial statement is not required for plans which need not file annual reports, and may be waived by the Secretary of Labor for plans for which simplified annual reports are allowed.

*Reports on termination*

In addition to the annual reports which must be filed with the Secretary of Labor, special terminal reports are required to be filed for pension plans that are winding up their affairs. These terminal reports may also be required by the Secretary of Labor for welfare plans. Also in the year a plan is terminated the Secretary may require the supplementary information to be filed with the annual report.

*Disclosure to participants*

Each administrator of an employee benefit plan is to furnish to each participant and to each beneficiary a summary plan description written in a manner calculated to be understood by the average plan participant or beneficiary. The summary is to include important plan provisions, names and addresses of persons responsible for plan investment or management, a description of benefits, the circumstances that may result in disqualification or ineligibility and the procedures to be followed in presenting claims for benefits under the plan.

Summary plan descriptions are to be furnished to participants within the matter of 120 days after the plan is established or 90 days after an individual becomes a participant. Updated plan descriptions are also to be provided to participants every five years thereafter where there have been plan amendments in the interim; in any case, a new description is to be provided every ten years. Also, participants are to receive descriptions of material changes in a plan within 210 days after the end of any plan year in which a material change occurs. Also, the annual report and plan documents are to be available for examination by participants or beneficiaries at the principal office of the plan administrator and such other places as is necessary to provide reasonable access to these reports and documents. Thus, if the participants covered under the plan are employed in more than one geographic area, each geographic area is to have available for examination the required documents. Each participant is also to be furnished a copy within 210 days after the close of the plan year of the schedule of plan assets and liabilities and receipts and disbursements as submitted with the annual report, including any other material which is necessary to thoroughly summarize the latest annual report. Upon a written request, a plan administrator is to furnish a participant or beneficiary a complete copy of the comprehensive plan description, the latest annual report and other instruments under which the plan is established and operated. The plan administrator may charge a reasonable amount for fulfilling such a request.

Upon the request of a plan participant or beneficiary, a plan administrator is to furnish on the basis of the latest available information the total benefits accrued and the nonforfeitable pension benefit rights, if any, which have accrued. No more than one request may be made by any participant or beneficiary for this information during any one 12-month period.

A copy of the statement of the deferred vested benefits in the plan for individuals who have terminated employment during a plan year which is furnished to the Social Security Administration also is to be furnished to the individual participant.

*Reports made public information*

The contents of the descriptions of plans and reports filed with the Secretary of Labor are to be public information and are to be available for inspection in the Department of Labor. In addition, the Secretary of Labor may use the information and data for statistical and research purposes and for the compiling and publishing of studies as he may deem appropriate. However, information with respect to a plan participant's accrued benefits and nonforfeitable pension rights is to be disclosed only to the extent that information respecting a participant's benefits for old age retirement insurance may be disclosed under the Social Security Act.

*Forms to be provided*

The Secretary of Labor may require that any information required to be filed with the Labor Department, including statements and schedules attached to the annual report, must be submitted on forms that he may prescribe. The financial statement prepared by the independent qualified accountant and the actuarial statement prepared by the enrolled actuary and the summary of the plan description are not required to be submitted on forms. However, the Secretary may prescribe the format and content of the accountant's and actuary's statements and of the summary plan description, the summary annual report, and other statements or reports required under title I to be furnished or made available to participants and beneficiaries.

EFFECTIVE DATES

The conference agreement provides that the reporting and disclosure provisions generally are to take effect on January 1, 1975. However, in the case of a fiscal year plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary of Labor may by regulation postpone the effective date until the beginning of the first plan year of the plan which begins after January 1, 1975.

II. PARTICIPATION AND COVERAGE (SECS. 201, 202, AND 1011 OF THE BILL AND SECS. 401 AND 410 OF THE INTERNAL REVENUE CODE)

The House bill provides that an employee cannot be excluded from a plan on account of age or service if the employee is at least 25 years old and has had at least one year of service, or, if he has three years of service, the employee cannot be excluded even though he is not yet 25. The 1-year service requirement (for employees 25 and older) may be extended to 3 years if the plan provides full and immediate vesting for all participants. Under the Senate amendmnet, an employee cannot be excluded on account of age or service if he has attained age 30 with 1 year of service.

The conference substitute is described below. In general, the substitute follows the rules of the House bill in this area with respect to technical matters.

*Plans subject to the provisions*

Under title I of the conference substitute (the labor law provisions) the new participation and coverage rules are to be enforced by the Secretary of Labor when participants bring violations to his attention or when cases come to his attention which initially were under consideration by the Secretary of Treasury on which he has previously initiated action.

The rules are to apply to employee pension benefit plans of employers or employee organizations established in or affecting interstate commerce. Under title II (the tax law provisions), the participation and coverage rules are to be administered by the Secretary of the Treasury or his delegate, and the rules apply to tax-qualified pension, profit-sharing, and stock bonus plans.[1]

*Exceptions to coverage*

The participation and coverage requirements of title I (the labor law provisions) do not apply to governmental plans (including Railroad Retirement Act plans), church plans (except those electing coverage), plans maintained solely to comply with workmen's unemployment, disability, or compensation laws, plans maintained outside the United States primarily for the benefit of nonresident aliens, employee welfare plans, excess plans (which provide for benefits or contributions in excess of those allowable for tax-qualified plans), unfunded deferred compensation arrangements, plans established by labor organizations (those referred to in sec. 501(c)(5) of the Internal Revenue Code) which do not provide for employer contributions after the date of enactment, and fraternal or other plans or organizations (described in sec. 501(c)(8), 501(c)(9)), which do not receive employer contributions or trusts described in 501(c)(18) of the Internal Revenue Code. Title I does not apply to buy-out agreements involving retiring or deceased partners (under sec. 736 of the Internal Revenue Code). In addition, title I does not apply to employer or union-sponsored individual retirement accounts (see "Employee Savings for Retirement").

The participation requirements of title II apply only to plans which qualify for certain tax deferral privileges by meeting the standards as to participation and other matters set forth in the Internal Revenue laws. However, governmental plans and church plans which do not elect to come under the new provisions will nevertheless be treated as qualified for purposes of the tax deferral privileges for the employees, if they meet the requirements of present law. Also the rules do not apply to plans of labor organizations (described in sec. 501(c)(5)) or fraternal or other organizations (described in sec. 501(c)(8) or (9)) which do not provide for employer contributions.

*Exemption for church plans*

As indicated above, both title I and title II exempt church plans from the participation and coverage requirements of the conference substitute (although title II requires these plans to comply with present law in order to be qualified). This exemption does not apply to a plan which is primarily for the benefit of employees engaged in an unrelated trade or business, or (except as noted below) to a multiemployer plan unless all of the participating employers are churches or conventions or associations of churches (rather than merely church-related agencies). However, a multiemployer plan which was in existence on January 1, 1974, and which covers church-related agencies (such as schools and hospitals) is to be treated as a church plan for purposes of the exemption

[1] The division of administrative responsibility between Labor and Treasury is discussed in Part XII, below "General Provisions Relating to Jurisdiction, Administration, Enforcement: Joint Pension Task Force, Etc." Except where otherwise noted, the regulations with respect to participation, vesting and funding are to be written by the Secretary of the Treasury or his delegate.

(even though it continues to cover those agencies) for plan years beginning before January 1, 1983, but not for subsequent plan years.

A church plan may make an irrevocable election to be covered under title I and title II (in a form and manner to be prescribed in regulations). A plan which makes this election is to be covered under the bill for purposes of the new participation, vesting, funding and form of benefit rules, as well as the fiduciary and disclosure rules and will also be covered under the plan termination insurance provisions.

*General rule as to participation*

Generally, under title I and title II of the conference substitute, an employee cannot be excluded from a plan on account of age or service if he is at least 25 years old and has had at least one year of service. However, if the plan provides full and immediate vesting for all participants, it may require employees to be age 25 with 3 years of service, in order to participate. As an alternative, any plan which is maintained exclusively for employees of a governmental or tax-exempt educational organization which provides full and immediate vesting for all participants may have a participation requirment of age 30, with 1 year of service.

*Maximum age requirement*

Under the conference substitute, in general, a plan may not exclude an employee because he is too old. However, because of cost factors, it was decided that in a defined benefit plan it would be appropriate to permit the exclusion of an employee who is within 5 years of attaining normal retirement age under the plan (or older) when he is first employed. (These employees would be counted as part of the employer's work force, however, for purposes of determining whether or not his plan satisfied the breadth-of-coverage requirements.) Of course, if a plan defines normal retirement age as the later of age 65, or the tenth anniversary of the employee's participation in the plan, the plan could not impose a maximum age requirement (because no employee would be within 5 years of normal retirement age when first employed). A "target benefit" plan, as defined in Treasury regulations, could also impose a maximum age requirement (even though it is not a defined benefit plan), because in many respects the pattern of costs and benefits of target benefit plans closely resembles the pattern of costs and benefits of defined benefit plans.

*Year of service defined*

Under the conference substitute, in general, for purposes of the participation requirement, the term "year of service" means a 12-month period during which the employee has worked at least 1,000 hours. This 12-month period is measured from the date when the employee enters service. Thus, the emmployee has fulfilled his 1,000-hour-requirement if he has 1,000 hours of work by the first anniversary date of his employment. Under the substitute, the employee (if age 25 or older) would then be admitted to the plan within 6 months of his anniversary date of employment or by the beginning of the first plan year following his first anniversary date, whichever occurred earlier. (Of course, this does not mean that an employee would have to be admitted to the plan if he were lawfully excluded for reasons other than age or service.)

The plan would not be required to admit the employee if he had "separated from the service" before the otherwise applicable admission date. In general, "separated from the service" means the employee was discharged or quit; it does not mean temporary absence due to vacation, sickness, strike, seasonal layoff, etc.

If the employee did not complete 1,000 hours of service by his first anniversary date, but is still employed, he would start over toward meeting his 1,000 hour requirement. For this purpose, the plan could provide (on a consistent basis) that the relevant 12-month period is either (a) the year between his first anniversary date and his second anniversary date, or (b) the first plan year which began after the individual was first employed. For example, assume the plan is on a calendar year basis, and that an employee begins work on July 1, 1976. Between July 1, 1976, and June 30, 1977, the employee has less than 1,000 hours of service. The plan could provide that the employee would be tested the second time for purposes of participation based on the year from July 1, 1977 through June 30, 1978, or based on the year from January 1, 1977 through December 31, 1977 (but not January 1, 1978 through December 31, 1978).

The regulations with respect to "year of service" are to be written by the Secretary of Labor for purposes of participation and vesting. The term "hour of service" will also be defined in Labor Department regulations.

For purposes of participation (and vesting), in the case of any maritime industry (as defined in Labor Department regulations), 125 days of service are to be treated as the equivalent of 1,000 hours of service, but this rule will not apply to other industries.

*Seasonal and part-time workers*

In general, the 1,000 hour standard is to apply for purposes of determining whether or not an employee may be excluded from the plan as a seasonal or part-time employee (replacing the 5-month year, 20-hour week standard now in the Internal Revenue Code). However, in the case of seasonal industries where the customary period of employment is less than 1,000 hours, the term "year of service" is to be determined in accordance with Labor Department regulations.

*Breaks in service*

Under the conference substitute, a 1-year break in service occurs in any calendar year, plan year, or other consecutive 12-month period designated by the plan on a consistent basis (and not prohibited under Labor Department regulations) in which the employee has 500 hours of service or less.

The general rule is that all service with the employer (pre-break and post break) is to be taken into account for purposes of determining whether the employee has met the participation requirements. However, if an employee has a 1-year break in service, the plan may require a 1-year waiting period before reentry, at which point the employee's pre-break and post-break service are to be aggregated, and the employee is to receive full credit for the waiting period service. For example, if the plan is on a calendar year basis, and an employee who has a 1-year break in service reenters employment on November 1, 1976, works 200 hours in 1976, and 1700 hours by November 1, 1977, the employee under this provision would be considered as reentering the plan for 1977. As a result, his pre-break and post-break service would be aggregated, and he would advance one year on the vesting schedule for 1977. He would also accrue benefits for that year. (Other rules with respect to break-in-service are explained below in connection with vesting and benefit accrual.)

In the case of a plan which has a 3-year service requirement for participation (because the plan provides 100 percent immediate vesting), the plan may provide that employees to have a 1-year break in service before completing their 3-year service requirements must start over toward fulfilling that requirement after the break in service.

*Eligibility—collective-bargaining units, air pilots*

Title II of the conference substitute provides the employees who are under a collective bargaining agreement can be excluded for purposes of the breadth-of-coverage requirements (coverage for 70 percent of all employees or 80 percent of all eligible employees if at least 70 percent of all employees are eligible to benefit under the plan, or coverage on a nondiscriminatory basis), if the employees are excluded from the plan and there is evidence that retirement benefits have been the subject of good-faith bargaining. However, if the union employees are covered under the plan, benefits or contributions must be provided for them on a nondiscriminatory basis.

Title II of the substitute provides another exception to the breadth-of-coverage rule. It provides that air pilots represented in accordance with the Railway Labor Act may bargain separately for tax-qualified employee plan benefits, without including other workers within the industry (but only in the case of a plan which covers no employees other than air pilots). In addition, the conferees intend that the joint congressional pension task force study group, created under this legislation, study this area to see whether a similar rule should be applied to other unions or professional groups in the future.

*Nonresident aliens*

Title II of the conference substitute provides that employees who are nonresident aliens with no United States income from the employer in question are to be excluded for purposes of applying the breadth-of-coverage requirements and for purposes of applying the antidiscrimination rules (whether or not they are covered under the plan).

*Predecessor employer*

Service with a predecessor employer must be counted for purposes of the plan if the successor employer continues to maintain the plan of the predecessor employer (and, of course, the successor employer cannot evade this requirement by nominally discontinuing the plan). The question of the extent to which such service must be counted in other circumstances is to be determined under regulations.

*Multiemployer plans*

Under the conference substitute, service with any employer who is a member of a multiemployer plan is to be counted for purposes of the plan.

The term "multiemployer plan" means a plan maintained pursuant to a collective bargaining agreement, to which more than one employer is required to contribute, and to which no one employer makes as much as 50 percent of the contributions. (This percentage test would become a 75-percent test once the plan qualifies as a multiemployer plan.) Also, the plan must provide that benefits will be payable to each participant, even though his employer subsequently ceases to make contributions under the plan. However, the plan would not be required to provide past service benefits, i.e., benefits for periods before the participant's employer entered the plan. Also, service during a period for which the employer was not a member of the plan would not be required to be counted for participation or vesting purposes.

Additional requirements relating to multiemployer plans may be prescribed in Department of Labor regulations. The conferees intend that a plan not be classified as a multiemployer plan unless it is a collectively bargained plan to which a substantial number of unaffiliated employers are required to contribute. Also, a plan is not to be classified as a multiemployer plan where there is no substantial business purpose in having a multiemployer plan (except to obtain the advantages of multiemployer plan status under this bill).

In addition to employees of employers making contributions to a multiemployer plan, under the conference substitute such

a plan may cover employees of labor unions which negotiated the multiemployer plan and employees of the plan itself. For this purpose, the plan would have to satisfy the general breadth-of-coverage and nondiscrimination requirements of the Internal Revenue Code separately with respect to these union or plan employees and collectively (i.e., with respect to all groups of employees covered under the plan), but would not be required to meet the exclusive benefit rules of the tax law. Instead, the exclusive benefit rules would be applied to the beneficiaries of the multiemployer plan as a whole. (Similar treatment for union employees or plan employees would also be available in the case of a single-employer collectively bargained plan.)

*H.R. 10 plans*

In general, the provisions of present law which allow a 3-year service requirement for participation (but do not allow the plan to impose an age requirement), and require 100 percent immediate vesting, would continue to govern owner-employee H.R. 10 plans (those for sole proprietors and 10 percent owners and their employees). However, certain provisions of this bill, such as the rules with respect to year of service and breaks in service are also to apply for purposes of the H.R. 10 plans.

*Affiliated employers*

Title II of the conference substitute provides that in applying the breadth-of-coverage and antidiscrimination rules (as well as the vesting rules and the limitations on contributions and benefits), employees of all corporations who are members of a "controlled group of corporations" (within the meaning of sec. 1563(a) of the Internal Revenue Code of 1954) are to be treated as if they were employees of the same corporation. A comparable rule is to be provided in the case of partnerships and proprietorships which are under common control (as determined under regulations). The conferees agree with the interpretation of these provisions, as expressed in the Ways and Means Committee report (No. 93–807).

*Effective dates*[2]

Under the conference substitute the changes made in the bill with respect to participation and vesting are to apply to new plans in plan years beginning after the date of enactment. For plans in existence on January 1, 1974, the general effective date of these provisions is to be plan years beginning after December 31, 1975.

The general effective date of plan years beginning after December 31, 1975 applies in the case of collectively bargained plans in the same manner as in the case of other plans. However, in order that the opening up of the contract to comply with the requirements of this bill will not require negotiations with respect to other matters, the conference substitute provides that a collective bargaining contract, in existence on January 1, 1973, which does not expire until after the general effective date for existing plans, may be reopened solely for the purpose of allowing the plan to meet the requirements of this bill, without having to be opened for any other purpose. Where it is necessary, as a result of this bill, to modify an employee benefit plan, it is the conferees' understanding that it is not an unfair labor practice under the National Labor Relations Act for a party to a collective bargaining agreement to refuse to bargain regarding matters unrelated to the modification required by this bill, provided this refusal is not otherwise an unfair labor practice. In addition, the changes required to be made in a plan are not themselves to be treated as constituting the expiration of a contract for purposes of any other provisions of this bill which depend on the date of the expiration of a contract.

Finally, the conference substitute provides that if a plan, adopted pursuant to a collective bargaining agreement in effect on January 1, 1974, contains a clause: (1) which provides supplementary benefits which are in the form of a lifetime annuity and refer to not more than one-third of the basic benefit to which the employees generally are entitled; or (2) which provides that a 25-year service employee is to be treated as a 30-year service employee, if that right is granted by a contractual agreement which is based on medical evidence as to the effects of working in an adverse environment for an extended period of time (such as workers in foundries or workers in asbestos plants), then the application of the accrued benefit provision of this bill to those benefits is to be delayed until the expiration of the collective bargaining agreement (but no later than plan years beginning after December 31, 1980). For purposes of applying the effective date rules, the conferees agree with the statements appearing in the paragraph beginning at the bottom of page 51, and in the first full paragraph on page 52 of the Ways and Means Committee report (No. 93–807). This explanation relates to situations where a collective bargaining agreement is to be treated as having terminated, and as to how the effective date rules are to be applied to a plan which includes some employees covered under one or more collective bargaining agreements, and also employees not covered under any such agreement.

An existing plan which would be entitled to a delayed participation vesting, funding, etc. provision is to be permitted to elect to have all those provisions apply sooner. Any such election is to be made under regulations, must apply with respect to all the provisions of the Act, and is to be irrevocable.

III. VESTING AND RELATED RULES (SECS. 203–209, 1012, 1015, 1021, 1022, AND 1032 OF THE BILL, AND SECS. 401, 411, AND SECS. 401, 411, AND 414 OF THE INTERNAL REVNUE CODE.)

Under the House bill a plan was required to meet one of three minimum vesting schedules. First, a plan could provide a graded vesting standard, under which the employee must be at least 25 percent vested in his accrued benefit after 5 years of covered service, with 5 percent additional vesting for each of the next 5 years, and 10 percent additional vesting for each year thereafter (so that the employee was 100 percent vested after 15 years of service). Second, a plan could provide that each employee must be 100 percent vested after 10 years of service. Third, a plan could provide for a "rule of 45," under which each employee with 5 years or more of service would be 50 percent vested when the sum of his age and his years of service equaled 45, with 10 percent additional vesting for each year thereafter.

Under the Senate amendment, plans generally were required to comply with the first of these alternatives, the graded vesting schedule. However, plans which were already using the 10-year/100-percent vesting schedule were permitted to continue to use that method.

The conference substitute is described below.

*Plans subject to the provisions; exceptions from coverage; exemption for church plans*

The rules in these areas are the same as the corresponding rules discussed above under Participation and Coverage.

*General rules*

Under the conference substitute[1] plans must provide full and immediate vesting in benefits derived from employee contributions.

With respect to employer contributions, the plan (except class year plans) must meet one of three alternative standards. Two of those, the 5- to 15-year graded standard and the 10-year/100-percent standard are the same as provided in the House bill (and briefly described above). The third standard under the conference substitute is a modification of the House-bill "rule of 45". As under the House rule, under the modified rule of 45, an employee with 5 or more years of covered service must be at least 50 percent vested when the sum of his age and years of covered service total 45, and there must be provision for at least 10 percent additional vesting for each year covered service thereafter. Unlike the House bill, however, each employee with 10 years of covered service (regardless of his age) must be at least 50 percent vested and there must be provision for 10 percent additional vesting for each year of service thereafter.

In addition, all plans would have to meet the requirement of present law that an employee must be 100 percent vested in his accrued benefit when he attains the normal or stated retirement age (or actually retires).

*Service credited for vesting purposes*

Generally, under the conference substitute, once an employee becomes eligible to participate in a pension plan, all his years of service with an employer (including preparticipation service, and service performed before the effective date of the Act) are to be taken into account for purposes of determining his place on the vesting schedule. However, the plan may ignore periods for which the employee declined to make mandatory contributions, and periods for which the employer did not maintain the plan or a predecessor plan, as defined in Treasury regulations (i.e., if the plan provides past service credits for purposes of benefit accrual, it must also provide past service credits for purposes of participation and vesting).

Generally, the plan may also ignore service performed before age 22; however, if a plan elects to use the rule of 45, service before age 22 may be ignored only if the employee was not a participant in the plan during the years before age 22.

The plan may also exclude part-time or seasonal service (i.e., generally years when the employee had less than 1,000 hours of service).

Also, if the employee has had a "break in service", his service performed prior to the break may be ignored to the extent permitted under the "break in service" rules (discussed below).

Service performed prior to January 1, 1971, may be ignored by the plan, unless (and until) the employee has at least 3 years of service after December 31, 1970.

*Year of service defined*

In general, under the conference substitute, the rules with respect to "year of service", seasonal and part-time employees, etc., are the same for purposes of the vesting schedule as they are for purposes of participation (i.e., generally 1,000 hours of service except for seasonal industries, where the customary work year is less than 1,000 hours). However, the relevant year for purposes of applying the vesting schedule may be any 12-month period provided under the plan (plan year, calendar year, etc.) regard-

[1] Unless otherwise indicated, the rules with respect to vesting appear in both title I and title II of the conference substitute. Unless otherwise indicated, the regulations with respect to vesting are to be written by the Secretary of the Treasury, or his delegate.

[2] Because of the interrelationship of the effective date provisions for participation and vesting, this discussion deals with the effective dates for both.

less of the anniversary date of the participant's employment (even though the anniversary date is the measuring point for purposes of the participation requirements for an employee's first year).

For purposes of benefit accrual, in general, the plan may use any definition of the term "year of service" which the plan applies on a reasonable and consistent basis (subject to Department of Labor regulations). (Of course, the "year" for benefit accrual purposes cannot exceed the customary work year for the industry involved.) However, the plan must accrue benefits for less than full time service on at least a pro rata basis. For example, if a plan requires 2,000 hours of service for a full benefit accrual (50 weeks of 40 hours each) then the plan would have to accrue at least 75 percent of a full benefit for a participant with 1,500 hours of service. Generally, a plan would not be required to accrue any benefit for years in which the participant had less than 1,000 hours of service. In the case of industries or occupations where the customary year is less than 1,000 hours (for example, the tuna fishing industry, or the winter season employees of a ski lodge), the rules with respect to benefit accrual would be determined under Department of Labor regulations. As previously indicated a special rule is provided for the maritime industries.

*Breaks in service*

Under the conference substitute, a 1-year break in service occurs in any calendar year, plan year, or other consecutive 12-month period designated by the plan and applied on a consistent basis (and not prohibited under Labor Department regulations) in which the employee has no more than 500 hours of service. For example, if the plan is on a calendar year basis, and the employee works 1,000 hours in 1976, 501 hours in 1977, 501 hours in 1978, and 1,000 hours or more in 1979, the employee would not have a break in service (although the plan would not be required to accrue benefits or give vesting schedule credit for 1977 or 1978).

The rules with respect to breaks in service for vesting and benefit accrual purposes may be summarized as follows:

(1) If an employee has a 1-year break in service, the plan may require (for administrative reasons) a 1-year waiting period before his pre-break and post-break service must be aggregated under the plan. However, once the employee has completed this waiting period, he must receive credit for that year (for purposes of vesting and accrued benefit).

(2) In the case of an individual account plan (including a plan funded solely by individual insurance contracts as well as a "target benefit plan") if any employee has a 1-year break in service, his vesting percentage in pre-break benefit accruals does not have to be increased as a result of post-break service.

(3) Subject to rules (1) and (2), once an employee has achieved any percentage of vesting, then all of his pre-break and post-break service must be aggregated for all purposes.

(4) For all nonvested employees (and subject to rules (1) and (2)), the employee would not lose credits for pre-break service until his period of absence equaled his years of covered service. Under this "rule of parity" for example, if a nonvested employee had three years of service with the employer, and then had a break in service of 2 years, he could return, and after fulfilling his 1-year reentry requirement, he would have 4 years of covered service, because his pre-break and post-break service would be aggregated.[2]

For years beginning prior to the effective date of the vesting provisions, a plan may apply the break-in-service rules provided under the plan, as in effect from time to time. However, no plan amendment made after January 1, 1974, may provide for break-in-service rules which are less beneficial to any employee than the rules in effect under the plan on that date, unless the amendment complies with the break-in-service rules established under this bill.

The principles of some of the rules outlined above may be illustrated as follows: For example, assume a plan is on a calendar year basis, and an employee with a 1-year break in service reenters employment on November 1, 1976, works 200 hours in 1976, and 1,700 hours by November 1, 1977. In this case, the employee would be eligible to reenter the plan on November 1, 1977, his pre-break and post-break service would be aggregated, he would advance one year on the vesting schedule for 1977, and he would also accrue benefits for 1977. On the other hand, if the employee reentered employment on March 1, 1976, worked 1,700 hours before December 31, 1976, and was not separated from service by March 1, 1977, he would be eligible to reenter the plan on March 1, 1977, advance one year on the vesting schedule for his 1976 service, and the plan would have to provide at least a partial benefit accrual for 1976.

*Predecessor employer*

The rules concerning service with a predecessor employer are the same for purposes of vesting and benefit accrual as the rules for purposes of participation, discussed above.

*Multiemployer plans*

Under the conference substitute, service with any employer, for any year in which the employer is a member of the plan, is to be counted for purposes of vesting as if all employers who are parties to the plan were a single employer.

*Permitted forfeitures of vested rights*

Under the conference substitute, except as outlined below, an employee's rights, once vested, are not to be forfeitable for any reason. An employee's rights to benefits attributable to his own contributions may never be forfeited.

(1) The plan may provide that an employee's vested rights to benefits attributable to employer contributions may be forfeited on account of the employee's death (unless a "joint and survivor" annuity is to be provided).

(2) Also, the plan may provide that payment of benefits attributable to employer contributions may be suspended for any period in which the employee is reemployed by the same employer under whose plan the benefits are being paid (in the case of a single employer plan). In the case of a multiemployer plan, however, a suspension of benefit payments is permitted when the employee is employed in the same industry, in the same trade or craft and also in the same geographical area covered under the contract, as was the case immediately before he retired. Regulations with respect to the suspension of benefits are to be prescribed by the Department of Labor.

(3) A plan amendment may reduce an employee's vested or nonvested accrued benefit attributable to employer contributions, but only for the current year, and only if the amendment is adopted within 2½ months from the close of the plan year in question (without regard to any extensions). In the case of a multiemployer plan, the retroactive amendment may effect the current year, and the two immediately preceding years (thus, a multiemployer plan amendment adopted by December 31 1978, could effect plan benefits for 1976, if the plan was on a calendar year). However, no plan amendment which reduces accrued benefits is permitted unless the Secretary of Labor has 90 days prior notice of the proposed amendment, and approves it (or fails to disapprove it). No such approval is to be granted, except to prevent substantial economic hardship, including a serious danger that the plan will be terminated unless the amendment is allowed. In addition, it must be found that the economic hardship cannot be overcome by means of a funding variance. Subject to these rules, no plan amendment may retroactively reduce the accrued benefit of any participant (whether or not that benefit is vested).

(4) A plan may provide that an employee's rights to benefits from employer contributions may be forfeited where the employee is less than 50 percent vested in these benefits and withdraws all or any part of his own mandatory contributions to the plan. However, the plan must also provide a "buy back" rule, i.e., that the employee's forfeited benefits will be fully restored if the employee repays the withdrawn contributions (with interest of 5-percent per annum, compounded annually) to the plan.

In the case of a plan which does not provide for mandatory contributions after the date of enactment, the plan may provide, in this case, that the employee will forfeit a proportionate part of his pre-date-of-enactment accrued benefits derived from employer contributions even if he is 50 percent or more vested in these benefits. Also, the plan is not required to have a "buy back" clause with respect to the withdrawal of pre-enactment contributions. Additional regulations in this area are to be prescribed by the Secretary of the Treasury, or his delegate.

(5) A plan may provide for the "cash out" of an employee's accrued benefit. In other words, the plan may pay out, in a lump sum, the entire value of an employee's vested accrued benefit. (However, portability is available to the employee because other provisions of the bill permit the employee to reinvest in an individual retirement account on a tax-sheltered basis.) If the plan does make such a cash-out, then the plan would not be required to vest the employee in his accrued benefits which are not vested at the time he separates from the service, if the employee is later reemployed. (However, the employee's prebreak service would have to be taken into account for all other purposes, subject to the break-in-service rules, e.g., for purposes of his place on the vesting schedule.)

A cash-out could be made from the plan without the employee's consent only if the payment (a) was made due to the termination of the employee's participation in the plan, (b) constituted the value of the employee's entire interest in the plan, and (c) did not exceed an amount (to be prescribed in regulations by the Secretary of the Treasury or his delegate), based on the reasonable administrative needs of the plan, and, in any event, not in excess of $1,750 (with respect to the value of the benefit attributable to the employer's contributions). Despite the foregoing provision, generally, the conferees prefer that all amounts contributed for retirement purposes be retained and used for those purposes. Thus, a plan could provide for no cash-out, or the employee's collective bargaining unit might wish to bargain for such a provision.

A higher cash-out could be made with the employee's consent. However, even these voluntary cash-outs could only be made if the employee terminated his participation

[2] Also, in the case of a defined benefit plan, the employee would have at least 3 years of accrued benefits under the plan (2 years of accrued benefits due to his pre-break participation and 1 year of benefits accrued with respect to the 1 year reentry period).

in the plan, or under other circumstances to be prescribed in regulation.

Moreover, the plan must provide, in all cases (except where a distribution equal to the value of the full accrued benefit is made), that all accrued benefits must be fully restored (except to the extent provided under the break-in-service rules) if the employee repays the amount of the cash-out, with interest. Repayment of an involuntary cash-out would have to be allowed under the plan at any time after the employee reentered employment under the plan, and repayment of voluntary cash-outs would have to be allowed under circumstances to be prescribed in regulations. However, an individual account plan would not be required to permit repayment after the employee had a one year break in service.

*Accrued benefit*

Under the conference substitute, the term "accrued benefit" refers to pension or retirement benefits. The term does not apply to ancillary benefits, such as payment of medical expenses (or insurance premiums for such expenses), or disability benefits which do not exceed the normal retirement benefit payable at age 65 to an employee with comparable service under the plan, or to life insurance benefits payable as a lump sum.

Also, the accrued benefit does not include the value of the right to receive early retirement benefits, or the value of social security supplements or other benefits under the plan which are not continued for any employee after he has attained normal retirement age. However, an accrued benefit may not be reduced on account of increasing age or service (except to the extent of social security supplements or their equivalents).

In the case of a plan other than a defined benefit plan, the accrued benefit is to be the balance in the employee's individual account.

In the case of a defined benefit plan, the accrued benefit is to be determined under the plan, subject to certain requirements. In general, the accrued benefit is to be defined in terms of the benefit payable at normal retirement age. Normal retirement age generally is to be the age specified under the plan. However, it may not be later than age 65 or the tenth anniversary of the time the participant commenced participation, whichever last occurs. No actuarial adjustment of the accrued benefit would be required, however, if an employee voluntarily postponed his own retirement. For example, if the plan provided a benefit of $400 a month payable at age 65, this same $400 a month benefit (with no upward adjustment) could also be paid by the plan to an individual who voluntarily retired at age 68.

Each defined benefit plan is to be required to satisfy one of three accrued benefit tests (which limit the extent of "back-loading" permitted under the plan).

*The three percent test.*—Under this alternative each participant must accrue, for each year of participation, at least 3 percent of the benefit which is payable under the plan to a participant who begins participation at the earliest possible entry age and serves continuously until age 65, or normal retirement age under the plan, whichever is earlier. This test is to be applied on a cumulative basis (i.e., any amount of "front loading" is permitted.) Also, in the case of a plan amendment, the test would be cumulative. For example, assume that a plan provided a flat benefit of $200 a month payable at age 65 during the first 10 years of an individual's participation, then amended to provide a flat benefit of $400 a month; the participant's accrued benefit at the end of his 11th year of participation would equal $132 (3 percent of $400, times 11 years of service.)

In addition, if a plan elects this alternative, and if the plan provides a given benefit to a person who is employed when he attains retirement age, who has a given amount of service, then any employee who has that amount of service, even though he leaves before retirement age, would be entitled to this same benefit when he reaches retirement age. For example, if the plan is based on compensation and provides a 40 percent of salary benefit for an employee who served at least 20 years and is still employed at age 65, then the plan must provide that an employee who served 20 years from age 35 to age 55 would be entitled to that same 40 percent of compensation benefit (beginning at normal retirement age or age 65).

*13⅓ percent test.*—Under this alternative, the plan is to qualify if the accrual rate for any participant for any later year is not more than 133⅓ percent of his accrual rate for the current year. Thus (unlike the House bill), the conference substitute permits an unlimited amount of "front loading" under this test. The accrual rate can be based on either a dollar or percentage rate. In applying these rules, a plan amendment in effect for the current year is to be treated as though it were in effect for all plan years. (For example, if a plan provides a one percent rate of accrual for all participants in 1976, and is amended to provide a 2 percent rate of accrual for all participants in 1977, the plan will meet this test, even though 2 is more than 1⅓ times 1). Also, if the plan has a scheduled increase in the rate of accruals which will not be in effect for any participant until future years, this scheduled increase will not be taken into account for purposes of the backloading rules until it actually takes effect. Also, in applying the 133⅓ percent test, social security benefits and all other factors used to compute benefits under the plan will be treated as remaining constant, at current year levels, for all future years.

*Pro rata rule.*—As a third alternative, the conference substitute contains a modified version of the rule contained in the Senate amendment. Under this test, for purposes of determining the accrued benefit, the retirement benefit is to be computed as though the employee continued to earn the same rate of compensation annually that he had earned during the years which would have been taken into account under the plan (but not in excess of 10), had the employee retired on the date in question. This amount is then to be multiplied by a fraction, the numerator of which is the employee's total years of active participation in the plan up to the date when the computation is being made, and the denominator of which is the total number of years of active participation he would have had if he continued his employment until normal retirement age. This test is cumulative in the sense that unlimited front loading is permitted. For purposes of this test, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant at current year levels for all future years. Also for purposes of this rule the term "normal retirement age" would be defined as set forth above, and the test would apply only to the benefit payable at, or after, normal retirement age (i.e., it would not take account of subsidized early retirement (to the extent such a benefit does not exceed the benefit payable at normal retirement age) and social security supplements.)[3]

[3] For example, assume a social security offset plan providing a benefit equal to 2 percent of high-3 years compensation per year of service with the employer, minus 30 percent of the primary social security benefit, with a normal retirement age of 65. Assume also an employee who began employment at age 25, and terminated employment at age 45, 100 percent vested, with high-3 years pay of $19,000, $20,000, and $21,000. At the time the employee separates from service the primary social security benefit payable to him at age 65 (under the social security law as an effect when he terminates) would be $6,000 if he continued to work with the employer at his same annual rate of compensation until normal retirement age. His accrued benefit under the plan would equal $7,100 (If the employee had remained in service until age 65, he would have 40 years service, times 2 percent per year (80 percent), times $20,000 average high-3 years compensation ($16,000), minus 30 percent of the $6,000 primary social security benefit payable to the employee at age 65 under then current law ($16,000 minus $1,800 equals $14,200) times 20/40ths (20 years of service over 40 total years from age 25 to age 65) equals $7,100.)

In the case of a plan amendment, the rule would work as follows. Assume an individual begins participation at age 25 in a plan which provides 1 percent of high-three-years pay during his first 10 years of service. In the 11th year the plan amends to provide 2 percent of pay for all future years of service. The employee separates from service at the end of the 11th year (and is 100 percent vested). His accrued benefit would equal 19.25 percent of average high-three-years pay (10 (years of patricipation) times 1 percent per year. 30 (years of projected participation) times 2 percent per year, times 11/40ths (11 years of participation over 40 total years between age 25 and age 65)).

A plan is not to be treated as failing to meet the tests solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service, measured from the anniversary date of employment.

In the case of a plan funded exclusively through the purchase of insurance contracts, the accrued benefit is to be the cash surrender value of the contract (determined as though the funding requirements with respect to the plan had been fully satisfied).

In the case of a variable annuity plan, the accrued benefit is to be determined in accordance with regulations to be prescribed by the Secretary of the Treasury or his delegate.

*Benefits accrued in the past*

Generally, the vesting rules of the conference substitute are to apply to all accrued benefits, including those which accrued before the effective date of the provisions (subject, however, to the break-in-service rules discussed above). However, many plans now in existence have no accrued benefit formula for the past, thus making it impossible in these cases to determine what the employee is vested in. To deal with this situation, the conference substitute provides that the accrued benefit under a plan for years prior to the effective date of the vesting provisions for any participant is to be not less than the greater of (1) the accrued benefit under the provisions of the plan (as in effect from time to time), or (2) an acrued benefit which is not less than one-half of the benefit which would have accrued under one of the three back-loading tests described above.

The plan may choose which of the 3 standards it wishes to apply for the past (subject to the antidiscrimination rules); however, the same standard must be applied to all the plan's participants on a consistent basis. The plan is not required to choose, for the past, the same test which it applies in the future.

*Changes in vesting schedule*

The conference substitute provides that if, at any time in the future, the plan changes in vesting schedule, the vesting percentage for each participant in his accrued benefit accumulated to the date when the plan amendment is adopted (or the date the amendment becomes effective, if later) cannot be reduced as a result of the amendment. In addition, as a further protection for long service employees, any participant with at least 5 years of service may elect to re-

main under preamendment vesting schedule with respect to all of his benefits accrued both before and after the plan amendment.

*Allocations between employee and employer contributions*

The House bill and the Senate amendment are quite similar in the rules they apply in allocating contributions between those made by the employee and the employer and the conference substitute follows the House bill as to technical matters in the case of this provision. In addition, the substitute makes a clarifying amendment which provides (in the case of a defined benefit plan), that the accrued benefit attributable to employee contributions can never be less than the sum of those contributions (computed without interest). This assures the employee will at least be vested in his own contributions to the plan, on a dollar-for-dollar basis. (Thus, for example, in the case of an individual insurance contract, employer contributions to the plan must at least absorb the load factor, but, of course, payment of the load factor by the employer would not cause the plan to be treated as a plan which was not funded solely through the purchase of insurance contracts.

*Discrimination*

Under the conference substitute the rules of the House bill are adopted with respect to the relationship of the minimum vesting standards of the bill to the antidiscrimination rules of present law (sec. 401(a)(4) of the Internal Revenue Code). In general, a plan which meets the vesting requirements provided in this substitute is not to be considered as discriminatory, insofar as its vesting provisions are concerned, unless there is a pattern of abuse under the plan (such as the firing of employees before their accrued benefits vest) or there has been (or there is reason to believe there will be) an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders or who are highly compensated.

In the past, however, the law in this area has been administered on a case-by-case basis, without uniform results in fact situations of a similar nature. As a result, except in cases where actual misuse of the plan occurs in operation, the Internal Revenue Service is directed not to require a vesting schedule more stringent than 40 percent vesting after 4 years of employment with 5 percent additional vesting for each of the next 2 years, and 10 percent additional vesting for each of the following five years. Also, this more rapid vesting would generally not be required except in a case where the rate of likely turnover for officers, shareholders, or highly compensated employees was substantially less (perhaps as much as 50 percent less) than the rate of likely turnover for rank-and-file employees. Of course, where there is a pattern of firing employees to avoid vesting, the limitations described above would not apply. Also, it generally is not intended that any plan (or successor plan of a now existing plan) which is presently under a more rapid vesting schedule should be permitted to cut back its vesting schedule as a result of this statement.

In addition, the conferees have directed the joint pension task force to study group to examine problems of the interrelationship of the vesting and the antidiscrimination rules carefully. The conferees also expect the Treasury or the Internal Revenue Service to supply information with respect to patterns of benefit loss for different categories of plans (as designated by the task force) under the minimum vesting schedules prescribed under this legislation, and such other information as the task force study group may require. In other words, the experimental rules outlined above (40 percent vesting after 4 years, etc.) are intended to apply only until the responsible congressional committees can review the situation after receiving the report of the task force study group.

Moreover, the conferees intend that the antidiscrimination rules of present law in areas other than the vesting schedule are not to be changed. Thus, the present antidiscrimination rules with respect to coverage, and with respect to contributions and benefits are to remain in effect. Also, the antidiscrimination rules may be applied with respect to benefit accruals.

The conference substitute contains a technical rule to be applied in the case of target benefit plans (and other defined contribution plans), which provides that regulations may establish reasonable earnings assumptions and other factors for these plans in order to prevent discrimination.

*Plan termination*

Under the conference substitute, as under present law, all accrued benefits in a qualified pension plan must become fully vested (in accordance with the rules of the bill concerning allocation of assets upon plan termination and to the extent then funded) in the event of a plan termination, or the complete discontinuance of contributions under the pension plan. Under the substitute, this rule is no longer to apply to cases where employers have not made contributions to plans covered under the funding requirements of the bill, because the bill reaches this problem by imposing an excise tax on underfunding. However, the rule of full immediate vesting is still to apply in the case of a termination, or partial termination of a plan, and in the case of the discontinuance of contributions to plans which are not subject to the new funding requirements (e.g., profit-sharing plans, church plans, and government plans). Also, the substitute contains a provision to make clear that the vesting requirements under the bill are not intended to operate to overturn rules which require that, in the event of plan termination, the benefits under the plan are not to be distributed in a manner that discriminates in favor of officers, shareholders, or highly compensated employees.

*Class year plans*

Under the substitute, the minimum vesting requirements are satisfied in the case of a class year plan if the plan provides for 100 percent vesting of the benefits derived from employer contributions within 5 years after the end of the plan year for which the contributions were made. Also, under the substitute, forfeitures with respect to employer contributions would be permitted on a class-year-by-class-year basis, for any year for which the employee withdraws his own mandatory contributions to the plan, if he is less than 50 percent vested with respect to that year. For purposes of these rules, withdrawals will be applied to the earliest year for which the employee has made contributions which have not yet been withdrawn.

*Recordkeeping requirements*

Under the conference substitute, in the case of a single employer plan, the employee, once each year, is to be entitled to request his plan administrator to furnish a statement as to his vesting and accrued benefits status. A similar statement is to be supplied automatically when a vested employee terminates his coverage under the plan. In the case of multiemployer plans, the recordkeeping and information supplying duties are to be performed by the plan administrator and, to the maximum extent practicable (in light of their different circumstances), multiemployer plans are to meet the same standards in this area as single employer plans (in accordance with regulations to be prescribed by the Secretary of Labor or his delegate).

*Variations*

Under the conference substitute, a variation is to be available with respect to the vesting schedule (for benefits attributable to employer contributions) and the accrued benefit rules for plans in existence on January 1, 1974. Under this procedure, a variation is to be allowed only if it is found by the Secretary of Labor that application of the rules of the bill would increase the cost of the plan to such an extent that there would be a substantial danger that the plan would be terminated, or that there would be a substantial reduction in benefits provided under the plan, or in the compensation of the employees. Also, it would have to be determined that the application of the vesting schedule requirements, or accrued benefit requirements, or discontinuance of the plan, would be adverse to the interest of the plan participants as a whole. Finally, it would have to be determined that the hardship described above could not be sufficiently mitigated by the granting of a funding variance.

The variation with respect to benefit accruals is not to apply for any year except years (not in excess of 7) during which the variation is in effect. (For example, there could be no variation with respect to the rules for benefits accrued in the past.)

No plan may receive a vesting variation unless application is made (in accordance with regulations to be prescribed by the Secretary of Labor or his delegate) within two years after the date of enactment of this bill. The variation would be granted for an initial period not to exceed 4 years. Plans can receive one additional variation (for a period not to exceed 3 years), but application for the additional variation would have to be made at least one year prior to the expiration of the initial variation period.

During the period when a variation is in effect, there can be no plan amendment which has the effect of increasing plan liabilities because of benefit increases, changes in accruals, or changes in the rate of vesting, except to a de minimis extent (in accordance with regulations to be prescribed by the Secretary of Labor).

*Amounts designated as employee contributions*

To clarify present law, the substitute provides that amounts contributed to a qualified plan in taxable years beginning after December 31, 1973, are to be treated as employee contributions if they are designated as employee contributions under the plan. This rule does not apply, however, to government "pick-up" plans, where the contribution is paid by the government, with no withholding from the employee's salary, and these amounts would be treated as employer contributions, no matter how designated under the plan.

*Joint and survivor annuities*

Under the conference substitute, when a plan provides for a retirement benefit in the form of an annuity, and the participant has been married for the one-year period ending on the annuity starting date, the plan must provide for a joint and survivor annuity. The survivor annuity must be not less than half of the annuity payable to the participant during the joint lives of the participant and his spouse.

In the case of an employee who retires, or who attains the normal retirement age, the joint and survivor provision is to apply unless the employee elected otherwise.

In the case of an employee who is eligible to retire prior to the normal retirement age under the plan, and who does not retire, the joint and survivor provisions need not be applicable under the plan, unless the employee made an affirmative election. Moreover, the plan need not make this option available until the employee is within 10 years of normal retirement age. (Of course,

a plan may provide that a joint and survivor annuity is to be the only form of benefit payable under the plan, and in this case, no election need be provided.)

These rules should help to avoid the situation where an employee who had not yet retired might have his own retirement benefit reduced as a result of inaction on his part and should also help to prevent adverse selection as against the plan.

The employee is to be afforded a reasonable opportunity, in accordance with regulations, to exercise his election out of (or before normal retirement age, possibly into) the joint and survivor provision before the annuity starting date (or before he becomes eligible for early retirement). The employee is to be supplied with a written explanation of the joint and survivor provision, explained in layman's language, as well as the practical (dollar and cents) effect on him (and his or her spouse) of making an election either to take or not to take the provision. At the same time, regulations in this area should take cognizance of the practical difficulties which certain industries (particularly those having multiemployer plans) may have in contacting all of their participants.

To prevent adverse selection the plan may provide that any election, or revocation of an election, is not to become effective if the participant dies within some period of time (not in excess of two years) of the election or revocation (except in the case of accidental death where the accident which causes death occurs after the election).

Also, the conferees agree with the statements in the Ways and Means Committee report (No. 93-807) to the effect that the bill does not require the plan to "subsidize" the joint and survivor feature (although the plan is permitted to do so) and that plans may make reasonable actuarial adjustments to take account of the possibility that total costs of the plan otherwise might be increased because of adverse selection.

*Alienation*

Under the conference substitute, a plan must provide that benefits under the plan may not be assigned or alienated. However, the plan may provide that after a benefit is in pay status, there may be a voluntary revocable assignment (not to exceed 10 percent of any benefit payment) by an employee which is not for purposes of defraying the administrative costs of the plan. For purposes of this rule, a garnishment or levy is not to be considered a voluntary assignment. Vested benefits may be used as collateral for reasonable loans from a plan, where the fiduciary requirements of the law are not violated.[4]

*Social security benefits of terminated participants*

The conference substitute codifies the current administrative practice which provides that qualified plans may not use increases in social security benefits or wage base levels to reduce employee plan benefits that are already in pay status. A similar protection is also extended against reductions in plan benefits where social security benefit levels (or wage base levels) are increased after the individuals concerned are separated from service prior to retirement. This requirement also applies to plans covered under title I (even if the plan is not qualified). A similar principle will apply in the case of an individual receiving disability benefits under social security and also under an employer plan.

[4] This rule will not apply to irrevocable assignments made before the date of enactment and the plan provision required under this rule need not be adopted prior to January 1, 1976 (so long as the plan complies with the substance of this rule after enactment).

*Integration with social security*

As discussed above, title I and title II of the conference substitute provide that plans may not use increases in social security benefit levels to decrease plan benefits in the case of retirees, or individuals who separate from service prior to retirement. The conference substitute also provides (consistent with the Ways and Means Committee report) for a two-year study, by the Congress, of the issues involved in the integration of private pension plans with social security.

Consequently, the substitute provides, in effect, that until July 1, 1976, pension plans may not increase their level of integration by taking into account changes in the social security wage base, or in social security benefit levels after 1971. Thus, in general, plans may integrate in accordance with Rev. Rul. 71-446, 1971-2 C.B. 187. (For example, an excess plan would integrate in accordance with section 3 of that ruling, and the tables set forth therein.) Of course, plans which do not satisfy the integration requirements as to form, but do in operation satisfy the requirements of Rev. Rul. 771-446, will be permitted to integrate under the conference substitute.

Certain plans, which are currently integrated above 1971 levels, are permitted to retain their current levels of integration (as in effect on June 27, 1974), but would not be permitted an increase. (For example, a unit benefit excess plan which now provides 1 percent of pay in excess of $11,000 per year of future service could remain at this level, but could not take account of a wage base higher than $11,000.)

To prevent undue hardship, in the case of plans which are automatically keyed to changes in the social security wage base or benefit levels (for example, a unit benefit excess plan now at the $13,200 wage base in effect on June 27, 1974), the plan is not required to amend until June 30, 1975, but any such amendment must be retroactive to January 1, 1975, and must provide that the plan does not take account of any changes in the social security wage base or in social security benefit levels which may occur after June 27, 1974.

For purposes of the rules with respect to retirees, or other individuals who have separated from service, any change in the plan after June 30, 1976, which takes account of the increases in the social security wage base or benefit levels which are temporarily frozen under these provisions, may not be used to reduce plan benefits otherwise payable to individuals who retire, or separate from service, between June 27, 1974 and June 30, 1976.

*Payment of benefits*

Under the conference substitute, a plan is generally required to commence benefit payments (unless the participant otherwise elects) not later than the 60th day after the close of the plan year in which the latest of the following events occurs:

(1) the participant attains age 65 (or any earlier normal retirement age specified under the plan),

(2) ten years have elapsed from the time the participant commenced participation in the plan, or

(3) the participant terminates his service with the employer.

Also, if the plan permits an employee who has not separated from service to receive a subsidized early retirement benefit if he meets certain age and service requirements, the plan must also permit an employee who fulfills the service requirement, but separates from service before he meets the age requirement, to receive benefit payments, on an actuarially reduced basis, when the separated employee meets the age requirement. For example, if the plan provides a benefit of $100 a month at age 65, or at age 55 for employees with 30 years of service who are still employed on their 55th birthday, then an employee who separates from service at age 50 with 30 years service, would have the right to draw down an actuarially reduced benefit (perhaps $50 a month) at age 55. The actuarial adjustments are to be made in accordance with regulations to be prescribed by the Secretary of the Treasury, or his delegate.

*Comparability of plans having different vesting provisions under the antidiscrimination rules*

The conference substitute provides that highly mobile employees, such as engineers, are permitted to trade off high benefits which might be available under one retirement plan of their employer for their right to participate in another plan with lower benefits, but more rapid vesting.

*Protection of pension rights under Government contracts*

Under the conference substitute, the Secretary of Labor is to undertake a study of steps which can be taken to ensure that professional, scientific, technical, and other personnel employed under Federal contracts are protected against loss of their pensions resulting from job transfers or loss of employment. The Secretary of Labor is to report to Congress on this subject within two years after the date of enactment of the bill and is, if feasible, to develop recommendations for Federal procurement regulations to safeguard pension rights in the situations in question within one year after filing his report. These regulations are to become effective unless either House of Congress adopts a resolution of disapproval within 120 days after the proposed regulations are submitted to the Congress. Any such disapproval is to be referred to the Labor Commitee of the relevant House.

*Effective dates*

The effective dates of the provisions with respect to participation and vesting are discussed above under "Participation and Coverage."

IV. FUNDING (SECS. 301-306, 1013, AND 1014 OF THE BILL AND SECS. 412, 413, AND 4971 OF THE INTERNAL REVENUE CODE)

The House bill would provide new minimum funding standards for plans of employers (or employee organizations) in interstate commerce (title I) and for tax-qualified plans (title II). Under the House version of the bill, the new minimum funding standard would require that currently-created costs be funded currently, and that costs attributable to already existing liabilities, past service liabilities created under plan amendments, and experience losses be amortized over stated periods of time. The House funding standards generally are based on accrued liabilities and not only on vested liabilities. However, if the funding requirements are higher under a second general standard which is based on "vested" liabilities, this standard would apply in lieu of the other rules. Where the funding requirements would create financial hardship, and certain standards are met, the Secretary of the Treasury or Secretary of Labor could permit variances in meeting the funding requirements.

The Senate amendment is basically similar to the House bill, but differs somewhat with respect to some of the periods of time allowed for amortizing past service cost and with respect to several technical provisions. Also, the Senate amendment does not include a second general funding standard based upon "vested" liabilities.

Generally, the conference substitute follows the House bill with respect to amortization periods and with respect to technical aspects, but modifies the House bill in other respects.

*General rule as to funding*

The conference substitute establishes new minimum funding requirements for plans of employers and unions in or affecting in-

terstate commerce (title I) and qualified plans (title II) so these plans will accumulate sufficient assets within a reasonable time to pay benefits to cover employees when they retire. Of course, contributions generally may be greater than these minimum requirements if the employer so desires. (However, there may be limits on the ability to currently deduct these larger contributions, under the tax laws.) The new requirements generally are not to apply to profit-sharing or stock bonus plans, governmental plans, certain church plans, plans with no employer contributions, and certain insured plans. Under the tax provisions, once a plan or trust has been tax qualified, the minimum funding requirements will apply, and they are to continue to apply to the plan or trust, even if it later loses its qualified status. If a plan loses its qualified status, the deduction rules for nonqualified plans are to apply even though the minimum funding standard continues to apply to the plan.

Generally, under the new funding, requirements, the minimum amount that an employer is to contribute annually to a defined benefit pension plan includes the normal costs of the plan plus amortization of past service liabilities, experience losses, etc. Except as described below (under "Variances—alternative funding methods"), the minimum amortization payments required by the conference substitute are calculated on a level payment basis—including interest and principal—over stated periods of time and are based on all accrued liabilities. Generally, initial past service liabilities and past service liabilities arising under plan amendments are to be amortized over no more than 30 years (40 years for the unfunded past service liabilities on the effective date of these new funding rules, in the case of existing plans), and experience gains and losses are to be amortized over no more than 15 years. However, generally experience gains and losses need not be calculated more often than every three years. With respect to multiemployer plans, past service liabilities generally may be amortized over no more than 40 years, and experience losses over no more than 20 years. Following the Senate amendment, the conference substitute does not include a second general minimum funding standard based only on "vested" liabilities.

If an employer would otherwise incur substantial business hardship, and if application of the minimum funding requirements would be adverse to plan participants in the aggregate, the Internal Revenue Service may waive the requirement of current payment of part or all of a year's contributions of normal costs, and amounts needed to amortize past service liabilities and experience losses. This waiver is to be available for single employer and multiemployer plans. The amount waived (plus interest) is to be amortized not less rapidly than ratably (including interest) over 15 years, and no more than 5 waivers may be granted for any 15 consecutive years. Also, the Secretary of Labor may extend the amortization period for amortization of past service costs up to an additional 10 years, on a showing of economic hardship.

For money purchase pension plans, the minimum amount that an employer is to annually contribute to the plan generally is the amount that must be contributed for the year under the plan formula. For purposes of this rule, a plan (for example, a so-called Taft-Hartley plan) which provides an agreed level of benefits and a specified level of contributions during the contract period is not to be considered a money purchase plan if the employer or his representative participated in the determination of the benefits. On the other hand, a "target benefit plan" is to be treated as a money purchase plan for purposes of the minimum funding rules.

Under the new funding rules, generally each covered plan is to maintain a new account called a "funding standard account." This account is to aid both the taxpayer-employer and the Government in administering the minimum funding rules. The account also is used to assure that a taxpayer who has funded more than the minimum amount required is properly credited for that excess and for the interest earned on the excess. Similarly, where a taxpayer has paid too little, the account is to assist in enforcing the minimum funding standard, and to assure that the taxpayer is charged with interest on the amount of underfunding.

Each year the funding standard account is to be charged with the liabilities which must be paid to meet the minimum funding standard. Also, each year the funding standard account is to be credited with contributions under the plan and with any other decrease in liabilities (such as amortized experience gains). If the plan meets the minimum funding requirements as of the end of each year, the funding standard account will show a zero balance (or a positive balance, if the employer has contributed more than the minimum required). If the minimum contributions have not been made, the funding standard account will show a deficiency (called an "accumulated funding deficiency"). If there is an accumulated funding deficiency, an excise tax is to be imposed on the employer who is responsible for making contributions to the plan. Also, the responsible employer may be subject to civil action in the courts on failure to meet the minimum funding standards.

The differences between the House bill and the conference substitute are described below.

*Additional funding standard*

The conference substitute, following the Senate amendment, does not include an additional funding standard which would require a contribution of the first year's payment under a 20-year amortization schedule of unfunded vested liabilities.

*Reasonable actuarial assumptions*

The conference substitute combines the rules relating to actuarial assumptions of the House bill and of the Senate amendment and requires that, for purposes of the minimum funding standard, all plan costs, liabilities, rates of interest, and other factors under the plan are to be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable. Actuarial assumptions are to take into account the experience of the plan and reasonable expectations. These assumptions are expected to take into consideration past experience as well as other relevant factors.

In addition, under the conference substitute, the actuarial assumptions in combination are to offer the actuary's best estimate of anticipated experience under the plan. The conferees intend that under this provision a single set of actuarial assumptions will be required for all purposes (e.g., for the minimum funding standard, reporting to the Department of Labor and to participants and beneficiaries, financial reporting to stockholders, etc.).

*Treatment of certain changes as experience gains or losses*

The House bill does not indicate how funding is to be provided where there is a change in liabilities arising from changes in actuarial assumptions used. The Senate amendment would include such changes in liabilities as experience gains or losses. Under the conference substitute, changes in plan liabilities resulting from changes in actuarial assumptions are to be amortized over a 30-year period.

*Definition of experience gain or loss*

Under the conference substitute (following title II of the House bill and the Senate amendment) experience gain or loss is the difference between the anticipated experience of the plan and the actual experience.

The conferees understand that certain plans are maintained pursuant to collectively bargained agreements which provide for a predetermined level of contributions over a period longer than 12 months, such as a specified dollar amount per tour of covered service by an employee or a specified dollar amount per ton of coal mined. It is intended that, for the funding requirements to be workable in these cases, employers generally must be allowed to base their contributions on the bargained and agreed upon basis during the period to which the collective bargaining agreement relates (but generally for not more than three years). Under such a plan, if the actuarial assumptions were reasonable and the actuarial calculations were correct as of the beginning of the term of the agreement, and the agreed upon contributions were made when required during the term of the agreement, it is intended that there would be no deficiency in the funding standard account for the term of the collectively bargained agreement (limited as indicated above). This would be the case even if the amount of contributions were less than what was reasonably expected at the beginning of the term of the agreement (for example, because the hours worked or the tons of coal mined were less than reasonably anticipated). In this case, it is expected that any difference between the reasonably anticipated contributions and actual contributions would be treated as an experience loss which could be made up under the next agreement by adjustment of the contribution rate (or by adjustment of the level of benefits).

*Change in funding method or plan year*

The conference substitute (following the House bill and Senate amendment) provides that a change in a plan's funding method (or plan year) can be used to determine plan costs and liabilities only if the change is approved by the administering Secretary. (Note that this requirement of prior approval does not apply to use of the alternative minimum funding standard, described below.) The conferees intend that a change in funding method or plan year also is to be reported to the Pension Benefit Guaranty Corporation in order that the Corporation may be fully apprised of events which may adversely affect the funding status of a plan.

*Full funding limitation*

Both the House bill and the Senate amendment include special provisions establishing the minimum amount to be funded where the difference between plan liabilities and plan assets is smaller than the amount otherwise required to be contributed under the minimum funding requirement for the year. Generally, these provisions are substantially the same; the conference substitute follows the House bill in the technical aspects. However, the conferees wish to clarify statements in the House reports with respect to the time at which plan liabilities and plan assets are to be valued for purposes of determining the full funding standard. Generally, the conferees intend that assets and liabilities are to be valued at the usual time used by the plan for such valuations, if done on a consistent basis and in accordance with regulations.

*Retroactive plan amendments*

The House bill generally would allow limited amendments of plans which retroactively decrease plan benefits (without the approval of the Secretary of Labor), and also would allow other plan amendments which retroactively decrease plan benefits, with the approval of the Secretary of Labor. The Senate amendment included no similar provisions.

The conference substitute generally allows limited retroactive plan amendments, but

only with the approval of the Secretary of Labor.

Under the conference substitute, plan amendments that reduce plan benefits may be made after the close of the plan year, and yet apply to that year if they are made within 2½ months after the end of the plan year. However, since a single plan year is not a workable standard for multiemployer plans, with respect to multiemployer plans, an amendment may be made under the conference substitute within 2 years of the close of the plan year.

To protect participants, amendments made under this provision are not to decrease vested benefits of any participant determined as of the time the amendment is adopted. In addition, such a retroactive amendment cannot reduce the accrued benefit (whether or not vested) of any participant determined as of the beginning of the first plan year to which the amendment applies. Moreover, such an amendment is not to retroactively reduce the accrued benefit of any participant, unless there would otherwise be an accumulated funding deficiency for all or part of the plan year in question, the funding deficiency could not be avoided through the implementation of any other reasonably available alternative (including amortization of experience losses or a waiver of the funding requirement), and the funding deficiency was not primarily attributable to the failure by employers to discharge contractual obligations to make contributions under the plan (e.g., failing to contribute a required amount per hour of work of plan participants).

Under the conference substitute, the plan administrator is to notify the Secretary of Labor of any amendment which retroactively decreases plan liabilities, before the amendment goes into effect. The amendment can then go into effect only if the Secretary has approved it, or if the Secretary does not disapprove it within 90 days after notice is filed. It is expected that within the 90-day period the Secretary may notify the plan of a tentative disapproval, if he needs more information or more time before making a final determination. The Secretary of Labor is not to approve any retroactive amendment unless he determines that it meets the requirements discussed above and determines that it is necessary because of substantial business hardship.

*Three-year determination of gains and losses*

Under the House bill, experience gains and losses would be determined every three years (more frequently in particular cases as required by regulations). Under the Senate amendment, an annual determination of gains and losses and an annual valuation of liabilities would be required.

The conference substitute follows the rules of the House bill. The conferees intend that regulations may be issued to require a determination of gains and losses and valuation of a plan's liabilities more frequently than every three years with respect to situations where there is a need for more frequent review. For example, the regulations might provide that a determination of experience gains and losses would be made more frequently than every three years by plans which have sustained substantial experience gains or losses for several periods in succession.

*Year-by-year waivers*

Title II of the House bill and the Senate amendment both provide that the Secretary of the Treasury may waive all or part of the minimum funding requirement for a plan year if an employer is unable to satisfy this requirement without incurring substantial business hardship.

The conference substitute follows the House bill with respect to the technical aspects and with respect to the number of variances that may be granted in any consecutive period of years. In addition, under the conference substitute, it is made clear that this waiver is to be available for employers contributing to a multiemployer plan. For multiemployer plans, the Secretary of Treasury may waive part or all of the funding requirements if at least 10 percent of the employers contributing to the plan demonstrate that they would experience substantial business hardship without the waiver, and if applying the minimum funding standard would be adverse to the interests of plan participants as a whole.

*Variances—extension of amortization periods*

The House bill would allow the Secretary of Labor to extend the amortization periods for funding past service liabilities or experience gains and losses of plans for an additional ten years, in cases of substantial business hardship. (Under the labor provisions of the House bill, this would be available for all plans under the general variance provision; under the tax provisions this would be available only for multiemployer plans.) A similar provision is included under the Senate amendment.

Under the conference substitute, the Secretary of Labor may extend the amortization period for unfunded past service liabilities and experience gains and losses for both multiemployer and single employer plans. These periods may be extended up to an additional ten years where there would otherwise be a substantial risk that the plan might be terminated or a substantial risk that pension benefit levels or employee compensation might be limited. Additionally, to grant an extension of time the Secretary must find that (1) the extension would carry out the purposes of the Act, (2) the extension would provide adequate protection for participants and beneficiaries, and (3) not granting the extension would be adverse to the interests of plan participants and beneficiaries as a whole.

*Variances—alternative funding methods*

Title I of the House bill provides that the Secretary of Labor may prescribe an alternative minimum funding method for multiemployer or single employer plans in certain cases of hardship. The Senate amendment does not include any similar provision. The conference substitute does not include a general provision allowing the Secretary of Labor to prescribe an alternative minimum funding method. However, the substitute provides an alternative method for a multiemployer plan to satisfy the minimum requirements for funding past service liabilities existing as of 12 months after the first date on which the minimum funding standards apply to the plan. This alternative method may be used only by multiemployer plans which were in existence on January 1, 1974, if (on that date) the contributions under the plan were based on a percentage of pay.

Under this alternative, and eligible plan may elect to fund, over the relevant amortization period, the applicable past service liabilities with contributions that are a level annual percentage of the aggregate pay of all participants under the plan (instead of funding these liabilities with level dollar payments) over the appropriate amortization period. The minimum amount to be paid under this alternative is the interest (at the rate otherwise used by the plan in determining its liabilities) on initial past service liabilities and past service liabilities created by plan amendment. Also, this interest assumption, by itself, must be a reasonable rate; and the assumption with respect to aggregate pay must, by itself, be a reasonable assumption. This is necessary because these two assumptions have a key role, individually, in determining the amount that will be contributed to a plan under this alternative amortization method.

*Limit on increase in benefits during variance*

The House bill provides that while a variance is in effect the plan cannot be amended to increase liabilities by an increase in benefits, a change in the accrual of benefits, or a change in the rate of vesting. A similar limitation is included in the Senate amendment.

The conference substitute generally follows the House bill in its technical aspects and limits plan amendments which increase liabilities where there has been a year-by-year waiver, or an extension of time to amortize past service costs or experience gains and losses. This limitation is to apply until the waived amount has been fully amortized or until the extension of time for amortization is no longer in effect. Also, under the conference substitute, benefits may not be increased if there has been a plan amendment which retroactively decreased plan benefits within the preceding 12 months (24 months in the case of multiemployer plans). However, the conference substitute makes it clear that reasonable, *de minimis* increases in plan liabilities are to be allowed, under regulations of the Secretary of Labor. (It is expected that the regulations will indicate the types of plan amendments considered *de minimis* for this purpose.) Also, amendments are to be allowed even though they increase plan liabilities if they are required as a condition of tax qualification. Further, amendments which merely repeal (in whole or in part) a previous retroactive decrease in benefits are to be allowed.

*Alternative minimum funding standard*

Under title II of the House bill, the same funding method and assumptions would be used for determining the minimum amount that must be contributed to a plan and for determining the maximum amount for which a current tax deduction is available. The Senate amendment does not include a similar requirement.

The conference substitute generally follows the rules of the House bill in requiring the funding method used by a plan to be the same for purposes of determining the minimum amount to be contributed and the maximum deduction for contributions. However, the conference substitute also would allow the use of an alternative minimum funding standard in order that there may be some leeway between the minimum required contributions and the maximum deductible contributions.

Under the alternative funding standard, generally the minimum amount to be contributed to a plan is (1) the excess (if any) of the value of accrued benefits over the value of plan assets, plus (2) normal cost. Under this standard, plan assets are to be annually valued at fair market value and plan liabilities are to be valued on the same basis as the Pension Benefit Guaranty Corportation would have computed them if the plan terminated. These valuation methods are used because this minimum funding standard is similar to a "termination test" funding standard. When the financial status of a plan is examined on a termination basis it is considered appropriate to use fair market valuations rather than valuations which tend to spread out fluctuations in value. In addition, under this standard normal cost is to be the lesser of normal cost as determined under the method used by the plan or normal cost under the unit credit method.

The alternative standard generally is to be available only for plans using funding methods which provide contributions which are no less than the contributions required under the entry age normal method. In this case, plan participants and beneficiaries will

have the protection of a relatively faster build-up of plan assets in the early years of the plan than under, e.g., the unit credit method.

On electing to use the alternative method, a plan must maintain an alternate funding standard account. The account will be charged with normal costs plus the excess of accrued benefits over assets (but not less than zero), and will be credited with contributions. There is to be no carryover of contributions over the minimum required from one year to another, because this amount automatically will become part of the next year's calculation in determining whether liabilities are greater than assets (that is, excess contributions will become part of the plan assets for purposes of the next year's calculation). On the other hand any shortfall of contributions less than the amount required will be carried over from year to year (with interest added) and an excise tax will be payable on these amounts (or on the funding deficiency as shown by the basic funding standard account, if smaller).

A plan that chooses to use the alternative funding method is to maintain both an alternative funding standard account and the basic funding standard account. The basic funding standard account will be charged and credited under the usual rules, but an excise tax generally will not be owed on any "deficiency" shown in that basic account. A plan making this choice is required to maintain both accounts because the minimum funding requirement will be the minimum required contribution under either account, which ever is the lesser.

The requirement under the alternative method could become higher than under the basic method if there was a substantial decrease in the market value of the assets, or if there was a substantial increase in plan liabilities (as through a plan amendment). If the minimum required contributions are lower under the basic standard than under the alternative standard, it is expected that the plan will switch back to the basic funding method.

If a plan switches back from the alternate funding standard to the basic funding standard, generally there is to be a 5-year amortization of the excess of charges over credits that have built up in the basic funding standard account over the years in which the alternative funding standard has been used. This will give the employer a reasonable period of time to fund the amounts that otherwise would have been contributed under the basic funding method, but were not contributed while the alternative funding method was being used. However, to the extent that excess charges (over contributions) have been previously built up in the alternate funding standard account, these are not to be amortized over 5 years, but instead are to be contributed immediately if the excise tax on underfunding is to be avoided. When an employer switches back from the alternative funding standard to the basic funding standard, the employer ceases to maintain the alternate minimum funding standard account. If the employer in some subsequent year returns to the alternate standard, a new account with a zero balance is to be established.

*Timing of contributions*

The conference substitute clarifies the intent of both the House bill and the Senate amendment, that contributions made after the close of a plan year may relate back to that plan year for purposes of the minimum funding standards. Under the conference substitute, the contribution may relate back to the plan year if it is made within 2½ months after the close of that plan year, plus any extension granted by the Internal Revenue Service up to an additional 6 months (for a maximum of 8½ months after the end of the year).

*Coverage and exemptions from coverage*

Under title I of the House bill, pension plans of employers in interstate commerce and pension plans of employee organizations with members in interstate commerce generally are covered by the minimum funding rules. Under title II, the new minimum funding rules apply to plans which are, or have been determined to be, tax-qualified. The Senate amendment is substantially the same as title II of the House bill, and in addition reaches substantially the same result as title I of the House bill by generally requiring all plans in interstate commerce to qualify under the tax laws. The conference substitute follows the House bill.

Under the conference substitute, government plans, including plans financed by contributions required under the Railroad Retirement Act, are to be exempt from the new funding requirement but they must meet the requirements of present law (sec. 401 (a)(7) of the Internal Revenue Code). The conferees intend that no changes are to be made in the application of the present funding requirements of the Internal Revenue Code to government plans. Although present law establishes a "safe haven rule" for payment of normal cost plus interest on past service costs, it is not intended that this safe haven rule become a requirement for government plans, but that (as under present Regs. § 1.401–6(c)(1)) the determination on whether a plan has terminated is to be made on "all the facts and circumstances in the particular case." Thus, it is intended that there be no change in the application of present law to government plans

The conference substitute exempts church plans from the new funding requirement if they meet the requirements of present law. However, church plans which elect to be covered under the participation, vesting, and termination insurance provisions are also to be covered by the new funding requirements.

The conference substitute excludes from the minimum funding rules plans established and maintained outside the United States if they are primarily for the benefit of persons substantially all of whom are nonresident aliens. This is specifically provided in the title I provisions, while under title II, such plans would have no need to seek tax deferral qualification.

The conference substitute excludes from the minimum funding rules of title I unfunded plans maintained by the employer primarily to provide deferred compensation for select management or highly compensated employees (under title II, such plans do not seek tax qualification). The conferees intend that this exemption is to include "consultant contracts" for retired management employees. Additionally, the substitute exempts from the funding rules plans adopted by a partnership exclusively for the benefit of a partner pursuant to section 736 of the Internal Revenue Code.

Under the conference substitute, plans which have not provided for employer contributions at any time after the date of enactment are to be exempt from the minimum funding rules (i.e., plans of unions funded exclusively by contributions of the union members).

An exemption is also provided for profit-sharing and stock bonus plans; however, money purchase pension plans and other individual account plans generally are not excluded from the minimum funding rules.

It is intended that plans generally are to be considered money purchase plans which meet the "definitely determinable" standard where the employer's contributions are fixed by the plane, even if the employer's obligation to contribute for any individual employee may vary based on the amount contributed to the plan in any year by the employee. For example, it is expected that a matching plan which provides that an employer will annually contribute up to 6 percent of an employee's salary, but that this contribution will be no more than the employee's own (nondeductible) contribution, will meet the "definitely determinable" criteria. In this case, the employer's contributions are set by the plan, will not vary with profits, and cannot be varied by the employer's action (other than by a plan amendment). (Of course, the plan must meet the nondiscrimination and other requirements of the Code to be qualified.)

Plans funded exclusively by the purchase of certain qualified level premium individual insurance contracts also are not to be subject to the minimum funding requirements. Additionally, the conference substitute makes it clear that where, instead of buying a series of such individual contracts, the employer holds a group insurance contract under which each employee's plan benefit is funded in the same manner as if individual contracts were purchased, the situation is to be treated the same as where there are individual insurance contracts. This generally will be available where the employer's premium is based on the sum of the level premiums attributable to each employee, where an employee's accrued benefit at any point in time is comparable to what would be provided under an individual contract, and as otherwise determined by regulations.

Supplemental unfunded plans which provide benefits in excess of limitations on contributions and benefits under the Internal Revenue Code and plans which are for the highly paid are to be excluded from the new funding standard. In addition, plans established by fraternal societies or other organizations described in section 501(c)(8) or (9) of the Internal Revenue Code are to be exempt if no employer contributions are made to the plan. Also, trusts which are part of plans described in section 501(c)(18) of the Code are to be exempt from the funding standards of title I (the standards of title II do not apply because those plans are not qualified plans).

With respect to the civil enforcement of the funding requirements, see "Labor and Tax Administration and Enforcement," *"Labor Department"* (Part VII, below). The excise tax provisions on underfunding in the conference substitute are the same as those in the House bill. However, before sending a notice of deficiency with respect to the first level (and second level) tax, the Internal Revenue Service is to notify the Secretary of Labor and provide him reasonable opportunity to obtain a correction of the funding deficiency, or to comment on the imposition of these taxes. The Service will be able to waive (or abate) the second level, but not the first level, tax upon a correction of underfunding that is obtained by the Secretary of Labor.

*Maximum deduction limitation*

The substitute generally provides that deductions are to be allowed to the extent of contributions required to meet the minimum funding standards. In addition, the present "5 percent" method allowing deductions of not in excess of 5 percent of the annual compensation of covered employees is repealed. Also, the "normal cost" method allowing deductions for normal cost, plus 10 percent of unfunded past service cost, is to be amended to allow deductions for contributions of normal cost, plus amortization over 10 years. Further, deductible limits are to be determined under the funding method and actuarial assumptions used for the minimum funding rules.

Generally, under the substitute, the maximum deduction is to be limited to the required contribution where a plan is subject to the full funding limitation. However, a special election is available under the substitute with regard to deductions if a plan becomes fully funded as a result of an amendment that decreases plan liabilities (benefits payable under the plan). This elec-

tion is available only with respect to plan amendments that are negotiated through the collective bargaining process. Under this election, the maximum amount deductible generally will be normal cost under the plan less the amount needed to amortize over 10 years (principal plus interest) the decrease in plan liabilities as a result of the plan amendment. However, if a plan is fully funded without regard to the collectively bargained decrease in liabilities, no deduction is to be allowed. If a plan elects this provision, the amounts deductible in future years for contributions to the plan will be decreased (pursuant to regulations) by the amount required for a 10-year amortization of the collectively bargained decrease in liabilities.

A special rule is provided with respect to plans of regulated public utilities doing business in 40 States and furnishing certain telephone or other communications services which are rate regulated. (This rule also applies to plans of other companies which are members of a controlled group that includes such a public utility doing business in 40 States.) Under this provision, if the Secretary of the Treasury finds that the plan is a collectively bargained plan, the rules described above for deductions where there have been decreases in liabilities on account of plan amendments would apply to decreases in plan liabilities as a result of an increase in benefits under Title II of the Social Security Act.

*Effective dates*

In the case of new plans, the funding provisions are to apply to the first full plan year beginning after the date of enactment of the bill. For example, if a plan was established on October 1, 1974, but its plan year is a calendar year, the new provisions are to apply to the plan year beginning January 1, 1975.

Generally, in the case of plans existing on January 1, 1974, the new funding provisions are to become applicable for plan years beginning after December 31, 1975. In the case of collectively bargained plans (both single employer and multiemployer plans) existing on January 1, 1974, the effective date would be delayed until the termination of the contract existing on January 1, 1974, but not later than plan years beginning after December 31, 1980. Where an employer has plans which involve both collective bargaining unit employees and other employees, the effective dates applicable to collectively bargained plans are to govern if (on January 1, 1974) at least 25 percent of the plan participants are members of the employee unit covered by the collectively bargained agreement. (This is described more fully in connection with the effective dates for participation.)

Where a qualified plan does not meet the funding requirements of existing law because of vesting or participation requirements made applicable by the substitute and where the funding requirements of the conference substitute do not become applicable until a later time than the vesting or participation requirements, then to the extent that failure to meet the funding requirements of existing law is attributable to these new vesting or participation requirements, no plan is to be disqualified in this interim period on the grounds of underfunding.

The effective date for the rules with respect to maximum deduction limits is the same as the effective date for the funding rules generally.

V. FIDUCIARY RESPONSIBILITY (SECS. 401–414 AND 2003 OF THE BILL AND SEC. 4975 OF THE INTERNAL REVENUE CODE)

*House bill and Senate amendment*

The House bill generally includes rules governing the responsibility of plan fiduciaries only in the labor provisions of the bill (title I). The labor provisions establish rules governing the basic responsibilities of plan as "prohibited transactions." (Present law under the Internal Revenue Code has similar prohibited transaction rules, which were unchanged by the House bill.)

Under the House bill, all plan fiduciaries must act, with respect to the plan, in accordance with a "prudent man" rule. In addition, plan fiduciaries generally must diversify plan investments (with certain exceptions for profit-sharing plans, etc., that invest in employer securities) and must act for the exclusive benefit of the plan participants and beneficiaries. The House bill also provides that all plans must be in writing, that plan assets generally are to be held in trust, and that trustees generally are to have the exclusive authority to manage and control plan assets. However, asset management in certain circumstances may be delegated to qualified investment managers. The bill also provides that plan trustees may allocate their responsibilities if the plan so provides and that in this event generally only the persons to whom responsibilities have been allocated would be liable for a surcharge.

Under the House bill, fiduciaries generally are prohibited from dealing on behalf of a plan with persons known to be parties-in-interest unless the dealings are for adequate consideration. Also, the bill generally prohibits fiduciaries from dealing with plan assets for their own accounts, receiving consideration from other parties dealing with the plan in a transaction involving the plan, or acting in a transaction involving the plan on behalf of a person who is adverse to the plan.

Under the House bill, a fiduciary is to be personally liable for losses to the plan resulting from violations of the fiduciary responsibility rules.

The Senate amendment includes rules governing fiduciary responsibility in both the labor and tax provisions. The labor provisions of the amendment, as in the case of the House bill, deal with the basic responsibility of fiduciaries, plan administrators, and structure; also and these provisions would establish certain transactions as prohibited transactions. Fiduciaries (and parties-in-interest) are to be personally liable under the labor provisions for losses sustained by a plan that result from a violation of these rules. The tax provisions of the amendment also establish prohibited transaction rules (which are nearly identical to the rules in the labor provision) which are to be enforced through an excise tax on parties-in-interest.

The Senate amendment rules governing the basic responsibilities of plan fiduciaries (*e.g.*, acting with prudence and for the exclusive benefit of participants and beneficiaries) are similar to the rules of the House bill.

With respect to plan administration, the amendment does not require plan assets generally to be held in trust nor does it require that assets be administered by trustees. The amendment would, however, deem plan assets to be held in trust. Also, the Senate amendment does not include provisions similar to those of the House bill with respect to allocation of responsibilities among trustees.

Under both the labor and tax provisions of the Senate admendment, plan fiduciaries generally are prohibited from engaging in specified transactions with parties-in-interest whether or not these transactions are for adequate consideration. However, the amendment provides for administrative variances from these prohibitions if certain conditions are met, and also would provide statutory exemptions for, *e.g.*, paying reasonable compensation to parties-in-interest for services rendered to the plan which are necessary for the plan's operation. The amendment also would prohibit a fiduciary from dealing with the plan assets on his own account, receiving consideration from other parties dealing with the plan, and acting on behalf of a person adverse to the plan.

*Fiduciary responsibility rules, in general*

The conference substitute establishes rules governing the conduct of plan fiduciaries under the labor laws (title I) and also establishes rules governing the conduct of disqualified persons (who are generally the same people as "parties in interest" under the labor provisions) with respect to the plan under the tax laws (title II). This division corresponds to the basic difference in focus of the two departments. The labor law provisions apply rules and remedies similar to those under traditional trust law to govern the conduct of fiduciaries. The tax law provisions apply an excise tax on disqualified persons who violate the new prohibited transaction rules; this is similar to the approach taken under the present rules against self-dealing that apply to private foundations.

The labor provisions deal with the structure of plan administration, provide general standards of conduct for fiduciaries, and make certain specific transactions "prohibited transactions" which plan fiduciaries are not to engage in. The tax provisions include only the prohibited transaction rules and apply only to disqualified persons, not fiduciaries (unless the fiduciary is otherwise a disqualified person and the transaction involved him, or the fiduciary benefited from the transaction). To the maximum extent possible, the prohibited transaction rules are identical in the labor and tax provisions, so they will apply in the same manner to the same transaction. (However, there are some differences, such as not prohibiting under the tax law an act to which the tax sanction cannot appropriately apply.)

*Coverage of the labor provisions*

The labor fiduciary responsibility rules generally apply to all employee benefit plans (both retirement plans and welfare plans) in or affecting interstate commerce. The usual exceptions for government plans, church plans (which do not elect to have the participation, vesting, funding, and insurance rules apply), workmen's compensation plans, and nonresident alien plans apply here as well as to the other parts of the labor provisions. In addition, the labor fiduciary rules do not apply to an unfunded plan primarily devoted to providing deferred compensation for a select group of management or highly compensated employees. For example, if a "phantom stock" or "shadow stock" plan were to be established solely for the officers of a corporation, it would not be covered by the labor fiduciary rules. Also, a deferred compensation arrangement solely for retiring partners (under sec. 736 of the Internal Revenue Code) is to be exempt from the fiduciary responsibility rules. Additionally, the fiduciary responsibility rules do not apply to a so-called excess benefit plan which is unfunded.

Since mutual funds are regulated by the Investment Company Act of 1940 and, since (under the Internal Revenue Code) mutual funds must be broadly held, it is not considered necessary to apply the fiduciary rules to mutual funds merely because plans invest in their shares. Therefore, the substitute provides that the mere investment by a plan in the shares of a mutual fund is not to be sufficient to cause the assets of the fund to be considered the assets of the plan. (However, a plan's assets will include the shares of a mutual fund held by the plan.)

The substitute also provides that a mutual fund is not to be considered a fiduciary or a party-in-interest merely because a plan invests in its shares, except that the mutual fund may be a fiduciary or party-in-interest if it acts in connection with a plan covering the employees of the investment company,

the investment adviser, or its principal underwriter.

An insurance company also is not considered to hold plan assets if a plan purchases an insurance policy from it, to the extent that the policy provides payments guaranteed by the company. If the policy guarantees basic payments but other payments may vary with *e.g.*, investment performance, then the variable part of the policy and assets attributable thereto are not to be considered as guaranteed, and are to be considered as plan assets subject to the fiduciary rules. (However, such assets need not be held in trust under the fiduciary responsibility rules.)

Additionally, it is understood that assets placed in a separate account managed by an insurance company are separately managed and the insurance company's payments generally are based on the investment performance of these particular assets. Consequently, insurance companies are to be responsible under the general fiduciary rules with respect to assets held under separate account contracts, and the assets of these contracts are to be considered as plan assets (but need not be held in trust). However, to the extent that insurance companies place some of their own funds in these separate accounts to provide for contingencies, this separate account "surplus" is not to be subject to the fiduciary responsibility rules.

These rules are to apply with respect to insurance policies issued by an insurance company, or by an insurance service or insurance organization. The conferees understand that some companies that provide, *e.g.*, health insurance, are not technically considered as "insurance companies." It is intended that these companies are to be included within the terms "insurance service or insurance organization."

*Structure of plan administration*

*Establishment of plan.*—Under the labor provisions of the conference substitute, every covered employee benefit plan (both retirement and welfare plan) is to be established and maintained in writing. A written plan is to be required in order that every employee may, on examining the plan documents, determine exactly what his rights and obligations are under the plan. Also, a written plan is required so the employees may know who is responsible for operating the plan. Therefore, the plan document is to provide for the "named fiduciaries" who have authority to control and manage the plan operations and administration. A named fiduciary may be a person whose name actually appears in the document, or may be a person who holds an office specified in the document, such as the company president. A named fiduciary also may be a person who is identified by the employer or union, under a procedure set out in the document. For example, the plan may provide that the employer's board of directors is to choose the person who manages or controls the plan. In addition, a named fiduciary may be a person identified by the employers and union acting jointly. For example, the members of a joint board of trustees of a Taft-Hartley plan would usually be named fiduciaries.

*Plan contents.*—Under the labor provisions of the substitute, each plan is to provide a procedure for establishing a funding policy and method to carry out the plan objectives. This procedure is to enable the plan fiduciaries to determine the plan's short- and long-run financial needs and communicate these requirements to the appropriate persons. For example, with a retirement plan it is expected that under this procedure the persons who manage the plan will determine whether the plan has a short-run need for liquidity, (*e.g.*, to pay benefits) or whether liquidity is a long-run goal and investment growth is a more current need. This in turn is to be communicated to the persons responsible for investments, so that investment policy can be appropriately coordinated with plan needs. Also, the plan documents are to set out the basis for contributions to and payments from the plan. Thus, the plan is to specify what part (if any) of contributions are to come from employees and what part from employers. Also, it is to specify the basis on which payments are to be made to participants and beneficiaries.

It is customary for those who manage and control the plan to allocate their responsibilities and, within limits, designate others to carry out the daily management of the plan. The conference substitute establishes special rules which will enable fiduciaries to continue to allocate and delegate their responsibilities. However, allocation or delegation is to be allowed only if the plan provides for it (or provides procedures for it) in accordance with the terms of the substitute, as discussed below.

Each plan also is to provide a procedure for amendments and for identifying who can amend the plan. Additionally, following common practice, a plan may provide that a person may serve in more than one fiduciary capacity under the plan, including service both as administrator and trustee. As described below, the plan may also provide for the hiring of investment (and other) advisers and investment managers.

*Establishment of trust.*—The labor provisions of the substitute generally provide that all plan assets are to be held in trust by trustees and also provide that the trustees are to manage and control the plan assets. Also, the plan trustees are to be appointed in the plan or trust documents or appointed by a named fiduciary. However, in order that persons who act as trustees recognize their special responsibilities with respect to plan assets, trustees are to accept appointment before they act in this capacity.

If the plan provides that the trustees are subject to the direction of named fiduciaries, then the trustees are not to have the exclusive management and control over the plan assets, but generally are to follow the directions of the named fiduciary. Therefore, if the plan sponsor wants an investment committee to direct plan investments, he may provide for such an arrangement in the plan. In addition, since investment decisions are basic to plan operations, members of such an investment committee are to be named fiduciaries. (For example, the plan could provide that the investment committee is to consist of the persons who serve as the president, vice-president for finance, and comptroller of the employer.) If the plan so provides, the trustee who is directed by an investment committee is to follow that committee's directions unless it is clear on their face that the actions to be taken under those directions would be prohibited by the fiduciary responsibility rules of the bill or would be contrary to the terms of the plan or trust.

In addition (as discussed below), to the extent that the management of plan assets is delegated to a special category of persons called "investment managers", the trustee is not to have exclusive discretion to manage and control the plan assets, nor would the trustee be liable for any act of such investment manager.

A trust is not to be required in the case of plan assets which consist of insurance (including annuity) contracts or policies issued by an insurance company qualified to do business in a State (or the District of Columbia). The same exemption will apply to the new section 403(b) custodial account arrangement involving investment in mutual funds, since these are treated as amounts contributed for an annuity contract under the tax law. Although these contracts need not be held in trust, nevertheless, the person who holds the contract is to be a fiduciary and is to act in accordance with the fiduciary rules of the substitute with respect to these contracts. For example, this person is to prudently take and keep exclusive control of the contracts, and is to use prudent care and skill to preserve this property.

To the extent that plan assets are held by an insurance company they need not be held in trust. However, to the extent the substitute treats assets held by an insurance company as "plan assets", the insurance company is to be treated as a fiduciary with respect to the plan, and is to meet the fiduciary standards of the conference substitute.

The labor provisions of the substitute also provide that the assets of H.R. 10 plans (plans for the self-employed and their employees) and individual retirement accounts need not be held in trust to the extent they are held in custodial accounts qualified under the Internal Revenue Code. It is recognized that the substitute generally amends the Internal Revenue Code to make use of custodial accounts more available for all plans, and that this is expected to decrease the cost of asset administration for many plans. Custodial accounts also may be used by all plans under the labor provisions. However, a plan (which is not exempt from the trust requirements) that uses a custodial account also will have to have a trustee (who can be the plan administrator or sponsor). The plan trustee will have the responsibility for investment decisions with regard to the assets and the custodian will (as under present practice) merely retain custody of these assets. Since the plan sponsor could be the trustee, the costs of plan administration will remain as low as with the present custodial account arrangements, but the plan also would have a responsible person in charge of investment decisions.

A trust also is not to be required for a plan not subject to the participation, vesting and funding provisions of title I, and the plan termination insurance provisions, to the extent provided by the Secretary of Labor.

*Liability for breach of co-fiduciary responsibility in general.*—Under the labor provisions of the conference substitute, a fiduciary of a plan is to be liable for the breach of fiduciary responsibility by another fiduciary of the plan if he knowingly participates in a breach of duty committed by the other fiduciary. Under this rule, the fiduciary must know the other person is a fiduciary with respect to the plan, must know that he participated in the act that constituted a breach, and must know that it was a breach. For example, A and B are co-trustees, and the terms of the trust provide that they are not to invest in, *e.g.*, commodity futures. If A suggests to B that B invest part of the plan assets in commodity futures, and if B does so, A, as well as B, is to be liable for the breach.

In addition, a fiduciary is to be liable for the breach of fiduciary responsibility by another fiduciary of the plan, if he knowingly undertakes to conceal a breach committed by the other. For the first fiduciary to be liable, he must know that the other is a fiduciary with regard to the plan, must know of the act, and must know that it is a breach. For example, A and B are co-trustees, and B invests in commodity futures in violation of the trust instrument. If B tells his co-trustee A of this investment, A would be liable with B for breach of fiduciary responsibility if he concealed this investment.

Also, if a fiduciary knows that another fiduciary of the plan has committed a breach, and the first fiduciary knows that this is a breach, the first fiduciary must take reasonable steps under the circumstances to remedy the breach. In the second example above, if A has the authority to do so, and if it is prudent under the circumstances, A may be required to dispose of the commodity futures acquired by B. Alternatively, the most appropriate steps in the circumstances may be to notify the plan sponsor of the breach,

or to proceed to an appropriate Federal court for instructions, or bring the matter to the attention of the Secretary of Labor. The proper remedy is to be determined by the facts and circumstances of the particular case, and it may be affected by the relationship of the fiduciary to the plan and to the co-fiduciary, the duties and responsibilities of the fiduciary in question, and the nature of the breach.

A fiduciary also is to be liable for the loss caused by the breach of fiduciary responsibility by another fiduciary of the plan if he enables the other fiduciary to commit a breach through his failure to exercise prudence (or otherwise comply with the basic fiduciary rules of the bill) in carrying out his specific responsibilities. For example, A and B are co-trustees and are to jointly manage the plan assets. A improperly allows B to have the sole custody of the plan assets and makes no inquiry as to his conduct. B is thereby enabled to sell the property and to embezzle the proceeds. A is to be liable for a breach of fiduciary responsibility.

*Allocation of duties of co-trustees.*—Under the conference substitute, if the plan assets are held by co-trustees, then each trustee has the duty to manage and control those assets. For example, shares of stock held in trust by several trustees generally should be registered in the name of all the trustees, or in the name of the trust. In addition, each trustee is to use reasonable care to prevent his co-trustee from committing a breach of fiduciary duty.

Although generally each trustee must manage and control the plan assets, nevertheless, under the substitute specific duties and responsibilities with respect to the management of plan assets may be allocated among co-trustees by the trust instrument. For example, the trust instrument may provide that trustee A is to manage and control one-half of the plan assets, and trustee B is to manage and control the other half of the plan assets.

Also, the trust instrument may provide that specific duties may be allocated by agreement among the co-trustees. In this case, however, the conferees intend that the trust instrument is to specifically delineate the duties that may be allocated by agreement of the co-trustees and is to specify a procedure for such allocation. Also, the trustees must act prudently in implementing such an allocation procedure.

If duties are allocated among co-trustees in accordance with the substitute, a trustee to whom duties have not been allocated is not to be liable for any loss that arises from acts or omissions of the co-trustee to whom such responsibilities have been allocated.

However, a co-trustee will be liable notwithstanding allocation if he individually fails to comply with the other fiduciary standards. For example, a co-trustee would be liable on account of his own acts if he did not act in accordance with the prudent man standard and thereby caused the plan to suffer a loss. In addition, the general rules of co-fiduciary liability are to apply. Therefore, for example, if a trustee had knowledge of a breach by a co-trustee, he would be liable unless he made reasonable efforts to remedy the breach.

Under the substitute, it is made clear that if plan assets are held in separate trusts a trustee of one trust is not responsible as a co-trustee of the other trust.

The conferees understand that under certain circumstances, trustees (and other fiduciaries) in discharging their responsibilities in accordance with the prudent man rule will hire agents to perform ministerial acts. In this case, the liability of the trustees (and other fiduciaries) for acts of their agents is to be established in accordance with the prudent man rule.

*Allocation and delegation of duties other than the management of plan assets.*—The substitute also provides for the allocation and delegation by fiduciaries of duties that do not involve the management and control of plan assets.[1] However, in order that participants and beneficiaries, etc., may readily determine who is responsible for managing a plan, the substitute generally provides that only "named fiduciaries" will be able to allocate or delegate their responsibilities.

Under the substitute, if the plan so provides, named co-fiduciaries may allocate their specific responsibilities among themselves, and named fiduciaries may delegate all or part of their duties (which do not involve asset management) to others. The substitute also provides that upon proper allocation or delegation fiduciaries will not be liable for the acts or omissions of the persons to whom duties have been allocated or delegated.

Allocation or delegation (and the consequent elimination of liability) can only occur under specific circumstances. The plan must specifically allow such allocation or delegation, and the plan must expressly provide a procedure for it. For example, the plan may provide that delegation may occur only with respect to specified duties, and only on the approval of the plan sponsor or on the approval of the joint board of trustees of a Taft-Hartley plan. Also, in implementing the procedures of the plan, plan fiduciaries must act prudently and in the interests of participants and beneficiaries. The fiduciaries also must act in this manner in choosing the person to whom they allocate or delegate their duties. Additionally, they must act in this manner in continuing the allocation or delegation of their duties.

In order to act prudently in retaining a person to whom duties have been delegated, it is expected that the fiduciary will periodically review this person's performance. Depending upon the circumstances, this requirement may be satisfied by formal periodic review (which may be by all the named fiduciaries who have participated in the delegation or by a specially designated review committee), or it may be met through day-to-day contact and evaluation, or in other appropriate ways. Since effective review requires that a person's services can be terminated, it may be necessary to enter into arrangements which the fiduciary can promptly terminate (within the limits of the circumstances).

Even though a named fiduciary has properly delegated his duties in accordance with the substitute, he may still be liable for the acts of a co-fiduciary if he breaches the general rules of co-fiduciary liability by, *e.g.*, knowingly concealing a breach of a co-fiduciary.

*Investment managers, investment committees, etc.*—Under the substitute, if the plan so provides, a person who is a named fiduciary with respect to the control or management of plan assets may appoint a qualified investment manager to manage all or part of the plan assets. (However, in choosing an investment manager, the named fiduciary must act prudently and in the interests of participants and beneficiaries, and also must act in this manner in continuing the use of an investment manager.) In this case, the plan trustee would no longer have responsibility for managing the assets controlled by the qualified investment manager, and the trustee would not be liable for the acts or omissions of the investment manager. Also, as long as the named fiduciary had chosen and retained the investment manager prudentially, the named fiduciary would not be liable for the acts or omissions of the manager. Under the substitute, a qualified investment manager may be an investment adviser registered under the Investment Advisers Act of 1940, a bank (as defined in that Act), or an insurance company qualified to perform investment management services under State law in more than one State. To be qualified, the investment manager also must acknowledge in writing that he is a plan fiduciary.

As described above (*Establishment of trust*) the plan may also provide that the trustee is to be subject to the direction of named fiduciaries with respect to investment decisions. In this case, if the trustee properly follows the instructions of the named fiduciaries, the trustee generally is not to be liable for losses which arise out of following these instructions. (The named fiduciaries, however, would be subject to the usual fiduciary responsibility rules and would be subject to liability on breach of these rules.)

In addition, a plan may provide that named fiduciaries (or fiduciaries to whom duties have been properly delegated) may employ investment and other advisers. However, a fiduciary cannot be relieved of his own responsibilities merely because he follows the advice of such a person. (Also, investment advisers would be fiduciaries under the substitute).

*Basic fiduciary rules*

*Prudent man standard.*—The substitute requires that each fiduciary of a plan act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character and with like aims. The conferees expect that the courts will interpret this prudent man rule (and the other fiduciary standards) bearing in mind the special nature and purpose of employee benefit plans.

Under the Internal Revenue Code, qualified retirement plans must be for the exclusive benefit of the employees and their beneficiaries. Following this requirement, the Internal Revenue Service has developed general rules that govern the investment of plan assets, including a requirement that cost must not exceed fair market value at the time of purchase, there must be a fair return commensurate with the prevailing rate, sufficient liquidity must be maintained to permit distributions, and the safeguards and diversity that a prudent investor would adhere to must be present. The conferees intend that to the extent that a fiduciary meets the prudent man rule of the labor provisions, he will be deemed to meet these aspects of the exclusive benefit requirements under the Internal Revenue Code.

Under the conference substitute, plan fiduciaries also must act in accordance with plan documents and instruments to the extent that they are consistent with the requirements established in the bill.

*Exclusive benefit for employees.*—Under the conference substitute each fiduciary of a plan must act solely in the interests of the plan's participants and beneficiaries and exclusively to provide benefits to these participants and beneficiaries (or to pay reasonable plan administrative costs).

Since the assets of the employee benefit plan are to be held for the exclusive benefit of participants and beneficiaries, plan assets generally are not to inure to the benefit of the employer. However, the conference substitute allows an employer's contributions to be returned to him in certain limited situations.

An employer's contributions can be returned within one year after they are made to the plan, if made as a mistake of fact. (For example, an employer may have made an arithmetical error in calculating the amounts that were to be contributed to the plan.) Also, if an employer contributes to a plan on the condition that the plan is tax-qualified or on the condition that a current tax deduction is allowed for the contribution, and it is later determined that the plan is not qualified (or the deduction is not

[1] For example, these rules would govern the allocation or delegation of duties with respect to payment of benefits.

allowed), the contribution can be returned if the plan provides for it. In this case, the contribution can be returned within one year after the disallowance of qualification or deduction. With regard to a disallowance of deductions, contributions can be returned only to the extent of the amount for which a deduction is denied. (For example, if $100 is contributed on the condition it is deductible and $20 is later determined not to be deductible, only $20 could be returned, and not $100.) Also with respect to qualification, contributions can be returned on the denial of initial or of continuing qualification (in the case of contributions made after *e.g.*, a plan amendment).

An employer's contributions under an H.R. 10 plan also can be returned to the employer to the extent permitted to avoid payment of an excess tax on excess contributions.

Under the labor (but not the tax) provisions of the substitute, the transfer or distribution of the assets of a welfare plan on termination of the plan is to be in accordance with the terms of the plan except as otherwise prescribed by regulations of the Secretary of Labor. It is intended that the Secretary of Labor would allow the terms of the plan (or in the case of a plan subject to collective bargaining, the collective bargaining agreement) to govern such distribution or transfer of assets except to the extent that implementation of the terms of the plan or agreement would unduly impair the accrued benefits of the plan participants or would not be in the best interests of the plan participants. Where such distribution or transfer is incidental to the merger of one multiemployer plan with another, it is expected that the Secretary of Labor would disallow the distribution or transfer only where the merger would reasonably be expected to jeopardize the ability of the plan to meet its obligations or would otherwise not be in the best interests of the plan participants.

Also, under the labor (but not the tax) provisions of the substitute, on termination of a pension plan to which the plan termination insurance provisions do not apply, the assets of the plan are to be allocated in accordance with the provisions under the plan termination insurance title of the Act governing such allocation (as if the plan were covered by termination insurance) except as otherwise provided in regulations prescribed by the Secretary of Labor. It is intended that regulations by the Secretary of Labor in this case would be similar to the regulations governing the distribution of assets on termination of a welfare plan as described above.

*Diversification requirement.*—The substitute requires fiduciaries to diversify plan assets to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. It is not intended that a more stringent standard of prudence be established with the use of the term "clearly prudent." Instead, by using this term it is intended that in an action for plan losses based on breach of the diversification requirement, the plaintiff's initial burden will be to demonstrate that there has been a failure to diversify. The defendant then is to have the burden of demonstrating that this failure to diversify was prudent. The substitute places these relative burdens on the parties in this matter, because the basic policy is to require diversification, and if diversification on its face does not exist, then the burden of justifying failure to follow this general policy should be on the fiduciary who engages in this conduct.

The degree of investment concentration that would violate this requirement to diversify cannot be stated as a fixed percentage, because a prudent fiduciary must consider the facts and circumstances of each case. The factors to be considered include (1) the purposes of the plan; (2) the amount of the plan assets; (3) financial and industrial conditions; (4) the type of investment, whether mortgages, bonds or shares of stock or otherwise; (5) distribution as to geographical location; (6) distribution as to industries; (7) the dates of maturity.

A fiduciary usually should not invest the whole or an unreasonably large proportion of the trust property in a single security. Ordinarily the fiduciary should not invest the whole or an unduly large proportion of the trust property in one type of security or in various types of securities dependent upon the success of one enterprise or upon conditions in one locality, since the effect is to increase the risk of large losses. Thus, although the fiduciary may be authorized to invest in industrial stocks, he should not invest a disproportionate amount of the plan assets in the shares of corporations engaged in a particular industry. If he is investing in mortgages on real property he should not invest a disproportionate amount of the trust in mortgages in a particular district or on a particular class of property so that a decline in property values in that district or of that class might cause a large loss.

The assets of many pension plans are managed by one or more investment managers. For example, one investment manager, A, may be responsible for 10 percent of the assets of a plan and instructed by the named fiduciary or trustee to invest solely in bonds; another investment manager, B, may be responsible for a different 10 percent of the assets of the same plan and instructed to invest solely in equities. Such arrangements often result in investment returns which are quite favorable to the plan, its participants, and its beneficiaries. In these circumstances, A would invest solely in bonds in accordance with his instructions and would diversify the bond investments in accordance with the diversification standard, the prudent man standard, and all other provisions applicable to A as a fiduciary. Similarly, B would invest solely in equities in accordance with his instructions and these standards. Neither A nor B would incur any liability for diversifying assets subject to their management in accordance with their instructions.

The conferees intend that, in general whether the plan assets are sufficiently diversified is to be determined by examining the ultimate investment of the plan assets. For example, the conferees understand that for efficiency and economy plans may invest all their assets in a single bank or other pooled investment fund, but that the pooled fund itself could have diversified investments. It is intended that, in this case, the diversified rule is to be applied to the plan by examining the diversification of the investments in the pooled fund. The same is true with respect to investments in a mutual fund. Also, generally a plan may be invested wholly in insurance or annuity contracts without violating the diversification rules, since generally an insurance company's assets are to be invested in a diversified manner.

(With respect to special rules regarding diversification of assets and investment in employer securities, etc., by certain individual account plans, see "Employer securities and employer real property," below.)

*Certain individual account plans.*—Under the substitute, a special rule is provided for individual account plans where the participant is permitted to, and in fact does, exercise independent control over the assets in his individual account. In this case, the individual is not to be regarded as a fiduciary and other persons who are fiduciaries with respect to the plan are not to be liable for any loss that results from the exercise and control by the participant or beneficiary. Therefore, if the participant instructs the plan trustee to invest the full balance of his account in, *e.g.*, a single stock, the trustee is not to be liable for any loss because of a failure to diversify or because the investment does not meet the prudent man standards. However, the investment must not contradict the terms of the plan, and if the plan on its face prohibits such investments, the trustee could not follow the instructions and avoid liability.

The conferees recognize that there may be difficulties in determining whether the participant in fact exercises independent control over his account. Consequently, whether participants and beneficiaries exercise independent control is to be determined pursuant to regulations prescribed by the Secretary of Labor. The conferees expect that the regulations will provide more stringent standards with respect to determining whether there is an independent exercise of control where the investments may inure to the direct or indirect benefit of the plan sponsor since, in this case participants might be subject to pressure with respect to investment decisions. (Because of the difficulty of ensuring that there is independence of choice in an employer established individual retirement account, it is expected that the regulations will generally provide that sufficient independent control will not exist with respect to the acquisition of employer securities by participants and beneficiaries under this type of plan.) In addition, the conferees expect that the regulations generally will require that for there to be independent control by participants, a broad range of investments must be available to the individual participants and beneficiaries.

*Transfer of assets outside of the United States.*—In order to prevent "runaway assets," the labor provisions of the substitute generally prohibit a fiduciary from transferring or maintaining the indicia of ownership of any plan assets outside the jurisdiction of the district courts of the United States. However, such a transaction may be permitted under regulations issued by the Secretary of Labor.

It is recognized that investment in securities of foreign companies and governments have been and may well continue to be in the best interests of plan participants in appropriate circumstances and with proper safeguards, and that the physical transfer of securities back and forth overseas may involve unduly high cost and impose unreasonable limitations on the investment of plan funds in such securities. The basic objective of the requirement that the indicia of ownership remain within the jurisdiction of a United States District Court is to preclude frustration of adequate fiduciary supervision and remedies for breach of trust. However, the risk of misappropriation of plan assets or their removal beyond the effective process of an American court is minimal where the assets are under the management or control of a bank, trust company or similar institution which is subject to adequate regulation and examination by State or Federal supervisory agencies. Such an institution would be responsive to legal process and to the traditional principles of fiduciary responsibility under trust law. Accordingly, it is contemplated that the Secretary of Labor will, as a general rule, grant an exemption to such institutions meeting standards that would assure the safety of plan assets. It is further contemplated that the Secretary will issue temporary regulations authorizing institutions with a history of investing pension funds in foreign securities as a matter of policy to continue to do so pending formal action on an application for exemption.

*Prohibited transactions*

*In general.*—The conference substitute prohibits plan fiduciaries and parties-in-interest from engaging in a number of specific transactions. Prohibited transaction rules are included both in the labor and tax provisions of the substitute. Under the labor provisions, (title I), the fiduciary is the main focus of the prohibited transaction rules.

This corresponds to the traditional focus of trust law and of civil enforcement of fiduciary responsibilities through the courts. On the other hand, the tax provisions (title II) focus on the disqualified person. This corresponds to the persent prohibited transaction provisions relating to private foundations.[2]

The prohibited transactions, and exceptions therefrom, are nearly identical in the labor and tax provisions. However, the labor and tax provisions differ somewhat in establishing liability for violation of prohibited transactions. Under the labor provisions, a fiduciary will only be liable if he knew or should have known that he engaged in a prohibited transaction. Such a knowledge requirement is not included in the tax provisions. This distinction conforms to the distinction in present law in the private foundation provisions (where a foundation's manager generally is subject to a tax on self-dealing if he acted with knowledge, but a disqualified person is subject to tax without proof of knowledge).

Under the labor provisions a fiduciary will be liable for losses to a plan from a prohibited transaction in which he engaged if he would have known the transaction involving the particular party-in-interest was prohibited if he had acted as a prudent man. The type of investigation that will be needed to satisfy the test of prudence will depend upon the particular facts and circumstances of the case. In the case of a significant transaction, generally for a fiduciary to be prudent he must make a thorough investigation of the other party's relationship to the plan to determine if he is a party-in-interest. In the case of a normal and insubstantial day-to-day transaction, it may be sufficient to check the identity of the other party against a roster of parties-in-interest that is periodically updated.

In general, it is expected that a transaction will not be a prohibited transaction (under either the labor or tax provisions) if the transaction is an ordinary "blind" purchase or sale of securities through an exchange where neither buyer nor seller (nor the agent of either) knows the identity of the other party involved. In this case, there is no reason to impose a sanction on a fiduciary (or party-in-interest) merely because, by chance, the other party turns out to be a party-in-interest (or plan).

The labor prohibitions affect "parties-in-interest," and the tax prohibitions affect "disqualified persons." The two terms are substantially the same in most respects, but the labor term includes a somewhat broader range of persons, as described below.

*Coverage.*—The prohibited transaction rules under the labor provisions apply to all plans to which the general labor fiduciary rules apply, as described above. The tax law prohibited transaction rules apply to all qualified retirement plans (under secs. 401, 403(a), and 405(a) of the Internal Revenue Code) and to all qualified individual retirement accounts, individual retirement annuities, and individual retirement bonds (under secs. 408 and 409 of the Code). In addition, the tax law rules are to continue to apply even if the plan, etc., should later lose its tax qualification.

The tax law prohibited transaction provisions follow the labor provisions with respect to whether the assets of an insurance company or mutual fund are to be considered the assets of a plan. Also, the tax provisions exclude from the new prohibited transaction rules government plans, and church plans which have not elected coverage under the new participation, vesting, funding and insurance provisions. (The latter plans, if they are qualified plans, will be subject to present law.)

*Party-in-interest transactions.*—Under the substitute, the direct or indirect sale, exchange, or leasing of any property between the plan and a party-in-interest[3] (with exceptions subsequently noted) is a prohibited transaction. Under this rule, the transaction is prohibited whether or not the property involved is owned by the plan or party-in-interest, and the prohibited transaction includes sales, etc., from the party-in-interest to the plan, and also from the plan to the party-in-interest. Also, following the private foundation rules of the tax law, a transfer of property by a party-in-interest to a plan is treated as a sale or exchange if the property is subject to a mortgage or a similar lien which the party-in-interest placed on the property within 10 years prior to the transfer to the plan or if the plan assumes a mortgage or similar lien placed on the property by a party-in-interest within 10 years prior to the transfer. This rule prevents circumvention of the prohibition on sale by mortgaging the property before transfer to the plan.

The conference substitute also generally prohibits the direct or indirect lending of money or other extension of credit between a plan and parties-in-interest. For example, a prohibited transaction generally will occur if a loan to a plan is guaranteed by a party-in-interest, unless it comes within the special exemption for employee stock ownership plans.

It is intended that prohibited loans include the acquisition by the plan of a debt instrument (such as a bond or note) which is an obligation of a party-in-interest. (However, the transition rules described below establish special rules for certain debt instruments held by a plan before July 1, 1974). Similarly, it is intended that it would be a prohibited transaction (in effect a loan by the plan to the employer) if the employer funds his contributions to the plan with his own debt obligations.

With certain exceptions described below, the direct or indirect furnishing of goods or services or facilities between a plan and a party-in-interest also is prohibited. This would apply, for example, to the furnishing of personal living quarters to a party-in-interest.

The substitute prohibits the direct or indirect transfer of any plan income or assets to or for the benefit of a party-in-interest. It also prohibits the use of plan income or assets by or for the benefit of any party-in-interest. As in other situations, this prohibited transaction may occur even though there has not been a transfer of money or property between the plan and a party-in-interest. For example, securities purchases or sales by a plan to manipulate the price of the security to the advantage of a party-in-interest constitutes a use by or for the benefit of a party-in-interest of any assets of the plan.

The labor provisions and the tax provisions differ slightly on the wording with respect to this latter prohibition. The labor provision prohibits such use of the plan's "assets", and the tax provision prohibits use of the plan's "income or assets". (This same difference appears with respect to other prohibited transactions, as well.) The conferees intend that the labor and tax provisions are to be interpreted in the same way and both are to apply to income and assets. The different wordings are used merely because of different usages in the labor and tax laws.

In addition, even though the term "income" is used in the tax law, it is intended that this is not to imply in any way that investment in growth assets (which may provide little current income) is to be prohibited where such investment would otherwise meet the prudent man and other rules of the substitute.

Since the substitute prohibits both direct and indirect transactions, it is expected that where a mutual fund, *e.g.*, acquires property from a party-in-interest as part of the arrangement under which the plan invests or retains its investment in the mutual fund, this is to be a prohibited transaction.

*Employer securities and employer real property.*—The labor provisions also generally prohibit the direct or indirect acquisition by the plan (or holding by the plan) of securities of the employer or real property leased to the employer, except if otherwise allowed. This prohibiton (and the exceptions to it) is described in detail below.

*Additional prohibitions.*—The substitute generally prohibits a fiduciary from dealing with the income or assets of a plan in his own interest or for his own account. However, this does not prohibit the fiduciary from dealings where he has an account in the plan and the dealings apply to all plan accounts without discrimination.

The substitute also prohibits a fiduciary from receiving consideration for his own personal account from any party dealing with the plan in connection with the transaction involving the income or assets of the plan. This prevents, *e.g.*, "kickbacks" to a fiduciary.

In addition, the labor provisions (but not the tax provisions) prohibit a fiduciary from acting in any transaction involving the plan on behalf of a person (or representing a party) whose interests are adverse to the interests of the plan or of its participants or beneficiaries. This prevents a fiduciary from being put in a position where he has dual loyalties, and, therefore, he cannot act exclusively for the benefit of a plan's participants and beneficiaries. (This prohibition is not included in the tax provisions, because of the difficulty in determining an appropriate measure for an excise tax.)

*Administrative exemptions or variances.*—The conferees recognize that some transactions which are prohibited (and for which there are no statutory exemptions) nevertheless should be allowed in order not to disrupt the established business practices of financial institutions which often perform fiduciary functions in connection with these plans, consistent with adequate safeguards to protect employee benefit plans. For example, while brokerage houses generally would be prohibited from providing, either directly or through affiliates, both discretionary investment management and brokerage services to the same plan, the conferees expect that the Secretary of Labor and Secretary of the Treasury would grant a variance with respect to these services (and other services traditionally rendered by such institutions), provided that they can show that such a variance will be administratively feasible and that the type of transaction for which an exemption is sought is in the interest of and protective of the rights of plan participants and beneficiaries. Thus, variances might be granted to brokers or their affiliates to act as investment managers if the Secretary determines that such arrangements are in the interests of plan participants and beneficiaries and that satisfactory safeguards are provided, including *e.g.*, such protections as the monitoring of the investment manager's decisions by a person with appropriate investment experience, as specified by the Secretaries, who is not affiliated with the broker. The conferees did not grant a statutory exemption to brokers for this type of multiple service because of the difficulty of establishing precise statutory standards for protecting

[2] Generally, the substitute defines a prohibited transaction as the same type of transaction that constitutes prohibited self-dealings with respect to private foundations, with differences that are appropriate in the employee benefit area. As with the private foundation rules, under the substitute, both direct and indirect dealings of the proscribed type are prohibited.

[3] Hereafter, the term "party-in-interest" will include the term "disqualified person" unless otherwise indicated.

against potential abuses. The conferees note that the general issue of institutional investment management by brokers is under consideration in separate legislation, and expect that any action taken by the Secretaries on requests for variances under this Act will be consistent with the outcome of such legislation.

In addition, the conferees recognize that some individual transactions between a plan and party-in-interest may provide substantial independent safeguards for the plan participants and beneficiaries and may provide substantial benefit to the community as a whole, so that the transaction should be allowed under a variance. For example, it is understood that the pension plan of a major corporation with its principal office in Dayton, Ohio, has become committed to invest in a joint venture that will own an office building in a downtown redevelopment area in Dayton. This building is to be a key element of the redevelopment project. The joint venture will lease a portion of this building to the employer that established and maintained this pension plan. Under the general rules, this would be a prohibited indirect lease between the plan and a party-in-interest. However, it is understood that the transaction has substantial safeguards that ensure that the transaction will inure to the benefit of the plan participants and beneficiaries. For example, there are other major investors in the joint venture at this time so the joint venture will seek an adequate rate of return. Additionally, it is understood that the building has another major tenant and the terms of the lease for this tenant and for the employer are substantially identical. Furthermore, it is understood that the rental under these leases is generally higher than the rental for similar space now available in the area. Also, the City of Dayton will have a major investment in the land (and in a superstructure), so that the City will have an independent financial interest in ensuring that the transaction is financially sound.

Under this transaction, each party in the joint venture is to share in profits and losses in proportion to its capital contribution. Therefore, this is not a "tax shelter" transaction with an attempted shift of early period losses away from a tax-exempt entity to taxable entities. Also, it is understood that while the joint venture will borrow to finance the acquisition of the building, neither the joint venture nor the plan (nor any other joint venturer) is to be "personally liable" on the mortgage debt. Therefore, if the transaction were to fail, the plan's liability would be limited to the funds advanced to the joint venture.

It is expected that in this situation, because of the substantial safe guards for the plan and its participants and beneficiaries, because of the lack of "tax abuse" aspects, because the transaction became binding before the conferees' decisions were announced, and because of the importance of the project to the entire community of Dayton, Ohio, that the Secretary of the Treasury and Secretary of Labor will grant a variance to the transaction for its whole term.

Under the substitute, variances may be conditional or unconditional and may exempt a transaction from all or part of the prohibited transaction rules. In addition, variances may be for a particular transaction or for a class of transactions, and may be allowed pursuant to rulings or regulations. A variance from the prohibited transaction rules is to have no effect with respect to the basic fiduciary responsibility rules requiring prudent action, diversification of investments, actions exclusively for the benefit of participants and beneficiaries, etc. (This is the case with respect to all statutory exemptions from the prohibited transaction rules as well.)

Under the substitute, the Secretary of Labor and the Secretary of the Treasury each must establish a procedure for allowing variances, but neither the Secretary of Labor nor the Secretary of the Treasury is to be required to grant a variance. Variances are to be granted only when each Secretary separately determines that the transaction in question is an appropriate case for a variance. Thus, for example, the Secretary of Labor may refuse to grant a variance if the transaction would constitute an abuse of the labor laws, even though the Secretary of the Treasury may be willing to grant a variance in the particular situation. Similarly, the Secretary of the Treasury may, for example, refuse to grant a variance if the transaction would constitute a tax abuse even though the Secretary of Labor may be willing to grant a variance in the same situation.

In addition, variances are not to be allowed unless each Secretary finds that the transaction is in the interests of the plan and its participants and beneficiaries, that it does not present administrative problems, and that adequate safeguards are provided for participants and beneficiaries.

Although the Secretary of Labor and the Secretary of the Treasury are to separately determine whether a variance is to be provided, they are to coordinate their activities. It is expected that the Secretaries of Labor and Treasury will develop an administrative procedure to allow one application for a variance and that the two departments will coordinate their activities with respect to this single application to prevent unneeded delays and duplication of effort by the applicant.

Before allowing a variance, adequate notice (including publication in the Federal Register) is to be given interested persons, who are to have an opportunity to present their views. In the case of a variance from the prohibitions against a fiduciary dealing with plan assets for his own account, acting on behalf of an adverse party to the plan, or receiving consideration for his personal account, there is to be a hearing and a determination on the record that the conditions required for granting a variance are met. (However, the Secretary of the Treasury may accept the record of a Department of Labor hearing, if he wishes, and make his determination with respect to the variance on the facts presented in that record.)

*Exemptions for loans to participants and beneficiaries.*—Following current practice, the substitute does not prohibit a loan by a plan to a participant or beneficiary in certain circumstances. To be permitted, such loans must be made in accord with specific provisions in the plan governing such loans. In addition, a reasonable interest rate must be charged and the loan must be adequately secured. Such loans must be made available to all participants on a reasonably equivalent basis. Consequently, the plan could not unreasonably discriminate between applicants on the basis of, e.g., age or sex; but the plan could make distinctions on the basis of, e.g., credit worthiness or financial need. Also, such loans cannot be made available to highly-compensated employees in an amount greater than the amount available to other employees. The conferees intend that this will allow a plan to lend the same percentage of a person's vested benefits to participants with both large and small amounts of accrued vested benefits. (However, the percentage is to be consistent with the requirements of adequate security.) The conferees also intend that a plan may provide that the same dollar amounts may be loaned to participants and beneficiaries without regard to the amount of their vested benefits if adequate security is otherwise provided. For example, a plan could provide for loans to participants and beneficiaries in an amount up to, *e.g.*, $30,000 to buy a house (even if the $30,000 is greater than the amount of the participant's or beneficiary's vested benefits) if the loan is adequately secured by, *e.g.*, a first mortgage on the house.

*Exemption for services, etc.*—The substitute allows a party-in-interest to furnish to a plan office space, legal services, accounting services, or other similar services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid for these services, etc. It is expected that arrangements will allow the plan to terminate the services, etc., on a reasonably short notice under the circumstances so the plan will not become locked into an arrangement that may become disadvantageous. It is also expected that the compensation arrangements will allow for changes so the plan will not be locked into a disadvantageous price.

The substitute also specifically allows the plan to pay a fiduciary or other party-in-interest reasonable compensation (or reimbursement of expenses) for services rendered to the plan if the services are reasonable and necessary. However, to prevent double payment, this does not apply with regard to a fiduciary who is receiving full-time pay from an employer or association of employers (with employees covered by the plan) or from a union (with members covered by the plan), except for the reimbursement of expenses properly and actually incurred and not otherwise reimbursed.

The substitute also makes it clear that a party-in-interest may serve as a fiduciary in addition to being an officer, employee, agent or other representative of a party-in-interest.

*Exemption for loans to employee stock ownership plan.*—Under the substitute, certain loans or extensions of credit from a party-in-interest to an employee stock ownership plan are not to be prohibited. The conferees understand that it is common practice for these plans to purchase the employer's stock from major shareholders (or from the employer). The proceeds to pay for the purchase often are obtained by the plan from an unrelated lender with a guarantee of repayment by the shareholder. In this case, the substitute does not prohibit the party-in-interest from guaranteeing the loan (or from providing his assets as collateral for the loan). In addition, the conferees understand that it is common practice for a party-in-interest to sell his stock in the employer to these plans and take back a purchase money note from the plan. The substitute also does not prohibit such a loan if the only collateral given by the plan for the loan consists of qualifying employer's securities.

These exceptions to the prohibited transaction rules are to be allowed if the transaction is for the benefit of the plan participants and beneficiaries (and, not, e.g., primarily to benefit the party-in-interest who is selling the stock), and if the interest rate charged on the loan to the plan remains at not more than a reasonable interest rate.

Although these transactions normally are for the benefit of plan participants and beneficiaries, the conferees recognize that there may be potential problems. For example, the interest rate should not be too high and the purchase price of the stock from the party-in-interest should not be too high, so that plan assets might be drained off. Also, the terms of the note between the party-in-interest and the plan should not allow the party-in-interest to call the note at his convenience, which might put undue financial strain on the plan. Because of such potential problems, the conferees intend that all aspects of these transactions will be subject to special scrutiny by the Department of Labor and Internal Revenue Service to ensure that they are primarily for the benefit of plan participants and beneficiaries.

This exception from the prohibited transaction rules is to be available only for employee stock ownership plans and not for other plans. The conferees understand that the basic element common to all employee stock ownership plans is that they are qualified stock bonus plans designed to invest primarily in qualifying securities of the em-

ployer whose employees are covered by the plan. In addition it is undertsood that a qualified money purchase penison plan designed to invest primarily in such securities of the employer may be coupled with such a qualified stock bonus plan (and that a profit-sharing plan sometimes may be used). Furthermore, it is understood that a frequent characteristic of some employee stock ownership plans is that they leverage their purchase of qualifying employer securities as a way to achieve transfers in the ownership of corporate stock and other capital requirements of a corporation and that such a plan is designed to build equity ownership of shares of the employer for its employees in a nondiscriminatory manner.

The conferees intend that the exemption from the prohibited transaction rules with respect to loans to employee stock ownership plans is to apply only in the case of loans (and guarantees) used to leverage the purchase of qualifying employer securities (and related business interests).

*Exemption for bank deposits.*—In certain cases the prohibited transaction rules of the substitute do not prevent a bank or similar institution (e.g., a savings and loan association or credit union) which is a plan fiduciary from investing all or part of the plan's assets in deposits with the bank, etc., if the deposits bear a reasonable interest rate. This exemption is allowed if the plan covers only employees of the bank, etc., or employees of its affiliates. In this case, it would be contrary to normal business practice for a bank to invest its plan assets in another bank.

A deposit with a bank, etc., fiduciary also is not prohibited if it is expressly authorized by the plan or is specifically authorized by a fiduciary (other than the bank or an affiliate of the bank) who is expressly empowered by the plan to direct that this investment be made. In this case, there is no conflict of interest involving the bank fiduciary upon a deposit with the bank, etc.

This exception, as all other exceptions to the prohibited transaction rules, is not to affect the applicability of the prudent man, diversification, etc., rules. However, it is expected that generally these rules will not be violated if all plan assets in an individual account plan are invested in a federally-insured account, so long as the investments are fully insured. (If an individual's account balance is greater than the amount covered by Federal insurance, this will not violate the prudence and diversification requirements if the individual participant or beneficiary has control over his account and determines, for himself, that the assets should be so invested.)

*Exceptions for purchase of insurance.*—The substitute does not prohibit a plan from purchasing life insurance, health insurance, or annuities from the employer that maintains the plan if the employer is an insurer qualified to do business in a State (or the District of Columbia). In this case, it would be contrary to normal business practice to require the plan of an insurance company to purchase its insurance from another insurance company. This exemption is available only if no more than adequate consideration is paid for the insurance by the plan.

This exemption also applies to the purchase of life insurance, health insurance, and annuities from an insurer that is wholly-owned, directly or indirectly, by the employer establishing the plan (or is wholly owned by a party-in-interest with respect to the employer establishing a plan). This rule applies if the total premiums and annuity considerations written by all such wholly-owned insurers for life insurance, health insurance, and annuity premiums purchased by all employers which are parties-in-interest and their plans are not more than 5 percent of the total premiums and annuity considerations written for all lines of insurance by these insurers. (In computing this 5 percent figure, all premiums and annuity considerations written by an insurance company for a plan which it maintains are to be excluded from both the numerator and the denominator of the fraction.) This exception also is allowed only if no more than adequate consideration is paid for the insurance.

The conferees understand that for some purposes, certain insurance contracts may be considered as securities. However, the substitute provides that insurance contracts are not to be considered as "employer securities" to the extent that the exception described above from the prohibited transaction requirements would apply to the purchase of insurance contracts by a plan. (Otherwise, the rules with respect to employer securities might, as a practical matter, prevent this exemption from operating as it is intended.)

*Exemption for ancillary bank services.*—Unless otherwise specifically allowed by statutory or administrative exemption, generally a fiduciary is not to be able to provide "multiple services" to a plan. (However, the prohibition against providing multiple services is not to apply to parties-in-interest, who are not fiduciaries.) This rule was adopted because of the potential problems inherent in situations where persons who can act on behalf of a plan also are in a position to personally benefit at the expense of the plan in exercising that authority. However, as indicated above, it is expected that administrative exemptions will be established for sound commercial and financial practices where there are adequate safeguards. Also, the substitute provides some limited statutory exemptions from the general rule.

Under the substitute, a bank or similar financial institution (such as a savings and loan association or credit union), which is supervised by Federal or State authorities, is not prohibited from providing multiple ancillary services in certain limited circumstances. First, no more than reasonable compensation can be charged by the bank, etc., for these services. Also the bank, etc., must have established adequate internal safeguards to assure that its provision of ancillary services is in accord with sound banking and financial practice, as determined by Federal and State banking authorities. In addition, the bank's action must be in accordance with binding specific guidelines issued by the bank that will prevent the bank from providing ancillary services in an unreasonable or excessive manner or in a manner that would be inconsistent with the best interests of the plan's participants and beneficiaries. Such guidelines are to be subject to, and not inconsistent with, coordinated regulations of the Secretaries of Labor and Treasury, which are to be issued after consultation with State and Federal banking authorities. The bank's guidelines must be reported to the Department of Labor and Internal Revenue Service, and must be reported to each plan to which multiple services are provided. Of course, if the bank does not follow the guidelines, the exemption will not be available.

Placing plan funds in noninterest bearing checking accounts is an example of the type of an ancillary service that might be provided by a bank that is a plan fiduciary. However, a number of short-term investment vehicles have been developed recently so that such cash balances should be kept to the very minimum necessary for the current operations of the plan. Therefore, it is expected that adequate guidelines and procedures to prevent unreasonable cash balances will require the bank to invest plan funds in such vehicles to the maximum extent feasible. Also, in determining whether a plan pays more than reasonable compensation for its checking account services, the interest available on an alternate use of the funds is to be considered. It is also expected that proper procedures and guidelines will keep to a minimum the amount of discretion on the part of the bank, etc., in determining the amount of cash balances. The conferees intend that such limitation of discretion is to be included in guidelines that govern other ancillary services that may be provided by banks, etc.

*Exemption for conversion of securities.*—Under the stustitute a plan may hold or acquire certain employer securities. Since some of these securities may be convertible (*e.g.*, from bonds to stock) the substitute would not prohibit such a conversion to the extent provided in regulations if the plan receives at least fair market value under the conversion. It is expected that a conversion will be permitted if all the securities of the class held by the plan are subject to the same terms and such terms were determined in an arm's-length transaction, so that conversions cannot be tailored to apply only to a particular plan. Similarly, it is intended that a conversion generally will not be permitted if all but an insignificant percentage of unrelated holders of such securities do not exercise such conversion privileges. Also, it is intended that any acquisition of employer securities pursuant to a conversion privilege must be within the limits established by the by the geneal rules governing the acquisition and holding of employer securities, discussed below.

*Exemption for certain pooled investment funds.*—The conferees understand that it is common practice for banks, trust companies and insurance companies to maintain pooled investment funds for plans. If the bank, etc., is the plan trustee and invests the plan assets in its pooled fund (rather than managing the assets individually) this would be considered a purchase of investment units in the fund and would be prohibited under the general rules. However, since generally the net effect of pooling plan assets is to achieve more efficient investment management, in certain circumstances the substitute allows the purchase and sale of interests in a pooled fund maintained by a bank, etc., which is a plan fiduciary.

To be allowed, no more than reasonable compensation may be paid by the plan in the purchase (or sale) and no more than reasonable compensation may be paid by the plan for investment management by the pooled fund. In addition, it generally is inappropriate for the bank, etc., to make the decisions with respect to investment in a pooled fund because of a potential conflict of interest. Therefore, this exception is allowed only if the transaction is specifically permitted by the plan or if a plan fiduciary (other than the bank, etc., or its affiliates) who has authority to manage and control the plan assets specifically permits such investment.

Banks, etc., that operate such pooled investment funds are, of course, plan fiduciaries. As fiduciaries they must act. *e.g.*, for the exclusive benefit of participants and beneficiaries. Therefore, a bank, etc., cannot use pooled funds as a place to dump unwanted investments which were initially made on its own (or another's) behalf.

*Exemptions for owner-employees, etc.*—The substitute retains the prohibited transaction rules (but not the disqualification sanction) of present law (sec. 503(g) of the Internal Revenue Code) with respect to owner-empoyees. Consequently, under the substitute the exceptions from the prohibted transaction rules described above generally will not apply with respect to sales, loans, payments for services, etc., between a plan and an owner-employee with regard to that plan. Also, since shareholder employees of subchapter S corporations are generally treated as owner-employees, the same limitations apply with respect to shareholder-employees. Additionally, these limitations apply to participants and beneficiaries of (and employers who establish and main-

tain) individual retirement accounts, individual retirement annuities, and individual retirement bonds, since these persons generally have the same type of control with respect to a plan as do owner-employees.

*Exemptions for distribution of plan assets.*—It is not a prohibited transaction for a plan to distribute its assets in accordance with the provisions of the plan and in the case of a pension plan if the distribution is in accord with the allocation of assets rules under the termination insurance provisions of the substitute.

Also a distribution of assets from a welfare (or pension) plan, as described above in "Basic fiduciary rules", is exempt from the labor provisions as to prohibited transactions.

*Employer securities and employer real property*

*Eligible individual account plans.*—The labor provisions of the substitute generally limit the acquisition and holding by a plan of employer securities and of employer real property (combined) to 10 percent of plan assets. (Employer securities are securities issued by an employer with employees covered by the plan or its affiliates. Employer real property is real property which is leased by a plan to an employer (or its affiliates) with employees covered by the plan.)

However, a special rule is provided for individual account plans which are profit-sharing plans, stock bonus plans, employee stock ownership plans, or thrift or savings plans, since these plans commonly provide for substantial investments in employer securities or real property. Also, money purchase plans which were in existence on the date of enactment, and which invested primarily in employer securities on that date are to be treated the same way as profit-sharing, etc., plans. (However, employer-established individual retirement accounts are not to be eligible individual account plans.)

In recognition of the special purpose of these individual account plans, the 10 percent limitation with respect to the acquisition or holding of employer securities or employer real property does not apply to such plans if they explicitly provide for greater investment in these assets. In addition, the diversification requirements of the substitute and any diversification principle that may develop in the application of the prudent man rule is not to restrict investments by eligible individual account plans in qualifying employer securities or qualifying employer real property.

These exceptions apply only if the plan explicitly provides for the relevant amount of acquisition or holding of qualifying employer securities or qualifying real property. For example, if a profit-sharing plan is to be able to invest half of its assets in qualifying employer securities the plan must specifically provide that up to 50 percent of plan assets may be so invested. In this way, the persons responsible for asset management, as well as participants and beneficiaries, will clearly know the extent to which the plan can acquire and hold these assets. Plans in existence on the date of enactment will have one year from January 1, 1975, to be amended to comply with this requirement. If the plan does not comply within one year (but, *e.g.*, complies 2 years after January 1, 1975), then during the interim period, the plan will be subject to the 10 percent rule as well as the diversification requirement. This means, generally, that the plan will not be able to acquire any additional employer securities or employer real property during this period (and preparation should be made for divestiture of half of the excess of employer securities and real property by January 1, 1980.)

Under the substitute only, "qualifying" employer securities may be acquired and held by individual account plans under the rules described above. Stock of the employer will constitute qualifying securities. Also, certain debt will be qualifying employer securities if it is traded on a national securities exchange or has a price otherwise established by independent persons hold at least one-half of the issue. (Qualifying employer debt securities essentially are debt securities that meet the present rules of section 503(e) of the Internal Revenue Code.)

Also, under the substitute only "qualifying" employer real property may be acquired and held by eligible individual account plans under the rules described above. Real property which is leased to an employer is qualifying employer real property if a substantial number of the parcels are distributed geographically and if each parcel of real property and the improvements on it are suitable (or adaptable without excessive cost) for more than one use.[4] For example, the plan might acquire and lease to the employer multipurpose buildings which are located in different geographical areas. It is intended that the geographic dispersion be sufficient so that adverse economic conditions peculiar to one area would not significantly affect the economic status of the plan as a whole. All of the qualifying real property may be leased to one lessee, which may be the employer or an affiliate of the employer.

To the extent that an eligible individual account plan can acquire qualifying employer securities, it may acquire these securities from parties-in-interest if the acquisition is for adequate consideration and no commission is charged in the transaction. (The conferees intend that if a purchase is made from an underwriter who assumes the risks of market fluctuations after the award date, the underwriter's margin is not to be regarded as a "commission.") A similar exception from the prohibited transaction rules (in both the labor and tax provisions) is available for the acquisition from an employer of qualifying employer real property, the leasing of such property to the employer (or its affiliate) and the sale of such real property back to the employer on termination of the lease for adequate consideration. However, real property is not qualifying employer real property unless it is leased to the employer. Therefore, except for qualifying leasebacks, a plan generally is prohibited from acquiring real property from the employer.

*Other plans.*—Under the substitute, a plan other than an eligible individual account plan cannot acquire any employer securities or real property if immediately after doing so the plan would hold more than 10 percent of the fair market value of its assets in employer securities or real property. The acquisition rules apply not only to the purchase of employer securities, etc., but also to acquisition in other ways such as by exercise of warrants or by acquisition on default of a loan where the stock was made security for the loan. Also, these plans (as eligible individual account plans) are not to acquire any employer securities or employer real property other than qualifying employer securities or qualifying employer real property.

In addition, if a plan holds more than 10 percent of the fair market value of its assets in employer securities and real property on January 1, 1975, it is to dispose of enough of these assets to bring its holdings of employer securities, etc., to no more than 10 percent of plan assets on or before December 31, 1984.

In general, the 10 percent holding rule will be met on the first date after January 1, 1975 (and on or before December 31, 1984) that a plan holds no more than 10 percent of the fair market value of its assets in employer securities or employer real property. Thus, if a plan on January 1, 1975, holds qualifying employer securities and qualifying employer real property worth $200,000 and has total assets worth $1,000,000, the plan must bring its employer securities, etc., down to 10 percent of plan assets. If, *e.g.*, there is a substantial market rise in the value of the plan's other assets in the year 1976, so all plan assets are now worth $2,000,000, but employer securities are still worth $200,000, then the holding requirement has been met and from that time on, only the acquisition rule will affect the plan. (Under the acquisition rule, the plan could not acquire any more qualifying employer securities in 1976, since immediately after the acquisition more than 10 percent of plan assets would be invested in employer securities.) Also, if the fair market value of other plan assets decrease to $1,500,000 in 1977, so the plan has $200,000 of employer securities and $1,500,000 total assets, the plan will not violate the holding (or acquisition) rules, since it met the holding rules in 1976.

Under the substitute, a plan is not required to dispose of more qualifying employer securities than would bring its holdings down to 10 percent of the fair market value of assets on the date of enactment. Thus, if a plan had $200,000 of employer securities and $1,000,000 total assets on date of enactment, it would satisfy the 10 percent holding rule when it had employer securities of $100,000, even if its total assets had dropped to $900,000.

The substitute allows a special election for calculating the 10 percent holding rule (but not the 10 percent acquisition rule). Under this election, the 10 percent holding rule is met if on or before December 31, 1984, the value of employer securities which are held on January 1, 1975, is no greater than 10 percent of the fair market value of plan assets on January 1, 1975, plus employer contributions to the plan made after December 31, 1974, and prior to January 1, 1985. For this purpose, employer contributions are to be included only to the extent of the growth in the value of plan assets (other than employer securities) from January 1, 1975, through December 31, 1984. Election to make this provision applicable must be made prior to January 1, 1976, and the election is irrevocable once it is made. For purposes of this rule, employer securities held on January 1, 1975, are to include employer securities the ownership of which is derived solely from the employer securities held on January 1, 1975, or from the exercise of rights derived from such ownership under regulations to be prescribed by the Secretary of Labor. This election is to be available only for a plan which holds no employer real property, and does not acquire employer real property until after December 31, 1984.

A plan must be half-way toward meeting the 10-percent rule by December 31, 1979. The maximum percentage of assets that a plan may have in employer securities and employer real property on that date is to be established by regulations (which are to be issued by December 31, 1976). Generally, it is expected that the regulations will provide that the maximum percentage of assets that a plan may have in employer securities and real property on (or before) December 31, 1979, is to be determined by adding 10 percent to half of the percentage of employer securities, etc., held by the plan on January 1, 1975 in excess of 10 percent. For example, if 15 percent of the plan's assets are in employer securities on January 1, 1975, generally it is expected that the plan must have reduced its percentage of employer securities to 12½ percent on or before December 31, 1979. (That is, $10+\frac{(15-10)}{2}=12\frac{1}{2}$.)

If securities are qualifying employer securities they generally can be acquired or held notwithstanding the prohibited trans-

[4] Qualifying employer real property includes the real property and related personal property.

action rules, if acquisition is for adequate consideration and no commission is charged and if acquisition is allowed by the employer securities rules. However (except as noted above for eligible individual account plans), acquisition and holding of these assets must also meet the rules of prudence, diversification, etc. Therefore, if the diversification and prudence rules require that less than 10 percent of plan assets are to be held in employer securities and employer real property, the lower limit is to govern. Furthermore, the exclusive benefit rule also may apply. Thus, while a plan may be able to acquire employer securities or real property under the employer securities rules, the acquisition must be for the exclusive benefit of participants and beneficiaries. Consequently, if the real property is acquired primarily to finance the employer, this would not meet the exclusive benefit requirements.

Generally these rules apply only to the holding (or acquiring) of qualified employer securities or qualified employer real property. Under the general prohibited transaction rules, a plan is not to hold (or acquire) any other employer securities or employer real property (since this would be a prohibited loan or lease, respectively). Of course, the general transition rules discussed below will apply to employer securities or real property held on July 1, 1974.

*Civil liability*

*Fiduciaries.*—Under the labor provisions (but not the tax provisions) of the substitute, a fiduciary who breaches the fiduciary requirements of the bill is to be personally liable for any losses to the plan resulting from this breach. Such a fiduciary is also to be liable for restoring to the plan any profits which he has made through the use of any plan asset. In addition, such a fiduciary is to be subject to other appropriate relief (including removal) as ordered by a court. The place and manner of bringing civil actions against a fiduciary is described below.

Generally, a plan fiduciary is not to be liable for any breach of fiduciary duty if it occurred before he became a fiduciary or after he was no longer a fiduciary.

*Party-in-interest.*—A party-in-interest who engages in a prohibited transaction with respect to a plan that is not qualified (at the time of the transaction) under the Internal Revenue Code may be subject to a civil penalty of up to 5 percent of the amount involved in the transaction. If the transaction is not corrected after notice from the Secretary of Labor, the penalty may be up to 100 percent of the transaction.

*Exculpatory provisions and liability insurance.*—Under the substitute, exculpatory provisions which relieve a fiduciary from liability for breach of the fiduciary responsibility rules are to be void and of no effect. (However, this is not to affect the fiduciary's ability to allocate or delegate his responsibilities, as described above.)

The substitute also provides, however, that a plan may purchase insurance for itself and for its fiduciaries to cover liability or loss resulting from their acts or omissions if the insurance permits recourse by the insurer against the fiduciaries in case of a breach of fiduciary responsibility. Also, under the substitute, a fiduciary may purchase insurance to cover his own liability, and an employer or union may purchase liability insurance for plan fiduciaries (and these policies need not provide for recourse).

*Excise tax on prohibited transactions*

*In general.*—As indicated above, the substitute establishes an excise tax on disqualified persons who participate in specific prohibited transactions respecting a pension plan. The tax applies with respect to a plan which has qualified after the effective date of the prohibited transaction provisions (or has been determined to qualify by the Secretary of the Treasury under sections 401, 403 (a), or 405(a) of the Code) and with respect to a qualified individual retirement account, bond or annuity (under sections 408 or 409). The prohibited transaction rules and excise tax sanctions are to continue to apply even if the plan, etc., should later lose its tax qualification.

This excise tax generally follows the same procedures as the tax on self-dealing enacted in 1969 Tax Reform Act with respect to private foundations. The tax is at two levels: initially, disqualified persons who participate in a prohibited transaction are to be subject to a tax of 5 percent of the amount involved in the transaction per year. A second tax of 100 percent is imposed if the transaction is not corrected after notice from the Internal Revenue Service that the 5-percent tax is due.

Following present law with respect to private foundations, under the substitute where a fiduciary participates in a prohibited transaction in a capacity other than that, or in addition to that, of a fiduciary, he is to be treated as other disqualified persons and subject to tax. Otherwise, a fiduciary is not to be subject to the excise tax.

The first-level tax is owed for each taxable year (or part of a year) in the period that begins with the date when the prohibited transaction occurs and ends on the earlier of the date of collection or the date of mailing of a deficiency notice for the first-level tax (under section 6212 of the Internal Revenue Code). The first-level tax is imposed automatically without regard to whether the violation was inadvertent.

If more than one person is liable for the excise tax as a result of a particular prohibited transaction, they all are to be jointly and severally liable. For example, if the prohibited transaction involves $100,000, all disqualified persons who participated in the transaction will be jointly and severally liable for the first-level tax of $5,000 (per year in the taxable period) and also jointly and severally liable for the second-level tax of $100,000.

The excise tax on a prohibited transaction is dependent upon the amount involved in the transaction. The substitute provides that the amount involved is the greater of the fair market value of the property (including money) given or received in a transaction. However, with regard to services which generally may be paid for if the compensation is not excessive, the amount involved generally is the excess compensation. For the first-level tax, the amount involved in a prohibited transaction is valued as of the date of the transaction. However, for the second-level tax, the amount involved is valued at the highest fair market value during the correction period. The higher valuation is used for the second-level tax so the person subject to tax will not delay returning the amount involved to the trust in order to earn income with this amount.

A prohibited transaction may be corrected to avoid a second-level tax at any time before the 90th day after the Internal Revenue Service mails a notice of deficiency with respect to the second-level tax. However, the 90-day period may be extended by any period within which a deficiency cannot be assessed (because of petitions to the Tax Court), and may also be extended for a period which the Internal Revenue Service determines is both reasonable and necessary to correct the prohibited transaction.

To correct a prohibited transaction, the transaction must be undone to the extent possible, but in any case the final position of the plan must be no worse than it would have been if the disqualified person were acting under the highest fiduciary standards. The higher valuation to be used in computing any second-level tax that might be applicable is also the valuation to be used in correcting the transaction. In other words, correction requires that the plan receive the benefit of whatever bargain turns out to have been involved in the transaction.

Before sending a notice of deficiency with respect to the first level and second level taxes, the Internal Revenue Service is to notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of these taxes. However, the Service will be able to waive (or abate) only the second level tax (and not the first level tax) upon a correction that is obtained by the Secretary of Labor.

*Voluntary retroactive application.*—Under present law, if a prohibited transaction occurs, a plan (and trust) loses its exemption from taxation. If a trust is disqualified because of an act of the trustee and the employer, then the income tax imposed on the trust may be paid out of funds otherwise available to provide employees' retirement benefits and the sanction may then fall on innocent employees. To correct this problem in the future, the substitute eliminates disqualification and instead would impose an excise tax sanction for a violation of the prohibited transactions provisions.

The substitute also makes the excise tax sanction available—on a wholly voluntary basis—instead of the disqualification sanction in the case of plans which have engaged in prohibited transactions in (open) years before the effective date of the new prohibited transactions. Therefore, if a disqualified person with respect to a plan elects to be subject to and pays the excise tax, the plan and trust are not to be disqualified. For purposes of this application of the excise tax, the prohibited transactions are to be defined by present section 503 (b) or (g) of the Code and the amount involved is to be the amount that would be determined under new section 4975 of the Code. Since the tax is to be wholly voluntary, the joint and several liability provisions of new section 4975 are not to apply (unless there is an election by several disqualified persons to this effect). Also, the first-level tax that is to be paid under this provision will be owed for taxable periods calculated under new section 4975. Thus, if the prohibited transaction (under present section 503) occurred in 1972 and is corrected in 1974, the first-level tax will be owed for 1972, 1973, and 1974. As under new section 4975, the second-level tax will be owed only if the transaction is not corrected within the time allowed by that section.

Since this is to be a relief provision, no liability is to be imposed under the labor provisions of the substitute on a person who may be a plan fiduciary after January 1, 1975, if he fails to pay the tax and the plan is disqualified. Consequently, any decision to pay or not to pay this optional tax is to be deemed to have been made before January 1, 1975, and, therefore, to be made before the substitute would establish any duties on plan fiduciaries.

*Definitions*

The substitute defines "fiduciary" as any person who exercises any discretionary authority or control respecting management of a plan, exercises any authority or control respecting the management or disposition of its assets or has any discretionary authority or responsibility in the administration of the plan. Under this definition, fiduciaries include officers and directors of a plan, members of a plan's investment committee and persons who select these individuals. Consequently, the definition includes persons who have authority and responsibility with respect to the matter in question, regardless of their formal title. The term "fiduciary" also includes any person who renders investment advice for a fee and includes persons to whom "discretionary" duties have been delegated by named fiduciaries.

While the ordinary functions of consultants and advisers to employee benefit plans (other than investment advisers) may not be considered as fiduciary functions, it must be

recognized that there will be situations where such consultants and advisers may because of their special expertise, in effect, be exercising discretionary authority or control with respect to the management or administration of such plan or some authority or control regarding its assets. In such cases, they are to be regarded as having assumed fiduciary obligations within the meaning of the applicable definition.

The labor definition of a "party-in-interest" includes the following general categories. (1) Plan administrators, officers, fiduciaries, trustees, custodians, counsel and employees. (2) Persons providing services to a plan. (3) The employer, its employees, officers, directors, or 10-percent shareholders. (4) Controlling or controlled parties or parties under common control (and their employees, officers, directors, or 10-percent shareholders). (Under the substitute, "control" is generally defined at 50-percent ownership. However, the Secretary of Labor and Secretary of Treasury may, by regulation, reduce this percentage.) (5) Employee organizations with members covered by the plan, its employees, its officers and directors and its affiliates. (6) Certain relatives and partners of parties-in-interest are also treated as parties-in-interest.

Under the tax provisions, the same general categories of persons are disqualified persons, with some differences. Although fiduciaries are disqualified persons under the tax provisions, they are to be subject to the excise tax only if they act in a prohibited transaction in a capacity other than that of a fiduciary. Also, only highly-compensated employees are to be treated as disqualified persons, not all employees of an employer, etc.

*Prohibition against certain persons holding office*

The labor provisions of the substitute prohibit a person who is convicted of certain specified crimes from serving as a plan administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee or consultant of a plan for five years after conviction or five years after the end of imprisonment, whichever is later. However, such a person may serve as an administrator, etc., of a plan if his citizenship rights have been fully restored or if the United States Board of Parole determines that his service would not be contrary to the purposes of the labor provisions of the substitute.

Corporations and partnerships are not to be barred from acting as plan administrators, etc., without a determination from the Board of Parole that such service would be inconsistent with the labor provisions of the substitute.

No one is to knowingly permit another to serve as a plan administrator, etc., in violation of this provision. Those who violate this provision may be fined up to $10,000 and also may be imprisoned for up to one year. This provision is to apply to crimes committed before the date of enactment.

*Bonding*

The labor provisions of the substitute generally require every fiduciary of an employee benefit plan (and every person who handles funds or other property of a plan) to be bonded. This provision generally is identical to present section 13 of the Welfare and Pension Plans Disclosure Act and it is intended that the construction given to the bonding requirements before enactment of the substitute would continue. Generally, the amount of the bond is to be not less than 10 percent of the funds handled and not less than $1,000 (nor more than $500,000, except as otherwise required by the 10 percent rule or as prescribed by the Secretary of Labor). The substitute would not require a bond if plan benefits are paid only from the general assets of a union or employer. A bond also is not to be required for a domestic trust or insurance corporation subject to State or Federal supervision or examination if it has capital and surplus combined in excess of $1 million (or such other higher amount determined by the Secretary of Labor). However, a special rule is provided for banks or other financial institutions exercising trust powers if their deposits are not insured by the Federal Deposit Insurance Corporation. In this case a bond will not be required if the corporation meets bonding (or similar requirements) of State law which the Secretary of Labor determines are at least equivalent to bonding requirements imposed on banks under Federal law.

It is expected that regulations to be prescribed by the Secretary of Labor under this provision would include procedures for exempting plans where other bonding arrangements of the employer, employee organization, investment manager or other fiduciaries or the overall financial condition of the plan or the fiduciaries meet specified standards deemed adequate to protect the interests of the beneficiaries and participants, including bonds subject to a reasonable maximum for professional investment managers supervising large aggregations of clients' funds.

*Effective date and transition rules*

Generally, the new fiduciary responsibility rules are to take effect on January 1, 1975. However, with respect to any plan which is covered by plan termination insurance and which terminates before January 1, 1975, the fiduciary rules are to take effect on the date of enactment of the bill.

Under the labor provisions, the Secretary of Labor may postpone until January 1, 1976, the effective date with respect to the requirements for establishing a plan and establishing a trust, the rules regarding liability for breach by a co-fiduciary (other than the rules allowing delegation of asset management functions to an investment manager) and the rules prohibiting exculpatory clauses. The Secretary of Labor may allow such a delay only for plans in existence on the date of enactment and only if he determines (on application of the plan) that the delay is (1) necessary to amend the plan instrument, and (2) not adverse to the plan participants and beneficiaries.

To prevent undue hardship, the substitute also provides transition rules for situations where employee benefit plans are now engaging in activities which do not violate current law, but would be prohibited transactions under the substitute.

One of the transition rules permits the leasing or joint use of property involving a plan and a party in interest under a binding contract in effect July 1, 1974 (or pursuant to renewals of the contract), to continue for 10 years beyond that date until June 30, 1984. For this transition rule to apply, the lease or joint use must remain at least as favorable to the plan as an arm's-length transaction with an unrelated party and must not otherwise be a prohibited transaction under present law. A similar 10-year transition rule applies to loans or other extensions of credit under a binding contract in effect on July 1, 1974 (and renewals thereof), where the loan remains as favorable as an arm's-length transaction with an unrelated party and is not prohibited under present law.

The substitute allows a plan to sell property, at arm's-length terms, to a party in interest where the property is now under lease or joint use which qualifies for the 10-year transition rule described above. Sales of this type must occur before July 1, 1984. This transition rule is provided because it appears that such leases are not uncommon and in such cases often a party in interest is the best available buyer.

The substitute allows a fiduciary to provide multiple services to a plan until June 30, 1977, if he ordinarily and customarily furnishes services on June 30, 1974. Under this provision, such a fiduciary would not be limited to providing these services to plans which he served on that date, but he could take on new customers after that date. Under the substitute, multiple services also can be provided until June 30, 1977, if they were being provided under a binding contract in effect on July 1, 1974 (or under renewals of such a contract). It is intended that under this provision fiduciaries can continue to provide such services for the next three years in order that they might continue their business during the pendency of and application for a variance from the prohibited transaction rules. However, these services can only be provided under the transition rules if the price is at least an arm's-length price during the whole transition period and if they would not constitute a prohibited transaction under current section 503 of the Internal Revenue Code.

The substitute permits a plan to dispose of excess employer securities or employer real property owned by the plan on June 30, 1974, and at all times thereafter to a party-in-interest if the holding of such property would violate the rules governing holding of employer securities and real property, and if the sale, etc., is at fair market value.

VI. LABOR AND TAX ADMINISTRATION AND ENFORCEMENT (SEC. 501–516 AND 1041–1052 OF THE BILL AND SECS. 7476 AND 7802 OF THE INTERNAL REVENUE CODE)

*Labor Department*

*Criminal penalty.*—Under the bill as passed by the House, any person who willfully violates any of the provisions in title I of the Act, makes any statement in any report required to be filed or to be kept under that title knowing that it is false or misleading in any material fact, or forges or counterfeits or passes as true any document knowing it was forged or counterfeit for the purpose of influencing the acts of the Secretary of Labor is guilty of a crime which is punishable by a fine of up to $10,000 and 5 years of imprisonment, or both. If the act is committed by someone other than an individual the fine may be up to $200,000.

The bill as passed by the Senate did not contain comparable provisions but did provide for a fine of up to $1,000 and 6 months imprisonment, or both, for willful violation of the disclosure provisions.

Under the conference agreement, any person who willfully violates any provisions in title I of the bill relating to reporting and disclosure may be fined not more than $5,000 or imprisoned for more than 1 year, or both, except that in the case of a violation by a person other than an individual the fine may not exceed $100,000. The conference agreement retains present criminal provisions of Title 18, U.S.C. relating to false statements, bribery, kickbacks, embezzlement, etc., in connection with employee benefit plans.

*Civil penalty for failure to disclosure.*—Under the bill as passed by the House, if a plan administrator fails or refuses to furnish a participant or a beneficiary with a copy of the latest annual report (or such other information that is required to be furnished under the Act) within 30 days after a request for it, the administrator may be personally liable to the participant or beneficiary for up to $50 a day from the date of the failure and a court, in its discretion, may grant such other relief as it deems proper. The bill as passed by the Senate contains no comparable provision but relies upon the existing provisions of law to impose liability on the plan administrator. Under the conference agreement the administrator may be personally liable to the participant or beneficiary for up to $100 per day from the date of the failure and the court may in its discretion order such other relief as it deems proper.

*Civil actions by participants and beneficiaries.*—In addition, under the bill as passed

by both the House and Senate, civil action may be brought by a participant or beneficiary to recover benefits due under the plan, to clarify rights to receive future benefits under the plan, and for relief from breach of fiduciary responsibility.

Under the conference agreement, civil actions may be brought by a participant or beneficiary to recover benefits due under the plan, to clarify rights to receive future benefits under the plan, and for relief from breach of fiduciary responsibility. The U.S. district courts are to have exclusive jurisdiction with respect to actions involving breach of fiduciary responsibility as well as exclusive jurisdiction over other actions to enforce or clarify benefit rights provided under title I. However, with respect to suits to enforce benefit rights under the plan or to recover benefits under the plan which do not involve application of the title I provisions, they may be brought not only in U.S. district courts but also in State courts of competent jurisdiction. All such actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947. The U.S. district courts are to have jurisdiction of these actions without regard to the amount in controversy and without regard to the citizenship of the parties.

In any action brought by a participant or beneficiary, the court may allow reasonable attorney's fees or costs to either party. An action in the U.S.-district court may be brought in the district where the plan is administered or where the breach of fiduciary duty took place, or where a defendant resides or may be found. Process may be served in any other district where a defendant resides or may be found. If a participant or beneficiary brings an action in Federal court to enforce rights under title I, he is to provide a copy of the complaint to the Secretary of Labor and the Secretary of Treasury by certified mail. A copy is not required to be provided in any action which is solely for the purpose of recovering benefits under the plan. The Secretary of Labor or the Secretary of Treasury, or both, are to have the right to intervene in any action at their discretion.

*Civil actions by the Secretary of Labor.*—Under the bill as passed by the House, the Secretary of Labor may bring suit for breach of fiduciary responsibility and to enjoin any act or practice which violates the provisions of title I of the Act. The Secretary of Labor may also intervene in actions brought under the Act by participants and beneficiaries.

Under the bill as passed by the Senate, the Secretary of Labor may petition the court for an order requiring the return of assets transferred from a retirement fund, requiring the payment of benefits to a participant or beneficiaries, restraining conduct violating the fiduciary rules, and granting such other appropriate relief including the removal of a fiduciary. The Secretary is also authorized to bring suit when he believes that an employee benefit fund is being or has been administered in violation of the Act or the governing documents of the retirement fund. In addition, the bill as passed by the Senate authorizes the Secretary of Labor to intervene at his discretion in actions brought under the Act by participants or beneficiaries.

The conference agreement generally conforms to the provisions as passed by the House. The Secretary of Labor may bring an action for breach of a fiduciary duty or to enjoin any act or practice which violates the provision of title I of the Act or to obtain any other appropriate relief to enforce any provision of that title. In the case of a transaction by a party in interest with respect to a plan which is not qualified under the Internal Revenue Code, the Secretary of Labor may assess a civil penalty not to exceed 5 percent of the amount of the transaction. If not corrected, an additional penalty of not more than 100 percent of the transaction may be imposed.

In the case of any plan which has been found by the Internal Revenue Service to be a qualified employee benefit plan under the Internal Revenue Code (or with respect to any plan which has a pending application for a determination to be so qualified), the Secretary of Labor is not to bring an action for equitable relief with respect to a violation of the participation, vesting and funding standards of title I unless he is either requested to do so by the Secretary of the Treasury or by one or more participants, beneficiaries, or fiduciaries of the plan.

*Benefit claim procedure.*—The bill as passed by the House contains no provisions providing for procedures for resolving disputes between the plan administrator and participants or beneficiaries. Under the bill as passed by the Senate each pension plan is required to establish a procedure for a review of disputes between the plan administrator and participants or beneficiaries and afford an opportunity for arbitration of any dispute. Under the conference agreement every employee benefit plan is required to provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for denial written in a manner calculated to be understood by the participant. In addition, the plan administrator is required to afford a reasonable opportunity to any participant or beneficiary whose claim for benefits has been denied for a full and fair review of this decision by the plan administrator.

*Investigatory authority.*—Under the bill as passed by the House, the Secretary of Labor, where he has reasonable cause to believe that violation of the provisions of this bill have been committed, may enter places, inspect accounts and question persons to the extent he deems necessary in order to determine whether any provision of title I has been or is about to be violated. The Secretary is authorized to request the filing of supporting schedules of information and to publish and report on any investigation to interested persons or government officials.

Under the bill as passed by the Senate, the Secretary may enter premises and inspect records and accounts but he may make no more than one examination of books and records per year unless he has reasonable cause to believe that there was a violation of title I. The bill as passed by the Senate also authorizes the Secretary to require the filing of supporting schedules of information. The Secretary of Labor is further authorized to make arrangements with the Secretary of Treasury to prevent duplication of effort regarding investigation of violations relating to fiduciaries.

Under the conference agreement, the Secretary of Labor is to have the power to determine whether there have been violations or there are about to be violations of any provision of title I to make an investigation. In connection with the investigation, he may require the submission of reports, books and records, and the filing of supporting data, but no plan may be required to submit such books, records or supporting data more than once annually unless the Secretary has reasonable cause to believe there may exist a violation under title I. The Secretary also may enter places and inspect records and accounts and question those persons he deems necessary to enable him to determine the facts relative to the investigation if he has reasonable cause to believe there may exist a violation under title I. The Secretary is authorized to make available to persons covered by the plan and to any department or agency of the United States information concerning any matter which has been the subject of the investigation.

*Subpoena power.*—Under the bill as passed by the House, the Secretary of Labor is given the same powers of subpoena as are given to the Federal Trade Commission. The bill as passed by the Senate contains the same provisions as that passed by the House and in addition provides that Secretary of Labor may delegate his auditing and investigation functions with respect to insured banks acting as fiduciaries to appropriate Federal banking agencies. The conference agreement adopts the provisions of the bill as passed by the Senate.

*Appropriations authorized, etc.*—Under the bill as passed by the House and the Senate, there is authorized appropriations of such sums as may be necessary to enable the Secretary of Labor to carry out his functions and duties under the bill. In addition, under the bill as passed by the Senate, the Secretary of Labor is authorized to increase the number of supergrade positions in the Department of Labor. Under the conference agreement the Secretary of Labor is authorized to add one additional position in the GS–18 level in the Department of Labor and to place 20 additional positions in the GS–16 and 17 level in the Department of Labor.

*Service of process.*—Under the bill as passed by the House, subpoena or other legal process of a court upon a trustee or plan administrator constitutes service on the plan. In addition, a plan may sue or be sued as an entity. The bill as passed by the Senate does not contain comparable provisions. The conference agreement basically adopts the provisions as passed by the House but provides that where a plan does not designate in its plan description an individual as agent for service of legal process, service upon the Secretary of Labor is to constitute adequate service. In that case the Secretary upon receipt of service of process is to notify the administrator or any trustee of the pending action within 15 days after he is served.

*Enforcement of judgment.*—The bill as passed by the House provides that a money judgment under title I of the Act against the plan is to be enforceable only against the plan as an entity and not against any other person unless that person's liability is established in his individual capacity. The bill as passed by the Senate did not contain a comparable provision. Under the conference agreeemnt the House provisions are adopted.

*Government representation.*—Both the House bill and the Senate amendment provide for the Secretary of Labor to be represented by attorneys appointed by him in civil actions arising under the Act, except for litigation before the Supreme Court and the Court of Claims. The conference agreement adds the qualification that "all such litigation shall be subject to the direction and control of the Attorney General." The new language was added in order to make clear that even though litigation is conducted by Labor Department attorneys, there is to be authority in the Attorney General to resolve those situations where two or more agencies of the Federal government have varying positions with respect to issues in litigation and, in such situations, to assure that the government takes uniform positions before the courts. In addition, the Attorney General is to have authority concerning the presentation to the courts of the government's position with respect to such issues of general importance as the constitutionality of Federal laws. Under the conference agreement, it is intended that in civil litigation involving the Secretary of Labor under this bill, the Secretary, in the normal course, will be represented in court by the Solicitor of Labor and his attorneys, with appropriate arrangements being made between the Secretary of Labor and the Attorney General with respect to the active involvement of the Jus-

tice Department in the types of situations discussed above.

*Reports to Congress.*—Under the bill as passed by the House, the Secretary of Labor is to report annually to the Congress regarding the administration of title I. This report is to include an explanation of the variances granted, a status report on any plan operating with a variance and its progress in achieving compliance with the Act, the projected date for terminating the variance and information, and recommendations for further legislation in connection with matters covered by title I. Under the conference agreement, the provisions of the bill as passed by the House generally are adopted.

*Cooperation between agencies.*—Under the bill as passed by both the House and the Senate, the Secretary of Labor is authorized to cooperate with other agencies and make agreements for mutual assistance. In addition, under the bill as passed by the House, the Attorney General is authorized to receive from the Secretary of Labor for appropriate action evidence which has been developed that warrants consideration for criminal prosecution under Federal law. Under the conference agreement, the provisions for cooperation of other agencies including the authorization for the Attorney General to receive matters relating to criminal prosecution is adopted.

*Administrative matters.*—Under the bill as passed by the House, the Administrative Procedure Act is applicable to the provisions of title I. In addition, no employee of the Department of Labor is to administer or enforce title I with respect to any employee organization of which he is a member or employer organization in which he has an interest. The bill as passed by the Senate does not add any comparable provisions. Under the conference agreement, the provisions of the bill as passed by the House are adopted.

*Interference with rights.*—Under the bill as passed by both the House and the Senate, it is unlawful to interfere with the attainment of any rights to which a participant or beneficiary may become entitled or to coercively interfere through the use of fraud, force, or violence with any participant or beneficiary for the purpose of preventing him from exercising any right to which he is or may become entitled to under the plan or title I. The penalties and degrees of proof for violations of the provisions are somewhat different. Under the conference agreement, the participant or beneficiary may bring a civil action against any person who interferes with his rights which are protected under the Act. In addition, any person who willfully uses fraud, force, violence or threats to restrain, coerce or intimidate any participant or beneficiary for purposes of interfering with the participant's or beneficiary's rights under the plan or title I of the Act is to be fined $10,000 or imprisoned for not more than 1 year, or both.

*Advisory Council.*—Under the bill as passed by both the House and the Senate, there is established an Advisory Council on Employee Welfare and Pension Benefit Plans. Under the conference agreement, the Council is to consist of 15 members appointed by the Secretary of Labor. Not more than 8 members are to be of the same political party.

The Council is to be made up of members who are to be representatives of employee organizations and employers, and members from the fields of insurance, corporate trusts actuarial counseling, investment counseling, investment management, and accounting, and from the general public. Members are generally to serve for terms of 3 years, are to advise the Secretary of Labor with respect to the carrying out of his functions under the bill and are to submit to the Secretary recommendations as to the administration of the provisions of the bill.

*Tax Court declaratory judgment proceedings*

Both the House bill and the Senate amendment provide a procedure for obtaining a declaratory judgment with respect to the tax-qualified status of an employee benefit plan. Under both the House and Senate versions of the bill, jurisdiction to issue a declaratory judgment is given to the United States Tax Court. This remedy is available only if the Internal Revenue Service has issued a determination as to the status of the plan which is adverse to the party petitioning in the Tax Court, or has failed to issue a determination but the petitioner has exhausted his administrative remedies inside the Internal Revenue Service.

The differences between the bill as passed by both the House and Senate are technical in nature. For example, the Senate amendment provides that the burden of proof is to be on the petitioner (the employer, plan administrator, or employee) as to those grounds set forth in the Internal Revenue Service determination; the burden of proof is to be on the Service as to any other grounds that the Service relies upon in the court proceeding (e.g., if the Service does not issue a determination as to the plan, then the Service is to have the burden of proof as to every ground as to which it relies). On the other hand, the House bill does not make specific provisions for burden of proof.

Under the conference agreement, the House provision is accepted with a number of amendments. The Pension Benefit Guaranty Corporation is permitted to be a petitioner, on the same basis as other petitioners. Employees are permitted to be petitioners if they qualify as interested parties under Treasury regulations and have exhausted their administrative remedies. It is contemplated that only those employees who are entitled to petition the Secretary of Labor under section 3001 of this Act are to be treated as interested parties. It is contemplated that the question as to who bears the burden of proof will be determined by the Tax Court under its existing rule-making authority. Under the existing Tax Court rules the taxpayer has the burden of proof as to matters in the notice of deficiency. As to matters raised by the Service at the time of the Tax Court hearing, the Service has the burden. It is expected that rules similar to these will be adopted by the Tax Court.

Under the House bill, the declaratory judgment provisions are to take effect on January 1, 1978. The bill as passed by the Senate provides that the declaratory judgment provisions are to take effect on January 1, 1975.

Both the House and Senate bills authorize the assignment of the declaratory judgment proceedings provided in this bill to be heard by commissioners of the Tax Court. They also authorize a commissioner to enter a decision of the court in these proceedings. The conference substitute provides for this same procedure, but in doing so the conferees wish to make clear that it is not intended that this be construed as indicating that all of these proceedings should be heard by commissioners and decisions entered by them rather than by the judges of the court. Instead, it is intended to provide more flexibility to the Tax Court in the use of commissioners in these types of cases. It is anticipated, for example, that if the volume of these cases should be large, that the Tax Court will expedite the resolution of these cases by authorizing commissioners to hear and enter decisions in cases where similar issues have already been heard and decided by the judges of the court or in other cases where, in the discretion of the court, it is appropriate for the commissioners to hear and decide cases.

Under the conference agreement, the declaratory judgment provisions are to take effect with respect to petitions filed more than one year after the date of enactment.

*Administrative office in Internal Revenue Service*

Under the bill as passed by both the House and the Senate, there is established an Office of Employee Plans and Exempt Organizations, in the Internal Revenue Service, headed by an Assistant Commissioner of Internal Revenue, to administer the tax provisions with regard to employee benefit plans and other exempt organizations.

The House bill does not provide a compensation schedule for the employees of the new Office of Employee Plans and Exempt Organizations. The bill as passed by the House authorizes appropriations for this office in the amount of $20 million for fiscal year 1974 and $70 million for each fiscal year thereafter. However, the bill as passed by the House neither imposes nor earmarks any specific revenue source for this authorization of appropriations.

The bill as passed by the Senate provides for the Assistant Commissioner in charge of this office to be classified as GS–18 and that this is to be in addition to the number of positions at that level otherwise authorized for the Internal Revenue Service. Also, the bill as passed by the Senate authorizes for the Service an additional 20 positions at the level of GS–17 and 16. The Senate amendment authorizes appropriations for each of the fiscal years 1974, 1975, and 1976 in the amount of $35 million plus one-half of the revenue of the private foundation investment income tax (under section 4940 of the Code). For each fiscal year thereafter the bill as passed by the Senate authorizes appropriations of amounts equal to the collections of a new excise tax on employee benefit plans ($1 per participant per plan per calendar year, beginning with 1974) plus one-half of the private foundation investment income tax collections.

The conference agreement accepts the Senate provision authorizing the Assistant Commissioner Office of Employee Plans and Exempt Organizations to be classified as a GS–18 and providing to the Service an additional 20 positions in the level of GS–16 and 17. However, the conference agreement does not accept the Senate provision authorizing a new tax on employee benefit plans of $1 per participant.

In place of the authorization of the new excise tax on participants the conference provides a permanent authorization for fiscal year 1975 and for each fiscal year thereafter of an amount equal to the revenues from the private foundation investment income taxes if the rate of such tax was 2 percent plus an amount equal to that 2-percentage-point figure or $30,000,000, whichever is the larger.

Under the House bill, the provisions regarding the new office are to take effect 90 days after the date of enactment. Under the bill as passed by the Senate, no specified effective date is provided. The conference agreement accepts the House provision.

VII. CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES (SEC. 2001 OF THE BILL AND SECS. 401, 404, 1379, AND 4972 OF THE CODE)

Under the House bill the maximum limitations on deductions for self-employed individuals would be increased from 10 percent of their self-employment income, not to exceed $2,500, up to 15 percent of their self-employment income, not to exceed $7,500. In any event, a minimum of $750 would be deductible by self-employed individuals, without regard to the percentage limitations. The Senate amendment, although containing a number of technical differences, is generally similar to the House bill in this area.

The conference substitute is described below. Generally, the substitute in this case follows the House bill with respect to technical matters.

*Specific contribution limits on proprietorships, partnerships, or subchapter S corporations*

The conference substitute increases the maximum deductible contribution on behalf of self-employed persons to the lesser of 15 percent of earned income or $7,500. The same change is made as to excludable contributions on behalf of subchapter S corporation shareholder-employees. In applying the percentage limitation, not more than $100,000 of earned income may be taken into account. Self-employed persons (but not shareholder-employees) are permitted to set aside up to $750 a year out of earned income, without regard to the percentage limitation.

*Defined benefit limits for proprietorships, partnerships, and subchapter S corporations*

The substitute authorizes Treasury regulations to allow self-employed persons and shareholder-employees in effect to translate the 15-percent/$7,500 limitations on contributions into approximately equivalent limitations on benefits which individuals can receive under a defined benefit plan. In this respect, the substitute contains a table (based on certain interest and mortality rates) which will serve as a guideline for regulations. The Treasury Department may, by regulations, modify this table from time to time for years beginning after December 31, 1977, to take account of changes in interest and mortality rates which occur after 1973.

The conference substitute also contains technical rules to prevent an individual from obtaining unintended high benefit accruals late in his career merely by establishing a "token plan" early in his career.

A plan which covers owner-employees is not permitted to use the defined benefit provisions unless it provides benefits for all participants on a nonintegrated basis (i.e., without taking social security benefits into account).

*Excess contributions*

Present law provides that excess contributions to an H.R. 10-plan on behalf of an owner-employee must be repaid from the plan and provides, in the case of a willful excess contribution, that the owner-employee is barred from participating in a qualified plan for 5 years. The conference substitute repeals these provisions and, in lieu thereof, the substitute imposes an excise tax of 6 percent on excess contributions to plans for the self-employed. The tax is payable by the employer who maintains the plan.

In the case of a defined contribution plan (for example, a money purchase pension plan) excess contributions include amounts contributed for the self-employed person in excess of the 15-percent/$7,500 limitations. (However, the tax would never exceed 6% of the assets of the account.) In the case of a defined benefit plan, the tax is imposed where the plan is fully funded at the close of the employer's taxable year, and is imposed on the amount that has not been deductible for the taxable year or any prior taxable year. Also, in the case of either type of plan, excess contributions include voluntary contributions by owner-employees in excess of the allowable amount of such contributions.

The tax applies for the year in which the excess contribution is made and for every subsequent year that the excess contribution is outstanding. The excess contribution may be eliminated (so as to stop the running of the tax) in one of two ways—either by repayment of the excess contribution from the plan (which would reduce or eliminate the tax for subsequent years), or by a carryover of the excess payment and applying it against the amount allowable in the next year (or a subsequent year).

repayment would have to be made to the employer. In the case of a defined contribution plan, the repayment could be made either to the employer or to the employee

In the case of a defined benefit plan, the (but, as under present law, a distribution could generally not be made to the employee from a money purchase plan until he attained retirement age). An excess voluntary contribution would be repaid to the owner-employee who made it. Of course, any distribution made to eliminate an excess contribution would not be in violation of the exclusive benefit rules of present law, or the fiduciary standards imposed under this bill.

The excess contribution could also be eliminated through means of a carryover. For example, if contributions of $10,000 were made to a plan (where voluntary contributions were not permitted) on behalf of a self-employed person (who was entitled to the full $7,500 deduction) the $2,500 excess contribution could be purged in the next year if the contribution made on behalf of the individual in that year were limited to $5,000. In this case, the 6-percent tax would be imposed, but only once, because the excess contribution had been eliminated in the second year. Also, in the second year the individual would be entitled to a deduction of $7,500 ($5,000 of contributions in that year, plus the $2,500 carryover). Of course, there would be no tax on underfunding under these circumstances even if the plan were a money purchase plan, the terms of which required a $7,500 contribution for the individual in the second year.

*Premature distributions*

The conference substitute increases the tax on premature distributions to 10 percent of the amount of the premature distribution (instead of 10 percent of the marginal regular tax on the premature distribution, as under present law).

*Withdrawing of voluntary contributions by owner-employees*

The conference substitute allows an owner-employee to withdraw his own voluntary contributions to an H.R. 10-plan before retirement without penalty. It also contains a technical amendment which repeals the "stacking" rules of section 72(m)(1) (i.e., the rules which determine the order in which different categories of income are deemed to be distributed). The conferees intend that distributions from an H.R. 10-plan to an owner-employee be treated first as repayments of any excess contributions made on his behalf, and second as withdrawals of voluntary contributions.

*Effective dates*

In general, the amendments with respect to H.R. 10-plans are to apply to taxable years beginning after December 31, 1973. The rule with respect to the $100,000 contribution base limitation is to apply to taxable years beginning after December 31, 1975, or, if earlier, the first year in which contributions under the plan exceed the deductible contribution limits of present law. The rules facilitating the use of defined benefit plans for the self-employed are to apply to taxable years beginning after December 31, 1975. The rules with respect to excess contributions are to apply to contributions made in taxable years beginning after December 31, 1975, and the rules with respect to premature distributions are to apply to distributions made in taxable years beginning after December 31, 1975. The rule permitting withdrawal of voluntary contributions by owner-employees is to apply to taxable years ending after the date of enactment.

VIII. TAX DEDUCTIONS FOR INDIVIDUAL RETIREMENT ACCOUNTS (SEC. 2002 OF THE BILLS AND SECS. 219, 408, 409, 4973, 4974, AND 6693 OF THE INTERNAL REVENUE CODE)

Under the House bill, individuals not covered by qualified or government pension plans (or sec. 403(b) annuity contracts) would be permitted to take a deduction of up to 20 percent of their earned income, not to exceed $1,500, for retirement savings. This amount could be set aside in a special trusteed or custodial account with a bank, savings and loan, or credit union, used to purchase an annuity contract, or invested in qualified retirement bonds. This amount could not be drawn down without penalty before age 59½ (except in case of death or disability) and payment of benefits from the account would have to begin by age 70½. An individual could establish the account himself, or, alternatively, an employer or labor union could maintain accounts of this type for employees or members.

The provisions of the Senate amendment are similar in most respects. However, under the Senate amendment the allowable deduction could not exceed 15 percent of earned income, not to exceed $1,500. Moreover, under the Senate amendment, the assets of the account could be invested in life insurance contracts. Also, there is no provision in the Senate amendment for union-sponsored accounts.

The rules of the conference substitute are described below. In general it follows the House bill, except that the conference substitute accepts the Senate limitation of 15 percent—$1,500.

*Deductions for contributions to IRA's*

Under the conference substitute, the maximum annual deduction is to be $1,500, or 15 percent of compensation, whichever is less. Consequently, the percentage limitation for contributions to individual retirement accounts is the same as the percentage limitation for contributions to H.R. 10 plans (although the H.R. 10 plan has a $7,500 limitation on the amount which may be set aside in order to provide an incentive for the self-employed to establish qualified plans which will also benefit their employees).

This deduction is to be available to any individual who is not an active participant in a qualified or government plan, or a section 403(b) contract (available to employees of certain types of tax-exempt organizations) and is to be available whether or not the taxpayer itemizes his other deductions. The individual may himself make payments into such an account or this may be done by his employer or his union. If both husband and wife are eligible, each can make contributions to his or her own individual retirement account.

The conferees agree with the statement appearing in the report of the House Committee on Ways and Means (No. 93-807) that if an employee is given the option to elect not to be covered by a qualified, etc., plan and he so elects, generally he will not be treated as being an active participant in the plan for purposes of the retirement savings deduction. The conferees also agree with the statement in this report that where an employee who elects out of a qualified plan can elect later to become an active participant in it and can receive benefits for all prior years (for which he elected out) upon payment of, e.g., all mandatory contributions plus interest for prior periods, the employee is to be treated as being an active participant in the plan for the prior years with respect to which he pays the required amount and accrues benefits.

*Requirements for an IRA*

Under the conference substitute, the assets of an individual retirement account may be invested in a trusteed or custodial account with a bank, savings and loan, or credit union, or in an annuity contract, or in a qualified retirement bond.

In addition, the substitute allows a retirement savings deduction for amounts paid under certain life insurance endowment contracts (which will be treated as individual retirement annuities) to the extent the amounts paid are properly allocable to retirement savings. However, only the retirement saving elements in the contract, and example, if a premium of $1,000 were paid chase life insurance, is to be deductible. For not the part of the premium used to pur-

under a qualified endowment contract, and $200 of this amount were allocable (under regulations) to the cost of the life insurance element, and $800 to the retirement savings aspect of the contract, then $800 would be allowed as a retirement savings deduction (if the individual were eligible for a deduction of this amount).

Under the conference substitute, the total amounts payable under qualified endowment contracts cannot be greater than $1,500 per year. However, an individual may contribute (and deduct) the difference between his maximum allowable retirement savings deduction and the retirement savings element under an endowment contract through another funding medium (such as a trusteed bank account). Under the conference substitute the insurance companies are to provide (before the close of the year) every individual who has purchased a qualified endowment contracts in order to provide a subportion of the premiums which is deductible and the portion which is not deductible, as well as any other information required under regulations. A similar statement must be furnished to the Internal Revenue Service.

Insurance contracts are restricted to endowment contracts in order a provide a substantial savings element. The endowment contract also must be issued by a life insurance company qualified to sell insurance in the jurisdiction where the contract is sold (and may include no insurance element other than life insurance). In addition, the contract must mature no later than the taxable year in which the individual attains age 70½. The conferees intend that for an endowment contract to qualify, the premiums payable under the contract (for any given maturity value) are not to increase over the life of the contract, the cash surrender value of the contract at the maturity date is to be not less than the death benefit payable under the contract at any time, and the death benefit at some point during the life of the contract must exceed the greater of the cash value or the sum of the premiums paid under the contract.

Distributions from qualified endowment contracts are to be taxable as ordinary income to the extent allocable to retirement savings, and are to be taxed as life insurance proceeds to the extent allocable to life insurance. When a contract has matured, the full value of the contract will constitute retirement savings, and all amounts payable under a matured contract are to be taxed as ordinary income to the recipient (whether or not he is the individual who made contributions to the account and whether or not that individual is alive at the time the payments are made from the account).

Under the conference substitute, the assets of an individual retirement account may not be commingled with other property, except in a common trust fund or investment fund (i.e., a group trust), solely for the purposes of diversifying investment, under rules similar to those established in Rev. Rul. 56–267, 1956–1 C.B. 206. Also, following Rev. Rul. 56–267, the conferees intend that, solely for purposes of diversification of investments, the assets of qualified individual retirement accounts may be pooled with the assets of qualified section 401(a) trusts, without adversely affecting the tax-qualification of either the individual retirement accounts or the section 401(a) trusts. The conferees intend that the group trust itself will be entitled to exemption from tax under the Internal Revenue Code in accordance with the rules of Rev. Rul. 56–267.

The conferees intend that this legislation with respect to individual retirement accounts is not to limit in any way the application of the Federal securities laws to individual retirement accounts or the application to them of the laws relating to common trusts or investment funds maintained by any institution. As a result, the Securities and Exchange Commission will have the authority to act on the issues arising with respect to individual retirement accounts independently of this legislation.

The conferees understand that the Internal Revenue Service anticipates developing a prototype individual retirement account which would include a full disclosure of all the material elements governing the retirement savings deduction. This prototype plan would qualify under the requirements for an individual retirement account. Other plans would be required to seek prior approval from the Internal Revenue Service and the conferees expect that one of the requirements for approval would be a disclosure statement of all the material elements governing the retirement savings deduction. The conferees also expect the Internal Revenue Service to develop a pamphlet which sets forth the restrictions and limitations with regard to the individual retirement accounts, including, for example, the penalties for premature distributions, the fact that the account is not eligible for estate and gift tax advantages or the lump-sum distribution rules that qualified plans are entitled to. It is the hope of the conferees that such pamphlet would receive wide distribution so that individuals would be fully informed on the restrictions and limitations of such an account. Also, in accordance with regulations to be prescribed by the Secretary of Treasury or his delegate, there is to be disclosure of such matters as load factors for insurance contracts and earnings factors for individual retirement accounts. These required disclosures are to be made in layman's language, and civil penalties are imposed under the substitute for failure to adequately disclose.

*Requirements for an IRA annuity*

Under the conference substitute, retirement savings may also be invested in annuity contracts. This may be an individual annuity contract, or a joint and survivor contract for the benefit of the individual and his spouse. The annual premium for the contract is not to exceed $1,500, and the contract is to be nontransferrable and is not to be used as security for a loan. Also, distributions from the account must begin by the end of the year in which the individual attains age 70½.

*Employer and union-sponsored IRAs*

Under the substitute, employers and labor unions (and other employee associations) are to be able to establish individual retirement accounts for their employees or members. There is no requirement that the accounts must be established on a nondiscriminatory basis (since any employee not covered under an employer-sponsored account could establish his own account) but, of course, if the employer also maintains a qualified plan, he cannot satisfy the coverage requirements with respect to that plan by taking into account the fact that employees not covered under the plan are covered by individual retirement accounts. Even if the contributions are made by the employer, these amounts constitute income to the employees, and are subject to FICA and FUTA taxes. However, employer contributions are not to be subject to withholding for income tax purposes if it is reasonable for the employer to believe that the employee will be entitled to receive a deduction for the contribution.

*Taxation of distribution—in general*

General, the individual is to have a zero basis in his individual retirement account and the proceeds are to be fully taxable when distributed. These distributions are not to be eligible for capital gains treatment, or the special averaging rules applicable to lump-sum distributions from qualified plans (although the general averaging rules of Sec. 1301 are to be available). Also, the amounts in individual retirement accounts are not to be excluded from tax for purposes of estate and gift tax.

*Premature distributions*

In the event of a premature distribution (or deemed distribution) from the account before the individual attains age 59½, the individual's tax on this amount is to be increased by 10 percent of the total distribution (except in the case of death or disability, or distributions of excess contributions made within the time for filing the individual's tax return for the year in which the excess contributions occur).

If an individual borrows money from an individual account (or from a group trust in which the account assets were invested) the entire account of the individual is disqualified, earnings on the account are no longer tax-exempt, and the participant is then to be taxed as if he had received a distribution of the fair market value of all the assets in his account. (If he borrows money, using his interest in the account as security, the portion used as security is to be treated as a distribution.) A similar result (i.e., deemed distribution of the entire account) would follow if the individual borrowed money from the insurance company issuing an annuity or endowment contract, or otherwise used the contract as security for a loan. Clearly, if the assets of the account were invested in such a way as to provide for the direct and immediate benefit of the participant (for example, if the account were used for a down payment on the house where he lived) then the entire account would be deemed to be distributed. Of course, in the case of any deemed distribution from an individual retirement account, the amount of the distribution would not be includible in income a second time in a later year when the amount was actually distributed. (Questions of the order in which income is distributed where only part of the account is disqualified are to be determined under regulations.)

An individual may invest directly in an endowment contract but does not receive a deduction for the part of the premium which is allocable to life insurance protection. Thus, where the assets of an individual retirement account are invested in a qualifying endowment contract for the participant, this transaction is to be treated as an automatic rollover by the account, and only the amount of the assets which are allocable to the purchase of life insurance protection under the endowment contract are to be deemed to be distributed to the participant. This amount would be includible in income by the participant, but would not be subject to the 10 percent tax on premature distributions.

*Application of prohibited transaction and other taxes to IRA's*

Generally, an individual retirement account is to be exempt from Federal tax, but the unrelated business income of the account, if any, is to be subject to tax (under sec. 511).

Under the House bill, individual retirement accounts generally would be subject to the prohibited transaction rules of present law. However, with respect to prohibited transactions, the conference substitute (generally following the Senate amendment) replaces present law with an excise tax on prohibited transactions (instead of using disqualification as a sanction) and changes the existing prohibited transaction rules. Consequently, the conference substitute applies the new prohibited transaction rules applicable to an owner-employee (e.g., no borrowing from the account is permitted) to individual retirement accounts, with respect to transactions involving the employer or union sponsor of the account, or other parties in interest.

However, if an individual participant engages in an unauthorized transaction with his individual retirement account then, as indicated previously, the sanction, in general,

is disqualification of the account. In this case the assets of the account are to be deemed to be distributed, and the appropriate taxes, including the 10 percent additional tax on premature distributions, are to apply. However, the individual is not to be subject to the prohibited transaction excise taxes (of sec. 4975).

Thus, where there is a union or employer-sponsored account, and there is an individual retirement account trust covering more than one employee, only the employee who engages in the prohibited transaction is to be subject to disqualification of his separate account. However, if the employer (or union) sponsoring the account is the party engaging in a prohibited transaction, then the employer (or other party) will be liable for the excise tax, but the individual participants will not.

*Excess contributions*

In general, where contributions in excess of the deductible limits are made to an individual retirement account, no deduction is allowed for the excess amount, and this amount will be subject to a 6 percent tax for the year in which it is made, and each year thereafter, until there is no excess. The distribution is not to be includible in income if the excess is distributed to the individual on or before the due date for filing the employee's tax return for the year in question (including extensions). If the distribution occurs after that date, however, the distribution is to constitute taxable income to the employee (because his basis in his account is always zero) and will also give rise to a 10-percent additional tax if the distribution occurs before the employee is 59½.

The excess contribution may be removed by a distribution, or by underutilizing the allowable deduction limits for a later year. For example, if an employee contributed $3,000 in one year, and nothing the second year, then a 6 percent tax on $1,500 would be imposed only once (assuming the employee was entitled to a full $1,500 contribution for both years). (Similarly, if the participant withdrew the $1,500 excess contribution in the year in which the contribution was made, the 6 percent excise tax would be imposed only for that year.) Also (to prevent undue hardship resulting from bad investment experience), the tax may never exceed 6 percent of the assets in the account, but a decline in the asset value of the account does not remove the excess contribution and the 6 percent tax will be imposed until the excess contribution has been distributed or eliminated by underutilization of allowable contributions in a subsequent year).

A similar tax is to be imposed on excess contributions for section 403(b) plan investments in mutual fund stock (which are permitted under the conference substitute). (Section 403(b) allows deductions of up to 20 percent of salary, without regard to discrimination requirements, in the case of employees of educational and certain other types of exempt organizations.) However, the 6 percent tax is not imposed on section 403(b) annuity contracts, since earnings on annuity contracts are not taxable until distributed, even when the annuities are purchased outside the scope of a qualified plan.

No retirement savings deduction is to be allowed for contributions made during or after the year in which the individual attains age 70½, and contributions of an individual after attaining this age are to be treated as excess contributions.

*Excise tax on excess accumulations*

Under the conference substitute, distribution of the assets of an individual retirement account must begin by the year in which the participant attains age 70½, and must be distributed no less rapidly than ratably over his lifetime (or the lives of the participant and his spouse). To enforce this requirement, the substitute imposes an excise tax of 50 percent on the amount, if any, by which the amount of the distributions from the account fail to equal the minimum distribution required for the year in order to satisfy the age 70½ payout requirements.

*Tax-free rollover to facilitate pension transfers*

To facilitate portability of pensions—or their transfer with the employee as he changes jobs—the conference substitute provides that money or property may be distributed from a tax-qualified plan or from an individual retirement account to the plan participant, on a tax-free basis, if the same money or property is reinvested by the participant within 60 days in a qualifying individual retirement account.

In the case of distributions from a qualified plan, the distribution must be a lump-sum distribution (see Part X, Lump-Sum distributions) to qualify as a tax-free rollover.

Amounts received from a qualified plan may also be transferred to another qualified plan through the medium of an individual retirement account (with the consent of the individual's new employer) but in this case the conduit retirement account must consist of nothing but assets transferred from a qualified plan (and the earnings on this amount) to prevent a situation where retirement savings might indirectly obtain tax advantages not intended. (These qualified plan distributions may also be reinvested directly in the qualified plan of the individual's new employer on a tax-free basis, if the reinvestment occurs within 60 days after the individual receives the distribution.) However, an individual may have one individual retirement account for transferred savings from a qualified plan and another which represents a normal individual account set aside. For similar reasons, if the individual retirement account contains assets transferred from an H.R. 10 plan, on behalf of a self-employed person, no rollover is permitted from that retirement account to a qualified corporate plan.

Also, in the case of rollovers from a qualified plan, the amount contributed to the individual retirement account is to be the amount received, less the amount contributed to the plan by the individual as an employee contribution. (This is because the employee must always have a zero basis in his individual retirement account.)

Under the committee substitute, rollovers are permitted to and from qualifying investments in individual retirement bonds (discussed below) on the same basis as investments in other types of individual retirement accounts and annuities. At age 70½, the individual must cash in his bonds (since the proceeds of the bonds will be deemed to be distributed in full) but the assets may be rolled over into an investment which will satisfy the age 70½ payment requirements.

Tax-free rollovers between individual retirement accounts may occur only once every three years.

*Qualified retirement bonds*

Deductible employee savings may be invested in a special retirement bond to be issued by the Federal Government. Generally, the rules governing retirement bonds are closely comparable to the rules governing other forms of qualifying individual retirement savings. Thus, the bonds may be cashed prior to age 59½, but, except in the case of a rollover, the individual is generally to be subject to a 10 percent penalty tax (unless the bonds are cashed due to death or disability). However, the bond may be redeemed within 12 months of its purchase without penalty (and without payment of interest) and in this case the individual is not to be entitled to a deduction for the contribution.

The bonds are to cease to bear interest when the individual attains age 70½, and the proceeds of the bonds are to be deemed to be distributed in that year (whether or not the bonds are actually cashed in). However, as discussed above, the individual may roll the proceeds over into another qualifying form of individual retirement investment.

*Other rules*

The conference substitute provides that the proceeds of individual retirement accounts, etc, are to constitute retirement income for purposes of the retirement income credit. The substitute also includes the provisions of the Senate amendment that if a retirement account or annuity is transferred pursuant to a divorce settlement, the transfer is not to be taxable.

*Effective dates*

The deduction for retirement savings is to be available for taxable years beginning after December 31, 1974. The tax-free rollover of assets between qualified plans applies to transfers after the date of enactment.

IX. OVERALL LIMITATIONS ON CONTRIBUTIONS AND BENEFITS (SEC. 2004 OF THE BILL AND SECS. 401, 403, AND 415 OF THE INTERNAL REVENUE CODE)

Under the House bill, in general, in the case of defined benefits plans, the pension which may be paid from a qualified plan with respect to any individual may not exceed 100 percent of his compensation in his high three years of employment or $75,000, whichever is the lesser. In the case of defined contribution plans, the annual additions to an individual's account may not exceed the lesser of $25,000, or 25 percent of his compensation. (Both the $75,000 amount and the $25,000 amount referred to above are subject to cost-of-living allowances.) If an employee is under both a defined benefit plan and a defined contribution plan then the sum of (1) the percentage utilization of the maximum limit under the defined benefit plan, and (2, the percentage utilization of the maximum limit under the defined con-contribution plan, the maximum benefit

Under the Senate amendment, benefits under a defined benefit plan are limited to 75 percent of the participant's high-three-consecutive-years of compensation, taking into account no more than $100,000 of compensation per year. A closely comparable limitation is provided for defined contribution plans, so that deductible contributions may not exceed amounts sufficient to fund a pension for the employee equal to 75 percent of his average high-three-years of compensation (not in excess of the first $100,000 in any one year). Where an employer had both a defined benefit plan and a defined contribution plan the maximum benefit payable under the defined benefit plan would have to be reduced in proportion to the amount of the benefit which was funded through the defined contribution plan.

The conference substitute closely follows the provisions of the House bill. The detailed provisions of the conference substitute are discussed below.

*Coverage of limitations*

The conference substitute imposes an overall limitation (described below) on the contributions and benefits which are allowable under qualified pension, profit-sharing, and stock bonus plans and annuities (including H.R. 10-plans in cases where the overall limits are lower than the H.R. 10-plan limits). The overall limitation also applies to annuity contracts or mutual fund arrangements for employees of educational, charitable, etc., organizations or of public schools (i.e., sec. 403(b) annuities), as well as individual retirement accounts, annuities and retirement bonds.

*Application to defined benefit plans*

Under the conference substitute, in general, the highest annual benefit which can be paid (in the form of a straight-life annuity) out of a defined benefit plan to a participant is not to exceed the lesser of (a) $75,000, or (b) 100 percent of the participant's average compensation in his high-three-years of em-

ployment. (Both of these ceilings are to be adjusted to reflect cost-of-living increases.)

In the event of retirement before age 55, the $75,000 ceiling (but not the 100 percent ceiling) is to be scaled down on an actuarial basis (but not below $10,000). In general, there is no required scale down for preretirement ancillary benefits (such as medical, death and disability), but there would have to be an adjustment for post-retirement ancillary benefits, such as term-certain annuities, post-retirement death benefits, or a guaranteed payment for a period of years.

If a benefit were paid in the form of a joint and survivor annuity for the benefit of the participant and his spouse, the value of this feature would not be taken into account unless the survivor benefit were greater than the joint benefit.

Upward adjustments in the benefit schedule would be permitted to reflect any employee contributions to the plan, including rollover contributions from another qualified plan or from an individual retirement account.

Also the substitute would provide a *de minimis* rule, which would allow a qualified plan to pay an annual retirement benefit of up to $10,000 per annum, notwithstanding the 100-percent limitation, or the required adjustment for certain ancillary benefits, to any employee who had not participated in a qualified defined contribution plan of the employer.

As a further adjustment to the rules described above, the maximum allowable defined benefit woud have to be scaled down proportionately for an employee with less than 10 years of service.

*Application to defined contribution plans*

In the case of a defined contribution plan, the annual additions for the year are not to exceed the lesser of $25,000 (subject to an annual cost-of-living increase) or 25 percent of the participant's compensation from the employer. The term "annual additions" means the sum of (a) the employer's contributions, (b) the lesser of (i) one-half of all the employee's contributions, or (ii) the employee's contributions in excess of 6 percent of his compensation, and (c) any forfeitures which are added to the employee's account. Annual additions do not include rollovers from a qualified plan or individual retirement account. If forfeitures for a particular year could cause the plan not to meet these requirements with respect to a particular employee, these forfeitures must be reallocated to other participants in the plan (i.e., they may not be held in a suspense account), but regulations are to provide for the situation where none of the employees in the plan are eligible to receive forfeitures.

For purposes of the overall limitation, target benefit plans (i.e., plans where the employer establishes a target benefit for his employees, but where the employee's actual pension is based on the amount in his individual account) are to be treated as defined contribution plans. If the plan is a hybrid, i.e., part target benefit and part defined benefit, the plan will be treated as a defined contribution plan, for purposes of those rules, to the extent that benefit under the plan are based on the individual account of the participant. In the case of other plans which have characteristics both of a defined benefit plan and a defined contribution plan (such as a defined contribution plan with a guaranteed benefit, or certain variable annuity plans) the Secretary or his delegate may prescribe regulations applying the limitations to the defined benefit of the plan, and the part of the plan in which benefits are based on individual account balances.

*Application of limitation to combinations of plans*

Under the substitute, where an employer has two or more plans, the overall ceiling is to be computed, in general, by aggregating similar plans (defined contribution or defined benefit) to determine if the limitation for that type of plan has been met on an overall basis (i.e., for purposes of this test a 1.0 fraction is used). If an employer maintains a defined benefit plan and a defined contribution plan, each plan would be subject to the limit appropriate to that type of plan ($75,000 or 100 percent benefits for the defined benefit plan, $25,000 or 25 percent contributions for the defined contribution plan); in addition, the two plans must be combined in computing the overall limitation.

To achieve this purpose, the substitute establishes a formula (to be applied each year to each employee) under which a defined benefit plan fraction for the year is added to a defined contribution plan fraction. Each fraction indicates what portion the participant has used of the maximum permitted limit for the kind of plan involved. If the sum of these fractions exceeds 1.4 then one or more of the plans will be disqualified.

The order in which plans are to be disqualified is to be determined under regulations. The regulations are to provide that no terminated plan may be disqualified until all other plans of the employer have been disqualified. However (unlike the House bill), the substitute does not require that plans having the fewest number of participants must be disqualified before plans having more participants because, in some cases, such a rigid rule might result in lower qualified plan benefits for the employees viewed as a whole.

Plans of all corporations, partnerships, or proprietorships which are under common control must be aggregated (using a 50-percent common control test).

*Application of limitations to section 403(b) annuities for teachers or employees of tax-exempt organizations*

In general, section 403(b) annuities are to be treated as defined contribution plans for purposes of the limitations. Thus, such plans would be subject to the 25 percent/$25,000 limitations which apply to other defined contribution plans, and also are to be subject to the limitations of present law under section 403(b) (20 percent of includable contributions, times years of service, minus all tax excludable contributions by the employer for annuities for prior taxable years).

However, under present law, certain categories of employees covered under section 403(b), such as teachers, typically have a pattern of low contributions in the early stages of their careers, with relatively high "catch-up" contributions made late in their careers. (Often section 403(b) plans operate on a salary-reduction basis.) In order to make allowance for this problem, the conference substitute provides teachers, hospital employees, and employees of home health care institutions (which are tax-exempt and which the Secretary of Health, Education, and Welfare has classified as a home health agency for purposes of medicare) with a choice of three alternative rules which permit a significant amount of "catch up." The individual may elect the alternative he wishes to use (in a time and manner to be prescribed in regulations) and the election, once made, is to be irrevocable.

Under the first alternative (which may be used only once) at the time an employee separates from service he may use the catch-up rules of section 403(b) for the 10-year period ending on the date of his separation, without regard to the 25-percent limitation of section 415 (in other words, his exclusion allowance would equal 20 percent of current compensation, times 10, minus employer contributions already made for annuities for the 10-year period). The $25,000 limitation would apply, however.

Under the second alternative, which could be used each year by the employee, catch-up contributions otherwise permitted under section 403(b), could equal the lesser of 25 percent of current compensation, plus $4,000, or his exclusion allowance computed under section 403(b), but the deductible amount under this alternative could never exceed $15,000 for any one year.

For purposes of the overall limitations (sec. 415) in applying either of these two alternatives, the employee is not to be required to combine contributions to a 403(b) contract (which the participant would be deemed to control) with contributions by his employer to a qualified plan which he does not control (for example, a State wide plan for teachers). (Of course, the combination rules under section 403(b) of present law would not be changed.)

Under the third alternative, however, the employee would be permitted to come under the overall limitation (sec. 415) for all purposes (and the exclusion allowance of sec. 403(b) would not apply). This would mean that the employee would be covered under the overall limitation rules on combination plans, including the 1.4 fraction. For purposes of the combination rules both the employer and the employee would be deemed to have control of the 403(b) contract, but such a contract (which is to be treated as a defined contribution plan) could be combined with a State wide defined benefit plan, and benefits under the two plans, considered together, could equal 1.4 times the amount which could be provided under either plan when viewed separately.

If contributions to provide a section 403(b) annuity exceed the allowable limitations, the excess amounts must be included in income by the employee. Also, the employee's exclusion allowance under section 403(b) is to be reduced by the amount of the excess contribution (even though it was not excludable from the employee's income). If amounts are contributed for the purchase of mutual fund stock (which is permitted under another provision of the conference substitute), these amounts are to be subject to the 6 percent tax on overfunding until the excess is eliminated (see discussion above on individual retirement accounts). This tax is not imposed on contributions for annuity contracts, since earnings on these contracts are not taxed to the individual (until distributed) even when the annuity is not covered under section 403(b).

*Treatment of benefits or contributions over the limitations*

The House bill provided that benefits or contributions in addition to those allowable under qualified plans may be paid or accrued under a qualified plan, if the contributions by the employer for the additional benefits were not deductible until they were includible in income by the employee.

The Senate amendment provided, in effect, that no retirement benefits could be paid, except from a qualified plan.

To avoid technical difficulties, the conference substitute omits both provisions. The conferees intend that, for tax purposes, additional benefits may not be paid from a qualified plan. However, for purposes other than tax law, a qualified plan and a plan providing additional benefits may be treated as one plan by the employer.

*Applications of limitation where records not available*

Under the conference substitute, the Treasury is authorized to prescribe reasonable assumptions which may be used by the employer in cases where the facts needed to compute the overall limitation are not known.

*Application of limitation to existing cases*

The conference substitute contains a provision which provides that an individual who is an active plan participant on or before October 2, 1973, may receive a pension equal to the lesser of (a) 100 percent of his annual compensation on that date (or on the

date he separated from service with the employer), or (b) the benefit payable under the terms of the plan as in effect on that date (assuming no later change in compensation). If the regular rules of the (sec. 415) provision result in a higher limit (due to preretirement cost-of-living increases, for example) than that allowable under this transition provision, the individual is to be entitled to the higher limitation. If an individual covered under this feature is also covered under a defined contribution plan, contributions may continue to be made to the defined contribution plan, to the extent that prior contributions to this plan (or other plans of the same employer), plus the defined benefit available under this feature (which may exceed 1.0 for these purposes), do not exceed the 1.4 fraction. In the case of a participant who separated from the service of the employer prior to October 2, 1973, the benefit allowed under this feature cannot exceed the individual's vested benefit on the date when he separated from service.

*Aggregate deduction limits in the case of profit-sharing and pension plans, etc.*

The conference substitute provides that carryover deductions of excess contributions in a combination pension and profit-sharing plan may not exceed 25 percent of aggregate compensation for any year (present law allows 30 percent). Also, the carryover of unused aggregate contribution limitations to a profit-sharing plan for any year is not to exceed 25 percent (compared to 30 percent under present law).

*Timing of contributions*

Under the substitute, contributions by cash basis taxpayers which are made by the time for filing the tax return for the year in question may be treated as paid in the year in question.

*Effective dates*

The new rules with respect to limitations on corporate plans are to apply to years beginning after December 31, 1975. (For purposes of this provision the term "year" is to be defined in regulations.) In applying the limitations, contributions or accruals which occur before the effective date must, of course, be taken into account. For example, an employee with an accrued benefit of $60,000 on December 31, 1975, could accrue an additional benefit of $15,000 after that date (for a total benefit of $75,000) assuming that this was not in excess of the 100-percent limitation.

X. LUMP-SUM DISTRIBUTIONS (SEC. 2005 OF THE BILL AND SEC. 402(e) OF THE CODE)

*General rule*

Both the House bill and the Senate amendment treat the post-1973 taxable portion of a lump-sum distribution from a qualified pension, profit-sharing or stock bonus plan as ordinary income taxed under an averaging device which treats it as if it were received evenly over a period of years. Under the House bill, this special averaging treatment provides the treatment which would be applicable if the amount were spread over a period of 10 years, while the Senate amendment provides the treatment which would be applicable if it were spread over 15 years. Both the House and Senate versions treat the portion of the payment attributable to the pre-1974 period as long-term capital gain.

The conference substitute accepts the 10-year averaging period provided under the House bill. Both the House bill and the Senate amendment compute the ordinary income portion under the same general type of averaging device and this same general procedure is used in the conference substitute. The ordinary income portion is to be computed without regard to the taxpayer's other income (i.e., in effect it is taxed entirely separately as if this were the only income received by the individual). The tax rate schedule to be used in this separate-treatment approach is the schedule provided in the Code for unmarried individuals (whether or not the taxpayer is married). If the plan participant has service both before 1974 and after 1973, the amount attributed to the post-1973 service is the total taxable distribution times a fraction, the numerator of which is calendar years of active participation after 1973 and the denominator of which is total years of active participation. It is understood that the Treasury Department will provide regulations for allocating fractions of years for plan participants who have both pre-1974 and post-1973 value in lump-sum distributions.

The taxable portion of a distribution is to be the portion of the distribution attributable to employer contributions and to income earned on the account. The portion of the distribution representing the employee's contributions remains nontaxable.

*Definition of a lump-sum distribution*

The House bill would change the requirements used in determining what qualifies as a lump-sum distribution. The Senate amendment makes no changes in the existing rules on this subject. The conferees have accepted the new House rules.

Under existing law, a distribution generally is treated as a lumpsum distribution if it clears the employee's balance in a single trust, even though there are other trusts in that plan and even though the employee receiving the distribution is a participant in several plans maintained by the same employer. The conference substitue retains the requirement that an employee's entire account be distributed. For this purpose, however, all trusts which are part of a plan are to be treated as a single trust. Furthermore, for this purpose all plans of a given category (the categories are pension plans, profit-sharing plans, and stock bonus plans) maintained by an employer are to be treated as a single plan.

The conference substitute also follows the House bill in permitting a distribution to an employee (common-law definition of an employee) after he attains age 59½ to be treated as a lump-sum distribution entitled to the special averaging and partial capital gain treatment, even though the recipient has not left his employment. Under present law, the age 59½ rule applies only to self-employed persons. This change from existing law is a part of the effort to eliminate to the extent feasible the distinctions between taxation of lump-sum distributions to regular employees and to the self-employed, as discussed below.

*Multiple lump-sum distributions in one taxable year*

The House bill requires that a taxpayer who wishes to use the special averaging and capital gains treatment described above for one lump-sum distribution must use that treatment for the aggregate of the lump-sum distributions he receives in the same taxable year. The Senate amendment and existing law contain no comparable provision. The conference substitute accepts the House rule.

*Aggregation of distributions over six years*

Both the House bill and the Senate amendment require that the lump-sum distributions received by an individual during a taxable year be aggregated with all lump-sum distributions to that recipient during his five prior taxable years, but only for purposes of determining the tax brackets in which the income is to be taxed. However, the House bill limits this five-year "lookback" rule to lump-sum distributions made after 1973. No similar provision is contained in the Senate amendment.

The conferees accepted this rule enunciated in both the House and Senate versions and also accepted the House bill restriction limiting the lookback aggregation to distributions made after 1973.

*Treatment of distributions of annuity contracts*

Both the House bill and the Senate amendment provide that a distribution of an annuity contract is to remain nontaxable, but must be included in the six-year aggregation computation described above in order to determine the tax bracket rates on a taxable lump-sum distribution. The House bill provides the annuity contract is to be included in the aggregation computation at its fair market value, while the Senate amendment fixes the value as the cash surrender value as of the time of the distribution.

The conference substitute, as in both the House and Senate versions, includes an annuity contract distribution within the aggregation computation, but continues to treat the annuity contract distribution itself as nontaxable.

The conference substitute provides that the value of an annuity contract for the purposes of the aggregation rule referred to above is to be its current actuarial value. Normally this will be sufficiently close to the cash surrender value of the annuity so that, under Treasury regulations, the cash surrender value (disregarding any loan on the policy) would be treated as the "current actuarial value". However, if the cash surrender value is artificially reduced, Treasury regulations may provide for a simplified method of determining the cash surrender value the annuity would normally carry. If the annuity contract has no cash surrender value, its current actuarial value is to be the present value of the payments anticipated under the annuity contract, computed with regard to the life expectancy of the recipient (and the life expectancy of the recipient's spouse, unless the recipient elects not to take the annuity as a joint and survivor annuity). The present value of these anticipated payments is to be determined under tables to be issued by the Treasury Department.

*Recipients eligible for lump-sum distributions*

The House bill provides that the only recipients of lump-sum distributions who may elect the special averaging treatment are individuals, estates, and trusts. The Senate amendment (and present law) place no restrictions on who may use the special averaging treatment. The conference substitute generally accepts the restrictions of the House bill, but with modifications in the case of lump-sum distributions to trusts.

Under the conference substitute, a lump-sum distribution may be made to multiple trusts, but, if this occurs, the tax paid on account of the distribution is to be the tax payable as if the entire distribution were made to one recipient, with the tax liability apportioned among the multiple trusts in accordance with the relative amounts received by each.

In cases of distributions to individuals and estates (in which instances an entire lump-sum distribution must be made to one recipient) the recipient is to make an election as to whether to claim the special averaging treatment. (The personal representatives of the employee is to make the election if distributions are made to multiple trusts). This election is of significance because, as discussed below, only one election may be made with respect to an employee who has attained age 59½.

As under the House bill, the conference substitute provides that an employee must generally be regarded as the recipient, for purposes of the requirement of aggregation of all lump-sum distributions in a period of six taxable years, even if he or she causes the distribution to be made to a trust, if the employee retains such an interest in the trust as would require his taxation as the substantial owner of the trust under the present

tax rules, even if the grantor of the trust is technically the employer or plan.[1]

In the House bill, a trust would be allowed to elect the special averaging treatment only if (1) the use of the trust would not affect the includibility of the distribution in the employee's gross estate, and (2) the trust would be sole recipient of the entire balance to the credit of the employee. These provisions were not adopted by the conferees.

As indicated above, attainment of age 59½ is made a criterion of eligibility for a regular employee (as well as for a self-employed person, as under present law) for the special averaging lump-sum treatment under the conference substitute. It was not considered necessary, however, to specify that a beneficiary is entitled to the special averaging and partial capital gain treatment for a distribution on account of the death of an employee *after* his retirement (as well as before).[2]

*Number of elections*

The House bill allows the special averaging treatment to be elected freely until the employee attains age 59½, after which time only one election may be made with respect to that employee. The Senate amendment does not have an election procedure. As is the case under present law, the Senate version makes the treatment mandatory for lump-sum distributions and does not limit the number of times this special treatment may be used.

The conferees followed the House bill in allowing only one election with respect to an employee after he has attained age 59½. Thus, if an employee has made one election after attaining age 59½, he may not thereafter obtain the special averaging treatment for another distribution. As under present law, however, an employee, or his beneficiary, who is barred from the special averaging treatment by an earlier election may nevertheless gain the partial capital gain treatment for pre-1974 value if the distribution is made on account of the employee's death or separation from service. In addition, such an employee who receives a distribution because of attaining age 59½ may also receive the partial capital gains treatment although he is barred from the special averaging for the ordinary income portion.

A recipient who elects this special averaging treatment may still elect the usual income averaging provided under sec. 1301.[3] A taxpayer who surrenders an annuity may use the normal 5-year income averaging and also may use the special averaging for lump-sum distributions.

*Lump-sum distributions to the self-employed*

Under the House bill, the same 10-year ordinary income averaging may be elected for distributions on account of plan participation by self-employed persons as may be elected on account of the participation of regular employees. (Under present law, lump-sum distributions to self-employed persons are taxed under special 5-year averaging provisions.) There is no comparable Senate provision.

The conferees accepted the House provision eliminating the distinction of treatment between regular employees and the self-employed in this respect. If they elect the special averaging treatment, self-employed persons are also entitled to capital gain taxation on the pre-1974 value of their lump-sum distributions.

*Computation of tax in lump-sum distribution*

It is recognized that the computation of tax due on a lump-sum distribution with an annuity lump-sum distribution, as reflected in the reports of the House Ways and Means Committee and the Senate Finance Committee, is incorrect in that it subtracts the entire minimum distribution allowance from the amount of the annuity, instead of subtracting only that portion of the minimum distribution allowance that is proportionate to the amount of the annuity distribution as compared with the total distribution. This incorrectly increases the tax on the taxable distribution because it minimizes the tax attributable to the annuity distribution. The less the tax attributable to the annuity distribution, the larger is the tax attributable to the taxable distribution.

The correct computation is as follows:

*First example.*—On December 31, 1975, A terminates his services and receives a lump sum distribution of $65,000 from a qualified plan. The distribution includes employer securities with a fair market value of $25,000 and a basis of $10,000. A has been participating in the plan since January 1, 1966. The plan is noncontributory. A is married; both A and his wife are 50. Their only other income is A's salary of $15,000 and his salary from a second job ($5,000). Their itemized deductions are $3,000. Their average base period income (for purposes of regular income averaging) from the preceding four years (1971 through 1974) is $14,000.

The tax on the portion of the distribution which is not treated as a long-term capital gain is computed as follows:

| | |
|---|---|
| Net distribution ($65,000 total distribution less $15,000 unrealized appreciation on employer securities) | $50,000 |
| Less: Minimum distribution allowance: 50 percent of first $20,000 | 10,000 |
| Reduced by: 20 percent of net distributions in excess of $20,000 | 6,000 |
| | 4,000 |
| Distribution less allowance | 46,000 |

The tax on 1/10th of the distribution less allowance computed from the tax rate schedule for single taxpayers is $816.00.

Multiply this amount by 10: $8,160.00.

Then, multiply by the fraction,

$$\frac{\text{Years of participation in plan after 1973}}{\text{Total years of participation}} = \frac{2}{10} = 0.2$$

which yields $1,632.00.

Thus, the tax on the ordinary income portion of the distributon is $1,632.00.

$$\frac{\text{Years of participation before 1974}}{\text{Total years of participation}} = \frac{8}{10} = 0.2$$

| | |
|---|---|
| Net distribution | $50,000 |
| Capital gains element | 40,000 |

The capital gains element is taxed along with other income (exclusive of the ordinary income element) in the normal way. The tax on the taxable income of $35,500 ($15,000 salary from first job, plus $5,000 from second job, plus $40,000 capital gains element of lump-sum distribution, less $20,000 capital gains exclusion, less $3,000 itemized deductions, less two $750 personal exemptions) is calculated using the tax rate schedule for married taxpayers filing joint returns. In this case the alternative tax on capital gains is not available, but the regular-five year income averaging provisions are:

| | |
|---|---|
| Ordinary tax | $10,130.00 |
| Tax–Using regular income averaging[1] | 8,828.00 |

[1] As indicated above, average base period income is $14,000.

Selecting the tax computation method which yields the smallest amount of tax, A uses the regular five-year income averaging method and has a tax of $8,828.00.

Finally, A combines the tax on the capital gains portion of the distribution and his salary, with the tax on the ordinary income portion of the distribution:

| | |
|---|---|
| Tax on salary and captial gains portion of distribution | $8,828.00 |
| Tax on ordinary income portion of distribution | 1,632.00 |
| Total 1975 income tax | 10,460.00 |

A's basis in the employer securities is $10,000.

*Second example.*—On December 31, 1976, A receives a distribution from a qualified plan with respect to his second job. In this case the distribution is a nontransferable annuity contract, the value of which is $6,000; and a cash distribution of $4,000 financed solely by the employer. A had participated in the plan since January 1, 1967. Mr. and Mrs. A's only other income in 1976 is A's salary of $25,000 and interest of $3,000 on the $40,000 cash received in the prior lump 1–1 sum distribution. They have itemized deductions of $2,100. Mr. and Mrs. A's 1976 tax is computed as follows:

*First,* compute the tax on the portion of the distribution which is not treated as a long-term capital gain and which is taxed separately.

Step 1:

| | |
|---|---|
| 1976 cash distribution | $4,000 |
| 1976 annuity contract | 6,000 |
| Prior year net distribution | 50,000 |
| Total | 60,000 |
| Less: Minimum distribution allowance: 50 percent of first $20,000 | 10,000 |
| Reduced by: 20 percent of net distribution in excess of $20,000 | 8,000 |
| Total | 2,000 |
| | 58,000 |

Ten times the tax on one-tenth of $58,000 (from the rate schedule for single taxpayers) is $10,680.

Step 2:

| | |
|---|---|
| 1976 annuity | $6,000 |
| Minimum distribution allowance from step 1 | 2,000 |

Portion of minimum distribution allowance attributable to annuity distribution.

$$\left.\frac{\$6,000}{60,000}\right\} \times \$2,000 = \$200 \quad 200$$

| | |
|---|---|
| Remainder | 5,800 |

Ten times the tax on one-tenth of $5,800 (from the rate schedule for single taxpayers) is $820.

Step 3: $10,680.00—$820 = $9,860

Step 4:

Determine ordinary income and capital gains elements of A's distribution and his prior year distribution. The ordinary income

---

[1] If the lump-sum distribution is made to a recipient other than a trust during the employee's lifetime, it is intended that the usual assignment-of-income and constructive receipt rules are to apply to determine whether the employee is to be liable for the tax upon the distribution.

[2] Thus, no change in present law is intended by the deletion of references to this in sections 402(a)(2) and 403(a)(2)(A)(iii) of the code.

[3] H. Rept. 93-807, p. 150, which indicates that a common-law employee who uses the special averaging provided under present law may nevertheless also use the regular five-year income averaging for his other income and capital gain, is incorrect. Under the conference substitute, however, both types of income averaging may be used concurrently by both regular employees and the self-employed.

element of A's latest distribution is determined by multiplying the cash distribution of $4,000 by:

$$\frac{\text{Years of participation in plan after 1973} = 3/10 = 0.3}{\text{Total years of participation}}$$

Thus, A's ordinary income element is $1,200. $10,000 of Mr. A's prior distribution of $50,000 was ordinary income.

Thus, the tax on the ordinary income element is the fraction of the tax from Step No. 3 which the ordinary income elements of the 1976 and prior year distributions bear to the entire distributions.

$$\left.\frac{\$1,200+\$10,000}{\$4,000+\$50,000}\right\} \times \$9860 = \$2,045.04$$

Step 5:

The tax on the ordinary income element of A's 1975 distribution from their 1975 income tax return was $1,632.00. Subtracting that from the tax calculated in Step 4 yields the tax on the ordinary income element of A's latest distribution:

$2,045.04—$1,632.00=$413.04

*Second*, compute the tax on all other income, including the capital gains portion of the distribution.

Step 6:

In Step 4, the ordinary income element of the distribution was calculated as $1,200. Therefore, the long-term capital gains element is:

$4,000.00—$1,200=$2,800.00

Step 7:

The capital gains element is taxed along with other income in the regular manner.

| | |
|---|---|
| Capital gains element | $2,800 |
| Less: 50 percent of net long-term capital gain | 1,400 |
| Total | 1,400 |
| Salary | 25,000 |
| Interest | 3,000 |
| Adjusted gross income | 29,400 |
| Less: Itemized deductions | 2,100 |
| Less: Personal exemptions (2×$750) | 1,500 |
| Taxable income | 25,800 |

The tax on $25,800 is calculated using the tax rate schedule for married taxpayers filing joint returns. In this case, neither the alternative tax on capital gains nor the regular five-year income averaging provision is available.

| | |
|---|---|
| Ordinary tax | $6,308.00 |

*Third*, A combines the tax on the capital gains portion of the distribution and his other income, with the tax on the ordinary income portion of the distribution.

Step 8:

| | |
|---|---|
| Tax on capital gains portion of distribution and on other income | $6,308.00 |
| Tax on ordinary income portion of distribution | 413.04 |
| Total 1976 income tax | 6,721.04 |

If in the examples above, A has attained age 59½, he may elect to treat only one of the distributions as a lump-sum distribution qualifying for ten-year averaging. In computing the tax liability on the distribution which he elects to qualify for ten-year averaging, A will not aggregate any distribution (except in the case of a distribution of an annuity contract) made after attaining age 59½ which is not treated as a lump-sum distribution for purposes of the ten-year averaging.

XI. SALARY REDUCTION AND CASH OR DEFERRED PROFIT-SHARING PLANS (SEC. 2006) OF THE BILL

Under present law, in general, an employees' contributions to a qualified retirement plan maintained by his employer are not tax deductible. In the case of a salary reduction plan, or a cash or deferred profit-sharing plan, however, the Internal Revenue Service has permitted employees to exclude from income certain amounts contributed by their employers to the plan, even where the source of these amounts is the employee's agreement to take salary or bonus reductions, or forego salary increases.

On December 6, 1972, the Service issued proposed regulations which would have changed this result in the case of salary reduction plans, and which called into question the continued viability of the treatment of cash and deferred profit-sharing plans.

In order to allow time for congressional study of these areas, the conference substitute provides for a temporary freeze of the status quo. Thus, contributions to plans in existence on June 27, 1974, are to be governed under the law as it was applied prior to January 1, 1972. This treatment is to continue at least through December 31, 1976, or (if later) until regulations are issued in final form in this area, which would change the pre-1972 administration of the law. These regulations, if issued, are not to be retroactive for purposes of the social security taxes or the Federal withholding taxes, and are not to be retroactive prior to January 1, 1977, for Federal income tax purposes.

In the case of plans not in existence on June 27, 1974, contributions made on a salary reduction basis, or made, at the employee's option, to a cash or deferred profit-sharing plan, are to be treated as employee contributions (until January 1, 1977, or until new regulations are prescribed in this area). This will prevent a situation where a new plan might begin in reliance on pre-1972 law while Congress has not yet determined what the law should be in the future.

Generally a plan will be treated as having been established on June 27, 1974, if the plan had been reduced to writing and had been adopted and approved by the directors on or before that date, even if contributions had not yet been made to the plan on a salary reduction basis.[1] New participants may, of course, be added to an existing plan in the normal course of business.

Also to be covered under these principles are so-called cafeteria plans, under which the employees may have a choice between certain fringe benefits, some of which would constitute taxable income to the employee, whereas other forms of benefit might not. Thus, existing cafeteria plans also are to be governed under pre-1972 law until at least January 1, 1977. However, in the case of new plans, the value of any benefits selected under a cafeteria plan are to be includable in income until at least January 1, 1977 (or, if later, until new regulations in this area have been promulgated). In general, the same rules to be applied in determining whether or not a salary reduction plan was in existence on June 27, 1974, are also to be applied to cafeteria plans. Of course minor plan amendments (such as changing the plan to allow cash payments to cover cases of breakage, i.e., where two alternative benefits available under the cafeteria plan do not have exactly the same value) would not cause an existing plan to be classified as a new plan for purposes of these rules.

The conferees agree with the statements in the Ways and Means Committee report (No. 93-807) to the effect that there should be no inferences drawn from this action as to whether or not the pre-1972 application of the law is, or is not, correct, or as to whether new regulations in this area should, or should not, be issued, or as to what these regulations, if any, should provide.

[1] Where shareholder approval is required for formal adoption of the plan, such shareholder approval must also have occurred by June 27, 1974.

XII. GENERAL PROVISIONS RELATING TO JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC. (SEC. 3001–3004, 3021–3022, 3031, 3041–3043 OF THE BILL)

*General provisions relating to jurisdiction, administration and enforcement*

Under the bill and amendment as passed by the House and the Senate jurisdiction with respect to the requirements for plans seeking tax benefits under the Internal Revenue Code is basically with the Internal Revenue Service. In addition, the bill and amendment as passed by the House and the Senate provides jurisdiction to the Secretary of Labor to enforce standards for plans which do not seek special tax benefits under the Internal Revenue Code, and to enforce certain standards as they apply to tax-qualified plans.

Under the conference substitute, procedures are established which will provide a significant and appropriate role in the enforcement of the participation, vesting, and funding standards to both the Department of Labor and the Internal Revenue Service (with respect to plans which seek qualification under the Internal Revenue Code) without a duplication of effort on the part of the two departments. In addition to the specific areas of the conference substitute where areas of jurisdiction are delegated to one department or the other, the conference substitute provides general guidelines for the coordination of administration and enforcement.

The administration of qualified plans is separated into two stages: first, the stage when the plan seeks from the Internal Revenue Service initial qualification of entitlement to special tax benefits under the Internal Revenue Code: second, the operational stage with respect to the continued eligibility of the plan for the special tax benefits.

*Initial stage jurisdiction.*—In determining whether a pension, profit-sharing, or stock bonus plan or a trust which is a part of such a plan, is initially entitled to the special tax benefits provided under the tax law, the Secretary of the Treasury is to require that the person applying for the initial qualification of the plan is to provide, in addition to any materials and information which would generally be necessary for the administration of the tax laws, such other forms and information as may reasonably be made available at the time of the determination as the Secretary of Labor may require. The Secretary of the Treasury is also to require that the applicant for a determination provide evidence that any employee who is an interested party with respect to the plan has been notified of the request for a determination. Also the Secretary of the Treasury is to notify the Secretary of Labor and the Pension Benefit Guaranty Corporation when he receives an application for a determination as to the tax status of a plan.

The Secretary of the Treasury when he makes a determination with respect to a plan or trust is to notify the Secretary of Labor of his determination and furnish to the Secretary of Labor the forms and information submitted for the Secretary of Labor. For this purpose a determination includes a determination that a plan is, or is not, qualified for the special tax benefits under the Internal Revenue Code. The Secretary of the Treasury is also to notify the Secretary of Labor if a request for a determination is withdrawn.

Under the conference substitute, the Secretary of the Treasury is to afford the Secretary of Labor an opportunity to comment on the initial determination in any case involving the participation or vesting standards in which the Secretary of Labor requests such an opportunity. It is expected that the

two departments will set up procedures implementing this procedure in a manner which affords the Secretary of Labor an ample opportunity to comment but which does not cause undue delay in the granting of initial determinations. A request by the Secretary of Labor to comment upon an application for an initial determination is to be made only upon the request (in writing) of the Pension Benefit Guaranty Corporation or on the request of 10 employees (or 10 percent of the employees if lesser) who would be viewed as interested parties under the plan. A copy of the request submitted to the Secretary of Labor is to be transmitted by him to the Secretary of the Treasury within 5 business days of its receipt.

If the Secretary of Labor does not submit comments on behalf of such groups of employees within 30 days after receiving a petition from the necessary number of interested employees, the Secretary of the Treasury is to afford these interested employees a reasonable opportunity to comment upon the intial request for a determination. The above procedure for enabling employees to comment upon an application for a determination is not the exclusive means by which employees may participate in the determination proceedings. Employees may of course proceed on their own through the declaratory judgment provisions which are provided in the bill. The Pension Benefit Guaranty Corporation and the Secretary of Labor (upon petition by the required number of employees) may intervene in any declaratory judgment proceedings in the Tax Court whether the proceedings are brought on behalf of the employer or interested employees. In addition, the Pension Benefit Guaranty Corporation is to be entitled to bring a suit for a declaratory judgment under rules to be prescribed by the Tax Court.

If a plan is qualified by the Secretary of the Treasury, the plan is to be treated as meeting the initial requirements of the Secretary of Labor with respect to participation and vesting.

The above outlined procedures apply not only to the initial qualification of a plan which seeks the special tax benefits provided under the Internal Revenue Code but apply to a request for an IRS determination with respect to any amendment to the terms of a plan or a trust which seeks a favorable determination from the Internal Revenue Service.

*Operational stage jurisdiction.*—The conference substitute also provides procedures for the exercise of the respective jurisdictional authority of the departments with respect to plans qualified for special tax treatment under the Internal Revenue Code during their operation. The Secretary of the Treasury in carrying out the administration of the Internal Revenue Code with respect to any plan or trust is to examine the plan to determine whether the plan satisfies the requirements relating to minimum participation standards and minimum vesting standards (in secs. 410(a) and 411 of the Code).

The Secretary of Treasury is to notify the Secretary of Labor before commencing any proceedings to determine whether the plan or trust is in compliance with the minimum vesting and participation standards. While the notice need not be made prior to the time the Internal Revenue Service begins an audit or a review of a plan to verify that the minimum standards have been satisfied, it is expected that if in the course of a review or audit doubts or questions are raised by the Internal Revenue Service as to whether the plan has met the minimum standards, the Secretary of the Treasury is to notify the Secretary of Labor. Notification is to be made prior to the time the Internal Revenue Service issues a 30-day letter of an intention to disqualify the plan or trust. Except in cases of jeopardy the Secretary of the Treasury is not to issue a determination that the trust or plan does not satisfy the minimum standards until the expiration of a period of 60 days after the date on which he notifies the Secretary of Labor. This period of time is provided for the Secretary of Labor so that, if he chooses to do so, he may examine the plan to determine whether he should begin to take any action to compel compliance under those portions of the participation and vesting provisions of the bill in which he has jurisdiction or to coordinate any action he may be required to take by reason of a complaint from a participant or beneficiary. This 60-day period may be extended by the Secretary of the Treasury if he determines that an extension of this period would enable the Secretary of Labor to obtain compliance with the requirements of the law during this extended period. In order to assist the Secretary of Labor in deciding whether he should seek compliance with the requirements of the law the Secretary of the Treasury is to provide the Secretary of Labor with copies of any notices which he issues to the plan administrator with respect to the minimum participation and vesting standards.

The Secretary of the Treasury in administering the provisions relating to taxes on the failure to meet minimum funding standards (sec. 4971 of the Internal Revenue Code) is to notify the Secretary of Labor before imposing any tax on an employer. In addition, prior to the imposition of the tax, in other than jeopardy situations, the Secretary of the Treasury is to afford the Secretary of Labor an opportunity to comment on the appropriateness of imposing the tax. After consultation with the Secretary of Labor, the Secretary of the Treasury may in appropriate cases waive or abate the 100 percent excise tax on failure to satisfy the minimum funding standards. In order to coordinate their respective responsibilities under the funding standards, it is anticipated that both Secretaries will consult with each other as is needed with respect to the provisions relating to minimum funding standards, both those provided in the Internal Revenue Code and the funding standards provided by title I. As part of this coordination, at the request of the Secretary of Labor or the Pension Benefit Guaranty Corporation, the Internal Revenue Service is to initiate an immediate investigation with respect to any liability for the tax on failure to meet the minimum funding standards.

If the Secretary of Labor or the Pension Benefit Guaranty Corporation seek compliance on any case involving the construction or application of the minimum participation, vesting or funding standards, a reasonable opportunity is to be afforded to the Secretary of the Treasury to review and comment upon any proposed pleadings or briefs before they are filed. Of course, the Secretary of Labor need not obtain the approval of the Secretary of the Treasury and the Secretary of the Treasury may intervene and file his own pleadings or briefs in any case.

The Secretary of the Treasury in carrying out the provisions relating to tax on prohibited transactions (sec. 4975 of the Internal Revenue Code) is to inform the Secretary of Labor before imposing the tax under that section. In addition, the Secretary of Labor is to be afforded an opportunity, in other than jeopardy situations to comment on the appropriateness of imposing the tax. After consultation with the Secretary of Labor, the Secretary of the Treasury may in appropriate cases waive or abate the 100 percent excise tax on failure to correct a self-dealing violation. It also is anticipated that both Secretaries will consult as is needed with respect to the provisions relating to prohibited transactions (including the exemptions which may be provided therefrom) in order to coordinate the rules applicable under these standards. To best coordinate these rules the two Secretaries may want to set up a board to review and coordinate these rules. As part of this coordination, the Internal Revenue Service at the request of the Secretary of Labor or the Pension Benefit Guaranty Corporation is to initiate an immediate investigation with respect to the liability of any person for the tax on prohibited transactions.

*Issuance of regulations.*—Under the conference substitute the Department of the Treasury is to prescribe the necessary regulations under the general provisions relating to participation, vesting, and funding except where specific authority is given to the Secretary of Labor to prescribe the regulations. For example, the Secretary of Labor is to prescribe regulations defining what constitutes a year of service for purposes of the participation and vesting standards of the Act. Regulations which are prescribed by the Treasury or Labor Departments in those areas in which jurisdiction is assigned to them are to be binding upon the other department (unless provided otherwise by the bill). Where the final authorization to prescribe regulations under a provision is provided to one department or the other, it is expected that the two departments will consult and coordinate closely with each other in prescribing the necessary regulations which need to be issued under the various provisions of the bill.

Under the conference substitute whenever in the bill the Secretary of the Treasury and the Secretary of Labor are required to carry out provisions relating to the same subject matter, they are to consult with each other in the developing of rules, regulations, practices and forms to the extent possible for the efficient administration of the provisions in order to reduce to the maximum extent practical, duplication of effort, conflicting requirements and the burden of compliance (including the annual reports which must be filed by the plan administrators). The two Secretaries may make arrangements or agreements for cooperation and mutual assistance in the performance of the functions they have under the bill as they find practicable and consistent with the law. The maximum coordination is expected in those areas where one agency has the authority to prescribe regulations and also, of course, where the regulations are to be a cooperative effort of both agencies.

*Joint task force and studies*

Under the bill, as passed by the House, the Secretary of Labor is to undertake studies relating to private pension plans, including the cost impact of the bill on pension plans, the role of pension plans in providing economic security, the operation of pension plans, and methods of encouraging the growth of the private pension system. In addition, the Committee on Education and Labor and the Committee on Ways and Means are to undertake studies of retirement plans financed or maintained by the United States, or by State and local governments. This study is to include consideration of the adequacy of the participation, vesting, and fiduciary standards, as well as financing and funding methods. In studying whether the funding standards of the bill should be imposed on government plans the study is to take into account the taxing power of the governmental unit maintaining the plan. The two committees are to report the results of the governmental study to the House of Representatives by December 31, 1976.

Under the bill as passed by the Senate, the Secretary of Labor is authorized to undertake the studies relating to employee benefit plans which are generally similar to the studies provided for in the bill as passed by the House. However, the bill as passed by the Senate authorizes the Secretary of Treasury to undertake the study of governmental plans and report to the Committee on Finance and the Committee on Ways and Means by December 31, 1976.

Under the conference substitute the staffs of the Committee on Ways and Means and the Committee on Education and Labor of the House, the Joint Committee on Internal Revenue Taxation, and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate are to carry out duties assigned to the Joint Pension Task Force. By agreement among the Chairmen of these Committees, the Joint Pension Task Force is to be furnished with office space, clerical personnel, actuarial and other consultants, and the supplies and equipment which are necessary for the Task Force to carry out its duties. The Joint Pension Task Force is authorized to engage in specified studies and make a report to the abovementioned committees within 24 months after the date of enactment of the bill. In addition, the Joint Pension Task Force is to study any other matter which any of the committees referred to above may refer to it.

The Joint Pension Task Force is specifically authorized to engage in four studies. First, it is to study and review the three vesting alternatives in the bill to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of these provisions. (The results of this study are to be reported only to the tax committees.) Second, it is to study the means of providing for the portability of pension rights among different pension plans. Third, it is to study the appropriate treatment under the termination insurance provisions of the Act for plans established and maintained by small employers. Fourth, it is to study the effects and desirability of the pre-emption of State law provisions of the bill. In addition elsewhere in this statement it is indicated that the Joint Penson Task Force is to study the effect of the rules in this bill limiting the extent to which antidiscrimination rules may be enforced through additional requirements as to early vesting and the effect on benefits and costs of integrating social security benefits with the benefits payable under retirement plans.

The substitute agreed to by the conferees also provides for a congressional study of retirement plans established and maintained, or financed by the Government of the United States, by any State (including the District of Columbia), or any political subdivision thereof. The study is to include an analysis of the adequacy of existing levels of participation, vesting, and financing arrangements; existing fiduciary standards; and the unique circumstances affecting mobility of government employees and individuals employed under Federal procurement contracts. In considering whether plans are adequately financed consideration shall be given to the necessity for minimum funding standards as well as the taxing power of the government maintaining the plan. This study is to be submitted not later than December 31, 1976, by the Committee on Education and Labor and the Committee on Ways and Means to the House of Representatives and by the Committee on Finance and the Committee on Labor and Public Welfare to the Senate.

*Enrollment of Actuaries*

*Standards.—The House bill requires that* reasonable standards and qualifications are to be established for enrolling actuaries to practice, and specifies the standards that are to be applied for enrolling actuaries to practice. Under the Senate amendment, reasonable standards and qualifications are to be established for enrollment to practice, but the standards to be used are to be determined in regulations.

The conference substitute largely follows the provisions of the House bill. With respect to persons applying for enrollment before January 1, 1976, the substitute provides that the standards and qualifications are to include a requirement for "responsible actuarial experience relating to pension plans," and deletes the requirement for experience in the "administration" of pension plans. This change is intended only to clarify the application of the standards before January 1, 1976, so that persons who want to apply for enrollment before that date have responsible actuarial experience (and not only administrative experience) relating to pension plans. With respect to persons who perform actuarial services for smaller and simpler plans, the conferees anticipate that, to the extent feasible, the standards for enrollment will make it possible to use standard actuarial tables and standard earnings assumptions whether or not the actuary's training includes the highest level of actuarial skills. The limited number of persons with a high level of actuarial skills makes it desirable that the standards acceptable for persons examining smaller and simpler plans need not be as restrictive as in the case of those examining the larger plans.

The conference substitute also provides that actuaries may be enrolled on a temporary basis for a limited period. This makes it clear that actuaries can be enrolled almost immediately after enactment of the bill in order that enrolled actuaries will be available to help plans meet the requirements of the new law. The conferees intend that such temporary enrollment is not to be in lieu of any special enrollment standards for persons who apply for enrollment before January 1, 1976, but is only to allow immediate enrollment before the final standards are established.

*Procedures.*—The House bill provides for separate enrollment of actuaries by the Department of Labor (title I) and the Internal Revenue Service (title II). However, the House bill also provides that standards for enrollment after January 1, 1976, are to be established by joint regulations. The Senate amendment provides for enrollment only before the Internal Revenue Service.

Under the conference substitute, a single standard for enrollment is achieved by directing the Secretary of Labor and the Secretary of Treasury to establish a joint board which will set standards for enrollment and enroll actuaries to practice before the Department of Labor and Internal Revenue Service. In order that enrollment might begin as soon as possible, it is provided than an interim joint board is to be established no later than the last day of the first month following the date of enactment.

The joint board also is to administer the standards for disenrollment of actuaries and is to write the regulations on enrollment (to be approved by the two Secretaries or their delegates). As under the House bill, an actuary can be disenrolled only after notice and hearing, and if there is a finding that he does not comply with the governing rules or regulations, or is shown not to be competent in actuarial matters.

*Reports.*—Both the House bill and the Senate amendment provide that actuarial reports are to be made separately to the Department of Labor and the Internal Revenue Service. The conference substitute largely follows the provisions of the House bill in the technical aspects. In keeping with the general principle of eliminating, to the maximum extent feasible, duplication of effort in reporting, the conference substitute also requires the Secretaries of Labor and Treasury to take such steps as may be necessary to assure coordination, to the maximum extent feasible, between the actuarial reports they file with the Secretary of Labor and the Internal Revenue Service.

XIII. PLAN TERMINATION INSURANCE (SECS. 4001–4082 OF THE BILL)

*Administering corporation and its organization*

Both the House bill and the Senate amendment call for a public corporation named the Pension Benefit Guaranty Corporation to administer the plan termination provisions within (or with) the Department of Labor. The Secretary of Labor would be the chairman of a three-man board of directors. Under the House bill, the other two directors would be other officers or employees of the Department of Labor, while under the Senate amendment, the Secretaries of Commerce and of the Treasury would be the other directors.

The conferees decided, following the Senate amendment, to place the corporation within the Department of Labor under a board consisting of the Secretaries of Labor, Commerce, and the Treasury, with the Secretary of Labor to be chairman of the board. The corporation is to be "within" the Department of Labor in that it is to be quartered there and it is to receive such housekeeping services as it may request from the Labor Department. The board of directors is to establish policy, while the chairman is to be responsible for the overall supervision of the corporation's personnel, organization, and budget practices. The corporation's personnel will be appropriately classified in the usual categories, and they are to be nonpolitical. The conferees contemplate that the corporation may make contractual arrangements for the performance of some of its functions by other agencies, and, in particular, it is anticipated that it may arrange for such functions as recordkeeping to be performed by the Department of Labor insofar as those activities are analogous to the regular duties of the Labor Department. Generally, the other functions of the corporation are to be employed by its own employees, as well as by private parties contracting to perform special duties.

During the temporary start-up period following the date of enactment, the corporation may, in its discretion, make arrangements for performance of any of its functions by other agencies, and, in particular, the Department of Labor.

The conferees also established a seven-man Advisory Committee to advise the corporation on such issues as the investment of funds, appointment of trustees for terminating plans, whether plans should be liquidated immediately through purchase of annuities or continued in operation under a trustee, and on other problems with regard to which the corporation requests advice. The seven members are to be appointed by the President upon the recommendation of the board of directors. Employee organizations and employers are each to have two representatives on the Advisory Committee, with the general public to have three. The President is to designate one of the appointees as chairman.

The Advisory Committee members are to serve staggered, three-year terms, and are to meet at least six times a year. The members may select employees for the Advisory Committee, but its employees, as well as those of the corporation, are to be appointed in accordance with Civil Service regulations.

*Portability assistance*

The Pension Benefit Guaranty Corporation is to provide advice and assistance, upon request, to individuals regarding establishing individual retirement accounts or other forms of deductible individual retirement savings, and also regarding the desirability, in particular cases, of transferring an employee's interest in a qualified plan to a form of individual retirement savings upon that employee's separation from service.

*Investments, borrowing authority, and tax exemption*

Both the House and the Senate versions authorize the corporation to borrow up to $100 million from the Federal Treasury. The conferees expect the program, ultimately, to be self-financing.

The Senate amendment exempts the corporation from Federal taxation (except for

social security and unemployment taxes) and from State and local taxation (except that the Corporation's real and tangible personal property, other than cash and securities, may be taxed to the same extent according to value as other such property is taxed).

The conferees accepted both the borrowing authority and the tax exemption.

The assets in the Corporation's funds representing collections of premiums may be invested in obligations issued or guaranteed by the United States. The assets representing terminated plans in the process of liquidation are to be invested by the trustees of the liquidating plans consistently with investment policies suggested to the corporation by the Advisory Committee.

*Premiums*

In the establishment of premium rates for plan termination insurance the House bases its rate on a combination of a plan's unfunded insured benefits and its total (whether or not funded) insured benefits. The Senate amendment, on the other hand, initially provides a premium of $1 per year per plan participant. In addition, the Senate amendment provides for collection of the premiums as a tax (therefore by the Internal Revenue Service), while the House bill does not make use of the tax collection procedure but instead the corporation is to bill and collect the premiums from the plans charging interest on unpaid premiums past due.

The conferees decided to require the corporation to establish separate uniform premium rates for single-employer and for multiemployer plans for retirement benefits. Single-employer plans are to pay $1 per plan participant during the first full plan year following enactment (and a prorated amount for any part of a plan year preceding that first full plan year). Multiemployer plans are to pay 50 cents per plan participant during these periods.

For the first fractional part of a year (after enactment) and the first full plan year after the date of enactment, premiums are to be paid within 30 days after the beginning of the period of coverage. The corporation may follow this or another system thereafter.

In the case of participants in multiemployer plans, no participant is to be counted more than once in computing the per capita ($1 or 50 cents per person) premium. Thus, if, during the course of a plan year, an employee leaves one employer in the multiemployer plan to work for another employer in the plan, the plan need nevertheless pay only one 50-cent premium on account of his participation.

The corporation is directed to establish by regulation appropriate procedure for determining the amount of the premium where there are practical problems such as rapid turnover of participants during a plan year.

During the second full plan year, both single-employer and multi-employer plans may elect to pay a premium determined under the formula of the House bill but not less than one-half of that they would have to pay under the per capita rates. (This rate base for multi-employer plans continues until 1978). One-half of the premium referred to above is to be determined according to the plan's unfunded insured benefits (but with the premium not to exceed 0.1 percent of unfunded vested benefits for single-employer plans and .025 percent for multiemployer plans). The other half of the premium is to be based on the total insured benefits. In this case the premium is to be fixed at a uniform rate (determined separately for single-employer and multiemployer plans) which is calculated by the corporation to produce the same total yearly revenue as is produced by the premiums on unfunded insured benefits.

In subsequent years the corporation may set premiums using the per capita rate base, the unfunded insured benefits rate base, or the total insured benefits rate base, or any combination of these (subject to the rate limitations above described). If the corporation should want to combine any two or more of these three rate bases, it is to design the bases to produce approximately equal amounts of aggregate premium revenue yearly from each.

The corporation may exceed the rate limitations, produce unequal amounts of aggregate premium income from the different rate bases, or use other rate bases, but only as to plan years beginning after Congress approves these revisions through a special procedure set forth in the conference substitute.

The conferees also decided that the corporation should establish by regulations equitable methods of valuing a plan's assets and benefits for the purpose of setting premium rates.

The basic enforcement mechanism is to be a civil action brought by the corporation for the collection of unpaid premiums past due. There is to be a civil penalty of up to 100 percent of the amount of unpaid premiums to be assesseed after 60 days following the due date of the premiums, but application of this penalty may be postponed in cases in which payment of the premiums entails hardship to the plan. The plan is to be liable for both the premiums for coverage of benefits and for any penalty assessed for failure to pay premiums. Besides the penalty, the corporation may also charge interest (at the rate imposed at the time under section 6601 (a) of the Internal Revenue Code, or its successor, upon tax underpayments) for unpaid premiums that are past due. Additionally, a court, in any action brought to enforce the insurance provisions, including an action to collect unpaid premiums, may award the corporation all or any part of its costs of litigation.

The corporation may elect to insure nonbasic benefits in covered plans and do this through separate funds. If it does so, uniform premium rates are to be established by the corporation for the risk insured in each category. The term "nonbasic benefits" may include both what are sometimes called ancillary benefits and what are sometimes called supplemental benefits.

As to basic retirement benefits, coverage is to continue although premiums are not paid when due.

As explained subsequently, the corporation is also to provide insurance protection for employer liability upon the termination of plans. In this case the corporation is free to determine the rates in a manner it determines as appropriate. These premiums are to be set at rates sufficient to fund the contingent liability covered. This coverage is not to remain in effect if premiums due are unpaid. For coverage of employer liability, the corporation is to provide regulations to set the appropriate period for which the premiums (which are to be paid by the employer) should be paid. Employers electing this coverage may give notice of their election prior to the coverage period, and the five-year waiting period during which the premiums must be paid before contingent employer liability is covered is to begin with that notification.

*Establishment of pension benefit guaranty funds*

Under the House bill, separate trust funds were to be established for single-employer plans and for multiemployer plans. In addition, the corporation would be given the option to establish other trust funds, including a fund for employers paving the optional extra premium for coverage against employer liability. The corporation was to have the discretion to grant coverage against this contingent employer liability for employers in single-employer plans. (There was to be no employer liability for employers in multiemployer plans.) Although premium rates were to be established separately to reflect experience and corporation costs for single-employer plans and multiemployer plans, only one trust fund was specifically provided under the Senate amendment. However, authority was granted to establish funds for insurance of contingent employer liability and insurance of other classes of benefits.

Under the conference substitute, four separate revolving funds are specifically established. They are for the basic retirement benefits of single-employer and multiemployer plans and for such nonbasic benefits of single employer and multiemployer plans that the corporation chooses to insure. It is intended that separate accounts will be maintained in the two basic retirement funds for employer liability payments and for premiums paid for employer liability coverage.

The resources of each fund are not to be used to pay the losses or expenses of another fund, and the funds may draw upon the general funds of the Treasury only to the extent of their borrowing authority. The funds are to be self-sufficient and are not to be a charge on the Federal budget.

Among the receipts to be included in each fund are the appropriate portions of premiums, penalties, interest, and other charges; employer liability payments; amounts borrowed from the Treasury; and interest earned by fund assets.

Disbursements are to be made from each fund for payments of insured benefits (including employer contingent liability coverage), repayment to the Treasury of borrowed amounts, operational and administrative expenses, and payments for assets being purchased under certain circumstances from a plan being terminated.

*Plans covered*

The House bill required mandatory coverage of all plans to which the funding standards of the bill would apply, except that no plan having less than 25 participants (of whom at least 10 must have vested benefits) during any five consecutive years, or any plan with assets covering less than 10 percent of the value of the plan's insured benefits, would be covered. The Senate amendment required mandatory coverage of all qualified plans except money purchase pension plans, profitsharing plans, stock bonus plans, governmental plans, church plans (other than those electing to be covered), and certain fraternal association plans.

Subject to specific exceptions, the conference substitute requires mandatory coverage of employee pension benefit plans that either affect interstate commerce (and, in the case of nonqualified plans, have for five years met the standards for qualified plans) or that are qualified under the Internal Revenue Code, the so-called 403(b) plans of certain educational and other tax-exempt organizations and some so-called H.R. 10 plans for the self-employed and their employees. Covered plans must pay the appropriate premium for coverage. As to whether any particular benefit receives insurance coverage, see "Benefits guaranteed" below.

A plan once determined to be a qualified plan by the Internal Revenue Service is a covered plan even if the determination is subsequently deemed erroneous. However, once a qualified plan loses its qualification, benefits thereafter accruing are not insured.

Plans specifically excluded from coverage are:

(1) individual account plans (such as money-purchase pension plans, profit-sharing plans, thrift and savings plans, and stock bonus plans),

(2) governmental plans (including plans set up under the Railroad Retirement Act of 1935 or 1937),

(3) a church plan which has not volunteered for coverage, is not for employees in an unrelated trade or business, and is not a multiemployer plan in which one or more of the employers are not churches or a convention or association of churches,

(4) plans established by fraternal societies or other organizations described in sec-

tion 501(c) (8), (9), or (18) of the Internal Revenue Code which receive no employer contributions and which cover only members (not employees),

(5) a plan that has not after the date of enactment provided for employer contributions,

(6) nonqualified deferred compensation plans established for a select group of management or highly compensated employees,

(7) a plan outside the United States for nonresident aliens,

(8) a plan primarily for a limited group of highly paid employees where the benefits to be paid (or contributions received) are in excess of the limitations set forth in section 415 of the Internal Revenue Code (as added by the conference substitute),

(9) a qualified plan established exclusively for "substantial owners" (defined below),

(10) a plan of an international organization exempt from tax under the International Organizations Immunities Act,

(11) a plan maintained only to comply with workmen's compensation, unemployment compensation, or disability insurance laws,

(12) a plan established and maintained by a labor organization described in section 501(c)(5) of the Internal Revenue Code that does not after the date of enactment provide for employer contributions,

(13) a plan which is a defined benefit plan to the extent it is treated as an individual account plan under section 3(35)(B) of the Act, or

(14) a plan established and maintained by one or more professional service employers that has from the date of enactment not had more than 25 active participants. Once one of these plans has more than 25 active participants, it remains covered although the number of such employees drops to 25 or less.

*Benefits guaranteed*

The House bill would provide coverage for benefits required to be vested under the bill's minimum vesting standards (up to the insurance limitations) if the plan providing the benefit had been covered for more than five years prior to the termination. The corporation could elect to cover (subject to certain conditions) nonbasic benefits if both the plans providing them and the plan provisions providing the particular benefits had been in existence for more than five years prior to the termination, or if the plans providing the coverage were tax-qualified. The Senate amendment provided coverage for benefits vested under the plan up to the insurance limitations and without regard to whether they exceeded the vesting required under the bill. The benefits, however, had to have been provided by plan provisions in effect at least three years prior to the termination.

Under the conference substitute, vested retirement benefits guaranteed by the plan (other than benefits vesting only because of the termination) are to be covered to the extent of the insurance limitations except to the extent indicated below. (Nonbasic benefits the corporation had chosen to guarantee are also to be covered. These nonbasic benefits may include that part of annuities in excess of $750 monthly, medical benefits, etc. This coverage is not necessarily to be subject to the phase-in rule limiting coverage of basic retirement benefits.)

One of the principal limitations on the coverage is that it is to be phased in at the rate of 20 percent per year until the plan or benefit is fully covered after it has been in effect for five years. (For this purpose, the period of existence of a successor plan covering substantially the same employees and providing substantially the same benefits is to be added to the period of existence of its predecessor plan in determining how long a benefit has been in effect.

In determining how long a plan or amendment has been in effect for purposes of the phase-in schedule, the first year following the end of the plan year in which the plan or amendment first becomes effective constitutes the first year (after which 20 percent of the benefit is covered).

The phase-in rule applies to all benefits provided by qualified plans from the date the benefit was provided. In the case of nonqualified plans that affect commerce, the phase-in rule applies only to benefit increases since the original plan benefits must have been in existence for five years when the plan is first covered (after at least five years of meeting all the standards applicable to qualified plans).

In the case of a plan not covered the day after enactment, the five-year phase-in rule is to commence only when the plan is covered.

The benefit coverage of "substantial owners" is not to be phased in. Resultingly, the benefits of substantial owners may be covered only after their plans have been in effect for 5 years, but at that time their benefits may be covered entirely (up to the basic insurance limitation).

In the case of a termination after the date of enactment (after December 31, 1977, in the case of a termination of a multiemployer plan), the phase-in rule is not to apply unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under the bill. For example, if guaranteed benefits had been increased by one or more amendments made during the 5 years before the termination (or if the plan was created during those 5 years), and the employer's financial condition at the time of termination had not deteriorated significantly from his employer's financial condition immediately after the amendment, then no part of the benefit increase attributable to the amendment is to be insured.

If such a determination was for any purpose other than a reasonable business purpose (whether or not the primary purpose) of obtaining insurance benefits, benefits established or increased during the five years prior to termination are to receive no coverage. For the purpose of this provision, a termination to avoid the liability or responsibility imposed under Title IV on an employer is to be considered a termination for a purpose other than a reasonable business purpose.

Guarantee of benefits is not to extend to benefits accrued after the Secretary of the Treasury or his delegate issues a notice of determination that any trust in the plan is no longer tax-qualified (unless the determination is later held erroneous) or after a plan amendment is adopted that causes the Secretary or his delegate to issue a notice of determination that any trust in the plan is not tax-qualified (unless the determination is later held erroneous or unless the amendment is retroactively revoked to comply with the amendment).

*Insurance limitations*

The House bill limited insurance benefits to the actuarial equivalent of an annuity, beginning at age 65, of $20 per month per year of credited service, regardless of the number of plans in which the employee had been a participant. This maximum amount would be adjusted according to changes in all employees' average wages. No insurance at all would be paid to a "substantial owner," which is defined as a person who owns a sole proprietorship, more than five percent of a partnership, or five percent of either the entire stock or the voting stock of a corporation.

The Senate amendment would have restricted insurance benefits to the actuarial equivalent of the lesser of 50 percent of average wages during the five years preceding termination or $750 monthly. This maximum was to be adjusted in accordance with changes in the social security contribution and benefit base. The insurance maximum was thus set without regard to the number of plans in which the employee had been a participant, and the insured benefits of an "owner-employee" in the plan during the year of termination or any of the preceding three years were to be reduced by his pro rata share of the accumulated funding deficiency requiring the insurance payments.

In general, the conferees followed the outline of the Senate amendment. However, the limitation is set as the actuarial equivalent of the lesser of 100 percent of the employee's wages during his highest-paid five consecutive years (without regard to temporary absences from participation during that period), or $750 monthly. This amount is adjusted to reflect changes in the social security contribution and benefit base.

In computing the limitation, the guarantee of nonbasic benefits is to be disregarded. In other words, employees are entitled to receive insurance payments for nonbasic benefits although those insured benefits, together with the payment of guaranteed retirement benefits, exceeds the maximum limitation.

The maximum benefit for an "owner-employee" as to each benefit or benefit increase is also limited by a fraction representing the number of years in the 30 years (the period for amortizing an unfunded past service liability for single-employer plans created after January 1, 1974) preceding termination in which the owner-employee was an active plan participant. An owner-employee is defined as a person owning 10 percent of an enterprise, whether a corporation or a partnership, or a sole proprietorship at any time in the five years preceding the termination.

*Employer's contingent liability coverage*

The House bill, authorized the corporation to insure employers against the contingent liability that could arise; against employers to reimburse the corporation for its losses caused by coverage of those employers' terminated plans. The amount of premiums charged for this coverage was to be based upon the actual and projected costs of this coverage. (Since there was to be no employer contingent liability for employers in multiemployer plans, there was no provision for coverage of such employers.)

The Senate amendment mandated the corporation to offer contingent liability coverage that was to be applicable to all electing plans (including both single-employer and multiemployer plans) if the extra premium for the coverage had been paid for each of the five plan years immediately preceding the plan year of the termination. The coverage was not to be granted, however, if the employer remained in the same or in a similar business. The premiums were to be calculated by the corporation at a rate sufficient to fund any contingent liability coverage payments.

Under the conference substitute, coverage of contingent employer liability is mandatory for single and multiemployer plans, but the corporation is instructed to attempt with private insurers to devise within a 36-month period a system under which risks are equitably distributed by the corporation and the private insurers with respect to classes of employers insured by each. The corporation may thereafter require all employers to obtain coverage from the private insurers, the corporation, or both, depending upon the system devised. The corporation is to fix the premiums at a rate sufficient to fund any payment by the corporation required by the coverage. Private insurers are left free to fix the rates of their own premiums, and other terms and conditions of insurance, but the corporation may level any charge upon employers obtaining private insurance that may be necessary to assure that the costs to all employers are reasonable and equitable and to assure the liquidity and adequacy of the corporation's funds used for this purpose. The corporation may not make any coverage payment with respect to contingent liability until the insurance has been in effect, and

the premiums have been paid for more than five years.

The corporation may set the premium levels and collect the premiums (in arrears) for this coverage during any time up to, but not later than, three years after the date of enactment. An employer may then pay premiums for the period since the date of enactment, and this period is to be counted toward completion of the five-year payment of premiums requirement. Once obtained coverage is to be prospective only, not retroactive.

In making arrangements with private insurers, the corporation is also to consider using private industry guarantees, indemnities, or letters of credit as an alternative or supplement to private insurance.

*Termination by plan administrator*

The House bill requires an employer or employee organization planning to terminate a plan to first notify the corporation. The Senate amendment requires a 90-day notification period that may be extended by agreement. A notification by the corporation during one of these periods that the plan assets are insufficient is to cause a termination by the corporation under the provisions for a termination by the corporation. If, in the couse of an authorized voluntary termination, a plan administrator determines that the plan assets are insuffcient, he is required to so notify the corporation, which is then to terminate the plan under the regular proceedings for a termination by the corporation.

The Senate amendment also provides that a change from an insured plan into a money purchase plan, a profit-sharing plan, or a stock bonus plan (none of which may be covered) is to be treated as a voluntary termination (for which authorization from the corporation must first be obtained).

Under the conference substitute, the plan administrator must file notice wtih the corporation at least 10 days before the date of the proposed termination, and he may pay no benefit under termination procedures of the plan for 90 days after the proposed termination date, unless, in the interim, he receives a notice of determination from the corporation that the plan assets are sufficient to discharge the plan obligations as they fall due. The plan administrator or the corporation is authorized to petition the court for appointment of a trustee to manage the plan under the same procedure by which a trustee may be appointed in the case of an involuntary termination, if the best interest of the participants and beneficiaries would be served by the appointment. In other respects the conferees accepted the substance of the Senate amendment.

A plan termination in the sense that benefits stop accruing (as provided in section 411 (d) (3) of the Internal Revenue Code) is not to be terminated under the insurance provisions so long as the employer continues to meet the funding standards provided by the substitute.

*Date of termination*

The termination date of a plan is to be determined by the plan administrator or the corporation, depending upon which terminates the plan and also depending upon whether this date is agreed to by the other party. If there is not agreement between the corporation and the plan administrator, the termination date is to be established by the court. However, in the case of terminations of plans which occur before the date of enactment, the date of termination is to be set by the corporation on the basis of the date on which benefits ceased to accrue or on any other appropriate basis.

*Termination by Pension Benefit Guaranty Corporation*

Under the House bill, the Secretary of Labor may terminate a plan, after a hearing, (a) if he determines that the plan failed to meet the minimum funding standards, the plan is unable to pay benefits when due, or failure to terminate will cause long-run loss to the corporation, or (b) if the employer or an appropriate employee organization applies to him for authority to terminate. In terminating a plan, the Secretary of Labor must distribute the plan's assets in accordance with the priority schedule contained in the bill. He is permitted to distribute the assets without ending the plan or without appointing a receiver, and also he may order the plan's continuation under a receiver until all benefit liabilities are satisfied. At any time, however, he may wind up the plan (after a hearing) with a distribution of remaining assets.

Under the Senate amendment, the corporation may institute termination proceedings for the causes listed in the House bill or if a distribution in excess of $10,000 is made to an owner-employee (other than on account of death or disability) if, after the distribution, there are unfunded vested liabilities.

Under the conference substitute, the corporation may institute termination proceedings in court if it finds that:

(1) minimum funding standards have not been met,

(2) the plan is unable to pay benefits when due,

(3) a distribution is made to an owner-employee of $10,000 in any 24-month period if not paid by reason of death and if, after the distribution, there are unfunded vested liabilities, or

(4) the possible long-run liability to the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

In seeking a termination, the corporation is to apply to the appropriate United States District Court, with notice to the plan, for appointment of a trustee to administer the plan pending issuance of a termination decree. Unless cause is shown within three days thereafter why a trustee should not be appointed, the appointment is to be made and the trustee is to administer the plan until the corporation decides whether the plan should be terminated. The court may appoint the trustee from a list furnished to the court by the corporation, or it may appoint the existing plan administrator or the corporation itself. Even without the appointment of a trustee, however, the corporation may, with notice to the plan, apply for a termination decree.

If it grants the decree, the court is to order the trustee (after first appointing a trustee, if none has yet been appointed) to terminate the plan.

A trustee with the discretion to commence the final liquidation of the trust must first give the corporation at least 10 days' notice. If the corporation should oppose the trustee's proposal, the court is to resolve the dispute.

In the case of small plans, the corporation may prescribe a simplified procedure and may pool assets of small plans so long as the rights of the participants and employers (including the right to a court decree of termination) are preserved. Furthermore, the corporation may agree with any plan administrator to designate a trustee who, without court appointment, is to have the usual powers of trustees appointed by the court.

If the application for a trustee is rejected by the court, the trustee is to transfer all assets and records of the plan back to the plan administrator within three days. If the corporation fails to apply within 30 days after appointment of the trustee for a termination decree, the trustee is to transfer the assets and records back to the plan administrator. This 30-day period may be extended by agreement or court order.

The corporation may file for termination despite the pendency in any court of bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan. The court may also stay any of these proceedings. In the termination proceedings, the court is to have the exclusive jurisdiction of the plan and its assets with powers of a court in bankruptcy and of a court in a Chapter X proceeding.

The compensation of the trustee is to be approved by the corporation, and, in the case of a trustee appointed by the court, with the consent of the court. Trustees are authorized to employ professional assistance in acordance with regulations to be issued by the corporation.

*Reportable events*

Under the House bill, certain events indicating possible danger of plan termination must be reported by the plan administrator to the corporation. These events are:

(a) a tax disqualification:

(b) a benefit decrease by plan amendment:

(c) a decrease in active participants to 80 percent of the number at the beginning of the plan year, or 75 percent of the number at the beginning of the previous plan year;

(d) an IRS determination that there has been a plan termination or partial termination for tax purposes;

(e) a failure to meet the minimum funding standards;

(f) inability to pay benefits when due;

(g) a distribution of $10,000 or more in a 24-month period to a "substantial owner," if the plan has unfunded nonforfeitable benefits after the distribution (unless the distribution was made on account of death);

(h) filing of a report preliminary to a merger, consolidation, transfer of assets or liabilities, or adistribution in excess of $25,000 to a participant in any plan year or the granting by the Secretary of Labor of a hearing in regard to a variation on the bill's standards; or

(i) the occurrence of any other event which the corporation determines may be indicative of a need to terminate the plan.

The Senate amendment is essentially the same as the House bill points through (f). As to point (g), the Senate amendment requires reporting of any distribution of $10,000 or more to an owner-employee (unless the distribution is made on account of death or disability), if the distribution increases or creates unfunded vested liabilities. The Senate amendment does not include provisions corresponding to points (h) and (i) of the House bill.

The Senate amendment provisions requiring the Secretary of Treasury to report certain occurrences to the corporation are essentially the same as those of the House bill. There are no corresponding provisions regarding the Secretary of Labor.

The conference substitute requires the plan administrator to inform the corporation with respect to the same listing of reportable events as listed in the House bill. However, the corporation is authorized to waive the requirement and to require any of the events referred to above to be included in the annual report made by the plan. In addition, an employer in a covered plan who knows, or has reason to know, that a reportable event has occurred is immediately to notify the plan administrator of this event.

*Management functions*

Under the House bill, the Secretary of Labor is given authority to transfer funds of terminated plans to the corporation for investment and for payment of benefits, as well as to obtain outside financial counsel and to take any other consistent action to assure equitable payments to participants and beneficiaries. The Senate amendment provides that investments of funds of terminated plans are to be handled by the court-appointed trustees.

Under the conference substitute, the

trustee is to take over general management of the assets. The Advisory Committee is to make timely recommendations to the corporation regarding investment policy relating to funds of terminated plans and on whether terminating plans, at the time, should be operated as liquidating trusts or liquidated (with the proceeds used to purchase annuities for the participants and beneficiaries). The corporation is to make recommendations to trustees of terminated plans regarding investments and is to direct each trustee whether to operate his plan as a wasting trust or to liquidate it and purchase annuities. If the trustee disagrees with the directive of the corporation, he is authorized to apply to the court for a resolution of the dispute.

*Allocation of assets at termination*

Under the House bill, priorities are provided for distribution of assets upon termination of a plan. In general, net assets (assets less expenses and less those assets irrevocably allocated to individual accounts at least 2 years before termination) are allocated in the following order:

(a) employee contributions,

(b) vested benefits of employees already receiving benefits or entitled to choose early retirement (except for disability),

(c) other vested benefits,

(d) other accrued benefits,

(e) interest on employee contributions,

(f) remaining liabilities proposed in the plan for payment upon termination, and

(g) pro rata to each person entitled to receive a distribution on account of priorities (a) through (f).

The Senate amendment requires that plan assets be distributed according to the following priorities:

(a) voluntary employee contributions,

(b) mandatory employee contributions,

(c) benefits in pay status at least 3 years (at the benefit level existing 3 years before termination),

(d) other insured benefits.

Both the House bill and the Senate amendment also have other provisions regarding allocation within a priority category when the remaining assets are insufficient to satisfy all the benefits in that category, regarding benefits in more than one priority category, and regarding similar related problems.

Under the conference substitute, assets are to be allocated among plan benefits in the levels of priorities stated below:

(1) Voluntary employee contributions,

(2) Mandatory employee contributions,

(3) Equally among individuals in the following two subcategories:

(i) in the case of benefits in pay status three years prior to termination (at the lowest pay level in that period and at the lowest benefit level under the plan during the five years prior to termination), and

(ii) in the case of benefits which would have been in pay status three years prior to termination had the participant been retired (and had his benefits commenced then, at the lowest benefit level under the plan during the five years prior to termination),

(4) All other guaranteed benefits up to the insurance limitations (but irrespective of the limitation to one $750 monthly benefit regardless of the number of plans in which the employee participated) and (on an equal level of priority) benefits that would be so guaranteed except for the special limitation on coverage of a "substantial owner,"

(5) All other (meaning uninsured) vested benefits, and

(6) All other benefits under the plan.

The plan may, under regulations, establish subclasses and categories within these six classes.

*Employer liability*

Both the House bill and the Senate amendment required employer liability for insurance payments made by the corporation because of terminations of the employers' plans. The House bill set a limit on employer liability of 50 percent of the employer's net worth, as compared with 30 percent under the Senate amendment. In addition, the House bill did not impose any liability in the case of multiemployer plans.

As previously discussed, both the House bill and the Senate amendment authorized the corporation to insure employers against employer liability, under different sets of conditions.

Under the conference substitute, employer liability is required for employers in both single-employer and multiemployer plans. The employer liability is limited to 30 percent of net worth, with net worth valued as of a date chosen by the corporation, but not more than 120 days prior to the termination.

Net worth is to be computed without taking the contingent employer liability into the calculation. It is determined on the basis chosen by the corporation to reflect best the operating value of the employer, and it is to be increased by any transfers made by the employer prior to the termination that the corporation finds improper.

In determining the employer who may be liable for insurance coverage losses of the corporation, all trades or businesses (whether or not incorporated) under common control are to be treated as a single employer. Trades or businesses under common control may, for this purpose, include partnerships and proprietorships as well as corporations.

If, as a result of the cessation of operations at any facility, more than 20 percent of the participants in a plan are separated from their employment, the employer is to be treated as an employer in a terminating plan that is maintained by more than one employer. Furthermore, in the case of withdrawals of employers in multiemployer plans resulting in substantial reductions of contributions, the corporation may treat the withdrawal as constituting a termination with respect to employees of such employers.

In determining the amount of the corporation's liability, the amount of employer liability (but not the employer's net worth), the application of the lien arising out of employer liability, the appropriate allocation of assets in the event of a termination, the value of the plan's assets, the amount of benefits payable with respect to each participant, the amount of benefits guaranteed with respect to each participant, the present value of the aggregate amount of benefits potentially payable by the corporation, and the fair market value of the plan's assets, the date of determination is to be the date of termination.

In determining the fair market value of a plan's assets, unrealized gain is to be taken into account.

*Lien for employer liability*

The House bill provides for the imposition of a lien upon all property and rights in property belonging to an employer who is liable to the corporation as a result of a plan termination. Under this provision, the lien would arise if payment were not made after demand for payment was made by the corporation and would be in the amount of the liability including interest. Further, the lien would not be valid against the general Federal tax lien.

The Senate amendment provided that the lien would also be inferior to the special estate and gift tax imposed under the Internal Revenue Code and, if arising from an obligation incurred by the employer prior to termination of the plan, a lien or other security interest which is perfected not later than 30 days after termination. The amendment further modifies the House bill by authorizing the corporation to subordinate the lien under certain circumstances.

The conference substitute in general follows the lien imposition provisions of both bills but provides (1) additional rules relating to the period during which the lien will be in existence; (2) that the priority of the lien is to be determined in the same manner as under the Federal tax lien rules to minimize circular priority problems; (3) rules relating to the civil action to foreclose the lien, including the period during which an action must be commenced; and (4) authority for the corporation to release or subordinate the lien under certain circumstances.

More specifically, the revised and added provisions may be explained as follows:

(1) The conference substitute adopts the lien priority rules of the Internal Revenue Code. Generally, these rules provide protection against the lien for a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor if any such person's title or interest is acquired or perfected before notice of the lien is filed. Protection is also provided for certain other interests even if acquired or perfected after notice of the lien is filed. Generally, if the purchaser or creditor does not have actual notice or knowledge of the lien, this status is provided for a purchaser or a holder of a security interest in a security (stocks, bonds, negotiable instruments, etc.), a purchaser of a motor vehicle, a purchaser of certain household goods or personal effects in a casual sale for less than $250, an insurer which makes a loan secured by a policy issued by it, and a financial institution which makes a passbook loan secured by an account with the institution. This status is also provided for certain retail purchases, possessory liens, real property tax assessments, liens for repairs to a residence, and attorney's liens.

Protection against the lien is also provided with respect to certain advances which are made, after notice of the lien is filed, pursuant to a commercial transaction financing agreement, a real property construction or improvement financing agreement, or an obligatory disbursement agreement.

In the case of bankruptcy or insolvency proceedings, the lien is to be treated in the same manner as a tax due and owing to the United States.

The conference substitute provides that, for purposes of determining the priority between a Federal tax lien and the employer liability lien, each lien is to be treated as a judgment lien arising when notice of that lien is filed. The effect of this is to adopt a "first to file" priority rule with respect to the employer liability lien and the Federal tax lien imposed under section 6321 of the Internal Revenue Code.

(2) The conference substitute provides that the corporation may bring a civil action in a district court of the United States to enforce the employer liability lien or to subject any property belonging to an employer to the payment of the employer's liability to the corporation. Generally, this action must be commenced within 6 years after the date upon which the plan is terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the employer before the expiration of the 6-year period.

(3) The conference substitute provides for both the release and subordination of the lien. The lien may be released or subordinated if the corporation determines, with the consent of the board of directors, that release or subordination of the lien would not adversely affect the collection of liability to the corporation. Under these conditions, the corporation may issue a certificate of release or subordination of the lien with respect to the employer's property or any part thereof.

*Recapture of plan payments*

The House bill contains no provision for the recovery shortly prior to termination of payments to participants that might be deemed excessive. Under the Senate amendment, certain payments of a terminated plan affecting interstate commerce made during a three-year period prior to termina-

tion may be recovered. Payments made on account of death or disability were not to be subject to recovery, and the corporation was authorized to waive recovery of certain amounts when the recovery would have caused substantial hardship.

In the case of a distribution to an owner-employee that exceeds $10,000 and creates or increases unfunded vested liabilities, the three-year lookback period would not begin until the corporation is informed of the distribution (which is a reportable event under both the Senate amendment and the conference substitute).

Under the conference substitute, the trustee may recover all payments to a participant in excess of $10,000 (or the amount he would have received as a monthly benefit under a lifetime annuity commencing at age 65, if greater), made during any twelve-month period within the three years prior to termination.

As under the Senate amendment, the conference substitute provides that there is to be no recovery of payments for after death or death or disability, that the three-year period is not to end, in the case of a distribution to a substantial owner (after which the plan was unfunded vested liabilities), until the corporation is notified of the distribution, and that the corporation is authorized to waive any recovery that would cause substantial economic hardship.

*Restoration of plans*

Neither the House bill nor the Senate amendment had any specific provision that procedures against a plan in the termination phase might be abandoned by the corporation if the employer and plan enjoyed a favorable reversal of business trends, or if some other factor made termination no longer advisable.

Under the conference substitute, the corporation may cease any termination activities and do what it can to restore the plan to its former status. As a result, a terminated plan being operated by a trustee as a wasting trust may be restored if, during the period of its operation by the trustee, experience gains or increased funding make it sufficiently solvent. The corporation may, when appropriate, transfer to the employer or plan administrator part of all of the remaining assets and liabilities.

*Liability of substantial employer for withdrawal*

Since employers in multiemployer plans were not liable for the corporation's losses under the House bill, that bill contained no provision regulating the withdrawal of a substantial employer from a multi-employer plan.

Under the Senate amendment, the plan administrator was to inform the corporation of the withdrawal of a substantial owner (as defined). The corporation could then either require payment into escrow of the substantial owner's potential liability or require deposit of a bond in the amount of 150 percent of the liability. If the plan terminated within five years, the payment or bond was to be forfeited. The corporation could, in the case of a withdrawal causing a significant reduction in plan contributions, require allocation between participants no longer in the plan because of the withdrawal and the remaining participants. The portion of the fund allocable to the departed participants would be treated as a termination. The corporation could waive all these procedures if there were an indemnity agreement between the remaining employers in the plan sufficient to satisfy all plan liabilities.

Under the conference substitute, the plan administrator is required to notify the corporation within 60 days after the withdrawal of a substantial employer from a plan under which more than one employer makes contributions.

The corporation may require the substantial owner either to pay the potential liability (as determined by the corporation) into escrow or to post a bond in 150 percent of the amount of the liability. The liability is normally to be determined as the substantial employer's share (with the substantial employer's share computed according to that employer's proportion of the total employer contributions to the plan within the past five years) of the total plan liability that would have existed if the plan had terminated when the substantial owner withdrew. However, the corporation is also authorized to determine the liability according to any other equitable basis prescribed by it in regulations.

If the plan terminates within five years, the payment or bond is forfeited for the benefit of the plan, but the employer may be refunded any amount not needed to meet the plan's liabilities. If there is no termination, the payment or bond is to be returned to the substantial employer or cancelled.

As alternatives to the bond or escrow payment requirement, the corporation may, if the withdrawal causes a significant reduction in the amount of plan contributions, require the plan fund to be allocated between those participants no longer under the plan because of the withdrawal and those participants still covered. That portion of the fund allocable to participants no longer in the plan is to be treated as a termination, while the remainder is to be a new plan.

The corporation is entitled to waive the use of either of these procedures if there is an indemnity agreement between all the other employers in the plan sufficient to satisfy all plan liabilities.

*Liability of employers on termination of plan maintained by more than one employer*

The House bill did not provide employer liability for employers in multiemployer plans. Under the Senate amendment, the employer liability on termination of a multiemployer plan was to be allocated among the employers who had contributed to the plan during the five years before termination, in proportion to their contributions. The 30-percent of net worth limit on employer liability was to be applied separately to each employer.

Under the conference substitute, the general rule of the Senate amendment is accepted with the three modifications:

1. This particular computation of employer liability is to apply to all plans having more than one employer making contributions at the time of the termination, or at any time within the five plan years preceding the date of termination.

2. The allocation is not to be in accordance with actual contributions made by employers during the last five plan years ending prior to the termination, but according to the amounts *required* to be contributed by each employer during that period.

3. The corporation is authorized to determine the liability of each employer on any other equitable basis prescribed in the corporation's regulations.

This regulatory authority extends in two directions. That is, the corporation is authorized to permit other equitable methods of allocation to be used by the employers in the plan, where such other method of allocation would not increase the likelihood that the entire plan would terminate. Also, the corporation is authorized to require the use of other equitable methods where allocation in proportion to contributions would produce inequitable results. For example, the corporation is authorized to require a different allocation basis if the employers in a plan have agreed on a contribution formula that would have the effect of shifting employer liability from those employers that had net assets to those employers that had little or no net assets.

In this regard, it should be noted that the affiliated employer rules are to apply in this area. That is, if one member of an affiliated group has employer liability, then that liability is to extend to the entire affiliated group. Also, the 30-percent-of-net-assets limit is to apply with respect to the net assets of the entire group.

*Effective dates*

The House bill applied the provisions on premiums and benefits to plan years beginning after June 1, 1974, for single employer plans. In the case of a multiemployer plan involving a collective bargaining agreement covering more than 25 percent of the total participants, these provisions applied to plan years beginning after the earlier of December 31, 1980, or the date on which the last such agreement relating to that plan terminated (without regard to extensions made after the date of enactment of the bill). Provisions other than those regarding premiums and benefits payable were to take effect on the date of enactment of the bill.

The Senate amendment required premiums to be collectible with respect to plan years beginning after December 31, 1973. The provisions regarding terminations and corporation and employer liability applied to plan years beginning after December 31, 1976, unless the corporation determined it had sufficient funds to cover earlier terminations. The remaining provisions were to take effect as of the date of enactment of the bill.

Under the conference substitute, benefits payable by single-employer plans are covered with respect to plans terminated after June 30, 1974, provided the usual requirements for coverage are met. Employers do not, however, incur contingent liability coverage for plans terminating between June 30, 1974, and the date of enactment.

These plans are not covered, however, unless they send the Secretary of Labor a notice received by him not later than 10 days after enactment. If reasonable cause is shown for failure to meet this requirement, notice can be received as late as October 31, 1974.

The opportunity to give notice as late as October 31, 1974 (where good cause is shown), is not intended to apply to situations where the failure to give timely notice was the result of inconvenience or inadvertence. In determining whether there is reasonable cause shown for not having given notice within the 10-day period, it is intended that the showing be by clear and convincing evidence that it was not reasonably possible to have given the notice within the time allowed.

With respect to multiemployer plans, benefits generally are not covered for plans terminating before January 1, 1978. However, the corporation may, in its discretion, cover the benefits of multiemployer plans that had been maintained for five years prior to a termination after the date of enactment, if the corporation determines that this coverage will not jeopardize the coverage of multiemployer plans terminating after December 31, 1977.

Notwithstanding the usual requirements for coverage (discussed above with respect to coverage of plans and coverage of benefits), the corporation may exercise its discretion to cover multiemployer plans which terminate after the date of enactment and before January 1, 1978, if these plans were maintained for five years prior to termination and if the plans—

(A) have been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding five years, and

(B) if the participating employers and employee organization or organizations had no reasonable recourse other than termination.

Where in exercise of its discretion to cover benefits of multi-employer plans that have been in substantial compliance with the

funding requirements and had no reasonable alternative to termination, or in exercise of its discretion to cover any multiemployer plan terminating before January 1, 1978, the corporation is to notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Labor and Public Welfare and the Committee on Finance of the Senate.

If the corporation decides to exercise its discretion with respect to a multiemployer plan, the corporation—

(A) may establish requirements for the continuation of payments which commenced before January 2, 1974, with respect to retired participants under the plan,

(B) may not make payments with respect to any participant who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to that participant on that date,

(C) may not make payments which are derived, directly or indirectly, from amounts borrowed from the Treasury, and

(D) is to review from time to time these discretionary payments and reduce or terminate them to the extent necessary to allow the corporation to guarantee benefits of multiemployer plans terminating after December 31, 1977, without increasing premium rates.

The premiums for both single-employer and multiemployer plans are to be payable for fractional years beginning with the date of enactment.

If the Pension Benefit Guaranty Corporation finds that a plan (other than a multiemployer plan) has terminated after June 30, 1974, and before the date of enactment (and therefore would be eligible for coverage of benefits under the plan termination insurance provisions, but the employer would not be subject to employer liability under those provisions), then the guarantee of benefits is not to apply unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this bill or of avoiding employer liability.

*Temporary authority for initial period*

Under the conference substitute, the corporation may appoint a receiver during the first 270 days after the enactment for a plan if (1) the corporation receives notice that a plan is to be terminated, or (2) the corporation determines that the plan should be terminated. Within 20 days after the appointment, the corporation must apply to the court for a decree approving the appointment.

If the court rejects the application or the corporation fails to apply within the 20 days, the plan assets are to be transferred back to the plan administrator within three days.

As an alternative to this procedure, the corporation may request the plan administrator to apply to the district court for the appointment of a receiver until the plan can be terminated.

The receiver is to determine whether the plan assets are sufficient to discharge the plan obligations. If the receiver's determination is approved by the corporation and the court, the receiver is to terminate the plan in accordance with the insurance provisions.

The corporation is also to have special temporary powers during the first 270 days after enactment to—

(1) contract for printing without regard to the provisions of chapter 5 of title 44, United States Code,

(2) waive any notice,

(3) extend the 90-day termination notice period (during which the plan administrator who has filed a notice of termination may not terminate the plan unless he receives a notice of sufficiency of plan assets from the corporation) for an additional 90-day period without the agreement of the plan administrator or approval of the court, and

(4) waive or reduce contingent employer liability for plan terminations, the requirements respecting withdrawals of substantial owners from plans, and the requirements respecting the liability of employers on termination of plans maintained by more than one employer if this appears necessary to avoid unreasonable hardship for an employer who was unable, as a practical matter, to continue its plan.

XIV. ADDITIONAL ITEMS

*Preemption of State laws (Sec. 514 of the bill)*

Under the substitute, the provisions of title I are to supersede all State laws that relate to any employee benefit plan that is established by an employer engaged in or affecting interstate commerce or by an employee organization that represents employees engaged in or affecting interstate commerce. (However, following title I generally, preemption will not apply to government plans, church plans not electing under the vesting, etc., provisions, workmen's compensation plans, non-U.S. plans primarily for nonresident aliens, and so-called "excess benefit plans.")

The preemption provision will take effect on January 1, 1975, except that preemption with respect to plan termination insurance will take effect on the date of enactment of this bill. However, it will not affect any causes of action that have arisen before January 1, 1975, and it will not affect any act or omission which occurred before that date. In addition the preemption provisions will not apply to any criminal law of general application of a State.

The preemption provisions of title I are not to exempt any person from any State law that regulates insurance, banking or securities. However, the substitute generally provides that an employee benefit plan is not to be considered as an insurance company, bank, trust company, or investment company (and is not to be considered as engaged in the business of insurance or banking) for purposes of any State law that regulates insurance companies, insurance contracts, banks, trust companies, or investment companies. This rule does not apply to a plan which is established primarily to provide death benefits; such plans, of course, may be regulated under the State insurance, etc., laws.

The substitute provides that the congressional Pension Task Force is to study this provision and report back to the labor committees of the Congress on the results of its study. It is expected that the Pension Task Force will consult closely with State insurance, etc., authorities in the course of this study.

*Collectively bargained plans. (Sec. 1014 of the bill and sec. 413 of the Internal Revenue Code)*

The tax provisions of the substitute provide, in the case of collectively bargained plans, that the vesting requirements are to be applied as if all employers who are parties to the plan are a single employer. Generally the substitute provides similar rules with respect to the application of the participation, discrimination, exclusive benefit, etc. requirements so that the collectively bargained plan generally will be looked to as a unit to see if these requirements are satisfied, rather than testing the requirements on an employer-by-employer basis.

In addition, the tax provisions of the substitute generally provide that, for purposes of these rules, employees of labor unions and of a collectively bargained plan are to be treated as employees of an employer which is a party to the collective bargaining agreement. However, this rule is to apply only if the union, etc. as an employer additionally meets the nondiscrimination and coverage requirements of the tax laws.

The conferees understand that the rules of the substitute are the same as the rules of present law, and it is intended that the substitute merely confirm the rules of present law.

*Puerto Rican plans (sec. 1022 of the bill)*

Under the conference substitute, a trust which is part of a pension, profit-sharing, or stock bonus plan which is exempt from income taxes under the laws of Puerto Rico, and which is exclusively for the benefit of participants who are Puerto Rican residents, is to be treated as a tax-exempt domestic trust for years after 1973. (Such plans would be subject to title I of the bill but would be exempt from the requirements of title II.)

A plan may elect (in a time and manner to be prescribed in regulations) to be subject to the requirements of a tax-exempt domestic trust for all purposes (including title II). In this case, a Puerto Rican trust which meets the qualification requirements of U.S. tax law may cover U.S. mainland employees of the employer, as well as his Puerto Rican employees. In the case of a trust making this election, the income source rules of subchapter N will apply to trust distributions to the extent provided in regulations. An election, once made, will be irrevocable, and will apply for plan years beginning after the date of the election.

*Remedial retroactive plan amendments (sec. 1024 of the bill and sec. 401(b) of the Internal Revenue Code)*

Under the substitute, retroactive plan amendments which correct a plan that does not meet the requirements for tax qualification are allowed to cure a new plan or to cure an amendment to an existing plan. Such retroactive changes can be made within the time for filing the employer's tax return for the year in which the plan was put into effect or in which the amendment was adopted (or such later time as is designated by the Secretary of the Treasury).

*Mergers and transfers of plan assets (sec. 1021 of the bill)*

Under the bill as passed by the House a plan must provide protection to participants in the case of a merger of the plan with another plan or the transfer of assets or liabilities from a plan. The value of benefits to the participant and the extent to which the benefits have been funded is to be protected by comparing what the participant's benefit would be if the plan had terminated immediately before the merger and what the participant's benefits would be under the merged plan had the merged plan been terminated just after the merger. The post-merger termination benefit may not be less than the premerger termination benefit. Further, a plan could not make a lump-sum distribution to a participant or beneficiary if the distribution exceeded the premerger termination benefit. Further, no merger or transfer of assets or liabilities could occur without an actuarial statement indicating compliance with the requirements being filed with the Secretary of the Treasury at least 30 days before the merger or distribution. The bill as passed by the Senate did not contain comparable provisions.

Under the conference agreement, a trust is not to constitute a qualified tax-exempt trust under the tax law, and also is not to satisfy the requirements of title I, unless it provides that in the case of any merger or consolidation of a plan, or any transfer of assets or liabilities of a plan, to any other plan each participant in the plan would receive post merger termination benefits which are equal to or greater than the premerger termination benefits. In the case of multiemployer plans these rules are to apply only to the extent that the Pension Benefit Guaranty Corporation determines that these rules are necessary for the participant's protection. These rules are to apply to mergers

or transfers made after the date of enactment of the bill, but the plan provision to this effect does not have to be adopted prior to January 1, 1976.

*Registration with Social Security (sec. 1031 and 1032 of the bill and secs. 6057, 6058, 6652, and 6691 of the Internal Revenue Code)*

The substitute generally follows the House bill with respect to registration with Social Security. However, the House bill includes requirements for registration under both the labor and tax provisions. Under the substitute, the registration procedure is included only in the tax provisions, but this procedure applies to all plans to which the vesting standards of the labor provisions apply. In addition, under the substitute the labor provisions as well as the tax provisions require the plan administrator to furnish each person an individual statement giving him the information reported to the government; this is included so the individual may enforce his rights to receive this statement by civil action in the courts.

Under the substitute, each plan which is covered by the vesting requirements of the labor provisions is to file with the Internal Revenue Service an annual statement regarding individuals who have terminated employment in the year in question and who have a right to a deferred vested benefit in the plan. Also, the plan administrator is to furnish each person an individual statement giving him the same information which is reported to the Government.

The Social Security Administration is to maintain records of the retirement plans in which individuals have vested benefits, and is to provide this information to participants and beneficiaries on their request and also on their application for Social Security benefits.

The provisions governing registration with Social Security are to apply to a multiemployer plan to the extent provided in regulations.

The provisions requiring registration with Social Security are to apply to plan years beginning after December 31, 1975, except that reports need not be made by Social Security for 3 years after that date.

*Rules for certain negotiated plans (sec. 2007 of the bill and sec 404(c) of the Internal Revenue Code)*

Under the bill as passed by the House, special rules were provided for welfare and benefit plans established before 1954 as a result of an agreement between a union and the government during a period of government operation of the major part of the productive facilities of the industry in which the employer is engaged. The special provisions enable these types of plans to establish two separate trusts—one for the payment of welfare benefits and a second for the payment of retirement benefits. In order to facilitate the restructuring of a welfare and pension plan into two separate plans the bill as passed by the House provides special rules for self-employed individuals who were treated as participants under the plan. The bill as passed by the Senate did not contain provisions pertaining to this manner. The conference substitute accepts the House provision without amendment.

*Tax treatment of survivor benefit plans of the uniformed services (sec. 2008 of the bill and sec. 122 of the Internal Revenue Code)*

The Senate amendment included a provision designed to continue the same tax treatment for servicemen and former servicemen of the United States under the Survivor Benefit Plan (recently enacted in P.L. 92-425) as formerly was available for them under the Retired Serviceman's Family Protection Plan in the case of annuities for surviving spouses or certain child beneficiaries. Under the present tax law, a member or former member of the uniformed services of the United States who receives a reduced amount of retired or retainer pay because of his election to contribute to the program for survivor annuity benefits is not required to include in his gross income the amount of this reduction in his pay. However, the law governing these annuities has recently been changed by the new Survivor Benefit Plan to provide that survivor annuity benefits apply unless the retired serviceman elects not to participate. The amendment conforms the existing tax treatment to this change in the election requirement under the new Survivor Benefit Plan. Thus, where a serviceman (or former serviceman) does not elect out of the new Survivor Benefit Plan and as a result receives reduced retired pay, the amount of the reduction is not taxed to him. Similar conforming amendments are also made to other provisions of the tax laws.

The conference substitute includes this entire provision from the Senate amendment.

CARL D. PERKINS,
FRANK THOMPSON, Jr.,
JOHN H. DENT,
PHILLIP BURTON,
ALBERT H. QUIE,
JOHN N. ERLENBORN,
RONALD A. SARASIN,
*Managers on the Part of the House as to Title I of the House Bill.*

AL ULLMAN,
JAMES A. BURKE,
MARTHA W. GRIFFITHS,
DAN ROSTENKOWSKI,
H. T. SCHNEEBELI,
HAROLD R. COLLIER,
JOEL T. BROYHILL,
*Managers on the Part of the House as to Title II of the House Bill.*

RUSSELL LONG,
HARRISON A. WILLIAMS,
JENNINGS RANDOLPH,
GAYLORD NELSON,
LLOYD BENTSEN,
JACOB K. JAVITS,
RICHARD S. SCHWEIKER,
WALLACE F. BENNETT,
CARL T. CURTIS,
*Managers on the Part of the Senate.*

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. PEPPER (at the request of Mr. O'NEILL), for today, on account of official business.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, as granted to:

(The following Members (at the request of Mr. KEMP), to revise and extend their remarks and include extraneous matter:)

Mr. KEMP, for 20 minutes, today.
Mr. GUDE, for 15 minutes, today.
Mr. MCKINNEY, for 5 minutes, today.
Mr. YOUNG of Alaska, for 5 minutes, today.

(The following Members (at the request of Ms. HOLTZMAN), to revise and extend their remarks and to include extraneous matter:)

Mr. REUSS, for 10 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. EILBERG, for 5 minutes, today.
Mr. VANIK, for 5 minutes, today.
Mr. MONTGOMERY, for 5 minutes, today.
Mr. BINGHAM, for 5 minutes, today.
Mr. DIGGS, for 5 minutes, today.
Mr. ASPIN, for 20 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. HARRINGTON, for 5 minutes, today.

## EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. LANDGREBE and to include extraneous matter.

Mr. ROGERS, and to include extraneous matter, with his own remarks on the Health Revenue Sharing and Health Services Act of 1974 (H.R. 14214).

(The following Members (at the request of Mr. KEMP) and to include extraneous matter:)

Mr. BURKE of Florida.
Mr. MINSHALL of Ohio.
Mr. MIZELL in five instances.
Mr. HOSMER in two instances.
Mr. GILMAN.
Mr. ANDERSON of Illinois in two instances.
Mr. BROYHILL of Virginia.
Mr. WYMAN in two instances.
Mr. COHEN.
Mr. BAKER in two instances.
Mr. KUYKENDALL in two instances.
Mr. DERWINSKI in three instances.
Mr. MICHEL in two instances.
Mr. CRONIN.
Mr. MCDADE.
Mr. HUBER.
Mr. BAUMAN in two instances.
Mr. YOUNG of Illinois in two instances.
Mr. PRICE of Texas.
Mr. ESCH.

(The following Members (at the request of Ms. HOLTZMAN) and to include extraneous material:)

Mr. ANNUNZIO in six instances.
Mr. ANDERSON of California in two instances.
Mr. RARICK in three instances.
Mr. GONZALEZ in three instances.
Mr. ROONEY of New York.
Mr. LONG of Louisiana in two instances.
Mr. HELSTOSKI.
Mr. STUCKEY.
Mr. JONES of North Carolina.
Mr. EVINS of Tennessee in two instances.
Mr. HAMILTON in two instances.
Mr. DINGELL.
Mr. BOLLING.
Mr. LEHMAN in 10 instances.
Mr. BOWEN.
Mr. BINGHAM in five instances.
Mr. GREEN of Pennsylvania.
Mr. FASCELL in two instances.
Mr. UDALL in five instances.
Mr. ROUSH in three instances.
Mr. DENT.
Mr. EVANS of Colorado.
Mr. ROGERS in five instances.

## SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 3331. An act to clarify the authority of the Small Business Administration, to increase the authority of the Small Business Administration, and for other purposes; and

S. 3782. An act to amend the Public Health Service Act to extend through fiscal year 1975 the scholarship program for the

National Health Service Corps and the loan program for health professions students.

## BILLS AND JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. HAYS, from the Committee on House Administration, reported that that committee did on August 9, 1974 present to the President, for his approval, bills and a Joint Resolution of the House of the following titles:

H.R. 69. An act to extend and amend the Elementary and Secondary Education Act of 1965, and for other purposes;

H.R. 7682. An act to confer U.S. citizenship posthumously upon Lance Corporal Federico Silva;

H.R. 5667. An act for the relief of Linda Julie Dickson (nee Waters); and

H.J. Res. 1104. A joint resolution to extend by 62 days the expiration date of the Export Administration Act of 1969.

## ADJOURNMENT

Mr. PATTEN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 47 minutes p.m.), the House adjourned until tomorrow, Tuesday, August 13, 1974, at 12 o'clock noon.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2647. A letter from the Secretary of Labor, transmitting the annual report on the administration of the Welfare and Pension Plans Disclosure Act, pursuant to section 14 (b) of the act; to the Committee on Education and Labor.

2648. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements entered into by the United States, pursuant to Public Law 92-403; to the Committee on Foreign Affairs.

2649. A letter from the Administrator, Federal Energy Administration, transmitting a progress report on the retailing of gasoline, pursuant to section 4(c)(2)(A) of the Emergency Petroleum Allocation Act of 1973; to the Committee on Interstate and Foreign Commerce.

2650. A letter from the Administrator of General Services, transmitting a report of a building project survey for Harvey, Ill.; to the Committee on Public Works.

2651. A letter from the Administrator, U.S. Environmental Protection Agency, transmitting a report of the Nation's water quality and an inventory of major point sources of pollution, pursuant to section 305(a) of the Federal Water Pollution Control Amendments of 1972 (Public Law 92-500); to the Committee on Public Works.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mrs. SULLIVAN: Committee on Merchant Marine and Fisheries. H.R. 14600. A bill to increase the borrowing authority of the Panama Canal Company and revise the method of computing interest thereon. (Rept. No. 93-1276). Referred to the Committee of the Whole House on the State of the Union.

Mr. TEAGUE: Committee of conference. Conference report on S. 1769 (Rept. No. 93-1277). Ordered to be printed.

Mr. TEAGUE: Committee of conference. Conference report on H.R. 11864 (Rept. No. 93-1278). Ordered to be printed.

Mr. PATMAN: Committee of conference. Conference report on S. 3066 (Rept. No. 93-12793. Ordered to be printed.

Mr. PERKINS: Committee of conference. Conference report on H.R. 2 (Rept. No. 93-1280). Ordered to be printed.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ASPIN:

H.R. 16367. A bill to amend section 5051 of the Internal Revenue Code of 1954 (relating to the Federal excise tax on beer); to the Committee on Ways and Means.

By Mr. BROYHILL of Virginia:

H.R. 16368. A bill to authorize the recomputation of the retired pay of members and former members of the uniformed services who entered service before July 1, 1958, and whose retired pay is computed on the basis of pay scales in effect before the date of the enactment of this act, and for other purposes; to the Committee on Armed Services.

By Mrs. GRIFFITHS (for herself, and Mr. ADDABBO):

H.R. 16369. A bill to create a national system of health security; to the Committee on Ways and Means.

By Mr. GUDE (for himself, Mr. DANIELSON, Mr. BOB WILSON, Mr. KYROS, and Mr. COHEN):

H.R. 16370. A bill to authorize the voluntary withholding of Maryland, Virginia, and District of Columbia income taxes, pursuant to agreements subject to review by the Committee on House Administration of the House of Representatives, in the case of certain legislative officers and employees; to the Committee on House Administration.

By Mr. McCORMACK (for himself, Mr. TEAGUE, Mr. MOSHER, Mr. GOLDWATER, Mr. FUQUA, Mr. WYDLER, Mr. SYMINGTON, Mr. ESCH, Mr. HANNA, Mr. CONLAN, Mr. ROE, Mr. PARRIS, Mr. BERGLAND, Mr. CRONIN, Mr. PICKLE, Mr. MARTIN of North Carolina, Mr. BROWN of California, Mr. KETCHUM, Mr. MILFORD, Mr. THORNTON, and Mr. GUNTER):

H.R. 16371. A bill to further the conduct of research, development, and demonstrations in solar energy technologies, to establish a solar energy coordination and management project, to provide for scientific and technical training in solar energy, to establish a Solar Energy Research Institute, to provide for the development of suitable incentives to assure the rapid commercial utilization of solar energy, and for other purposes; to the Committee on Science and Astronautics.

By Mr. McCORMACK (for himself, Mr. TEAGUE, Mr. MOSHER, Mr. GOLDWATER, Mr. PRICE of Texas, Mr. RARICK, and Mr. ANDERSON of Illinois):

H.R. 16372. A bill to further the conduct of research, development, and demonstrations in solar energy technologies, to establish a solar energy coordination and management project, to amend the National Science Foundation Act of 1950 and the National Aeronautics and Space Act of 1958, to provide for scientific and technical training in solar energy, to establish a Solar Energy Research Institute, to provide for the development of suitable incentives to assure the rapid commercial utilization of solar energy, and for other purposes; to the Committee on Science and Astronautics.

By Mr. MOORHEAD of Pennsylvania (for himself, Ms. ABZUG, Mr. ALEXANDER, Mr. BROOMFIELD, Mr. ERLENBORN, Mr. FASCELL, Mr. GOLDWATER, Mr. GUDE, Mr. KOCH, Mr. LITTON, Mr. McCLOSKEY, Mr. MOSS, Mr. THONE, and Mr. WRIGHT):

H.R. 16373. A bill to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies; to the Committee on Government Operations.

By Mr. RAILSBACK:

H.R. 16374. A bill to provide financial relief to livestock producers by extending until December 31, 1975, the date for compliance with permits issued with respect to the national pollution discharge elimination system; to the Committee on Public Works.

By Mr. RONCALIO of Wyoming:

H.R. 16375. A bill to amend the Emergency Daylight Saving Time Energy Conservation Act of 1973 to exempt from its provisions the period from the last Sunday in October 1974, through the last Sunday in February 1975; to the Committee on Interstate and Foreign Commerce.

H.R. 16376. A bill to amend the Internal Revenue Code of 1954 to increase the exemption for purposes of the Federal estate tax, to increase the estate tax marital deduction, and to provide an alternate method of valuing certain real property for estate tax purposes; to the Committee on Ways and Means.

By Mr. RONCALLO of New York (for himself, Mr. STRATTON and Mr. CONTE):

H.R. 16377. A bill to authorize the Secretary of the Navy to transfer ownership of two naval vessels no longer needed by the Navy to the City of New York, N.Y.; to the Committee on Armed Services.

By Mr. STEELE (for himself, Mr. COHEN, Mrs. HECKLER of Massachusetts, Mr. HEINZ, Mr. MOSHER, Mr. PEYSER, Mr. VEYSEY, and Mr. YOUNG of Illinois):

H.R. 16378. A bill to amend section 232 of the National Housing Act to provide insurance for loans to finance improvements to long-term care facilities required to correct deficiencies identified in State surveys and Federal certification procedures; to the Committee on Banking and Currency.

H.R. 16379. A bill to amend the Older Americans Act of 1965 to provide strengthened programs relating to long-term care facilities, and for other purposes; to the Committee on Education and Labor.

H.R. 16380. A bill to amend the Social Security Act to provide for the furnishing of rehabilitative services to inpatients of long-term care facilities; to the Committee on Ways and Means.

H.R. 16381. A bill to amend title XVIII of the Social Security Act to provide for the establishment of a Nursing Home Affairs Advisory Council; to the Committee on Ways and Means.

H.R. 16382. A bill to amend title XIX of the Social Security Act to impose certain requirements relating to the discharge or transfer of medicaid patients from skilled nursing or intermediate care facilities, and for other purposes; to the Committee on Ways and Means.

H.R. 16383. A bill to amend the Social Security Act so as to make permanent certain temporary provisions relating to inspections of long term care institutions, to provide for the publication of certain information regarding such institutions, and requiring that such institutions provide certain training for their nonprofessional employees as a condition of participation in the medicare and medicaid programs; to the Committee on Ways and Means.

By Mr. THOMSON of Wisconsin:

H.R. 16384. A bill to repeal the Emergency Daylight Saving Time Energy Conservation Act of 1973; to the Committee on Interstate and Foreign Commerce.

By Mr. YOUNG of Alaska:

H.R. 16385. A bill to authorize the Secretary of the Interior to convey all right, title

and interest of the United States in and to a tract of land located in the Fairbanks Recording District, State of Alaska, to the Fairbanks North Star Borough, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. BUCHANAN (for himself, Mr. BURGENER, Mr. CARNEY of Ohio, Mr. CASEY of Texas, Mr. CLEVELAND, Mrs. COLLINS of Illinois, Mr. DINGELL, Mr. DUNCAN, Mr. DU PONT, Mr. ESCH, Mr. EVANS of Colorado, Mr. HUBER, Mr. LONG of Maryland, Mr. MOAKLEY, Mr. STEIGER of Arizona, Mr. STOKES, and Mr. THONE):

H.R. 16386. A bill to amend title 39, United States Code, to strengthen the regulatory authority of the Postal Rate Commission with respect to the operation of the Postal Service, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. HOSMER (for himself, Mr. REGULA, Mr. JOHNSON of California, Mr. CRONIN, Mr. RUPPE, Mr. KETCHUM, Mr. LUJAN, and Mr. BAUMAN):

H.R. 16387. A bill to designate certain lands as wilderness, and for other purposes; to the Commitee on Interior and Insular Affairs.

By Mr. MOAKLEY:

H.R. 16388. A bill to provide for disclosure of information by executive departments to committees of Congress; to the Committee on Armed Services.

H.R. 16389. A bill to establish a National Commission on Supplies and Shortages; to the Committee on Banking and Currency.

H.R. 16390. A bill to amend title 44, United States Code, to redesignate the National Historical Publications Commission as the National Historical Publications and Records Commission, to increase the membership of such Commission, and to increase the authorization of appropriations for such Commission; to the Committee on Government Operations.

H.R. 16391. A bill to create a congressional price ombudsman; to the Committee on House Administration.

H.R. 16392. A bill to amend the Federal Food, Drug, and Cosmetic Act to require the labels on all foods to disclose each of their ingredients; to the Committee on Interstate and Foreign Commerce.

H.R. 16393. A bill to amend the Fishermen's Protective Act of 1967 in order to strengthen the import restrictions which may be imposed to deter foreign countries from conducting fishing operations which adversely affect international fishery conservation programs; to the Committee on Merchant Marine and Fisheries.

H.R. 16394. A bill to amend title 38, United States Code, to increase the maximum amount of the grant payable for specially adapted housing for disabled veterans; to the committee on Veterans' Affairs.

H.R. 16395. A bill to amend part B of title XI of the Social Security Act to provide a more effective administration of professional standards review of health care services, to expand the Professional Standards Review Organization activity to include review of services performed by or in federally operated health care institutions, and to protect the confidentiality of medical records; to the Committtee on Ways and Means.

H.R. 16396. A bill to amend section 214 of the Internal Revenue Code of 1954 to provide a deduction for dependent care expenses of married taxpayers who are employed part time, or who are students, and for other purposes; to the Committee on Ways and Means.

By Mr. DERWINSKI:

H.J. Res. 1108. Joint resolution designating the first full week in April 1975 as National Shoppers' Newsletter Week; to the Committee on the Judiciary.

By Mr. BRADEMAS (for himself, Mr. KYROS, Mr. YATRON, Mr. SARBANES, Mr. BAFALIS, Mr. PODELL, Mr. BROWN of California, Mr. ROE, Mr. WHITEHURST, Mr. ADDABBO, Mr. NIX, Mr. ANDERSON of Illinois, Mr. FASCELL, Mr. HINSHAW, Mr. KING, Mrs. GRASSO, Mr. YOUNG of Georgia, Mr. SEIBERLING, Mr. REES, Mr. CARNEY of Ohio, Mr. ROSENTHAL, Mr. MOLLOHAN, Mr. FISH, Mr. MOAKLEY, and Mr. MOORHEAD of Pennsylvania):

H. Con. Res. 597. Concurrent resolution expressing the sense of Congress regarding the withdrawal of foreign troops from the Republic of Cyprus; to the Committee on Foreign Affairs.

By Mr. BRADEMAS (for himself, Mr. KYROS, Mr. YATRON, Mr. SARBANES, Mr. BAFALIS, Mr. STUDDS, Mr. HARRINGTON, Mr. GUDE, Mr. STARK, Mr. EILBERG, and Mr. DERWINSKI):

H. Con. Res. 598. Concurrent resolution expressing the sense of Congress regarding the withdrawal of foreign troops from the Republic of Cyprus; to the Committee on Foreign Affairs.

By Mr. DERWINSKI (for himself, Mr. CRANE, and Mr. FROEHLICH):

H. Res. 1308. Resolution to affirm the foreign policy of the United States; to the Committee on Foreign Affairs.

By Mr. GRAY (for himself and Mr. JONES of North Carolina):

H. Res. 1309. Resolution relating to officers and members of the U.S. Capitol Police under the House of Representatives; to the Committee on House Administration.

## MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

518. By the SPEAKER: Memorial of the Legislature of the State of Illinois, relative to no-fault insurance; to the Committee on Interstate and Foreign Commerce.

519. Also, memorial of the House of Representatives of the Commonwealth of Massachusetts, relative to making recipients of supplemental security income eligible for food stamps; to the Committee on Ways and Means.

## PETITIONS, ETC.

Under clause 1 of rule XXII,

470. The SPEAKER presented a petition of the council of the city and county of Honolulu, Hawaii, relative to Federal participation in the costs of educating immigrants; to the Committee on Education and Labor.

# EXTENSIONS OF REMARKS

## INDIAN TEACHERS FOR SCHOOLS ON RESERVATIONS

### HON. PAUL J. FANNIN

OF ARIZONA

IN THE SENATE OF THE UNITED STATES

*Monday, August 12, 1974*

Mr. FANNIN. Mr. President, of all the problems on our Indian reservations, one of the most perplexing is how to provide a good educational system. We want a system which will provide Indians with the education which they need to compete in and share in what is frequently referred to as the mainstream of American life. Yet we also want a system which will enable Indians to maintain their rich traditions, language, and cultural heritage.

One of the major obstacles is the lack of teachers who speak Indian languages and understand the various cultures. An obvious answer to this is to train Indians to become teachers, but this involves unique problems because of the remoteness of some reservations, because of economic barriers, and because in the past Indians simply have not been motivated to get a college education.

The Arizona magazine of the Arizona Republic carried an excellent article on July 28, 1974, about an experimental program which appears to show some success.

Mr. President, I believe my colleagues would be interested in reading about the program and the remarkable determination of both those operating the program and the participants. I request unanimous consent that the article be printed in the RECORD.

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

A SPECIAL KIND OF TEACHER FOR THE RESERVATION

(By Robert Barrett)

In 115-degree heat, Mrs. Selma Elizabeth Carlyle was hoeing a small canal in the sandy ground so water could reach a newly planted palm tree. She motioned the visitors to the shade of a thatched ramada in front of her home that stands by itself off a dirt road on the reservation southwest of Laveen.

"I've been here in this little shack, oh boy, about fourteen years. I raised all my boys here. My boy (Deke) is not wild. He stays close to home and that's the only way I get through school," she said.

Mrs. Carlyle is one of 36 American Indians scheduled to graduate with a bachelor's degree in elementary education from Arizona State University in August. At age 47 she returned to school after 30 years, three marriages, eight children and a bout with cancer. Each week, she drove 90 miles to attend classes on the Gila River Indian Reservation.

Mrs. Carlyle started working for the reservation's Headstart program as a cook. She worked as a volunteer because the program had no funds to pay her. After cooking for the school she worked from 2 p.m. until sundown bunching vegetables. Eventually she was paid for cooking but she didn't give up her second job.

"I was supporting my family alone then. I got fifty dollars a week as a cook and after taxes I got about forty-seven dollars a week. I had to raise five boys and I guess I was too proud to go on welfare," she said. One of her sons, Paul Smith, is president of the Salt River Indian tribe.

"All my children have scattered to the winds except for two," she said. Tony works as a hospital orderly and her thirteen-year-old, Deke, keeps house while she's at ASU. "He brushes dirt under the chairs," Mrs. Carlyle said.

Her children are the product of three marriages. She dropped out of the ninth grade when she married at age 17. Her first husband died, she divorced her second and she's separated from her third husband.

Mrs. Carlyle advanced from cook to teacher aide while working at the Gila Crossing Day School. Then she entered an experimental